



COWICHAN TRIBES
Child and Family Wellness Legislation Project



Raising our Children our Quw'utsun Way:

Overview of Cowichan Tribes' Child and Family Wellness Law

Update to Community

August 22, 2023

OUR CHILD AND FAMILY SERVICES LAW



Legal nature of this work

- It is important to understand that Cowichan law will become a legal document within the laws of Canada and BC.
- It will become the law for Cowichan mustimuhw but will also need to be used and understood by Judges, lawyers and police when necessary.
- Cowichan law will have to comply with other basic Constitutional and Human Rights laws.
- This law is the legal foundation for our Child and Family jurisdiction.
- This law once passed can only be amended through community ratification, so we will have other documents to deal with many details of how the law will operate. Including policies and regulations.
- We do not want our law to be challenged in court for being unconstitutional, therefore it must pass any legal requirements.
- For these reasons the law is written in legal language.



Components of Cowichan Law

- Preamble
- Part One: Title, Interpretation and Purpose
- Part Two: Governance and Jurisdiction
- Part Three: Guiding Principles and Minimum Standards
- Part Four: Support Services
- Part Five: Intervention Services
- Part Six: General Provisions



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PREAMBLE

- Sets out the purpose and reasons for Cowichan Tribes passing this law
- Reflects our inherent right to be self-determining over Cowichan children and families
- Reflects that our laws flow from *snuw'uyulh* and that kinship is a foundational legal principle of our *snuw'uyulh*
- Acknowledges the harm done to our children and families by colonization and that Cowichan Tribes is best positioned to remedy this harm



Part One: TITLE

Cowichan Tribes' Child and Family Wellness Law

- Working on incorporating Hul'qumi'num language.
- We are working with the Sul-hween Committee to determine a Hul'qumi'num title and with the Education Department to ensure that the Hul'qumi'num spelling is correct and translations are accurate throughout.



Part One: PURPOSE

The purpose of the law is to:

1. Exercise and implement the inherent right of self-government of Cowichan Tribes
2. Set out principles and standards for the provision of child and family services
3. Facilitate the return of Cowichan Tribes children to the jurisdiction of Cowichan tribes, and return to their Cowichan family and community
4. Clarify that this law prevails when in conflict with federal or provincial laws



Part Two: Governance and Jurisdiction

- Sets out the authority and jurisdiction of Cowichan Tribes to pass this law
- States that this law applies to all Cowichan children and families and the initial service delivery where this law applies – Vancouver Island and Gulf Islands
- In the rest of B.C. provincial law will apply to Cowichan children and Cowichan will enter into an agreement with MCFD to ensure Cowichan is involved in decisions
- Sets out the powers and duties of Chief and Council, establishes a Board of Directors, and Lalum'utul' Smun'eem Executive Director



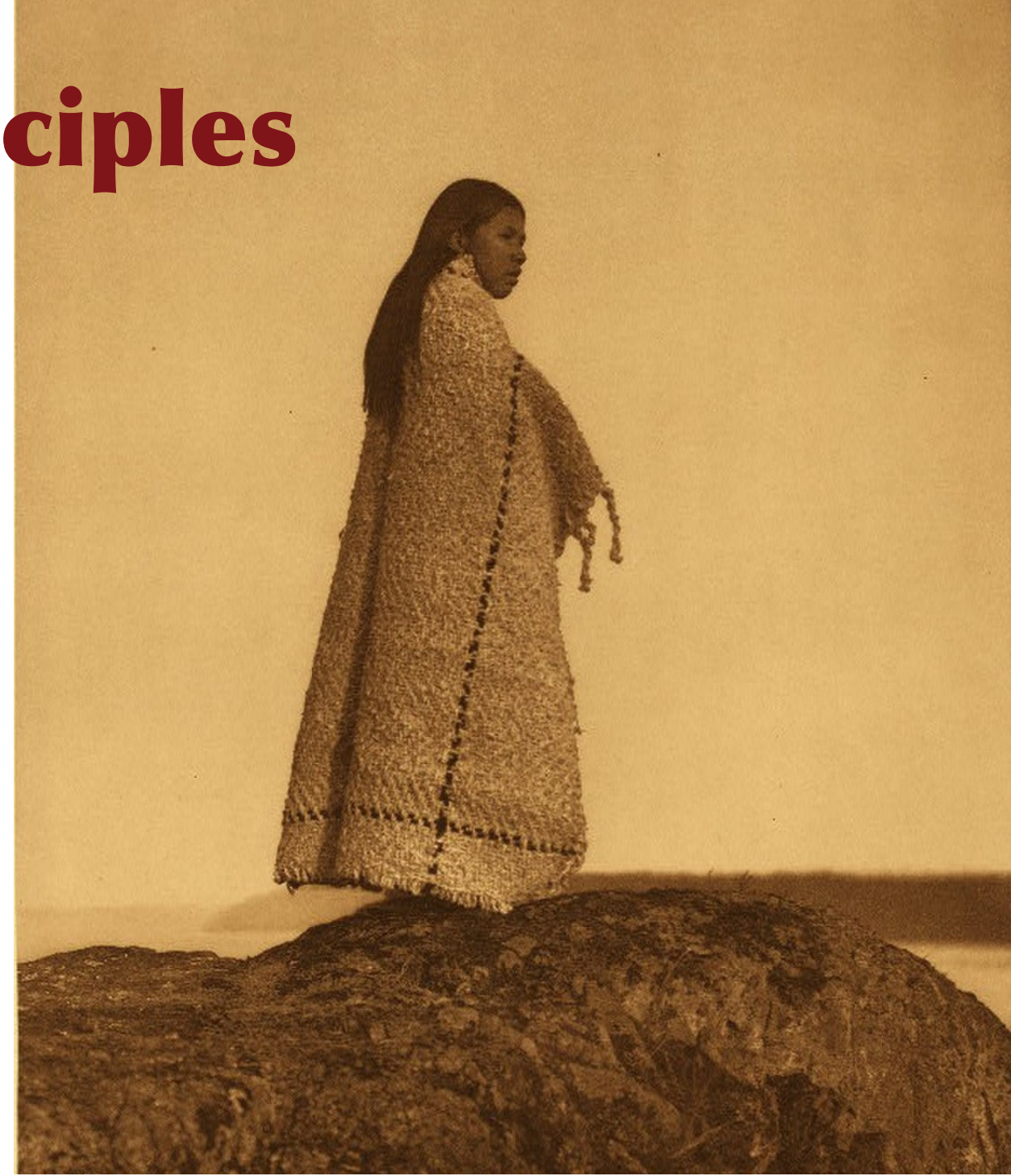
Part Three: Guiding Principles

The law is to be interpreted and administered in accordance with our *snuw'uyulh*

GUIDING CULTURAL PRINCIPLES | love, respect, sharing and support, trust, sacred protection, collaboration, knowing where you come from, ensuring familial connection

- These principles mandate and guide our workers and others when determining the best interests of the child

PLACEMENT PRIORITIES | 1. child's parents; 2. extended family or kinship groups; 3. Cowichan Tribe's family; 4. Others (in consultation with child's extended family)



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Part Three: Minimum Standards

- **DETERMINING THE BEST INTERESTS OF THE CHILD (s. 87)**
 - Determined through many factors: need to know their identity, ability to learn Hul'qumi'num, access to ceremony, maintaining kinship connections, the child's preferences, preserving cultural identity and connections
 - When providing any child and family services, ***active efforts must be made*** to ensure the best interests of the Cowichan Tribes Child are met (s. 100)

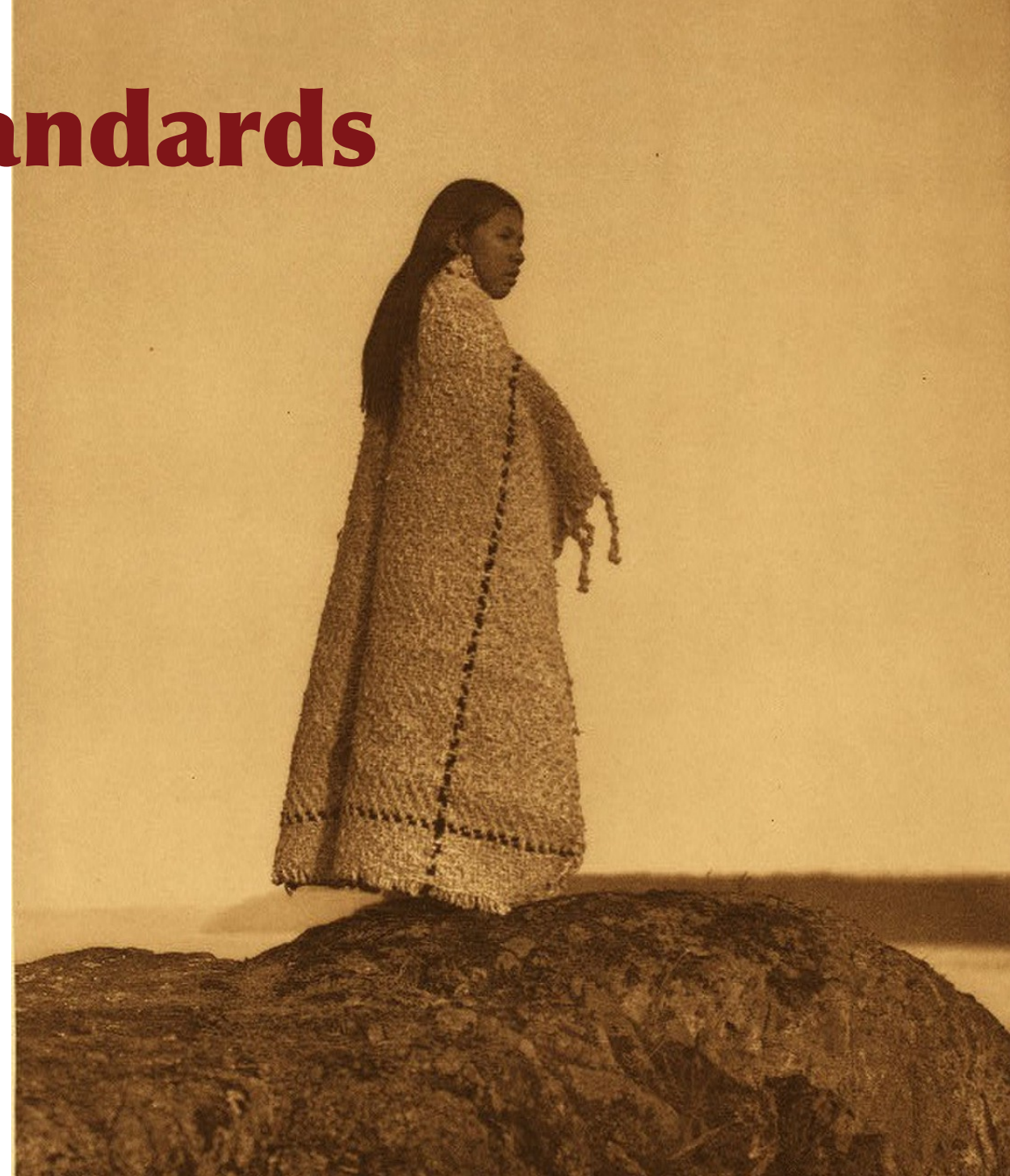
Part Three: Minimum Standards

Grandparent Collaboration | Recognizes that a child's grandparent plays an important role

Family Spokesperson | Will be consulted to ensure decision-makers are aware of specific circumstances of a child and their family

Sul'hween Committee | Formed by enrolled community members to ensure decision-making is guided by *snuw'uyulh* (ss. 118-123)

Child Blanketing Committee | Formed to restore the honour to the Child and their family, and shield them from future harm (ss. 124-126)



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Part Four: Support Services

FOCUS IS ON PREVENTION

FOR FAMILIES | basic support services will be offered to all Cowichan Tribes families that wish to participate to strengthen life skills, health care, and cultural knowledge, more targeted support services may be offered to families that need extra support

FOR YOUTH | safe houses, prevention programming, educational support, outreach, supported living

FOR THOSE AGING OUT OF CARE | IGB will establish policies to support those formerly in care through the ages of 19-27.



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Part Five – Intervention Services

Early Intervention Services

- s. 153 When taking intervention action, the Lalum'utul' Smun'eem Worker must make ***active efforts*** to find the least disruptive means of assisting the parent
- The starting point will be trying to find culturally-based customary care arrangements that the family involved consents to
 - This could include care arrangements in-home and out-of-home
 - Focus is on working with the family to ***heal***



Part Five – Intervention Services

Protection Services

- s. 171 Removing a child from their parent is ***a last resort*** after all active efforts have failed and there is clear and convincing evidence that abuse or neglect has occurred
- s. 172 Protection services are a last resort and will occur only if a child's interests are at risk and:
 - 1. A parent or caregiver declines to participate in the voluntary parts of this Act; or
 - 2. The need to act to protect a child requires protective intervention



Part Five – Intervention Services

Protection Services

- A *joint custody model* is being considered to ensure we are only taking away the legal rights necessary to care for the child in the day to day while making sure the parents or family retain some rights
- No continuing custody orders. We propose having ongoing custody orders that mandate Lalum'utul' Smun'eem to continue to involve family in working for reunification.



Part Five: Adjudication and Dispute Resolution Mechanisms

- Cowichan Tribes will exercise their jurisdiction over dispute resolution in a phased approach (s. 179)
 - **Phase 1:** B.C. Provincial Court with culturally-based modifications (ss. 180-187)
 - The *Sul’hween* Peace Giving Advisory Body (a committee of elders) will sit with the provincial court judge to advise them (ss. 188-191)

Part Five: Adjudication and Dispute Resolution Mechanisms

- **Phase 2:** Cowichan Tribes will build our own dispute resolution mechanism within two years (ss. 229-232)
 - Will be done in consultation with other Cowichan Tribes departments
 - Will be based on customary dispute resolution practices and principles



Part Six: General Provisions

- Housekeeping provisions to bring other necessary provincial laws into effect
- Describes how the transition of existing files with the province will work (ss. 247-248)
- Sets out how the law will be reviewed and amended (ss. 249-251)
- Lalum'utul' Smun'eem must prepare a report after five years reviewing the law (s. 252)



Questions or Feedback

Email us anytime at:

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