The Cowichan Tribes’ Nation-Based Child & Family Wellness Legislation Project: a case study
What is Indigenous Law?

- Law is a practice – an activity
- Law cannot be separated from its surrounding culture
- There are numerous different and unique Indigenous legal traditions across Canada
Cowichan Tribes
How did this work begin?

“We don’t want our children to be in the system. We want our children to be taken care of by their family, not unknown people ...”

—Dora Wilson, Cowichan Tribes’ Elder
Timeline

• 1976 – Single Cowichan Tribes social worker
• 1996 – Cowichan assumes delegated authority
• 2010 – start of discussions of Cowichan law (pilot project with MCFD)
• 2012 – community engagements
• 2013 – project funding cut
• 2018 – discussions with Canada and BC on Cowichan jurisdiction
• 2019 – LOU signing (tripartite)
• 2020 – notice to exercise jurisdiction and start of coordination table
• 2021 – tri-partite negotiation table to develop coordination agreement
Cowichan Tribes Nation-Based Child & Family Wellness Legislation:  
*Rationale*

- Cowichan’s objective has always been to develop its own authority through nation-based legislation.

- Having its own legislative authority would provide for greater opportunity for consistency with our inherent rights, would foster greater legitimacy within the community and would support Cowichan nation building.

- Cowichan Tribes has their own laws and legal processes when it comes to issues surrounding children and families.
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: Project Proposal

• In 2010, Lalum’utul’ Smun’eem (LS) submitted a proposal to the provincial government to begin the planning and development of a piece Nation-based legislation

• LS and Cowichan Tribes developed several committees in order to move this process forward:
  • Guiding Committee – responsible for overall management
  • Working Group Committee – responsible for technical deliverables and culturally relevant information to support the project
  • Research Committee – responsible for providing support, expertise, direction and oversight to the project
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: Community Consultations

- LS undertook a **community driven approach** for the development of the legislation model
  - Community meetings
  - Presentations to Cowichan Tribes
  - Community focus groups
  - Family visits
  - Elders luncheons
  - Community BBQs
  - Two community forums
  - Presentations to community agencies

- Approximately 1500 band members were involved in the consultations
- Focused on gaps and Cowichan teachings regarding children and families
Some Considerations

• Laws relating to Care and Connection
  • What were/are laws, practices, teachings?
  • Connecting children and families who have been disconnected
  • Practices and teachings related to those with special exceptionalities and needs
  • When care of children needs to extend to adulthood

• Laws relating to decision making
  • What are teachings, practices and processes used to make decisions about children?
  • Who is a part of decision making?

• Laws for addressing differences among Nation members: parents, families, etc.
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: 
*Findings from Initial Consultations*

- **Major Themes**
  - **Culture**
    - “Our culture makes us strong. It identifies who we are”
  - **Family**
    - “Everyone in the family had a role and responsibility. All children had a purpose”
  - **Teachings**
    - “Teachings are a life long everyday practice”
    - “Teachings are lost in English translation”
  - **Governance**
    - “Elders were our social workers and decision makers regarding our families”
    - “There were no boundaries (jurisdictions)”
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: 
*Findings Identified by Staff*

- The concept of removing children from families and community is foreign

- Child’s parents are named as the primary caregiver, and solely responsible for care of the child (vs extended family)

- Time limits (s. 42) for Temporary Custody are too short  
  - doesn’t allow family enough time to “do the work”

- The “best interest of the child” guiding principle is individualistic vs. Cowichan view of the collective importance of families and community)

- CFSA does not mention or sufficiently emphasize  
  - Centrality of culture  
  - Key role of prevention services
Cowichan Tribes Nation-Based Child & Family Wellness Legislation:  

**Guiding Principles**

Recognizes that Cowichan laws and policies are based on the cultural values and teachings set out in the snuw’uyulh

- The Cowichan Act defines snuw’uyulh as “a set of teachings including the traditional beliefs, practices and laws for Cowichan.”

- The Cowichan legislation identifies fundamental/guiding principles regarding families:
  - “all my relations” (importance of knowing who you are and where you come from)
  - Family (ensuring our connections are strong and resilient)
  - Love
  - Respect
  - Support and Sharing
  - Trust
  - Protection
Cowichan Tribes Nation-Based Child & Family Wellness Legislation:  
*Service Delivery Principles*

- Highlights the importance of partnership with family, commitment of the Cowichan Tribes, and rights of citizens in guiding the appropriate provision of services

- The commitment of Cowichan Tribes in providing a continuum of services for children and their families with emphasis on prevention, early intervention, and community-based alternatives

- An extensive list of the rights of citizens is identified as underlying service delivery under the Cowichan law
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: Raising & Nurturing Children

- **Family Meetings**
  - Priority given to consulting with the child’s extended family about potential resolutions (unless not in the best interests of the child)

- **Sulhween (Elders) Committee**
  - Advise and consult with Cowichan families and CT Child and Family Service agency

- **Cowichan Tribes Child Consultation Team**
  - Consists of representatives from the Cowichan Grandparents Committee, LS Advisory Committee, Cowichan Justice Committee, Quw’utsun Syuw’entst Lelum’, Ts’ewulhtun Health, Sustainable Housing and Social Development
  - Advisory and consultative body
Cowichan Tribes Nation-Based Child & Family Wellness Legislation: *Traditional Stories/Quotations*

- Illustrate the teachings and practices that are the primary source of Cowichan people’s rights and responsibilities

- Role of traditional stories
  - Fosters legitimacy
Challenges in Codifying *snu’wuyulh*

- **Format**
  - Cultural Code (interpretive document)
  - Incremental vs. Full Jurisdiction

- **Language**
  - Difficult to translate
  - Important to revitalizing law
  - Low number of fluent speakers and even lower number of individuals able to read Hul’qumi’n’um’

- **Infrastructure of Legislation**
  - Child and family service law(s) do not operate in isolation
  - Jurisdiction is limited to CFS (administration and enforcement)
  - Capacity - Requires a lot of discussion/cooperation/negotiation

- **Concurrent Law Model**
  - Conflict of laws?
  - Significance of gaps?