

# The Cowichan Tribes' Nation-Based Child & Family Wellness Legislation Project: a case study

*Broadening Legal Horizons: Drafting Indigenous Legal Traditions*

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# 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'num'
- 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?