



August 31, 2021

VIA E-MAIL
Ref: 260084

First Nations Summit
Union of BC Indian Chiefs
BC Assembly of First Nations
E-mail: c/o djohnson@ubcic.bc.ca

To First Nations Leadership Council:

The Ministry of Children and Family Development (MCFD) is committed to support and uphold Indigenous inherent and human rights and to implement and meet the objectives of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). This includes upholding Indigenous peoples' right to self-determination, free, prior, and informed consent on decisions that affect them, and to ensure they have a role in the development of legislation that may affect them. Aboriginal and treaty rights are recognized and affirmed in section 35 of the *Constitution Act, 1982*, and corresponding Crown obligations have been judicially commented upon and set out by the courts, and incorporated/set out in the draft principles that guide British Columbia's relationship with Indigenous peoples (https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft_principles.pdf).

MCFD wants to move ahead with the transformation of the child and family services system in British Columbia. This includes working alongside First Nations' leadership to implement the standards in the UN Declaration through the statutes that direct our work as part of our effort to modernize our laws. MCFD acknowledges that there is substantial work being done government-wide on legislative and policy development processes with First Nations and the outcomes of that work will be included as addendums to this letter.

This letter of commitment confirms the principles, processes, roles, and responsibilities that MCFD will implement in the coming months to work with Indigenous governments and the First Nations Leadership Council (FNLC), as mandated by First Nations leadership, as it undertakes legislative and policy changes to transform MCFD services and systems. A strong relationship and strengthened partnership based on recognition, rights, respect, co-operation, and partnership is critical to the success of our work together. Accordingly, building trust with rights holders and with the organizations that represent their interests must be a primary focus as we move forward. The key goal of this transformation is to eliminate all forms of colonialism, discrimination, and denial of the rights of Indigenous peoples from child and family services laws and policies in British Columbia, and to support First Nations to resume jurisdiction over children and families. We acknowledge this will be a major shift for MCFD that requires structural change and has been committed to repeatedly by the Government of British Columbia.

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Alignment of Laws (Declaration Act Section 3)

The provincial government has committed, in collaboration with First Nations, to address the legacy of residential schools, the ongoing impact of colonialism on Indigenous children, families and communities, and the epidemic of Indigenous children in government care. To begin this work, MCFD has prioritized alignment of its governing legislation with UNDRIP as required under section 3 of the *Declaration Act*, through a modernization of statutes, beginning with the *Child, Family and Community Service Act*. In accordance with section 3 of the *Declaration Act*, the provincial government must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure provincial laws are consistent with UNDRIP.

MCFD acknowledges the concerns expressed by FNLC and Indigenous partners with how the legislative amendments for early learning and child care were developed. This letter commits to a process to ensure meaningful opportunity for distinctions-based engagement, input, and co-development with Indigenous peoples to ensure the distinctions-based rights of Indigenous peoples guide the process, as well as the obligation of British Columbia to ensure there is alignment of MCFD laws and policies with the UN Declaration.

We acknowledge that, going forward, we must engage with Indigenous peoples through their governing bodies, and with the FNLC who have been directed by the Chiefs through resolution, throughout the process of policy analysis, development of legislative proposals, and maximizing opportunities for co-development to ensure the process and substance reflects meaningful and effective consultation and collaboration, and not our previous practice of developing proposals internally and then having a limited consultation phase to receive feedback. This early and continued engagement will be a critical part of MCFD fulfilling its obligations in relation to the *Constitution Act, 1982*, as well as to align our laws with the UN Declaration consistent with section 3 of the *Declaration Act*.

Additional Legislative Work

At times, we are faced with additional legislative amendments to resolve a legal conflict or to provide greater operational clarity to frontline staff and service providers. Some amendments are required to be made expeditiously to address immediate legal or policy questions. We acknowledge all the work of MCFD has an impact on First Nations in British Columbia. We understand this includes amendments of a technical or administrative nature. We commit to exploring through dialogue with First Nations and FNLC the extent to which proposed legislative changes will impact First Nations peoples and governments.

MCFD commits to raising any proposed legislative changes, including amendments which are technical or administrative in nature, at the earliest opportunity with the FNLC, and to ensure appropriate engagement with First Nations that is reflective of our constitutional obligations, section 3 of the *Declaration Act* and the standards in the UN Declaration. We acknowledge the obligation of the Province to meaningfully engage directly with First Nations Rights and Title-holders on a government-to-government level and that any discussions with the FNLC does not displace this obligation, as the FNLC itself has consistently reminded us that our obligation is to engage at several levels according to a principled approach.

In addition to MCFD's alignment of laws work, we acknowledge that there is broader discussion about issues associated with other ministry proposed legislative amendments, and it will be discussed further at the Joint Core Working Group. We commit to ensure that our process is consistent with any agreement at that table, while continuing our discussions with FNLC representatives on any proposed changes in the intervening period.

Shared Decision-Making (*Declaration Act* Section 7):

We commit to participating in and supporting the work of the Joint Core Working Group on facilitating and implementing any decision-making agreements under section 7 of the *Declaration Act*. This work will include considering any necessary policy and legislative amendments related to the suite of legislation that mandates the work of MCFD. Our common commitment across the provincial government, but also from MCFD, is to ensure the implementation of section 7 agreements as part of the modernization of MCFD legislation. We further recognize that the child and family services sector might be appropriate for more immediate implementation of these agreements, given the priority placed on the work in relation to children and families through a number of key agreements over the past decade, including the Commitment Document.

In undertaking this work, MCFD will maintain an approach that recognizes the rights of Indigenous peoples, recognized and affirmed by the Constitution of Canada and affirmed in the UN Declaration, and we acknowledge that this calls for clarity of process and robust steps that fulfill Crown obligations. Since the process for making either legislative or regulatory changes is currently staged and governed by confidentiality and Cabinet processes, the timeframe for reform may require up to two years from the initiation on policy engagement to the introduction of a bill in the Legislature.

Subject to any changes being made to this process, MCFD commits to the following approach to ensure continuous engagement with FNLC and Indigenous partners:

Policy Initiation:

Before legislative changes are proposed, the policy must be assessed and evaluated to determine the extent to which legislative changes are required, including an assessment of the potential impact of these changes to Indigenous peoples and their rights in British Columbia. We will engage with First Nations and the FNLC on the assessment or evaluation of policies and any intent to develop policy that may lead to legislative changes. MCFD commits to a comprehensive process designed to reach and be inclusive of all First Nations in British Columbia who may choose to participate. We acknowledge that engagement and collaboration is most impactful when done early in the policy development process and we commit to working closely with First Nations and the FNLC at the earliest possible policy stages.

Within this current process, we commit to substantive engagement with FNLC and First Nations to ensure legislative drafting reflects the procedural and substantive requirements of implementing and meeting the objectives of the UN Declaration, including collaboration, cooperation and consultation with Indigenous peoples.

Collaboration on Documents for Cabinet policy approval:

Legislative amendments begin with Cabinet review and approval on the policy scope, which is then further defined through the Request for Legislation (RFL) and legislative review processes. In the current process, the RFL and draft bill must be consistent with the initial policy direction approved by Cabinet. We commit to ensuring the Cabinet submission is consistent with the policy intent developed in partnership with FNLC and First Nations. This can include the joint development of drafting instructions for legislative counsel, as well as sharing documents used to develop Cabinet documents and draft legislation under signed confidentiality agreements with FNLC representatives and First Nations, if requested. If a dispute or barrier arises regarding the agreed policy intent, we commit to a joint problem-solving approach to resolve any disputes or conflicts in relation to the scope or content of MCFD's policy and legislative changes.

MCFD will provide transparency and clarity of current government processes, such as legislative and budget cycles or operational considerations that may factor into the legislative process and will work with FNLC to clarify each party's roles and responsibilities in the development of MCFD policy and legislation at the political, senior official and technical levels.

Request for Legislation:

After Cabinet approval of the policy intent, we must develop and seek Cabinet approval on a RFL. MCFD will commit to co-development of the policy underlying the RFL and relevant portions of the RFL when this is appropriate, under signed confidentiality agreements with FNLC representatives and First Nations, if requested. This process may change in response to the additional discussions that are underway. We commit to aligning our process of legislative development with the outcome of these discussions.

We will also share information with the FNLC and First Nations on the approximate timing and scheduling on the proposed legislative projects in a timely manner to ensure appropriate time allowances for input and/or co-development. Input for each stage of the legislative process is best received approximately two months prior to its consideration by Cabinet.

Drafting Legislation:

We commit to updating FNLC representatives, and First Nations on request, on the drafting progress, and the joint development of legislation wherever possible or appropriate. MCFD will provide early and subsequent drafts of the legislative amendments throughout the process prior to review by the Legislative Review Committee. This may be possible only with appropriate confidentiality agreements in place, as has been the recent practice.

Cabinet Committee Review of Legislation:

Once work on the legislation is complete, a final draft is presented to the Legislative Review Committee of Cabinet for review and approval. Once it is approved to be introduced in the Legislature, parliamentary privilege applies. This privilege belongs to the members of the Legislative branch of the provincial government and is not covered by the confidentiality agreements entered into with the Executive branch of government. Further disclosure of the legislation at this point by the Executive branch of government could be viewed as a breach of that parliamentary privilege. MCFD commits to ensuring that information is shared early enough in the process that any issues can be addressed through collaboration and cooperation, that meets the standards of the UN Declaration, before the legislation is subject to these strict confidentiality rules at the end stage of the legislative development process.

Implementation:

We recognize that, depending on the nature of the legislative changes, we will need to work collaboratively with First Nations and the FNLC to implement the changes, monitor their impact, and continue any dialogue for continuous improvement of the policy and law.

Implementation can often involve new or amended regulations. If regulatory changes are necessary, we will take the same approach to work collaboratively with First Nations and the FNLC to develop the policy intent and scope, refine instructions for regulatory drafting, share regulation drafts, and update representatives on progress as the regulation amendments are reviewed by Cabinet.

While setting out this approach, we will continue dialogue with the Joint Core Working Group to identify changes to the legislative process in order to ensure MCFD effectively implements the *Declaration Act's* requirement for consultation and collaboration with Indigenous peoples.

Conclusion

MCFD acknowledges that early, consistent, and transparent collaboration and cooperation with the FNLC and Indigenous governments is essential to addressing the transformation of child and family services in British Columbia. We understand a key part of this work is to continue to grow a strong relationship with FNLC, built on trust and a mutual understanding of roles and responsibilities. In the *Protocol on Cooperation and Communication* between the Minister and FNLC (July 2019), we committed to work together for the health and well-being of First Nation children, including through legislative and policy reform. We propose to use our Protocol to continue to guide us, as appropriate, as we engage in regular dialogue and work constructively together on matters, including legislative, policy and practice change. The FNLC has been explicit in communications with senior officials and Ministers, reminding us that engagement and collaboration on policy and law with the FNLC does not fulfill, replace, displace, or interfere with our engagement with First Nation governments and proper Rights and Title holders.

In the weeks ahead, we will share a robust process for the consideration of the reform of the foundational legislation administered by MCFD and identify the opportunities to reset these foundations to better align with the recognition of the rights recognized and affirmed in section 35 of the *Constitution Act*, and to fulfill the obligation on British Columbia to implement and meet the objectives of the UN Declaration.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Dean". The signature is written in a cursive, flowing style.

Mitzi Dean
Minister of Children and Family Development