



TSAWWASSEN FIRST NATION
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2009

CHILDREN AND FAMILIES ACT

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TSAWWASSEN FIRST NATION

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The Tsawwassen Legislature enacts as follows:

Citation

1 This Act may be cited as the *Children and Families Act*.

Definitions

2 In this Act:

“**British Columbia**” means the government of British Columbia;

“**best interests of the child**” means all relevant factors that must be considered in determining the child’s best interests, including but not limited to

- (a) the child’s safety,
- (b) the child’s physical and emotional needs and level of development,
- (c) the importance of continuity in the child’s care,
- (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship,
- (e) the child’s cultural, racial, linguistic and religious heritage,
- (f) the child’s views,
- (g) the importance of preserving the child’s cultural identity and connection to the extended family, and
- (h) the effect on the child if there is a delay in making a decision;

“**child**” means a person under the age of majority;

“**child care**” means the care and supervision of a child in a child care setting or other facility, other than:

- (a) by the child’s parent, or
- (b) while the child is attending an educational program provided under the *School Act* (British Columbia) or the *Independent School Act* (British Columbia);

“**child protection services**” means services that provide for the protection of children, where the primary objective is the safety and well-being of children, having due regard for:

- (a) protection from abuse, neglect, and harm, or threat of abuse, neglect, or harm, and any need for intervention,
- (b) guardianship responsibilities for children in care,
- (c) support of families and caregivers to provide a safe environment and prevent abuse, neglect, and harm, or threat of abuse, neglect, or harm, and
- (d) support of kinship ties and a child’s attachment to the extended family;

“**children in care**” means children who are in the custody, care, control or guardianship of an MCFD director;

“**Executive Council**” means the Executive Council of Tsawwassen First Nation established under the *Government Organization Act*;

“**guardian**” means the guardian of the child’s person having all the rights, duties and responsibilities of a parent;

“**in need of protection**” has the same meaning as in a child who needs protection as defined in section 13 of the *Child, Family and Community Service Act* (British Columbia).;

[Amended by Bill 25-2009; Enacted on September 16, 2009]

“**Manager**” means the Tsawwassen First Nation Children and Family Services Manager designated by Executive Council or a person delegated with the authority to act in the Manager’s place in accordance with the regulations;

“**MCFD**” means the Ministry of Children and Family Development or any successor ministry having authority in respect of child protection services;

“**MCFD director**” means a director designated by the Minister of Children and Family Development under the *Child, Family and Community Service Act* (British Columbia) or the *Adoption Act* (British Columbia), as applicable;

“**parent**” means

- (a) a mother or father of a child who has custody of the child,
- (b) a mother or father who does not have custody of their child but who exercises or attempts to exercise a right of access,
- (c) a mother or father providing financial support for a child,
- (d) a person to whom custody of a child has been granted by a court of competent jurisdiction or by an agreement, or
- (e) a person with whom a child resides and who stands in place of the child’s mother or father;

“**Tsawwassen Child**” means a child who is a Tsawwassen Member;

“**Tsawwassen Government**” means the government of Tsawwassen First Nation as referred to in clause 2 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement;

“**Tsawwassen Lands**” means the lands set out in Appendix C-4 of the Tsawwassen First Nation Final Agreement as Tsawwassen Lands, as amended from time to time under that agreement;

“**Tsawwassen Member**” means a Tsawwassen individual who is enrolled under the Tsawwassen First Nation Final Agreement in accordance with the eligibility and enrolment chapter.

Application

- 3** This Act applies to child and family services on Tsawwassen Lands in respect of
- (a) Tsawwassen Children, and
 - (b) children who are not Tsawwassen Children, subject to an agreement under clause 74 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement.

Guiding principles

- 4** This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations, and in accordance with the following principles:

- (a) a child is entitled to be protected from abuse, neglect and harm or threat of harm;
- (b) the traditions and oral history of Tsawwassen First Nation must be honored and respected;
- (c) a child is entitled to receive care and support that is in their best interests, in a manner consistent with the customs, cultural values, and laws of Tsawwassen First Nation;
- (d) best efforts must be made to improve the quality of life of all Tsawwassen Members;
- (e) the promotion of the health, safety and well-being of Tsawwassen children is integral to the future of Tsawwassen First Nation;
- (f) knowledge about family origins is important to the development of a child's sense of identity;
- (g) a child's cultural identity, kinship ties and attachment to his or her extended family and community should be preserved;
- (h) responsibility for the health, safety, and well-being of a child rests primarily with a child's family;
- (i) all persons share the responsibility of protecting and promoting the health, safety and well-being of a child;
- (j) the family is the primary influence on the growth and development of a child;
- (k) a child flourishes in stable, caring and long-term family environments;
- (l) if, with available support services, a family can provide a safe and nurturing environment and ensure the care and well being of a child, then those support services should be provided;
- (m) extended family members should be involved in supporting the health, safety and well-being of a child;
- (n) a child, his or her parents, and members of his or her extended family should be informed of the services available to them and encouraged to participate in decisions that affect them;
- (o) prevention activities are integral to the promotion of the health, safety, and well being of a child;
- (p) Tsawwassen Government needs to be involved in the planning and delivery of family support services to Tsawwassen Members;
- (q) Tsawwassen First Nation will foster cooperative intergovernmental relations with British Columbia, Canada, and American Indian and Alaska Native tribes in the United States, to ensure the well-being of children and families.

Service delivery principles

- 5** The services provided for under this Act must be delivered so that the safety and well-being of children are the paramount considerations , and in accordance with the following principles:
- (a) families and children should be informed about the services available to them and encouraged to participate in decisions that affect them;

- (b) programs and services should be planned and provided in ways that are sensitive to the needs and the cultural and religious heritage of those receiving the services;
- (c) Tsawwassen Members should be involved, wherever possible and appropriate in the planning and delivery of services, including preventive and support services to families and children;
- (d) families and children should receive the most effective form of support, assistance and protection appropriate in the circumstances;
- (e) interventions should be consistent with the best interests of the child and his or her family;
- (f) Tsawwassen First Nation will collaborate with the MCFD in the planning and delivery of services to Tsawwassen Children and families, with a focus on prevention and support services to children and families;
- (g) services should be integrated, wherever possible and appropriate, with services provided by ministries of the government of British Columbia, community agencies and Community Living British Columbia established under the *Community Living Authority Act* (British Columbia).

Family support services

- 6 In accordance with the regulations, the Tsawwassen Government may provide support services to children and families, including but not limited to
 - (a) family support,
 - (b) parenting programs,
 - (c) services for children,
 - (d) counselling,
 - (e) in-home support,
 - (f) respite care,
 - (g) services to support children who witness family violence,
 - (h) opportunities for Tsawwassen community participation,
 - (i) family development activities,
 - (j) advocacy,
 - (k) child protection, and
 - (l) foster care.

Service plan

- 7 The Manager must submit to Executive Council for its approval a proposed service plan respecting the provision of support services to children and families.

Duty of the Manager

- 8 Any program or service established for the support of children and families must be administered and managed by the Manager in accordance with a service plan approved by Executive Council under section 7.

Manager may represent Tsawwassen Government

- 9 The Manager is authorized to act as a representative of the Tsawwassen Government in matters relating to this Act.

Plan of care

- 10 In an effort to prevent a removal, the Manager may make a plan of care with a parent for the care of a child.

Child care agreements

- 11 (1) The Manager may make an agreement with a person from a child's extended family or another person, if the person
- (a) has established a relationship with the child or has a cultural or traditional responsibility toward that child, and
 - (b) is given physical care and control of the child by that child's parent.
- (2) The agreement under subsection (1) may provide for a child's financial support from money appropriated by British Columbia for that purpose while the child is in the person's care.

Privacy

- 12 Information obtained through the provision of support services to children and families under this Act is personal information, which must not be disclosed except in accordance with the *Freedom of Information and Privacy Act* or section 13 of this Act.

Duty to report

- 13 A person who has reason to believe that a child on Tsawwassen Lands needs protection in accordance with the *Child, Family and Community Service Act* (British Columbia) must promptly report the matter to the Manager or a MCFD director.

Delegation of child protection authority

- 14 (1) The *Child, Family and Community Service Act* (British Columbia) applies in respect of child protection services on Tsawwassen Lands.
- (2) The Tsawwassen Government delegates all powers, duties and functions for child protection services on Tsawwassen Lands to the MCFD in accordance with the *Child, Family and Community Service Act* (British Columbia), subject to section 15 of this Act.

Notification

- 15 Where a MCFD director fails to notify the Manager in respect of
- (a) the removal of a Tsawwassen Child on Tsawwassen Lands,
 - (b) a child protection matter on Tsawwassen Lands involving a Tsawwassen Child, or
 - (c) a presentation hearing concerning a Tsawwassen Child on Tsawwassen Lands,

the Manager upon becoming aware of the failure must notify the Deputy Minister of MCFD in writing of the failure and negotiate and attempt to reach agreement on notification procedures that will prevent such failures in the future.

Manager may represent Tsawwassen Government in court

- 16 The Manager may represent the Tsawwassen Government in court in a dispute involving the removal or custody of a Tsawwassen Child.

Authority to make agreements

- 17 For the purposes of this Act, the Tsawwassen Government may make an agreement with British Columbia in respect of
- (a) support services for children and families resident on Tsawwassen Lands,
 - (b) child protection services for Tsawwassen Children who do not reside on Tsawwassen Lands, or
 - (c) child protection services for children who reside on Tsawwassen Lands who are not Tsawwassen Children.

Parties to agreements

- 18 For the purposes of this Act, the Tsawwassen Government may make an agreement with the government of Canada, a first nation, an aboriginal organization, American Indian and Alaska Native tribes of the United States or the United States government in respect of services for Tsawwassen Children and families.

Guardianship

- 19 If an MCFD director becomes the guardian of a Tsawwassen Child, the Manager must collaborate with the MCFD director in planning for the Tsawwassen Child.

Judicial proceedings

- 20 If the custody of a Tsawwassen Child is in dispute, the Manager may exercise the right to commence an action, intervene in an action, or exercise the right of standing, representation or appearance in any judicial proceeding and the court must take judicial notice of the provision of this act and consider any evidence and representations in respect of this act and Tsawwassen First Nation customs in addition to any other matters it is required to consider in respect of an enactment of British Columbia, Canada, or other jurisdiction inside or outside Canada with respect to the custody of that Tsawwassen Child.

Child protection services information

- 21 Tsawwassen First Nation must
- (a) participate in British Columbia's information system until Tsawwassen First Nation establishes an information system that incorporates or is compatible with British Columbia's information system concerning children in need of protection and children in care, and
 - (b) establish and maintain a system for the management, storage and disposal of child protection services records and the safeguarding of personal child protection services information.

Information sharing and protection

- 22 (1) The Tsawwassen Government must share information in confidence with MCFD concerning children in need of protection and children in care.

- (2) Subject to subsection (1) information concerning children in need of protection and children in care must be protected by the Manager from disclosures to the extent possible under law.

Personal information

- 23** Information concerning children in need of protection and children in care is personal information for the purposes of the *Freedom of Information and Protection of Privacy Act* and federal and provincial privacy and access to information legislation.

Provincial adoption legislation applies

- 24** Subject to sections 25 and 26 of this Act, the *Adoption Act* (British Columbia) applies to the adoption of a Tsawwassen Child.

Discussion with Manager before adoption of Tsawwassen Child

- 25** Before placing a Tsawwassen Child for adoption, an MCFD director or an adoption agency must make reasonable efforts to discuss the child's placement with the Manager.

Before adoption placement

- 26** Before a Tsawwassen Child is placed for adoption, the Manager must
- (a) provide information about adoption and the alternatives to adoption to the birth parent or other guardian requesting placement,
 - (b) obtain as much information as possible about the social history of the child's biological family and preserve the information for the child, and
 - (c) give the prospective adoptive parents information about Tsawwassen First Nation and the social history of the child's biological family.

Objections to adoptions

- 27** Sections 25 and 26 do not apply if
- (a) the child is 12 years of age or over and objects to the discussion taking place, or
 - (b) the birth parent or other guardian of the child who requested that the child be placed for adoption objects to the discussion taking place.

Regulations

- 28** (1) Executive Council may make regulations under this Act with respect to child protection services, adoption and other services provided to children and families under this Act.
- (2) Executive Council may make regulations delegating the Manager's authority provided for under this Act to another person.

Interpretation

- 29** The *Interpretation Act* (British Columbia) applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Commencement

- 30** This Act comes into effect on the date of its enactment by the Tsawwassen Legislature.

