BC Aboriginal Child Care Society

Advancing Indigenous Jurisdiction over Indigenous Childcare in British Columbia: A Community Engagement Project to Explore Opportunities for Legal Change

Final Report

Final Draft – April 2020

Acknowledgements

BCACCS would like to acknowledge and express deep gratitude to all the community members, ECE workers and advocates, parents, Elders, leaders, and Advisory Committee members for their time, energy, and contributions to this project.

Executive Summary

Indigenous peoples have always had systems for the care and teaching of their children, which incorporate Indigenous knowledge, teachings, practices, laws, responsibilities, and systems of governance. Despite the impacts of colonization, residential schools, and the imposition of westernized educational and legal systems, Indigenous Childcare[1] continues to be practiced and exercised within Indigenous communities. Indigenous Childcare is carried out informally and formally within families, within the community, and at the Nation level.

The exercise of Indigenous jurisdiction over Indigenous Childcare is challenged by the fact that the Province also asserts jurisdiction over Indigenous Childcare in British Columbia. The Province asserts jurisdiction over Indigenous Childcare primarily through the application of the *Community Care and Assisted Living Act* ("Act") and the *Child Care Licensing Regulation* ("Regulations").

The BC Aboriginal Child Care Society's ("BCACCS") community-based research with Indigenous peoples and communities has previously identified a number of the challenges associated with the Province's assertion of jurisdiction over Indigenous Childcare, including the challenges associated with the application of the Act and Regulations to Indigenous communities in British Columbia. Time and again, Indigenous Childcare advocates, service providers, and leaders have shared the challenges they face in providing Indigenous Childcare within the current legislative and regulatory framework. BCACCS has often proposed improvements to the Act and Regulations but the suggested changes have not been made and the challenges persist.

Given this reality, from March 2019 to April 2020, BCACCS carried out research and community engagement in order to explore what legislative changes are possible for upholding and supporting Indigenous Childcare in British Columbia (the "Project").

[1] The term "Indigenous Childcare" was used in the Legal Report to refer to the early learning and child care approaches, programs and services delivered to Indigenous children throughout Indigenous territories, including on and off reserve, as well as the facilities through which such approaches, programs and services are delivered. We use that term throughout this Report where appropriate.

The term "child care" is used in this Report to refer to child care more broadly, encompassing both Indigenous Childcare and non-Indigenous child care. It is also used to reflect the language of legislation, reports, and other cited materials. Example: The Province relies on the Act and Regulations to regulate licenced child care facilities in British Columbia.

The purposes of the Project were to:

- Explore various legal avenues that are available to Indigenous peoples in order to best support Indigenous Childcare in British Columbia;
- Share information about the legal avenues with Indigenous Childcare workers, directors, and advocates, as well as parents, Elders, and other engaged community members; and,
- Gather community perspectives and preferences regarding the possible legal avenues, as well as priorities for legal change, to inform and guide BCACCS and Indigenous leadership.

The focus of the Project was intentionally and specifically limited to exploring the opportunities for legal change. Other types of reforms (e.g., policy change, curriculum development, etc.) were outside of the scope of the Project.

Avenues for Legal Change Explored through the Project

The Project included the drafting of a legal report titled *Exploring Options for Reclaiming Indigenous Child Care in British Columbia* ("Legal Report"), which included the following research and analysis:

- An overview of the Act and Regulations to better understand how specific provisions limit or prevent culturally-appropriate Indigenous Childcare in formal Indigenous Childcare programs;
- A discussion of key gaps and challenges the Act and Regulations have created for Indigenous Childcare in British Columbia;
- A discussion of legislative approaches taken in other jurisdictions to consider whether these approaches might assist in effectively addressing the challenges created by the application of the Act and Regulations to Indigenous Childcare in British Columbia;
- A discussion of options for formal reclamation of Indigenous jurisdiction over Indigenous Childcare in British Columbia; and,
- Options for engaging Indigenous Childcare providers, Indigenous leaders, and community representatives in discussions about options for legal change.

Based on the research and discussion in the Legal Report, two main avenues of legal change were identified for community engagement. The two legal avenues were:

1. Formally reclaiming Indigenous jurisdiction and governance over Indigenous Childcare in British Columbia; and,
2. Proposing amendments to the Act and Regulations to support the delivery of high quality, culturally-appropriate Indigenous Childcare in British Columbia.

For each avenue of legal change, there were a variety of options presented for achieving change, including options for achieving formal reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare and options for amending the Act and Regulations.

The Project's community engagement occurred in Spring and Summer 2019 and involved thirteen (13) focus groups across different regions of the province, as well as an online survey paralleling the focus group discussions.

These engagement methods revealed that Project participants support pursuing formal reclamation and recognition of jurisdiction and governance over Indigenous Childcare, as well as amending the current Act and Regulations to address the failure to support Indigenous understandings and practices of quality child care. The high participant support for both legal avenues reveals that a multi-pronged strategy must be developed in collaboration with Indigenous leadership, communities and partner organizations.

Context for Legal Change

The participant support for Indigenous jurisdiction over Indigenous Childcare and for legislative change identified through the Project is supported by several political and legal developments at the provincial and national levels, which we discuss briefly below.

In 2015, the Truth and Reconciliation Commission of Canada (the "TRC"), whose mandate was to inform all Canadians about the histories and legacies of Indian Residential Schools ("IRS") in Canada and to document the truth of IRS survivors, families, communities, and anyone personally affected by the IRS experience, released its Calls to Action. The 94 Calls to Action urge federal, provincial, territorial, and Aboriginal governments to work together to change policies and programs in an effort to repair the harm caused by residential schools and move forward with reconciliation. Several of the Calls to Action address Indigenous Childcare.

In 2018, Canada endorsed the *Indigenous Early Learning and Child Care Framework* (the "IELCC Framework"), which "represents the Government of Canada and Indigenous peoples' work to co-develop a transformative Indigenous framework that reflects the unique cultures, aspirations and needs of First Nations, Inuit and Métis children across Canada."[2]

[2] Canada, E. (2019). Indigenous Early Learning and Child Care Framework - Canada.ca, from https://www.canada.ca/en/employment-social-development/programs/indigenous-early-learning/2018-framework.html [accessed 20 December 2019]

Further, the *Declaration on the Rights of Indigenous Peoples Act* ("DRIPA") was brought into force on November 28, 2019.[3] Section 3 of DRIPA requires the provincial government, in consultation and cooperation with Indigenous peoples in British Columbia, to take all measures necessary to ensure the laws of British Columbia are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").[4] While the impacts of DRIPA are yet to be determined, it presents a historic opportunity for Indigenous peoples and communities in British Columbia to seek a review of current early learning and child care legislation in order to bring it into alignment with, and assist in, the formal reclamation of Indigenous jurisdiction over Indigenous Childcare in British Columbia.

Recommendations Flowing from the Project

Given the focus of the Project, the results from the community engagement, and the current legal, policy, and political context, BCACCS recommends the following:

1. In consultation with the First Nations Leadership Council ("FNLC"), convene a multi-day forum of First Nations leadership and officials; Ministers and officials from the Ministry of Health, Ministry of Children & Family Development, and Ministry of Indigenous Relations and Reconciliation; and officials from the First Nations Health Authority, as well as Ministers and Officials from Crown Indigenous Relations and Indigenous Services Canada. The purpose of the forum would be to share the findings of the Project and develop pathways for change, including reclaiming, affirming, and implementing Indigenous jurisdiction over Indigenous Childcare and amending current legislation and policy;
2. BCACCS to develop a consultation approach that is linked to existing Indigenous leadership political processes, with the goal of achieving consensus on a shared legal and political strategy to reclaim Indigenous jurisdiction over Indigenous Childcare and amendments to legislation, as well as the community-voiced priorities identified in this Report;
3. BCACCS to provide technical and legal expertise to FNLC and other leadership in prioritizing and advancing the review of the Act and Regulations through the legislative review process under DRIPA. This would include proposing draft amendments to the legislation to align with UNDRIP;
4. BC and Canada to fund Indigenous organizations to begin identifying capacity requirements to move towards and prepare for the implementation of Indigenous jurisdiction over Indigenous Childcare; and

[3] For the text of DRIPA, see: http://www.bclaws.ca/civix/document/id/complete/statreg/19044#section10
[4] For the full list of UNDRIP Articles, see: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

5. BCACCS to work with BC Association of Friendship Centres and others to address issues related to the urban Indigenous Childcare.

There is an unprecedented opportunity to effect deep and long-lasting systems change for Indigenous Childcare in BC through the reclamation of Indigenous jurisdiction over Indigenous Childcare and through amendments to the Act and Regulations, supported by the TRC's Calls to Action, the implementation of the IELCC Framework, and DRIPA being enacted.

BCACCS looks forward to working with Indigenous leadership, organizations and communities, as well as governments to implement the needed systems change.

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Introduction and Background

Indigenous peoples have always had systems for the care and teaching of their children, which incorporate Indigenous knowledge, teachings, practices, laws, responsibilities, and systems of governance. Despite the impacts of colonization, residential schools, and the imposition of westernized educational and legal systems, Indigenous Childcare[5] continues to be practiced and exercised within Indigenous communities. Indigenous Childcare is carried out informally and formally within families, within the community, and at the Nation level.

The exercise of Indigenous jurisdiction over Indigenous Childcare is challenged by the fact that the Province also asserts jurisdiction over Indigenous Childcare in British Columbia. The Province asserts jurisdiction over Indigenous Childcare primarily through the application of the *Community Care and Assisted Living Act* ("Act") and the *Child Care Licensing Regulation* ("Regulations").

BCACCS's community-based research with Indigenous peoples and communities has previously identified the challenges associated with the Province's assertion of jurisdiction over Indigenous Childcare, including the challenges associated with the application of the Act and Regulations to Indigenous communities British Columbia. Time and again, Indigenous Childcare advocates, service providers, and leaders have shared the challenges they face in providing Indigenous Childcare within the current legislative and regulatory framework. BCACCS has often proposed improvements to the Act and Regulations but the suggested changes have not been made and the challenges persist.

Given this reality, from March 2019 to April 2020, BCACCS carried out research and community engagement in order to explore what legislative changes are possible for upholding and supporting Indigenous Childcare in British Columbia (the "Project").

[5] The term "Indigenous Childcare" was used in the Legal Report to refer to the early learning and child care approaches, programs and services delivered to Indigenous children throughout Indigenous territories, including on and off reserve, as well as the facilities through which such approaches, programs and services are delivered. We use that term throughout this Report where appropriate.

The term "child care" is also used in this Report to refer to child care more broadly, as it applies to child care approaches, programs, and services delivered to both Indigenous and non-Indigenous. It may also be used to reflect the language of legislation, reports, and other cited materials. Example: The Province relies on the Act and Regulations to regulate licenced child care facilities in British Columbia.

The purposes of the Project were to:

- Explore various legal avenues that are available to Indigenous peoples in order to best support Indigenous Childcare in British Columbia;
- Share information about the legal avenues with Indigenous Early Childhood Educators ("ECEs"), directors, and advocates, as well as parents, Elders, and other engaged community members; and,
- Gather community perspectives regarding possible legal avenues, as well as priorities for legal change, to inform and guide BCACCS and Indigenous leadership.

The focus of the Project was intentionally and specifically limited to exploring the opportunities for legal change. Other types of reforms (e.g., policy change, curriculum development, etc.) were outside of the scope of the Project.

The Current Context

For decades, Indigenous ECEs, advocates, service providers, and leaders have shared the ongoing challenges they face in providing Indigenous Childcare consistent with their vision of quality within the current framework. Despite these challenges, there are a number of political and legal developments at the provincial and national levels that support the call for systemic change to Indigenous Childcare. We discuss these developments briefly below.

The Truth and Reconciliation Commission of Canada's Calls to Action

In 2015, the Truth and Reconciliation Commission of Canada (the "TRC"), whose mandate was to inform all Canadians about the histories and legacies of Indian Residential Schools ("IRS") in Canada and to document the truth of IRS survivors, families, communities, and anyone personally affected by the IRS experience, released its Calls to Action.[6]

The 94 Calls to Action urge federal, provincial, territorial, and Aboriginal governments to work together to change policies and programs in an effort to repair the harm caused by residential schools and move forward with reconciliation.

[6] For the full list of Calls to Action, see: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

Relevant Calls to Action relating to Indigenous Childcare include:

> *5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.*
>
> *12. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.*

The IELCC Framework

In 2018, Canada endorsed the *Indigenous Early Learning and Child Care Framework* (the "IELCC Framework"), which "represents the Government of Canada and Indigenous peoples' work to co-develop a transformative Indigenous framework that reflects the unique cultures, aspirations and needs of First Nations, Inuit and Métis children across Canada."[7] The IELCC Framework includes a set of guiding principles (Figure 1), as well as priorities to recognize and support Indigenous self-determination over early learning and child care, including governance of improved or new systems to deliver programs and services to Indigenous children and their families.

IELCC Framework Guiding Principles

- Indigenous knowledges, languages, and cultures
- Self-determination
- Quality programs and services
- Child- and family-centered
- Inclusive
- Flexible and adaptable
- Accessible
- Transparent and accountable
- Respect, collaboration, and partnerships

Figure 1: IELCC Framework Guiding Principles

The IELCC Framework is now in year 2 of a 10-year implementation process. The guiding principles of the IELCC Framework support the reclamation of Indigenous jurisdiction over Indigenous Childcare in BC, as well as changes to the Act and Regulations.

[7] Canada, E. (2019). Indigenous Early Learning and Child Care Framework - Canada.ca, from https://www.canada.ca/en/employment-social-development/programs/indigenous-early-learning/2018-framework.html [accessed 20 December 2019]

The Declaration on the Rights of Indigenous Peoples Act

On November 28, 2019, the *Declaration on the Rights of Indigenous Peoples Act* ("DRIPA") was brought into force.[8] Section 3 of DRIPA requires the provincial government, in consultation and cooperation with Indigenous peoples in British Columbia, to take all measures necessary to ensure the laws of British Columbia are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").[9]

Relevant UNDRIP articles to Indigenous Childcare, which are annexed in DRIPA, include:

> *13(1) Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*
>
> *14(1) Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.*
>
> *14(3) States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.*
>
> *21(1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.*
>
> *21(2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous Elders, women, youth, children and persons with disabilities.*

[8] For the text of DRIPA, see: http://www.bclaws.ca/civix/document/id/complete/statreg/19044#section10. While DRIPA was passed after the Project's legal research and engagement was completed, it informs the context for next steps regarding legislative changes to support Indigenous Childcare in BC.
[9] For the full list of UNDRIP Articles, see: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

22(1) Particular attention shall be paid to the rights and special needs of indigenous Elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

34 Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

DRIPA also requires the provincial government to prepare and implement an action plan to achieve the objectives of UNDRIP, in consultation and cooperation with Indigenous peoples in British Columbia.

While the impacts of DRIPA are yet to be determined, it presents a historic opportunity for Indigenous peoples and communities in the province to seek a review of the Act and Regulations in order to bring it into alignment with, and assist in, the formal reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare in British Columbia.

The Opportunity for Legal Change

The Project started with legal research and analysis to address the issue of formally reclaiming Indigenous jurisdiction over Indigenous Childcare, and to explore options for amending the Act and Regulations. The Project's legal report, *Exploring Options for Reclaiming Indigenous Child Care in British Columbia* (the "Legal Report") included the following:

- An overview of the Act and the Regulations to better understand how specific provisions limit or prevent culturally-appropriate Indigenous Childcare in formal Indigenous Childcare programs;
- A discussion of key gaps and challenges the Act and Regulations have created for Indigenous Childcare in British Columbia;
- A discussion of legislative approaches taken in other jurisdictions to consider whether these approaches might assist in effectively addressing the challenges created by the application of the Act and Regulations to Indigenous Childcare in British Columbia;
- A discussion of options for formal reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare in British Columbia; and,
- Options for engaging Indigenous Childcare providers, Indigenous leaders, and community representatives in discussions about options for legal change.

Legal Avenues for Change

Based on the research and discussion in the Legal Report, two main avenues of legal change were identified for community engagement. The two legal avenues were:

1. Formally reclaiming Indigenous jurisdiction and governance over Indigenous Childcare in British Columbia; and,
2. Proposing amendments to the Act and Regulations to address the failure to specifically reference or address Indigenous Childcare in British Columbia.

For each avenue of legal change, there were a variety of options presented for achieving change, including options for achieving formal reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare and options for amending the Act and Regulations.[10]

Legal Avenue 1: Reclaiming Indigenous jurisdiction over Indigenous Childcare

Formal reclamation of Indigenous jurisdiction over Indigenous Childcare entails Indigenous Nations and communities' governance and lawmaking over child care and early learning to be formally recognized, respected, and supported by the Crown, either through agreement, legislation, or other means.

Three options for advancing Indigenous jurisdiction over Indigenous Childcare were explored in the Legal Report, and then brought forward in the community engagement. The options discussed in the community engagement, which are based on the discussion in the Legal Report, are as follows:

1. Reclamation and recognition of Indigenous jurisdiction over child care through negotiations and the passing of federal legislation;
2. Bringing a test case to the courts to establish the Aboriginal right to governance over Indigenous Childcare; and
3. Relying on UNDRIP to advocate for change.

Indigenous jurisdiction over Indigenous Childcare could be formally recognized through the passing of federal legislation. Such an approach would involve negotiations between Indigenous communities and the federal government. One example of this type of approach is the passing of *An Act respecting Indigenous, Inuit and Métis children, youth and families*, which came into force on January 1, 2020. This act affirms the rights and

[10] For further information, please see the Legal Report in Appendix A to this Report.

jurisdiction of Indigenous peoples in relation to the provision of child and family services, including the passing of Indigenous laws in regard to child and family services.

A second option for reclaiming Indigenous jurisdiction over Indigenous Childcare is to bring a test case to the courts. In this option, an Indigenous Nation or community could bring a test case to establish the Aboriginal right to governance over child care, pursuant to section 35 of the Constitution Act, 1982. For this option to be successful, the Indigenous Nation or community would have to satisfy the legal tests required to establish an Aboriginal right.

A third option is to rely on UNDRIP to advocate for change. As noted earlier in the Report, UNDRIP affirms Indigenous peoples' inherent right to self-determination expressed through self-governance over cultural, social, political, and economic institutions, among other internal matters.[11] Indigenous peoples' right to exercise their laws, practices, and governance over Indigenous Childcare is consistent with Indigenous self-governance as described in UNDRIP. UNDRIP also recognizes that states must provide capacity and supports to Indigenous peoples to enable the exercise of self-governance. Although DRIPA had not yet been enacted in British Columbia during the course of the Project, it now offers an opportunity to address Indigenous jurisdiction over Indigenous Childcare in British Columbia. Parallel to BC, Canada has also made a commitment to implementing UNDRIP through federal legislation. While Canada has yet to pass such legislation, if it is passed, it will offer additional opportunity for change.

Legal Avenue 2: Amendments to the Act and Regulations

Another legal avenue for change explored in this Project was making amendments to the Act and Regulations, based on a review of legislation and regulatory frameworks from other jurisdictions where Indigenous Childcare has been addressed.

The jurisdictions that were reviewed in the Project were Ontario, the Yukon, Nunavut, and New Zealand. Some of the relevant options from those jurisdictions are set out below.

<u>Ontario</u>

- One of the legislative purposes of the *Child Care and Early Years Act* (the "Ontario Act") is to facilitate and support local planning, and implementation of, child care and early years programs and services by First Nations;

[11] UNDRIP articles 4, 5, and 23

- The Ontario Act states that the provincial interest lies in respect, equity, inclusiveness, and diversity in Aboriginal, First Nations, Métis, and Inuit communities;
- The Minister must consider the interests and particular qualities of Aboriginal, First Nations, Métis, and Inuit communities when making policy statements relating to the operations of child care and early years programs and services;
- Under section 60 of the Ontario Act, a First Nation or group of First Nations may establish, administer, operate, and fund child care and early years programs and services by entering into an agreement with the Minister;
- Where there is an agreement with the Minister, a First Nation may exercise and perform any powers or duties of a service system manager as provided for under the Ontario Act and its regulations; and,
- The Ontario child care regulations endorse the "*Eating Well with Canada's Food Guide – Indigenous, Inuit and Métis*" as an acceptable standard for food services in child care facilities.[12]

Yukon

- The legislation sets as one of its objectives to recognize and support the aspirations of Yukon First Nations to promote and provide culturally appropriate child care services;
- Yukon's *Childcare Act* (the "Yukon Act") is second to any child care agreements reached under any of the following: a Yukon Land Claim Agreement; a self-government agreement between a First Nation and the Government of Canada; between a First Nation and the Government of the Yukon; or between a First Nation and the Yukon First Nation Self Government Agreement, or others listed in the legislation;
- Agreements made under the Yukon Act also allow First Nations to administer and monitor their own child care facilities for compliance with the Yukon Act;
- Section 36(1) of the *Yukon Act* allows the Minister to enter into an agreement with a Yukon First Nation to transfer administration of the Yukon Act. However, the agreement must include a condition that the child care services provided within the jurisdiction of the Yukon First Nation be consistent with the requirements and standards established by the Yukon Act; and,
- The Yukon Child Care Board is comprised of, in part, Indigenous child care representatives that provide advice to the Minister.[13]

[12] Legal Report, p. 10 paragraphs 33-40
[13] Legal Report, p. 13 paragraphs 41-44

Nunavut

- Traditional foods, or country foods, are recognized as acceptable foods in child care facilities with the proper licenses; and,
- Child care facility operators may use their discretion in assessing employment qualifications, which facilitates the employment of Elders and community knowledge holders in child care settings.[14]

New Zealand

- The system of Indigenous Childcare, titled Kohanga Reo, is administered and monitored by Indigenous Maori communities. It is an immersive early childhood program for children ranging from newborns to age six. Kohanga Reo programs incorporate community involvement;
- Kohanga Reo are chartered and overseen by a national organization called the Te Kohanga Reo National Trust (the "Trust"). The Trust offers courses, support, and advice to help ensure the program's success; and,
- Kohanga Reo remain licensed through the Ministry of Education under New Zealand child care regulations. These regulations set licensing requirements and standards to be upheld by the Kohanga Reo.[15]

The legal avenues that were explored in the Project were not considered mutually exclusive. Although they were presented as separate and distinct avenues for consideration, it was recognized that there are many ways to combine or sequence the various legal avenues and options to support Indigenous Childcare.

[14] Legal Report, p. 14 paragraphs 45-46
[15] Legal Report, p. 14 paragraphs 47-49

Community Engagement Strategy

The community engagement strategy for the Project was developed with the following goals in mind:

- Share with Indigenous communities the research context and possible legal avenues that may help solve the issues that have been identified by the ECE sector, Indigenous leadership, and previous research by BCACCS and others;
- Empower participants to identify and assess the pros and cons of each of the possible legal avenues identified in the Legal Report;
- Get a sense for participants preferred legal avenue(s) moving forward and why;
- Gain a community-based understanding of what capacity and development needs would be necessary for the preferred legal avenue(s) to work on-the-ground; and
- Ask what amendments to the current Act and Regulations, if any, would be supportive to offering high quality culturally-relevant Indigenous Childcare.

Based on the goals above, and working with the Project budget, it was determined that a series of focus groups and a parallel online survey would be the best approach to elicit feedback from Indigenous community-based ECE workers, advocates, and other community members. Table 1 summarizes the key engagement activities that occurred between March 2019 and April 2020.

March 2019	Advisory Committee formation and meeting #1
April 2019	Developed community engagement strategy and handouts Advisory Committee call #1
May 2019	Focus groups begin: Nanaimo, Campbell River, Victoria, Duncan, Port Hardy, Prince George, Richmond, Mission, Vancouver (x2)
June 2019	Focus groups end: Kamloops, Vernon, Terrace Advisory Committee calls #2 and #3
August 2019	Developed online survey and accompanying handbook Survey launched and open for one month
October 2019	Project updates to First Nations Leadership Council (“FNLC”) and First Nations Summit (“FNS”) Advisory Committee meeting #2
April 2020	Advisory Committee call #4

Table 1: Project Community Engagement Activities

Project Advisory Committee

To guide the work, BCACCS established an Advisory Committee for the Project. The Advisory Committee comprised eight (8) members and included sectoral representatives from all BC regions, cultural knowledge holders, and ECE advocates. The Advisory Committee provided significant input and direction on the development of the engagement strategy, as well as feedback on possible next steps and recommendations based on their review of the community engagement results. BCACCS' legal counsel and the Project engagement team were present to support the dialogue at each meeting and call.

Focus Groups

Thirteen (13) focus groups were held across the different regions of BC. Eleven (11) of the focus groups engaged with mostly Indigenous-based child care providers, while two (2) focus groups were held with members of organizations providing Indigenous Childcare in urban settings: a session in Duncan with BC Association of Aboriginal Friendship Centres ("BCAAFC") staff, and one in Richmond with Board members of Aboriginal Head Start Association of BC ("AHSABC").

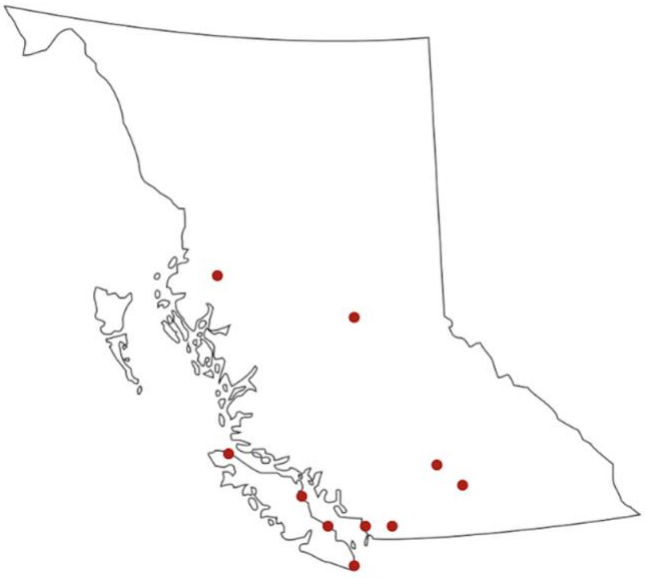

Figure 2: Focus Group Locations

Based on Advisory Committee recommendations and service capture areas, the other community-based engagements were held in Victoria, Nanaimo, Campbell River, Port Hardy, Mission, Vancouver (x2 sessions), Prince George, Terrace, Kamloops, and Vernon.

The focus group format was a semi-structured facilitated group discussion with handouts to support the conversations. Each focus group followed a similar sequence:

- The Project was introduced with reference to the previous BCACCS work that informs the Project;

- The legal avenue of reclaiming jurisdiction[16] was introduced, followed by a facilitated group discussion. The facilitator took notes on a flip chart without attributing comments to specific people or their position;
- The same process was repeated for the legal avenue of possible amendments to the Act and Regulations;
- The facilitator invited feedback about which legal avenue(s) participants would like to see further explored, including proposing new options for consideration, identifying community-based capacity and development needs for the legal avenue(s) to be successfully implemented, and general comments or additional questions; and,
- Participants were given the choice to share their contact information to receive updates on the Project, including a summary of their focus group notes.

The goal of the focus groups was not to seek consensus among participants regarding which legal avenue(s) they preferred; rather, it was to seek advice from community on the best way forward to address known barriers to delivering Indigenous Childcare. The focus groups created space for dialogue, allowing participants to delve deeper into and gain a stronger understanding of the possible legal avenues. As a result, they were able to share their informed perspectives and advice for BCACCS' next steps. The focus groups allowed the Project team to gain on-the-ground perspectives on how each possible legal avenue might change the day-to-day work of Indigenous ECEs and administrators', and which legal avenue(s) were preferred.

The focus group format worked particularly well for exploring the complexity of the topics at hand. The presence of a lawyer or articling student on the engagement team also meant that participants could ask clarifying questions on complex legal information and receive answers in real time. However, the Project budget constrained the number of focus groups that were possible in this phase of engagement.

Online Survey

A parallel online survey that closely modeled the focus group process was also developed, in order to gain the input of community members for whom face-to-face focus group participation was not possible. The survey was distributed online in August 2019 to 603 community-based ECE managers and Band administrators. A handbook, similar to the handouts used during the focus groups, was developed to support survey respondents as they answered questions about each possible legal avenue. The

[16] Although the Legal Report describes legal avenue 1 as "reclaiming jurisdiction," the terms "reclaiming jurisdiction" and "recognizing jurisdiction" were both used in community engagement.

majority of the survey questions were open-ended, allowing for respondents to share in-depth perspectives on each option and the rationale for their choices.

The online survey method was selected because it had the potential for a broader reach to fill any engagement gaps from the focus groups. The online survey format also allowed for some quantification of results, which is a complementary set of data to the aggregated focus group feedback. The anonymous nature of online surveys prevented deeper engagement or follow-up with participants, including asking for more detailed responses or clarifications, which is a drawback to the method.

Data Analysis Methodology

Notes from the focus groups were reviewed and synthesized using a thematic analysis approach to draw out key themes with attention to regional trends and perspectives. As a result, reporting on the input from the focus groups includes necessarily vague language (e.g., some participants). While this is a limitation of the focus group format, it does not diminish the value of the rich insights shared during the focus groups.

The Likert scale and multiple-choice survey responses were quantified and summarized while the open-ended survey responses were reviewed and aggregated using a thematic analysis approach, similar to the focus group notes. The online survey format also allowed for responses within specific themes to be quantified, which has the added benefit of showcasing the more common perspectives among survey respondents.

Community Validation Process

Participants from each focus group received a summary of the notes from their focus group, with the invitation to share their feedback and corrections. This validation process was shared in the spirit of transparency, accountability, and reciprocity. It helped to ensure that the Project team had accurately represented the conversations and salient points for each individual focus group, while also sharing the results with participants to support their own local conversations about Indigenous Childcare in their Nations and communities.

Who Participated?

127 people provided input across all data collection methods during the Project engagements: 74 people attended the focus groups, while 53 people completed the survey.

The priority was to engage with people from a wide range of Indigenous communities, Nations, and organizations in urban, rural, and remote settings, to hear and record the broadest range of perspectives on the topics at hand. All participants were invited to share their perspectives as individuals, not as representatives from their Nations.

Focus Groups

Over the course of thirteen (13) focus groups we heard from 74 individuals.

The most strongly represented positions among focus group participants were:

- ECEs and managers;
- Indigenous Nations' and organizations' staff and administration;
- Urban Indigenous ECE organization members; and,
- Engaged community members (i.e., parents, Elders).

Additionally, Indigenous education training providers, ECE program directors, BCACCS staff, First Nations elected leadership, and those working in the fields of Aboriginal Supported Child Development ("ASCD"), Child Care Resource and Referral ("CCRR"), and the Aboriginal Infant Development Program ("AIDP") attended some, but not all focus groups.

To maintain participant anonymity, no additional identifying information was collected.

Online Survey

While 100 people opened the survey and entered their demographic information, 47 people did not answer any of the content-based questions, and thus have been excluded from the reporting of the results. 53 people, or 8.8% of 603 survey recipients, completed the survey in its entirety.

The most strongly represented positions among survey respondents were:

- ECE managers (41.5% of respondents);
- Indigenous Nation administrators or staff (30% of respondents); and
- ECEs (19% of respondents).

7.5% of respondents were urban Indigenous organization directors or staff, 11% were parents, 4% were Elders, 4% were elected leaders in their community, and 2% were hereditary leaders. No ECE assistants or volunteers responded to the survey. 26% of respondents held additional roles including: school principal, supported child development worker, play therapist, executive directors of service agencies (e.g., counselling), and modern treaty First Nation workers (e.g., executive director, staff).[17]

In terms of regional representation, 11.3% of respondents came from the Fraser region, 26.4% from the Interior, 26.4% from the North, 13.2% from the Vancouver Coastal region, and 22.7% from Vancouver Island.

Among those working within child care, 13% of respondents have been in the sector for 1-5 years, 24% for 5-10 years, 45% for 10 to 20 years, and 18% for 21 years or more. In other words, 63% of survey respondents working in child care had over 10 years of experience in the field.

What We Heard

The two legal avenues explored in this Project included multiple options for change, which formed the basis for focus group discussions and survey questions (these are described in *Avenues for Legal Change* on p. 5). These options were used to stimulate focus group discussions and develop survey questions. Each legal avenue, as well as various options for change, is listed in the following pages, along with:

- The level of support for each legal avenue and option among engagement participants;
- Summaries of participants' overall preferences and perspectives on each option; and,
- Concerns and implementation requirements identified by participants for the legal avenues to work on-the-ground.[18]

[17] Note that respondents could select more than one response to this question, so the total percentages do not add to 100%.
[18] The detailed report of participant feedback can be found in the Project Engagement Summary Report in Appendix B.

Legal Avenue 1: Reclaiming and recognizing Indigenous jurisdiction over Indigenous Childcare in BC

Participants' Level of Support

The majority of participants in the Project's engagements (the majority of participants from 11 of the 13 focus groups and 83% of survey respondents) supported the avenue of reclaiming jurisdiction over Indigenous Childcare. Of those not in favour of the option, the majority of focus group participants and 17% of survey respondents expressed uncertainty about the option, rather than opposition to it (no survey respondents expressed opposition to the option). This suggests that participants would benefit from additional information on this legal avenue in order to make an informed decision.

Options for Reclaiming and Recognizing Jurisdiction over Indigenous Childcare

The engagement process highlighted three (3) possible options to reclaim jurisdiction (discussed in more detail on p. 6):

1. Reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare through negotiations and the passing of federal legislation;
2. Bringing a test case to the courts to establish the Aboriginal right to governance over Indigenous Childcare; and,
3. Relying on UNDRIP to advocate for change.

The possible legal options could be combined or sequenced in particular ways to achieve Indigenous peoples' aims regarding jurisdiction; they are not mutually exclusive. Engagement participants articulated the nuance and complexity of each legal option to reclaim jurisdiction, demonstrating that there is no one straightforward answer.

<u>Option 1: Reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare through negotiations and federal legislations</u>

This was the first preference among the majority of focus group participants. In the survey, 47% of respondents were in support of the option, 43% were unsure, and 9.5% were opposed to the option. Through the Project engagement process, participants were able to identify the strengths and challenges of this legal option, which are synthesized in the table below:

Strengths	Challenges
● Nation-based dialogue that has the ability to reflect the unique and varied needs of BC Indigenous communities ● Opportunity for collaboration and to enact Nation-to-Nation protocols in order to bring a unified voice to negotiations ● Opportunity to create shared understanding and mutually-agreeable decisions based on what is best for young children and their families ● Potential to end or mitigate prohibitive colonial practices and policies	● Need for funding to engage in negotiations and capacity building; existing funding inequities; potential lack of funding continuity ● Need for BC and Canada's buy-in to engage in negotiations ● The uncertainty of any negotiations with government and worries about potential negative outcomes (on funding streams, for example) ● Power imbalances among negotiating parties. This could result in advantages for more resourced Nations and/or for advantages to the BC and federal government ● Finding consensus, first among Indigenous communities, then among all government bodies ● Worries that negotiations may stall after many years of work

Among those who believed negotiations would be effective, some stated that success would likely vary based on who is sitting at the negotiations table, as well as on the provincial and federal governments' priorities. Multiple participants expressed a desire for ECEs and advocates, Elders, parents, hereditary leaders, and matriarchs to have a representative voice alongside their elected leaders in negotiating with governments, particularly regarding the implementation of recognized Indigenous jurisdiction over Indigenous Childcare. Multiple participants who supported this option also emphasized that they wanted urban representation in negotiations.

Multiple participants who were opposed to this option stated that Indigenous peoples have an inherent right to self-governance and should not have to negotiate terms for jurisdiction. Rather, Nations should simply be given needed access to resources to implement jurisdiction.

Overall, the engagement input showed that a sizeable majority of participants (the majority of participants from 11 of 13 focus groups and almost half of survey respondents) were in support of the option, with a small minority of participants expressing uncertainty about this option (43% of survey participants), and even fewer

engagement participants expressing opposition to this option (participants from 2 focus groups and 9% of survey participants).

Option 2: Bringing a test case to the courts to establish the Aboriginal right to governance over Indigenous Childcare

This was the second preference among focus group participants in favour of recognized jurisdiction but had more support amongst survey respondents (65% in support of this option). Participants in both the focus groups and the survey identified the strengths and challenges for the option, synthesized below:

Strengths	**Challenges**
● Opportunity to raise general awareness of the issue with the public ● Process could result in a legally-binding (positive) decision ● A positive decision could be leveraged by non-participating Nations for Nation-specific agreements or for later negotiations	● High cost, both in money and time ● Uncertain outcome of legal process ● Process could result in a legally binding (negative) decision ● The possibility that change still may not happen in a meaningful way even with a positive court ruling in favour of the Nation

Focus group participants were generally more cautious about this legal option than the other two options for reclaiming jurisdiction over Indigenous Childcare, with multiple participants stating the high uncertainty of a court case outcome and high costs as causes for concern.

Option 3: Relying on the *United Nations Declaration on the Rights of Indigenous Peoples* to advocate for change[19]

This legal option received less support as a standalone option, for both focus group participants and survey respondents (41.5% of survey respondents expressed uncertainty that using UNDRIP would be effective to reclaim jurisdiction). Although UNDRIP was generally seen as a positive support for the reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare, this legal option was not considered to be strong enough on its own. The majority of participants in focus groups and 58.5%

[19] It bears repeating that the Project engagement occurred prior to DRIPA being passed in British Columbia. Thus, these participant perspectives do not consider the implications of DRIPA. As the implications of DRIPA continue to emerge, these insights from Project participants still provide important direction and context for next steps in the work.

of survey respondents noted that UNDRIP has significant potential to support either or both of the other two possible legal options. Participant-identified strengths and challenges of the option are described below:

Strengths	Challenges
● Could act as supportive leverage for negotiations and/or a court case ● UNDRIP has the potential to validate Indigenous jurisdiction over Indigenous Childcare	● Too passive as standalone option for effecting necessary change

Additionally, some engagement participants expanded on their perspective with the following points:

- UNDRIP enshrines Indigenous peoples' rights to govern themselves according to their own laws and practices;
- UNDRIP cultivates the development of Indigenous Childcare, institutions, cultures, and traditions; and,
- UNDRIP formally recognizes the inherent Indigenous right to self-determination.

Jurisdiction Summary

The summarized perspectives indicate strong support among the majority of Project participants to move toward reclaiming jurisdiction over Indigenous Childcare as a long-term goal for their communities, with a preference to pursue this goal through negotiations with the provincial and/or federal government.

Indigenous communities deciding to reclaim and implement jurisdiction face a number of foreseeable challenges, including these challenges identified throughout engagement:

- The cost;
- The varied capacities of Indigenous Nations, communities, and organizations in taking up and implementing jurisdiction;
- Ensuring effective collaboration between Nations and organizations when Nations are working collaboratively;
- Effective transitioning; and,
- The time-consuming nature of legislative change.

These challenges lend weight to the implementation supports that were identified through the Project's engagement process. The implementation supports that were

identified through engagement, which are crucial to successfully reclaiming and implementing Indigenous jurisdiction over Indigenous Childcare, are:

- Making immediate and significant investments in training and funding, to both address outstanding issues and deficits in capacity, including in service delivery;
- Focusing on issues related to the recruitment and retention of Indigenous ECEs, with a focus on working conditions and wage equity; and,
- Developing meaningful collaboration pathways among Nations and organizations on all levels to be able to move the work forward and ensuring the financial and institutional supports are in place to maintain such collaboration pathways.

Legal Avenue 2: Making Changes to the Act and Regulations

Engagement participants were invited to consider potential amendments to the Act and Regulations. The various options for amendments were based on the legal review of child care legislation in other jurisdictions (see p. 7 of this Report for an overview, and Appendix A for the full Legal Report), as well as supportive regulatory measures that have been suggested to BCACCS since 2008 by Indigenous ECEs, child care providers, and advocates. Table 2 lists the proposed amendments that were presented to participants and discussed during the community engagement.

The focus of the community engagement was to gauge participants' level of support for various proposed amendments arising out of the Legal Report, but also to explore other participants ideas for amendments based on their own experiences. The next step is to engage further with elected leadership and with Indigenous communities about proposed amendments.

The majority of focus group participants and survey respondents[20] supported amendments being made to the Act and Regulations. Project participants identified the amendments that could immediately improve the ability of ECEs to provide culturally-relevant child care, and described in detail the positive impacts that they anticipated each amendment would have on their work. They also identified challenges to implementing each amendment, and the kind of supports they would need for the amendments to be effective. The five (5) amendments that received the most support from both focus group participants and survey respondents are described and discussed in more detail below. For discussion on all proposed amendments to the Act and Regulations, please see the Project Engagement Summary Report in Appendix B.

[20] 88% of survey respondents selected six (6) or more of the twelve (12) options for amendments, while 44% of survey respondents selected nine (9) or more options (75% or more of the amendments).

Some Proposed Amendments to the Act and Regulations Explored in the Project
Require cultural sensitivity/safety training for Licensing Officers and Medical Officers who are working with Indigenous early learning and child care providers
Require training in Indigenous child care practices as part of early childhood certification
Explicitly state that Indigenous and traditional foods are appropriate to serve in child care settings in the Regulations
Provide a distinct approach to multi-age care in Indigenous communities in the Act and Regulations
Provide the opportunity for an Indigenous organization to act as the licensing body for Indigenous child care spaces
Delegate all licensing and monitoring powers and responsibilities to a centralized Indigenous body. This body would administer licenses to individual child care facilities and provide all training
Provide a distinct approach to employment qualifications in the Act and Regulations, which acknowledges Elders and other cultural knowledge holders' experiences and education
Develop a purpose statements to guide interpretation of current law in a way that specifically acknowledges and supports Indigenous peoples' needs, interests, and practices in providing child care in their communities
Delegate part of powers/responsibilities of legislation by entering into agreements between the Province and Indigenous communities or a group of communities/organizations to develop their own licensing scheme. Specifics of the agreement could include conditions of license, oversight, inspection, employment requirements, funding and training, and other operation matters based on Indigenous knowledge and practices
Formally acknowledge standards set out in the "Eating Well with Canada's Food Guide – First Nations, Inuit and Métis" in the Regulations
Set up an Indigenous advisory board similar to the option below, but with additional opportunity to give advice to the Minister or other provincial decision makers about who should be given child care licenses in their territories and/or in their communities and what conditions should be part of the license
Set up an Indigenous advisory board that would provide oversight on the operation of the Act and Regulations with respect to Indigenous communities and peoples

Table 2: Some Proposed Amendments to the Act and Regulations Explored in the Project

Cultural Safety Training Requirement for all Licensing and Medical Officers

Focus group participant support: High	Survey respondent support: 93.18%

The most supported legislative amendment was requiring culturally appropriate training for Licensing Officers and Medical Officers working in Indigenous child care settings. Focus group participants recommended that cultural safety or sensitivity training be reflective of the communities that Licencing Officers and Medical Officers work with. This training can be offered by Nations, offered on an ongoing basis, and funded by the Ministry. Participants supported this option as a way to deepen the relationship between Officers and the community and reduce turnover rates.

Indigenous Child Care Training Requirement for all ECE Certifications

Focus group participant support: High	Survey respondent support: 90.91%

Participants widely supported the requirement that training programs for ECEs include Indigenous knowledge and culture. Participants expressed the opinion that other professionals that work with Indigenous children have this requirement. Notable examples included language therapists, child development workers, and occupational therapists.

Provision for Distinct Approaches to Multi-Age Care

Focus group participant support: High	Survey respondent support: 77.27%

Participants strongly supported that the Act and Regulations provide for distinct approaches to multi-age care in Indigenous child care settings. Participants emphasized the benefits of keeping siblings together, while also viewing multi-age groupings as a practical solution for smaller communities with fewer child care options. Some participants drew comparisons between the current separation of children and residential schools. Many participants preferred allowing ECEs to make child grouping decisions by looking to the child's best interest.

Centralized Indigenous Licensing Body

Focus group participant support: High	Survey respondent support: 75.00%

Both a high number of focus group participants and 75% of survey respondents supported the idea of an Indigenous organization taking over the role and functions of Licensing Officer. Participants viewed this as a way of addressing the lack of Indigenous Licensing Officers, while creating more opportunity to hire from within communities. To this point, one participant explained, “it is always good to have [an] Aboriginal person to understand where we’re coming from.” Some urban and Northern/rural voices cautioned that this option risked ignoring systemic barriers that impede their access to provincial support.

Provision for Distinct Approach to Employment Qualifications

Focus group participant support: High	Survey respondent support: 70.45%

There was high support among focus group participants and majority support amongst survey respondents to allow for an adapted approach to employment qualifications in Indigenous communities to acknowledge Elders, knowledge holders, and the community’s role in child care. The majority of participants wanted more opportunities for trusted Elders and knowledge holders to engage with children. Additionally, by broadening the range of acceptable qualifications, child care managers would be able to mentor and hire those who do not have formal certification.

Summary of Changes to the Act and Regulations

Project engagement findings reconfirm previous BCACCS research on the failure of the Act and Regulations to support high quality Indigenous Childcare and the need for legal change. However, as noted by participants, making changes to the Act, Regulations, and other legislation that impacts child care in BC does not resolve the issue of Indigenous jurisdiction over Indigenous Childcare.

Multiple focus group participants shared the perspective that making amendments to the Act and Regulations can be an important shorter-term step in improving Indigenous Childcare on the longer road to reclaimed and recognized Indigenous jurisdiction over Indigenous Childcare.

Multiple focus group participants and survey respondents also commented that significant resources would need to be allocated to Indigenous Nations and organizations to implement both legislative change and advance Indigenous jurisdiction over Indigenous Childcare.

Engaging with Elected Leadership

In Fall of 2019, BCACCS shared interim Project updates with the FNLC and FNS during their seasonal gatherings. These short Project updates served primarily to inform elected First Nations leaders about the Project, initial learnings from community perspectives, and to invite feedback from Indigenous elected leadership. BCACCS will use this Report to continue conversations and engagement with First Nations leadership on the issues of Indigenous jurisdiction over Indigenous Childcare and of legislative change to support Indigenous Childcare, taking its direction from Nations to move future work and recommendations forward.

Charting the Way Forward

This Report is a continuation of BCACCS' a decade of work towards Indigenous-led, accessible and culturally-relevant child care and early learning for Indigenous families. Through the community engagement carried out in this Project, participants have identified that legal change is welcome, and that reclaiming Indigenous jurisdiction over Indigenous Childcare is a key and preferred strategy for change. Project participants have also identified the importance of legislative amendments to child care legislation in British Columbia.

The ultimate goal of Indigenous jurisdiction over Indigenous Childcare, achieved through federal legislation and negotiations with government, had strong support amongst Project participants. This approach is also supported by the by the IELCC Framework, which "represents the Government of Canada and Indigenous peoples' work to co-develop a transformative Indigenous framework for early learning and child care for First Nations, Inuit and Métis children across Canada."[21] One of the principles of the IELCC Framework for First Nations is a system of early learning and child care that is controlled and directed by First Nations, including authority and decision-making

[21] Canada, E. (2019). Indigenous Early Learning and Child Care Framework - Canada.ca, from https://www.canada.ca/en/employment-social-development/programs/indigenous-early-learning/2018-framework.html [accessed 20 December 2019]

at all levels of policy development, and funding allocations and governance, with reciprocal accountability.

Making amendments to the Act and Regulations was another avenue of legal change that has been identified as a positive step forward by Project participants. Amending the Act and Regulations is one way of validating the real concerns of Indigenous Childcare providers, families, and communities. It is also a way for British Columbia to support Indigenous children while investing in the growth and prosperity of Indigenous peoples in British Columbia. The recommended changes to the Act and Regulations have the capacity to effect immediate change without disrupting the other important legal avenue identified in the Project, which is the formal reclaiming and recognition of Indigenous jurisdiction over Indigenous Childcare.

Although this Project was conducted prior to the implementation of DRIPA, Project participants were supportive of UNDRIP being used as a tool to effect change. BCACCS supports British Columbia's commitment to aligning its laws with UNDRIP and views DRIPA as a promising tool in achieving legislative reform to British Columbia's child care legislation. BCACCS advocates that child care and early learning legislation be prioritized in the Province's legislative review process under DRIPA and will work collaboratively with the FNLC to support that work.

These findings call for a multi-pronged strategy to achieve the ultimate and long-term goal of Indigenous jurisdiction over Indigenous Childcare. A multi-pronged strategy should include a consultative process with Indigenous leadership to develop effective approaches to securing Indigenous jurisdiction over Indigenous Childcare. It should also include processes whereby Indigenous leadership and those working in child care can work with government to advance and implement amendments to the Act and Regulations, based on principles found in UNDRIP.

Proposed Next Steps and Recommendations

Given the legal avenues explored through the Project and the results from the community engagement, as well as the current legal, policy, and political context described in this report, BCACCS proposes the following steps and recommendations:

1. In consultation with the First Nations Leadership Council ("FNLC"), convene a multi-day forum of First Nations leadership and officials; Ministers and officials from the Ministry of Health, Ministry of Children & Family Development, and Ministry of Indigenous Relations and Reconciliation; and officials from the First Nations Health Authority, as well as Ministers and Officials from Crown-Indigenous Relations and Indigenous Services Canada. The purpose of the

forum would be to share the findings of the Project and develop pathways for change, including reclaiming, affirming, and implementing Indigenous jurisdiction over Indigenous Childcare and amending current legislation and policy;
2. BCACCS to develop a consultation approach that is linked to existing Indigenous leadership political processes, with the goal of achieving consensus on a shared legal and political strategy to reclaim Indigenous jurisdiction over Indigenous Childcare and amendments to legislation, as well as the community-voiced priorities identified in this Report;
3. BCACCS to provide technical and legal expertise to FNLC and other leadership in prioritizing and advancing the review of the Act and Regulations through the legislative review process under DRIPA. This would include proposing draft amendments to the legislation to align with UNDRIP;
4. BC and Canada to fund Indigenous organizations to begin identifying capacity requirements to move towards and prepare for the implementation of Indigenous jurisdiction over Indigenous Childcare; and
5. BCACCS to work with BC Association of Friendship Centres and others to address issues related to the urban Indigenous Childcare.

There is an unprecedented opportunity to effect deep and long-lasting systems change for Indigenous Childcare in BC through the reclamation of Indigenous jurisdiction over Indigenous Childcare and through amendments to the Act and Regulations, supported by the TRC's Calls to Action, the implementation of the IELCC Framework, and DRIPA being enacted.

BCACCS looks forward to working with Indigenous leadership, organizations and communities, as well as governments to implement the needed systems change.

Appendix A: Legal Report

Indigenous Jurisdiction and Regulation over Child Care in British Columbia

A Report prepared for the British Columbia Aboriginal Child Care Society

2019

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I. INTRODUCTION

1. Indigenous peoples have always had systems for the care and teaching of their children, which incorporate Indigenous knowledge, teachings, practices, laws, responsibilities, and systems of governance. Despite the impacts of colonization, residential schools, the imposition of westernized educational and legal systems, Indigenous Childcare[1] continues to be practiced and exercised within Indigenous communities. Indigenous Childcare is carried out informally and formally within families, within the community, and at the Nation level. This Report focuses on Indigenous Childcare in formal child care programs, primarily delivered at the community or Nation level.

2. The exercise of Indigenous jurisdiction and governance over child care is challenged by the fact that the Province also asserts jurisdiction over Indigenous Childcare in British Columbia. The Province asserts jurisdiction over Indigenous Childcare is primarily through the application of the *Community Care and Assisted Living Act* ("Act"),[2] and the C*hild Care Licensing Regulation* ("Regulations").[3]

3. The BC Aboriginal Child Care Society ("BCACCS") has previously studied the challenges created by the application of the Act and Regulations to Indigenous Childcare in British Columbia, drawing on the lived experiences of Indigenous communities, leadership, families, and Indigenous Childcare providers and educators.[4] This Report builds on previous studies by focusing on options to address the challenges that have been identified by Indigenous communities regarding their governance and provision of Indigenous Childcare.

4. The Report consists of six parts, including this introduction (Part I). Part II provides an overview of the Act and Regulations to better understand how specific provisions limit

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[1] Throughout this report, we will be using the term "Indigenous Childcare" to refer to the approaches, programs and services delivered to Indigenous children throughout Indigenous territories, including on and off reserve, as well as the facilities through which such approaches, programs and services are delivered.

[2] *Community Care and Assisted Living Act*, [SBC 2002] Chapter 75

[3] *Child Care Licensing Regulation*, B.C. Reg. 188/2018

[4] See BC Aboriginal Child Care Society, "Research Report: Licensing First Nations' Early Childhood Programs" (March 26, 2013), ["Licensing Report 2013"]

culturally appropriate Indigenous Childcare in formal, Indigenous Childcare programs. Part II also discusses the gaps and challenges the Act and Regulations have created for Indigenous Childcare in British Columbia. Part III of the Report discusses approaches taken in other jurisdictions to consider whether these approaches might assist in effectively addressing the challenges created by the application of the Act and Regulations to Indigenous Childcare in British Columbia. Part IV is a discussion of what may be possible for formal reclamation of Indigenous jurisdiction over Indigenous Childcare in British Columbia. The Report concludes (Part V) with next steps for engaging Indigenous Childcare providers, Indigenous leaders and community representatives in discussions about options for change addressed in the Report.

II. LEGISLATION AND REGULATIONS GOVERNING INDIGENOUS CHILD CARE IN BRITISH COLUMBIA

5. The Act and Regulations guide the licensing and oversight of early child care, including early child care facilities, in the province of British Columbia. The Act and Regulations have been applied to Indigenous and non-Indigenous child care facilities both on and off-reserve. As noted in the Report, *Whispered Gently Through Time: First Nations Quality Care: A National Study*, the Regulations were applied to on-reserve child care spaces "with almost no debate among First Nations government representatives or First Nations child care authorities" and have been applied to many Indigenous Childcare spaces since they came into effect.[5]

6. Some Indigenous Nations have chosen not to adhere to the Act or Regulations. This has an economic impact by limiting access to subsidy or benefit dollars, which are an essential part of the revenue stream for early childhood programs.[6] The 2013 Licensing Report prepared by BCACCS found that many First Nations pursue licences for their early childhood programs in order to allow families in their communities to be eligible for the provincial child care subsidy. The previous child care subsidy, administered by the Ministry of Children and

[5] Licensing Report 2013, p 9
[6] Licensing Report 2013, p 10

Family Development ("MCFD"), required children to be in eligible programs. For group child care programs, this meant that they must be licenced.[7]

7. On September 1, 2018, the child care subsidy was replaced by the Affordable Child Care Benefit through amendments to the *Child Care Subsidy Regulation* ("Subsidy Regulation").[8] Under the amended Subsidy Regulation, the Minister may pay a child care subsidy only if the Minister is satisfied that the child care is needed for reasons set out in the Subsidy Regulation, the child care is arranged or recommended under the *Child, Family and Community Service Act*, or the child care is recommended under the *Community Living Authority Act*.[9]

8. The Subsidy Regulation sets out that the Minister may pay a child care subsidy for group or multi-age care where the child care is in a licenced child care setting (a facility with a licence under section 11 of the Act, providing any of the programs as set out in section 2 of the Regulations).[10] The Minister may also pay a child care subsidy to an eligible parent of a child receiving child care in a registered licence-not-required child care setting. The maximum group size for a registered, licence-not-required child care setting is two children (or a sibling group) who are not related to the child care provider.[11] For registered, licence-not-required child care, staff must also have 20 hours of child care related training, relevant work experience and a clear criminal record check.[12] The benefit can also be paid where children are care for in unregistered, licence-not-required, child care. Only two children can be cared for in an unregistered, licence-not-required child care setting.

9. This approach to child care regulation in British Columbia has created gaps and issues in child care for Indigenous Childcare facilities, in particular those seeking to integrate traditional approaches while remaining compliant with the Act and Regulations.

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[7] Licensing Report, 2013, p 10
[8] B.C. Reg. 148/2018, September 1, 2018 ("Subsidy Regulation")
[9] Subsidy Regulation, s. 3
[10] Subsidy Regulation, ss. 1, 2
[11] https://www2.gov.bc.ca/gov/content/family-social-supports/caring-for-young-children/how-to-access-child-care/licensed-unlicensed-child-care
[12] https://www2.gov.bc.ca/gov/content/family-social-supports/caring-for-young-children/how-to-access-child-care/licensed-unlicensed-child-care

10. The Report outlines below the various sections of the Act and Regulations that apply to Indigenous Childcare programs and facilities in British Columbia, where complying has the effect of limiting and restricting Indigenous Childcare. .

A. The *Community Care and Assisted Living Act* and *Child Care Licencing Regulations*

11. The Act came into force in 2002 and has been used to regulate Indigenous Childcare facilities both on and off reserve. Under sections 5 and 9 of the Act, all community care facilities operating in the Province must be compliant with the Act's licensing scheme. Community care facilities, as defined in Section 1 of the Act, include child care facilities:

> "community care facility" means a premises or part of a premises
>
> (a) in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or
>
> (b) designated by the Lieutenant Governor in Council to be a community care facility

12. Given the broad definition of community care facility and the requirement that all community care facilities in the Province follow the provincial licensing scheme in order to receive funding tied to licenced child care spaces, many Indigenous communities have chosen to comply with the Act and Regulations, despite the challenges this creates for them. Below we outline some of the key issues that arise from the application of the Act and Regulations on Indigenous Childcare.

13. One of the challenges created by the Regulations relates to hiring and retaining qualified staff and facilitating Elder involvement. The Regulations limit how some community members, especially Elders, can contribute in remunerated and non-remunerated capacities.[13] This is achieved by compartmentalizing the types of roles employable in a child care facility and who qualifies for those roles.

[13] Licensing Report 2013, p 12

14. Section 1 of the Regulations defines “assistant” as a person holding an early childhood assistant certificate. Division 2 of Part 3 of the Regulations sets the minimum requirements for employees in a child care facility. Early childhood educators must have graduated from an early childhood program and have completed at least 500 hours of work experience relevant to early childhood education in the past 5 years, or demonstrated related experience in the past 5 years that the director views as equivalent to the 500 hours requirement. Early childhood education assistants similarly require the completion of at least one course covering basic early childhood education training through a recognized educational institution. There is also a requirement that the applicant has satisfactory experience in the five years prior to applying for the post. For a position within the early child care facility, a responsible adult must also have completed a minimum 20-hour course and possess the relevant work experience. Lastly, responsible adults must also have certification and relevant work experience.

15. The obligatory qualifications under the Regulations present unique barriers for Elders seeking employment in early child care or who want to act as assistants, particularly where the child care facility is unable to hire more than the required staff to meet the ratio for child care prescribed under the Regulations.[14] The Act does not envision a remunerated position for Elders who have not actively worked in the sector in the 5 years prior or where Elders do not hold a recognized certificate. These requirements fail to appreciate the cultural knowledge, including linguistic instruction capacity, Elders can impart to developing children. These issues highlight a need to either define a position with less stringent requirements that would apply to Indigenous Elders, allow licence holders heightened discretion to employ Elders in capacities that may not require certification, allow cultural knowledge and life experience to satisfy education requirements, or develop culturally-specific and accessible programs that can be attended by Elders and community members that are afforded equal opportunity and recognition.

16. The exclusion of Elders and other Indigenous caregivers can also have implications for the number of children permitted to be cared for at one time, and the age range of those

[14] Licensing Report 2013, pp 31-32

children. Section 39 of the Regulations requires a licensee to ensure that children are supervised at all times by a person who is an educator, an assistant, or a responsible adult. Where Elders or other Indigenous caregivers do not meet the criteria for being an educator, assistant or a responsible adult, they cannot occupy a supervisory role. Nor is it likely they would be considered an employee for the purposes of Schedule E of the Regulations.[15] The practical effect of this is that despite the competent care Elders and other Indigenous caregivers can provide to children in a child care facility, they are not included in the employee to children ratio, as required under section 34(2) of the Regulations. This limits the amount of children that can attend the child care facility, particularly in Indigenous communities where finding and retaining qualified Indigenous child care employees can be a challenge.

17. The requirement to group children based on age (under Schedule E) is also a barrier to the exercise of Indigenous Childcare. As noted in previous research by BCACCS, this requirement often separates children from their siblings and family members.[16] The segregation of children on the basis of age is contrary to many First Nations' cultural values, traditions and practices and is not in line with the principle of multi-age grouping identified in BCACCS *Statement on Quality Child Care*.[17]

18. Schedule B of the Regulations also creates obstacles for licence holders, Elders, and community participation in early childhood care. First, licence applicants or managers (if not the same person) are required to ensure that criminal record checks are completed for individuals who are participating in child care at the child care facility. The process of acquiring a criminal record check can impede Elders from engaging with early child care facilities as the process is often costly and time consuming, especially for Elders earning low incomes. Additionally, banning those with criminal records without discretion may fail to take into account histories of over-policing on communities, the impacts and consequences

[15] Section 34(2) of the Regulations states that a licensee must ensure that the facility has no more children than permitted in Schedule E, and the ratio of employees to children attending a community care facility is no less than that permitted in Schedule E.
[16] Licensing Report, 2013, p 36
[17] Licensing Report, 2013, p 36

of residential schools, and non-violent crimes. This requirement presents a further barrier for Elder involvement within a child care facility.

19. Criminal record checks are also required for any person over the age of 12 who will be ordinarily present at the child care facility. "Ordinarily present" is not defined by the Regulations, the Act, or in jurisprudence. As was discussed in the 2013 Licensing Report, this creates a point of uncertainty in the law and creates confusion for operators of child care facilities in their efforts to be compliant with the Act and Regulations, while at the same time trying to recruit employees to provide care for children in the facility in a scarce employment market.

20. Other barriers created by the Regulations are related to the physical space requirements. The child care facility, under section 13(2) of the Regulations, must ensure that furniture, equipment, and fixtures are clean and in good repair while children are present. This standard has been identified as vague and as posing a disadvantage for Indigenous Childcare programs that are frequently underfunded and may lack resources to meet a particular standard. There is also the issue of discretion in interpreting whether equipment has met an undefined standard. If adequate funding is not guaranteed, or a variety of interpretations are used to determine physical space requirements, upholding these standards becomes unfeasible and can prevent or deter child care businesses from operating in communities.

21. Section 13(3) of the Regulations prohibits any use of tobacco in the presence of children of the child care facility. This may frustrate certain traditional practices that require the burning of tobacco, undermining some cultural teachings about respectful tobacco use.

22. Section 48(1) of the Regulations also fails to specifically recognize *Canada's Food Guide for First Nations, Metis and Inuit* as a Regulations-approved food guide for child care facilities. Although section 48 does provide for the integration of culturally relevant foods, without explicit clarification in the Regulations it is possible that this Guide would not be used.

23. The type of discretion given to medical health officers to assess applicants, and cancel and place conditions on licences, combined with the lack of a formal requirement for medical

officers to have knowledge of Indigenous Childcare practices, creates barriers for the exercise of Indigenous Childcare.

24. For example, section 9(1) of the Regulations states that a person who is 19 years old or older may apply for a licence by submitting to a medical health officer both (a) an application, and (b) records respecting all of the matters set out in Schedule B. Schedule B of the Regulations sets out that the applicant must provide criminal record checks, and employee plan that gives a statement of the duties, qualifications, work experience, and suitability of the manager, the number of employees and their expected duties, a supervision and staffing plan, amongst other requirements. They must also provide a floor plan outlining dimensions of the facility amongst other matters.

25. Under section 11 of the Act, a medical officer is given the discretion to issue a licence to an applicant (who is a person and not a corporation) to operate a community care facility and specify in the licence the types of care that may be provided in the community care facility. However, the medical health officer must not issue a licence unless they are of the opinion that the applicant, if they are a person and not a corporation, is of good character, has the training, experience and other qualifications required under the Regulations, and has the personality, ability, and temperament necessary to operate a community care facility in a manner that will maintain the spirit, dignity, and individuality of the persons being cared for.

26. On issuing a licence under subsection 11(1), a medical health officer may attach the terms and conditions to the licence, subject to the Act and the Regulations that the medical health officer considers necessary or advisable for the health and safety of persons in care.

27. Under section 13 of the Act, a medical health officer may also suspend or cancel a licence if the medical health officer is of the opinion that the licensee is no longer compliant with the Act or the Regulations, or has contravened the term or condition of the licence. In cases of cancellation, a licensee or an associate of licensee is prohibited from applying for a new licence for one year after the date of cancellation or the period of licence suspension.

28. The fact that these Regulations set out requirements that may not be congruent with Indigenous Childcare practices creates a potential for bias in the assessment of Indigenous

community applicants for licences and/or determinations about cancelling existing licences held by Indigenous Childcare providers. At a minimum, it remains problematic for the Regulations to not require medical health officers to be familiar with the Indigenous communities they oversee, or to seek to learn and develop knowledge of the distinct needs, cultural goals, and traditional methods of child care of the Indigenous community they are assessing.

29. The risk of knowledge gaps among medical health officers may put effective Indigenous Childcare practices at risk and unintentionally continue the traumatizing legacy of colonial government decision-making power over Nations. Furthermore, even if the Regulations required medical health officers to gain this knowledge, this does not address the jurisdiction question of having Indigenous communities carry out their own licensing, inspection and monitoring of child care, using their own laws, practices and definitions of excellence in child care.

III. LEGISLATION AND REGULATIONS FROM OTHER JURISDICTIONS TO ADDRESS INDIGENOUS CHILDCARE

30. Other jurisdictions in Canada and elsewhere have made some efforts to address issues related to the application of laws and regulations to Indigenous Childcare. We review the following jurisdictions: Ontario, Yukon, Nunavut, and New Zealand.

A. Ontario

31. In 2014, Ontario modernized its legislation relating to child care. It passed the *Child Care and Early Years Act* ("Ontario Act")[18] and Regulations ("Ontario Regulations").[19] The Ontario Act and Ontario Regulations have been applied to Indigenous Childcare facilities.

32. Ontario requires all child care facilities and programs operating within Ontario to be compliant with the Ontario Act and Ontario Regulations, including those facilities and programs operated by Indigenous communities. However, under the Ontario Act, there are various provisions specifically relating to Indigenous Childcare and various exemptions that

[18] *Child Care and Early Years Act*, 2014, S.O. 2014, c. 11
[19] O. Reg. 137/15

can be granted under the Ontario Act to First Nations. Below we review some of the provisions that might provide a model for changes to British Columbia's Act and Regulations.

33. Section 1 of the Ontario Act sets out the facilitation and support of local planning, and implementation of child care and early years programs and services by First Nations as one of its purposes. Section 49(1) of the Ontario Act also states, in part, that the provincial interest lies in respect, equity, inclusiveness, and diversity in Aboriginal, First Nations, Metis, and Inuit communities. Section 55(4) also sets out that the Minister may issue policy statements relating to the operation of child care and early years programs and services, but must consider the interests and particular qualities of Aboriginal, First Nations, Metis, and Inuit communities.

34. Under section 60 of the Ontario Act, a First Nation or group of First Nations may establish, administer, operate, and fund child care and early years programs and services by entering into an agreement with the Minister. Under section 20(3) of the Ontario Act, where such an agreement has been entered into, a director may send a copy of an application for licence to operate a child care centre or a home child care agency to the First Nation for advice about the application. The director must consider advice provided by the First Nation in making a determination about whether to refuse to issue the licence under section 23 of the Act.

35. Specifically, under 23(1)(f) of the Ontario Act, a director may refuse to issue a licence or refuse a renewal of a licence if advice from the First Nation gives reasonable grounds to believe the licence would authorize the provision of child care in an area that is inconsistent with the First Nations child care and early years programs and services plan with respect to the demand for child care and the capacity and locations of existing child care locations.

36. Under section 60(3), where there is an agreement with the Minister, a First Nation may exercise and perform any powers or duties of a service system manager provided for under the Ontario Act and Ontario Regulations. Under section 56 of the Ontario Act, a service system manage <u>shall</u> perform the following:

(1) develop and administer local policies respecting the operation of child care and early years programs and services;

(2) administer the delivery of financial assistance provided by the Minister who are charged fees for licenced child care and other programs under the Act, in accordance with the regulations;

(3) coordinate the planning and operation of child care and early years programs and services with the planning and provision of other human services delivered by the service system manager;

(4) assess the economic viability of the child care and early years programs and services in the service area and, if necessary, make or facilitate changes to help make such programs and services economically viable; and

(5) perform such other duties as may be prescribed by the regulations.

37. Under section 57(1) of the Ontario Act, a service system manager may also:

(1) establish, administer, operate, and fund child care and early years programs and services;

(2) provide financial assistance for persons who are charged fees in respect of licence d child care, authorized recreational and skill building programs, and extended day programs, in accordance with the Ontario Regulations;

(3) fund and provide financial assistance for other programs or services prescribed by the Ontario Regulations that provide or support temporary care for or supervision of children;

(4) provide assistance to persons who operate child care and early years programs and services to improve their capabilities in relation to matters such as governance, financial management and the planning and delivery of programs and services;

(5) evaluate and assess the impact of public funding; and

(6) exercise such other powers as may be prescribed by the Ontario Regulations.

38. Under section 60(4) of the Ontario Act, a First Nation may also delegate to another First Nation or to a person prescribed by the Ontario Regulations, in writing, any of the First Nation's powers or duties provided for under this Act or under the agreement.

39. In addition to these sections of the Ontario Act, section 3.1 of the Ontario Regulations allows First Nations to operate a child care centre without a licence, pursuant to section 6(1) of the Ontario Act, where the program operates on weekdays for less than three hours a day, has a complementary purpose such as promoting recreation, artistic, musical, or cultural instruction, is not operated at a person's home, and the care is for children who are six years and older.

40. Section 42(2)(5) of the Ontario Regulations also requires that every licensee must ensure that meals, snacks, and beverages must meet the recommendations set out in the Health Canada documents "Eating Well with Canada's Food Guide", "Eating Well with Canada's Food Guide – First Nations, Inuit and Métis", or "Nutrition for Healthy Term Infants".

B. Yukon

41. The Yukon's *Child Care Act* ("Yukon Act"),[20] sets one of its legislative objectives to "recognize and support the aspirations of Yukon First Nations to promote and provide culturally appropriate child care services."[21] This objective helps frame the interpretation of the Yukon Act, solidifying territorial support for First Nations child care initiatives. Additionally, the Yukon Act is second to any child care agreements reached in a Yukon Land Claim Agreement, a self-government agreement between a First Nations and the Government of Canada or the Government of the Yukon, or the Yukon First Nation Self Government Agreement, among others listed. Agreements made under the Yukon Act also allow First Nations to administer and monitor their own child care facilities for *Child Care Act* compliance.

[20] R.S.Y. 2002, c. 30
[21] *Yukon Act*, s. 1(c)

42. Similar to provinces like Ontario, section 34(1) of the Yukon Act allows the Minister to enter into agreements with First Nations and transfer over the some of the Minister's responsibilities to First Nations. This includes over anything necessary for the administration of the Yukon Act and on other matters the Minister considers advisable, if the Minister is authorized by the Commission in Executive Council. Section 36(1) of the Yukon Act also allows the Minister to enter into an agreement with a Yukon First Nation to transfer administration of the Yukon Act. However, the agreement must include a condition that the child care services provided within the jurisdiction of the Yukon First Nation be consistent with the requirements and standards established by the Yukon Act.

43. There is a Yukon Child Care Board created under the Yukon Act, which is comprised of up to seven members who are appointed by the Commissioner in Executive Council, after nominations by Yukon First Nations, and other child-interest groups and stakeholders.[22] The Yukon Child Care Board's function is to help develop and support child care services to meet the needs of children, make recommendations to the Minister in meeting those needs, review policy, programs, services, government procedures, etc., that involve child care or child care administration, advise on the planning, development, standards, co-ordination, and evaluation of child care services in the Yukon, and to hear appeals under Yukon's Act.[23]

44. Finally, section 41 of the Yukon Act states that if there is any conflict between the Yukon Act and a Yukon Land Claim Agreement in force or a self-government agreement between a Yukon First Nation and Canada, the Yukon Land Claim Agreement and the Self Government Agreement shall prevail to the extent of any conflict. Therefore, if Yukon Nations have addressed child care in their Agreements and the governance and standards are different, those standards will prevail if they are different and there is a conflict.

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[22] *Yukon Act*, s 4(2)
[23] *Yukon Act*, s. 4(4)(a)-(e)

C. Nunavut

45. In Nunavut, the *Consolidation of Child Day Care Standards Regulations* (the "Nunavut Regulations"),[24] which informs the *Consolidation of Child Day Care Act* (the "Nunavut Act"),[25] takes a distinct approach to employment qualifications by leaving the discretion of the hire to the child care facility operator. This discretion can be useful for facilitating Elder and community knowledge holder participation in child care.

46. With respect to nutrition, section 27 of the Nunavut Regulations sets out that nutritious food provided by a qualified nutritionist must be provided by the operator or by the child's parent or guardian, for each child attending the child day care facility and that this can include country food, where the operator has obtained a licence to serve country food from the department responsible for renewable resources.

D. New Zealand

47. The system adopted in New Zealand is unlike any system operating within Canada. The system of Indigenous child care, titled Kohanga Reo, or "language nest", places the needs of Indigenous children, families, and the community at the core if its operations. Administration and monitoring responsibilities are undertaken by Indigenous Maori communities. Kohanga Reo is described as an early childhood education and care centre operating in the Maori language. The approach is immersed in Maori language and culture with a focus on children ranging from newborn to age six. Kohanga Reo have a curriculum framework that aims to facilitate meaningful learning in an integrated environment that encourages community involvement. By 1996, there were 176 Kohanga Reo caring for approximately 38% of all Maori children enrolled in early childhood care.[26]

48. Kohanga Reos, although locally operated, are chartered and overseen by a national organization called Te Kohanga Reo National Trust (the "Trust"). The Trust's role is

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[24] R.R.N.W.T. 1990,c.C-3
[25] R.S.N.W.T. 1988,c.C-5
[26] Chambers, N. A. (2015). "Language nests as an emergent global phenomenon: Diverse approaches to program development and delivery" in *The International Journal of Holistic Early Learning and Development*, 1, 25-38

described as guardian-like to ensure the quality and effectiveness of Kohanga Reo in preserving and progressing Maori culture and language. This is done in part by offering courses, support, and advice. The Trust offers training courses for teachers, training courses in the Maori language te reo Maori, computer training, early childhood education, and business administration.[27]

49. Although Kohanga Reo are chartered through the Trust, they remain licenced through the Ministry of Education under the Education (Early Childhood Services) Regulations of 2008 (the "New Zealand Regulations"). The New Zealand Regulations and licensing requirements hold Kohanga Reo to a set of standards to be upheld by each facility.[28] Specifically, section 43 of the New Zealand Regulations set out the curriculum standard to be applied including the requirements to plan, implement, and evaluate a curriculum that is designed to enhance children's learning and development through the provision of learning experiences and that is consistent with any curriculum framework prescribed by the Minister that applies to the service and that:

> (iv) encourages children to be confident in their own culture and develop an understanding, and respect for, other cultures; and
>
> (v) acknowledges and reflects the unique place of Māori as tangata whenua; and
>
> (vi) respects and acknowledges the aspirations of parents, family, and whānau; and
>
> (b) make all reasonable efforts to ensure that the service provider collaborates with the parents and, where appropriate, the family or whānau of the enrolled children in relation to the learning and development of, and decision making about, those children.

[27] More information available at: https://www.kiwifamilies.co.nz/articles/kohanga-reo/ and https://www.kohanga.ac.nz/

[28] Licensing requirements available at: https://www.education.govt.nz/assets/Documents/Early-Childhood/Licensing-criteria/Nga-Kohanga-Reo/Kohanga-Reo-Licensing-Criteria-Booklet.pdf

IV. INDIGENOUS JURISDICTION OVER INDIGENOUS CHILDCARE

A. Introduction

50. Indigenous Nations in British Columbia have an inherent right to govern themselves according to their own laws, which includes the right to govern and make decisions about the care of their children and families. The source of Indigenous governance rights is the exercise of Indigenous jurisdiction and governance over their communities and their territories, according to their own laws, customs, practices and traditions prior to European contact. Indigenous peoples in British Columbia continue to occupy their territories and govern themselves according to their own laws.

51. Indigenous peoples rights to govern themselves according to their own laws and practices, including the right to care for their children and families, is reflected in the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration").[29] Article 4 of the Declaration states that:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

52. Article 5 states:

> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

53. The Declaration also recognizes the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child. Article 23 of the Declaration also states:

> Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.

[29] UN GA Res 61/295, 61st Sess, Supp No 53 (2007)

54. Given that the Declaration recognizes the rights of Indigenous peoples to exercise their own laws, practices and governance over child care, and given that Canada and British Columbia have committed to implementing the Declaration, Indigenous jurisdiction over child care should be upheld and supported, both politically and economically.

55. Furthermore, the Courts have recognized Indigenous jurisdiction over various matters as an exercise of Indigenous laws, including with reference to the Declaration. In *Pastion v. Dene Tha' First Nation*,[30] the Federal Court stated that "Indigenous legal traditions are among Canada's legal traditions. They form part of the law of the land."[31] The Court also stated that "Canadian courts have recognized the existence of Indigenous legal traditions and have given effect to situations created by Indigenous law, particularly in matters involving family relationships."[32]

56. The Court also noted that The Truth and Reconciliation Commission of Canada pointed out that the recognition of Indigenous peoples' power to make laws is central to reconciliation, and cited Article 34 of the Declaration, which states that:

> Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.[33]

57. Indigenous Nations can rely on the Declaration to advocate for jurisdiction and governance over Indigenous Childcare, particularly given that both Canada and British Columbia have said they will implement the Declaration, and Bill C-262, which is an *Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, is in third reading in the Senate.

58. If Bill C-262 passes and becomes law, then Canada, in consultation and cooperation with indigenous peoples in Canada, must take all measures necessary to ensure that the laws of Canada are consistent with the Declaration, and must develop and implement a national

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[30] [2018] 4 FCR 467, 2018 FC 648 (CanLII) [*Pastion*]
[31] *Pastion*, para 8
[32] *Pastion*, para 8
[33] *Pastion*, para 10, citing, Article 34

action plan to achieve the objectives of the Declaration. One action plan could be to achieve objectives relating to Indigenous Childcare.

B. Indigenous Jurisdiction and Governance over Child Care as an Aboriginal Right

59. Asserting and establishing a governance right over child care, as an existing Aboriginal right recognized under section 35(1) of the *Constitution*, is a legal pathway for Indigenous communities to reclaim jurisdiction over Indigenous Childcare. Below we set out some of the considerations for this approach.

60. The source of Aboriginal governance rights, as with all Aboriginal rights, is the existence of distinct Aboriginal societies occupying certain lands and governing themselves prior to European contact. Indigenous peoples continue to be governed by their laws, customs, practices and traditions, including practices related to child care.

61. Given that Aboriginal rights and claims to jurisdiction exist independently of Crown and court recognition,[34] Indigenous communities could simply continue to carry on their child care practices as they have done for generations and govern those practices according to their own laws and governance without recognition from the Province, Canada, or the courts.

62. Indigenous communities could also establish an Aboriginal right to governance of child care through the courts, relying on various cases where Indigenous law and governance has been recognized. For example, an early case where a court recognized Indigenous laws is *Connolly v Woolrich*.[35] In this case, the Court acknowledged that European and Aboriginal nations could co-exist with different systems of law and, accordingly, upheld Indigenous customary marriage laws. While *Connolly* was decided at the time of confederation, this recognition of customary laws in relation to principally matters of marriage and adoption has been upheld since, including in British Columbia in *Casimel v Insurance Corp British Columbia*.[36]

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[34] Grammond, p 142
[35] [1867] 11 L.C. Jur 197, (Qc. Sup. Ct.)
[36] (1993), 82 BCLR (2d) 387 (CA)

63. Although the Supreme Court of Canada ("SCC") has not considered a case where an Aboriginal right to governance over child care was claimed, the Court gave some consideration to Aboriginal governance rights more generally in *R v. Pamajewon*.[37] In this case, the SCC was prepared to assume that Aboriginal self-government rights exist, although it declined to decide the content of those rights based on the facts of the case. The SCC outlined that the standard for determining Aboriginal rights to self-government would be no different than the standard adopted by the Courts in respect to claims of other Aboriginal rights; that standard being established in *R. v. Van der Peet*.[38] In the *Van der Peet* case, the SCC set out the test for proving an Aboriginal right: that it must be an activity that is an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right.

64. In *Pamajewon*, the SCC stated that self-government rights could be proven by reference to practices, customs or traditions which are integral to the distinctive culture of the Aboriginal people claiming the right, provided such a practice, custom or tradition existed prior to European contact, and continues to the present day, albeit in a modern form. The SCC stated the following:

> Aboriginal rights, including any asserted right to self-government, must be looked at in light of the specific circumstances of each case and, in particular, in light of the specific history and culture of the Aboriginal group claiming the right.[39]

65. In *Campbell v British Columbia (AG)*,[40] it was argued that there was no jurisdictional space for Aboriginal self-government and that sections 91 and 92 of the Constitution had exhaustively allocated all jurisdictional authority to the federal (s 91) and provincial (s 92) governments. The BC Supreme Court dismissed these arguments and decided that the right to self-government continues to exist and is protected under section 35 of the *Constitution*.

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[37] *R. v. Pamajewon*, [1996] 2 S.C.R. 821 ["*Pamajewon*"]. In *Pamajewon*, the First Nations characterize their claimed Aboriginal right as falling within the "right to manage and use the reserve lands." The SCC re-characterized the right more specifically as the rights of the First Nations "to participate in, and to regulate, gambling activities on their respective reserve lands."
[38] *R. v. Van der Peet*, [1996] 2 S.C.R. 507 ("*Van der Peet*")
[39] *Pamajewon*, para 27
[40] 2000 BCSC 1123

Furthermore, the Court held that the right to self-government can include the power to make laws that prevail over federal and provincial laws.

66. As succinctly stated by Justice Grammond in his academic work:

> …one should not be surprised that Indigenous peoples have always had their own ways of caring for their own children, and that state intervention has not been entirely successful in eradicating them. Indigenous jurisdiction over child welfare and adoption may very well be an Aboriginal right protected by section 35 of the Constitution Act, 1982.[41]

67. It may be possible for an Indigenous community to establish a self-governance right over child care specifically. An analysis of the likelihood of success of such a claim is beyond the scope of this Report. However, as bringing such a claim would require an Indigenous community to gather evidence of pre-contact laws, customs, practices, and traditions relating to governance and child care, communities should be aware of the potential evidentiary burdens, time requirements, and costs associated with bringing such a claim. Indigenous communities would also need to consider various legal risks and challenges in bringing such a claim, including the risk of a negative result, such as a pronouncement by the Court against a governance right to child care.

C. The Division of Powers in Canada's Constitution and Indigenous Jurisdiction over Child Care

68. Section 92(16) of the Constitution gives the provinces jurisdiction to legislate over "Generally all Matters of a merely local or private Nature in the Province,"[42] which could arguably include the power to regulate the provision of child care in the Province. However, provincial jurisdiction over child care overlaps with the federal Crown's jurisdiction over "Indians, and Lands reserved for the Indians" enumerated in section 91(24) of the Constitution.[43] In the absence of federal legislation concerning Indian children, the Province filled a legislative void by imposing provincial law and regulation on Indigenous communities. Given this, the legal uncertainties brought on by provincial oversight of

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[41] Sébastien Grammond, "Federal Legislation on Indigenous Child Welfare in Canada." (2018), Journal of Law and Social Policy 28, pp. 132-151 ["Grammond"], p 142

[42] *Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (U.K.), section 92(16) ["*Constitution*"]

[43] *Constitution* at 91(24)

Indigenous Childcare are conceptually comparable to the current jurisdictional struggles in Indigenous child welfare.

69. One of the cases where the jurisdictional struggle over Indigenous care of children has been considered is in *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*.[44] In this case, the Canadian Human Rights Tribunal considered whether federal funding provided by Aboriginal Affairs and Norther Development Canada ("AANDC") to the First Nations Child and Family Services Program (the "FNCFS Program") was discriminatory.[45] In the Yukon, child and family services were provided to First Nations on reserve by the FNCFS Program. The complainant alleged that the AANDC was actively discriminating against First Nations children on-reserve in the Yukon, on the basis of race and/or national or ethnic origin, by inadequately funding these services.[46]

70. AANDC contended that child welfare fell within provincial jurisdiction and as AANDC was responsible for funding provincial or territorial agencies that delivered the services, they were not liable for discrimination.[47] However, the Tribunal stated that this did "not exempt it from its public mandate and responsibilities to First Nations people."[48]

71. What is important about the Tribunal's ruling is that in its discussion of jurisdiction, the Tribunal identified child welfare as a matter of overlap between provincial and federal jurisdiction. The federal government chose a governance model that enabled provinces and territories to legislate and oversee child welfare services for Indigenous children, with funding provided by the federal government. With respect to the issue of jurisdiction, the Tribunal stated:

> Instead of legislating in the area of child welfare on First Nations reserves, pursuant to Parliament's exclusive legislative authority over "Indians, and lands reserved for Indians" by virtue of section 91(24) of the Constitution Act, 1867, the federal government took a programing and funding approach to the issue. It provided for the application of provincial

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[44] *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General),* [2016] 2 C.N.L.R. 270 ["*First Nations Caring*"]
[45] *First Nations Caring*, para 5
[46] *First Nations Caring,* para 6
[47] *First Nations Caring,* para 78
[48] *First Nations Caring,* para 78

> child welfare legislation and standards for First Nations on reserves through the enactment of section 88 of the Indian Act. However, this delegation and programing/funding approach does not diminish AANDC's constitutional responsibilities.
>
> (…)
>
> Similarly, AANDC should not be allowed to evade its responsibilities to First Nations children and families residing on reserve by delegating the implementation of child and family services to FNCFS Agencies or the provinces/territory. AANDC should not be allowed to escape the scrutiny of the CHRA because it does not directly deliver child and family services on reserve.[49]

72. The *First Nations Caring Society* case emphasizes that federal legislative silence on a matter falling under section 91(24) of the Constitution does not exempt the federal Crown from liability. It also clarifies that federal legislative silence and provincial legislation over a matter of jurisdictional overlap do not grant the province exclusive jurisdiction. The Tribunal's finding does not invalidate provincial legislation *per se*, but affirms that the federal government has the power to legislate on these presumed provincial matters, for the benefit of First Nations.

73. Given the legal similarities between the assumed provincial jurisdiction over Indigenous child welfare and the assumed provincial jurisdiction over Indigenous Childcare, this case could be used not only to push for Indigenous control over Indigenous child welfare, but also to argue for Indigenous control over Indigenous Childcare.

D. Recognition of Indigenous Jurisdiction over Child Care through Enacting Federal Legislation

74. Under section 91(24), the federal government could pass legislation shifting the power over Indigenous Childcare to First Nations communities. In creating a federal law that delineates First Nations jurisdiction on child care, different constitutional doctrines are available to settle the applicability of provincial child care law. If a First Nation's child care law created from the federal act is challenged by a province, the doctrine of federal paramountcy would likely prevent the conflicting provincial law from applying to the First Nation.[50] In reference

[49] *First Nations Caring,* paras 83 and 84
[50] Grammond, p 146

to child welfare, Justice Grammond provides his prediction on conflicting provincial and First Nations laws when First Nations laws find their source in federal legislation:

> Where a First Nations' law enacts a comprehensive child and family services scheme, the doctrine of paramountcy would likely prevent the application of provincial legislation dealing with the subjects covered by the First Nations' law. The concurrent application of both systems would likely lead to incompatible results, for instance, by reaching different conclusions as to the need for apprehension or by making different decisions as to where the child should be placed. Concurrent application of a First Nations and a provincial system to the same child would lead to….a situation similar to that in which two unions would be certified to represent the same group of employees, a situation that Canadian constitutional law has always sought to avoid.[51]

75. Where a First Nation does not enact its own comprehensive child care scheme, provincial law and regulations would likely be applicable and fill the legislative void. However, aspects of the provincial legislation would likely have to be compliant with principles of the federal legislation in place. This could, at minimum, create a default child care legislative regime that is more responsive to the needs of Indigenous communities than what may currently exist.

V. NEXT STEPS: ENGAGING COMMUNITY REGARDING OPTIONS FOR CHANGE

76. After reviewing British Columbia's Act and Regulations, as well as relevant federal legislation, there are several legislative amendment options that could increase Indigenous jurisdiction and leadership of Indigenous Childcare. This section outlines these options.

77. **Amendment Option A: Include provisions that allow the provincial minister to enter into agreements with one or multiple Indigenous groups for the purposes of delegating child care responsibilities to communities.** British Columbia does not have a provision that allows for agreements to delegate Ministerial responsibilities to Indigenous communities. Agreements of this nature can be specific to the needs and capacity of specific communities. They may transfer monitoring and enforcement responsibilities to communities. In establishing such agreements, communities could lead their own self-monitoring for Act and Regulation compliance. In effect, this would employ community members to work within their respective communities as opposed to requesting a non-member inspect the houses

[51] Grammond, p 146

and facilities of the community. This, importantly, would address issues of gaps in cultural knowledge that can influence a director of licensing or medical health officer's discretionary assessments. Similar provisions are found in provinces and territories like Ontario and the Yukon.

78. **Amendment Option B: Establish a Legislative commitment to First Nation's needs**. British Columbia lacks an acknowledgement of its commitment to Indigenous Childcare. As noted, in the Yukon and Ontario, the *Child Care Act* states as one of its objectives the recognition and support of First Nations child care in a way that is culturally meaningful. Provisions concretizing objectives for the furtherance of Indigenous Childcare frame the acts and accompanying regulations. British Columbia could mirror this and re-orient the frame of its legislation to focus on meeting First Nations child care needs with a focus on building on existing strengths and capacities to design and deliver child care at the community level in ways aligned with the unique Indigenous ways of knowing and being of each First Nation.

79. **Amendment Option C: Establish a commitment to the promotion and inclusion of First Nations food in child care facilities.** Although misinformation has been primarily responsible for the misconception that Indigenous foods including game meats are not allowed to be served, the Act and Regulations do not encourage Indigenous diets given that they do not specifically recognize the First Nations, Inuit and Metis Food Guide. As an example, Nunavut explicitly allows for country food, and Ontario refers to the *Eating Well with Canada's Food Guide - First Nations, Inuit and Métis* as a nutrition guide to be followed by child care providers. This type of formal support of traditional diets would greatly reduce the confusion surrounding permissible foods in Indigenous Childcare and work toward improving the consumption of nutrient and protein rich Indigenous foods that also hold cultural significance and teachings.

80. **Amendment Option D: Revise the Regulations to Allow for the Increase in the Limit of Children Permitted in Multi-Age Child Care Facilities.** The Regulations under Schedule E set the maximum number of children allowed in multi-age child care at eight. With the maximum number of children allowed in a multi-age care facility, the Regulations also restrict the age makeup of the facility. To be responsive to the needs of First Nations

communities, the limits may need to be increased. This would be important for communities where multiple age-specific child care centres are not necessarily possible. This would also be important in encouraging an all-ages approach to child care and an honouring of this practice of child care and child development.

81. **Amendment Option E: Recognize the role of Elders in the Act and Regulations.** Elders and the role they occupy in Indigenous Childcare are not reflected in the Act or Regulations. Elders fall between categories of paid workers and volunteers. The existing requirements for the closest corresponding volunteer or remunerated position demand qualifications and background checks that are overly burdensome and deter Elders.[52] To remedy this, the Act and Regulations could create a new category for volunteer and remunerated positions that is specific to Indigenous Elders. Creating a new position would allow for an Indigenous-specific exception to the qualifications that dissuade Elders at present. Elders and their role may also need to be better understood to determine how they may equate into the child-caregiver ratio, and what types of responsibilities may be expected from the Elders. This may need to be left open and negotiated on an individual basis with the licence holder.

82. Short of creating a new position, the Act and Regulations could include a subsection to affirm an Elder's cultural knowledge and position within society as equal or greater to post-secondary education for the purposes of the position they will hold in the child care facility. This same rational should be applied to qualifications requiring certain years and hours of experience that may not be attainable for certain Elders. This may also be accomplished through a provision giving licence holders increased discretion to employ Elders as needed without the same formal requirements necessary for other employees.

83. This provision can look to existing Regulations provision 19(2) which currently applies as additional character requirements to skill requirements demanded by 19(1). The Regulations state in 19(2): A licensee must not employ a person in a community care facility unless the licensee is satisfied, based on the information available to the licensee under subsection (1) and the licensee's or, in the case of an employee who is not the manager, the manager's own observations on meeting the person, that the person (a) is of good

[52] See discussion in Licensing Report, 2013 of the barriers and options relating to the Role of Elders.

character, (b) has the personality, ability, and temperament necessary to manage or work with children, and (c) has the training and experience and demonstrates the skills necessary to carry out the duties assigned to the manager or employee.

84. **Amendment Option F: Reclaim Indigenous Jurisdiction over Child Care through an Aboriginal Rights Test Case, Enacting Federal Legislation or through relying on The Declaration:** One option is for an Indigenous Nation to bring a test case to the courts to establish an Aboriginal right to governance over child care. This could be done by one Indigenous Nation who could pursue such a claim, with the support of other Nations and organizations, who may choose to intervene in such a case.

85. Given the potential challenges associated with establishing an Aboriginal right to child care, another useful option may be to have the federal government pass legislation shifting the power over Indigenous Childcare to Indigenous communities.

86. Federal legislation conferring to Indigenous communities the power to operate Indigenous Childcare within their respective communities appears to be the streamlined and resource-conscious path. However, it is dependent on federal cooperation with Indigenous communities. The current federal government's policies position it in at least a more favourable light for this form of initiative, as is currently underway for Indigenous child welfare.

87. At this point, federal legislation on Indigenous child welfare has not been passed by Parliament. However, it is possible that clauses in the proposed legislation may assist in reclaiming jurisdiction over child care, or it may serve as a possible template for similar legislation specific to Indigenous Childcare.

88. Finally, Indigenous Nations could rely on the Declaration to advocate for jurisdiction and governance over Indigenous Childcare, particularly given that both Canada and British Columbia have said they will implement the Declaration, and Bill C-262, which is an *Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, is at third reading in the Senate.

Appendix B: Project Engagement Summary Report

BC Aboriginal Child Care Society

Indigenous Childcare Jurisdiction Project

Engagement Summary Report

Executive Summary

The BC Aboriginal Child Care Society ("BCACCS") is currently leading a project focused on exploring legal options for upholding and supporting Indigenous Childcare[1] in British Columbia (the "Project"). The purpose of the Project is to explore the possible legal avenues that are available to First Nations in order to best support Indigenous Childcare.

BCACCS has been doing community-based research and engagement with First Nations across the province on child care licensing and regulations since the provincial *Community Care and Assisted Living Act* (the "CCALA") and *Child Care Licensing Regulation* (the "CCLR") came into force in 2002. Indigenous Early Childhood Educators ("ECEs"), advocates, and leaders have shared the challenges they face in providing Indigenous Childcare within the current legislative and jurisdictional framework. These reports, and the community-based voices they draw on, have informed the current engagement Project.

The Project began with a legal review of the current context for Indigenous Childcare in BC, as well as possible legal avenues for change that were developed by looking to other provinces, territories, and countries. The two (2) legal avenues that have emerged as possibilities for First Nations to consider are:

1. Formally reclaiming Indigenous jurisdiction and governance over Indigenous Childcare in British Columbia; and
2. Proposing amendments to the Act and Regulations to support the delivery of high quality, culturally-appropriate Indigenous Childcare in British Columbia.

This document summarizes the information gathered during the community engagement for the Project. Engagement consisted of community-based engagement across BC via thirteen (13) focus groups conducted in May and June 2019, as well as an online survey distributed in August 2019. The engagement process sought to:

- Share the research context and possible legal avenues that may help solve the issues the ECE sector has identified in previous engagement and research;
- Empower participants to understand the pros and cons of each possible legal avenue, get a sense for their preferred avenue(s) moving forward and why; and
- Gain a community-based understanding of any additional capacity needs among communities wishing to pursue the preferred legal avenue(s).

127 people provided input during this initial round of discussions and engagements. 74 people

[1] The term "Indigenous Childcare" was used in the Legal Report to refer to the early learning and child care approaches, programs and services delivered to Indigenous children throughout Indigenous territories, including on and off reserve, as well as the facilities through which such approaches, programs and services are delivered. We use that term throughout this Report where appropriate.

The term "child care" is used in this Report to refer to child care more broadly, encompassing both Indigenous Childcare and non-Indigenous child care. It is also used to reflect the language of legislation, reports, and other cited materials. Example: The Province relies on the Act and Regulations to regulate licenced child care facilities in British Columbia.

participated in focus groups. The majority were ECE providers and educators, with many First Nations staff and administration, urban Indigenous organizations members, and engaged community members participating.

53 people filled out the online survey in its entirety. 41.5% of respondents were ECE managers, 30% were Band administrators or staff, and 19% were ECEs. 7.5% were Urban Indigenous organization directors or staff. 63% of survey respondents working directly in child care reported having over 10 years of experience in the field.

These engagement methods revealed that Project participants support pursuing formal reclamation and recognition of jurisdiction and governance over Indigenous Childcare, as well as amending the current Act and Regulations to address the poor fit between Indigenous understandings of quality and the existing regulatory system. The high participant support for both legal avenues reveals that a multi-pronged strategy must be developed.

Project participants described their vision for jurisdiction over Indigenous Childcare, which included these elements:

- It should be Nation-based and equitable;
- It should support culturally appropriate, culturally specific early learning and child care, with a focus on culture, traditions, and language;
- It should reflect Indigenous understandings of quality, while following and/or exceeding provincial standards of quality and safety;
- It should apply non-competitive funding mechanisms; and
- It should include supportive and enabling oversight and quality assurance systems (as opposed to the current punitive-oriented provincial model).

Supports that would be necessary to successfully implement Indigenous jurisdiction over Indigenous Childcare include securing funding for Nation-based capacity development beginning immediately, and phased opportunities to assume jurisdiction, as well as the choice for each Nation to opt into the jurisdictional framework. There is also a need for sustained support from elected leadership to work toward this goal.

There was a widespread understanding among participants that pursuing recognized and supported Indigenous jurisdiction over Indigenous Childcare is a key element in ongoing Nation (re)building, self- governance, and Indigenous social policy development work. The preference among participants was to explore reclaiming jurisdiction via negotiations with federal and provincial governments, as opposed to a court case to affirm the Aboriginal right over child care provision.

Engagement results also indicate that participants were open to the majority of proposed amendments to current BC legislation governing child care. These include amendments related to the oversight of ECE programs and facilities, requirements for Indigenous content in ECE training programs, increased cultural training for licensing officers, and others. While participants stated that these proposed changes would likely make immediate positive impacts

on their day-to-day work, there was also a concern that amendments to legislation do not address the underlying issue whereby BC has assumed jurisdiction over Indigenous Childcare in Indigenous communities.

Overall, participant responses in the engagements support and reinforce what BCACCS has heard from Indigenous ECEs and advocates for almost 20 years. The people who have taken the time to participate in a Project engagement opportunity have a clear understanding of the complexity of the issues at hand, the benefits and drawbacks of different legal avenues, and the challenges inherent to effecting large-scale systems change successfully and equitably across the province.

The emerging learnings from the engagement results show that while participants were asked about two (2) distinct approaches to improving Indigenous Childcare, these legal avenues are not mutually exclusive. For example, amendments to current legislation could serve as a stepping stone on the route to fully reclaimed and recognized Indigenous jurisdiction over Indigenous Childcare.

Moving forward, the Project will take these community-based perspectives to First Nations leadership for their consideration, discussion, and feedback. A final report will be developed that reflects both community and leadership's voices. This report will continue to inform BCACCS' advocacy for Indigenous Childcare as a key component to First Nations' self-governance work.

Table of Contents

List of Figures and Tables

Introduction

The BC Aboriginal Child Care Society ("BCACCS") is currently leading a project focused on exploring legal options for upholding and supporting Indigenous Childcare[2] in British Columbia (the "Project"). The Project includes engagement with community-based Early Childhood Educators ("ECEs") and program managers, parents, elders, education directors, leadership, and other early learning and advocates.

This document summarizes the information gathered during Phase 1 of the Project. Phase 1 has consisted of community-based engagement across BC via thirteen (13) focus groups conducted between May 13 and June 7, 2019 (which was primarily aimed at ECE educators and managers, though other community members participated) as well as an online survey distributed in August 2019. The document is a reflection of the voices of people who are invested in raising their communities' children.

The purpose of the document is to provide a high-level summary of the views that emerged from the focus group discussions and the online survey on opportunities to reclaim Indigenous jurisdiction over Indigenous Childcare, as well as to make changes to current provincial legislation governing child care.

The document includes seven (7) sections, including this one:

- Section 2 (Background) provides additional context for the Project;
- Section 3 (Engagement Overview) shares the engagement process that has been chosen for this Project;
- Section 4 (Who Participated?) provides information on the people that were engaged via the focus groups and online survey;
- Section 5 (Results Summary) shares a summary of their preferences, perspectives and responses to the engagement topics;
- Section 6 (Emerging Learnings to Guide Next Steps) shares some of the salient themes and learnings to inform the next phases of the Project work; and
- Finally, Section 7 (Project Next Steps) outlines the next steps for the Project, including how the information from Phase 1 will be used in moving the conversations on Indigenous Childcare jurisdiction forward.

The information gathered sets the stage for further engagement and discussion on legal avenues to support Indigenous Childcare, both within the Project's scope through discussions with leadership tables and a community validation process, and in post-Project work.

[2] The term "Indigenous Childcare" was used in the Legal Report to refer to the early learning and child care approaches, programs and services delivered to Indigenous children throughout Indigenous territories, including on and off reserve, as well as the facilities through which such approaches, programs and services are delivered. We use that term throughout this Report where appropriate.

The term "child care" is used in this Report to refer to child care more broadly, encompassing both Indigenous Childcare and non-Indigenous child care. It is also used to reflect the language of legislation, reports, and other cited materials. Example: The Province relies on the Act and Regulations to regulate licenced child care facilities in British Columbia.

Background

BCACCS has been doing community-based research with First Nations across the province on child care licensing and regulations since the provincial *Community Care and Assisted Living Act*[3] (the "Act") and *Child Care Licensing Regulation*[4] (the "Regulations") came into force in 2002. The Act and Regulations regulate Early Child Care in British Columbia, including in Indigenous communities.

Indigenous ECE workers, advocates, and leaders have shared the challenges they face in providing Indigenous Childcare within the current legislative and jurisdictional framework. Some of the research BCACCS has produced includes reports on:

- Licensing First Nations Early Childhood Programs (2010);
- Training, Recruitment & Retention in the First Nations ECE Sector (2012); and,
- Increasing Indigenous Children's Access to Traditional Foods in Early Childhood Programs (2015).

These reports, and the community-based voices they draw on, have informed the Project.

At the same time, Canada endorsed the national Indigenous Early Learning and Child Care Policy Framework in 2018 (the "Framework"). The Framework is now in year two (2) of a 10-year implementation process. The Framework includes priorities to recognize and support Indigenous self-determination over early learning and child care, including governance over improved or new systems to deliver programs and services to Indigenous children and their families.

The purpose of the Project is to explore the possible legal avenues that are available to Indigenous Nations in order to best support and uphold Indigenous Childcare in BC. The two legal avenues are:

1. Formally reclaiming Indigenous jurisdiction and governance over Indigenous Childcare in British Columbia; and
2. Proposing amendments to the Act and Regulations to support the delivery of high quality, culturally-appropriate Indigenous Childcare in British Columbia.

The participant feedback from this Project provides a community-based foundation for further dialogue and collaboration on making improvements to Indigenous Childcare, recognizing that such complex topics may require significant time and additional community-based engagement.

The Project began with a legal review of the current jurisdictional situation for Indigenous Childcare in BC, as well as possible legal avenues for change. BCACCS developed an engagement strategy that was then rolled out across BC, which is set out in detail in the next section of this Report.

[3] Community Care and Assisted Living Act, SBC 2002, c 75.

[4] Child Care Licensing Regulation, B.C. Reg. 188/2018.

To guide the work, BCACCS established an Advisory Committee for the Project, composed of sectoral representatives from all BC regions, cultural knowledge holders, and ECE advocates. The Advisory Committee provided significant input and direction on the development of the engagement strategy.

Engagement Overview and Methods

The Project engagement strategy involves three (3) phases:

- Phase 1: community-based engagement consisting of a combination of in-person focus groups across BC, and a parallel online survey process;
- Phase 2: discussions with First Nations leadership tables based on what we heard from community (now in progress); and
- Phase 3: community validation of the results before finalizing the report and any recommendations for the Project (also in progress).

Focus Groups

Thirteen (13) focus groups were held across the different regions of BC. Eleven (11) of the focus groups engaged with mostly on-reserve child care providers, while two (2) focus groups were held with members of organizations providing Indigenous Childcare in urban settings: a session in Duncan with BC Association of Aboriginal Friendship Centres ("BCAAFC") staff, and one in Richmond with Board members of Aboriginal Head Start Association of BC ("AHSABC").

Based on Advisory Committee recommendations and service capture areas, the other community- based engagements were held in Victoria, Nanaimo, Campbell River, Port Hardy, Mission, Vancouver (x2 sessions), Prince George, Terrace, Kamloops, and Vernon.

The focus group format was a semi-structured facilitated group discussion with handouts to support the conversations. Each focus group followed a similar sequence:

- The Project was introduced with reference to the previous BCACCS work that informs the Project;
- The legal avenue of reclaiming jurisdiction[5] was introduced, followed by a facilitated group discussion. The facilitator took notes on a flip chart without attributing comments to specific people or their position;
- The same process was repeated for the legal avenue of possible amendments to the Act and Regulations;
- The facilitator invited feedback about which legal avenue(s) participants would like to

[5] Although the Legal Report describes legal avenue 1 as "reclaiming jurisdiction," the terms "reclaiming jurisdiction" and "recognizing jurisdiction" were both used in community engagement for the purpose of sharing the concept in accessible plain language.

see further explored, including proposing new options for consideration, identifying community-based capacity and development needs for the legal avenue(s) to be successfully implemented, and general comments or additional questions; and,

- Participants were given the choice to share their contact information to receive updates on the Project, including a summary of their focus group notes.

The goal of the focus groups was not to seek consensus among participants regarding which legal avenue(s) they preferred; rather, it was to seek advice from community on the best way forward to address known issues in the sectors. The focus groups created space for dialogue, allowing participants to delve deeper into and gain a stronger understanding of the possible legal avenues. As a result, they were able to share their informed perspectives and advice for BCACCS' next steps. The focus groups allowed the Project team to gain on-the-ground perspectives on how each possible legal avenue might change Indigenous ECE workers' and advocates' day-to-day work, and which legal avenue(s) community-based Indigenous Childcare supporters' preferred.

The focus group format lended itself particularly well to exploring the complexity of the topics at hand. The presence of a lawyer or articling student on the engagement team also meant that participants could ask clarifying questions on complex legal information and receive answers in real time. However, the Project budget constrained the number of focus groups that were possible in this phase of engagement.

Participants from each focus group received a summary of the notes from their focus group, with the invitation to share their feedback and corrections.

Online Survey

A parallel online survey that closely modeled the focus group process was also developed, in order to gain the input of community members for whom face-to-face focus group participation was not possible. The survey was distributed online in August 2019 to 603 community-based ECE managers and Band administrators. A handbook, similar to the handouts used during the focus groups, was developed to support survey respondents as they answered questions about each possible legal avenue. The majority of the survey questions were open-ended, allowing for respondents to share in-depth perspectives on each option and the rationale for their choices.

The online survey method was selected because it had the potential for a broader reach to fill any engagement gaps from the focus groups. The online survey format also allowed for some quantification of results, which is a complementary set of data to the aggregated focus group feedback. The anonymous nature of online surveys prevented deeper engagement or follow-up with participants, including asking for more detailed responses or clarifications, which is a drawback to the method.

While the survey handbook was developed to support respondents' learning and responses, it is challenging to determine whether respondents had an accurate understanding of the legal avenues being presented. Moving forward in this work, it may be beneficial to prioritize

more conversational engagement methods (e.g., focus groups, interviews) over more standardized or less personal engagement methods such as surveys, to ensure that participants are empowered to understand the nuances of the legal avenues being explored.

Data Analysis Methodology

Notes from the focus groups were reviewed and synthesized using a thematic analysis approach to draw out key themes with attention to regional trends and perspectives. As a result, reporting on the input from the focus groups includes necessarily vague language (e.g., some participants). While this is a limitation of the focus group format, it does not diminish the value of the rich insights shared during the focus groups.

The Likert scale and multiple-choice survey responses were quantified and summarized while the open-ended survey responses were reviewed and aggregated using a thematic analysis approach, similar to the focus group notes. The online survey format also allowed for responses within specific themes to be quantified, which has the added benefit of showcasing the more common perspectives among survey respondents.

Who Participated?

127 people provided input across all data collection methods during this initial round of discussions and engagements: 74 people attended a focus group, while 53 people responded to the survey.

The priority was to engage with people from a wide range of Indigenous communities, Nations, and organizations in urban, rural, and remote, and on- and off-reserve settings, to hear and record the broadest range of perspectives on the topics at hand. All participants were invited to share their perspectives as individuals, not as representatives from their Nations.

Focus Groups

Over the course of thirteen (13) focus groups we heard from 74 individuals. The majority of participants were ECE providers and educators, with many First Nations staff and administration, urban Indigenous organizations members, and engaged community members. Additionally, Indigenous education training providers, program managers and directors, BCACCS staff, First Nation elected leadership, and those working in the fields of Aboriginal Supported Child Development (ASCD), Child Care Resource and Referrals (CCRR), and the Aboriginal Infant Development Program (AIDP) attended some, but not all focus groups.

To maintain participant anonymity, no additional identifying information was collected.

Online Survey

While 100 people opened the survey and entered their demographic information, 47 people did not answer any of the content-based questions, and thus have been excluded from the reporting of the results. 53 people (8.8% Of 603 survey recipients) completed the survey in its entirety.

The most strongly represented positions among survey respondents were:

- ECE managers (41.5% of respondents);
- Indigenous Nation administrators or staff (30% of respondents); and
- ECEs (19% of respondents).

7.5% of respondents were urban Indigenous organization directors or staff, 11% were parents, 4% were Elders, 4% were elected leaders in their community, and 2% were hereditary leaders. No ECE assistants or volunteers responded to the survey. 26% of respondents held additional roles including: school principal, supported child development worker, play therapist, executive directors of service agencies (e.g., counselling), and modern treaty First Nation workers (e.g., executive director, staff).[6]

In terms of regional representation, 11.3% of respondents came from the Fraser region, 26.4% from the Interior, 26.4% from the North, 13.2% from the Vancouver Coastal region, and 22.7% from Vancouver Island.

Among those working within child care, 13% of respondents have been in the sector for 1-5 years, 24% for 5-10 years, 45% for 10 to 20 years, and 18% for 21 years or more. In other words, 63% of survey respondents working in child care had over 10 years of experience in the field.

Results Summary

This section is presented according to the broad topic areas used to guide the focus group discussions.

The two (2) legal avenues explored in the community engagement were:

1. Formally reclaiming Indigenous jurisdiction and governance over Indigenous Childcare in British Columbia; and
2. Proposing amendments to the Act and Regulations to support the delivery of high quality, culturally-appropriate Indigenous Childcare in British Columbia.

Each possible legal avenue includes multiple options that formed the basis for focus group discussions and standalone survey questions. These options are described in the following subsections, along with the general level of support for the option among focus groups (low,

[6] Note that respondents could select more than one response to this question, so the total percentages do not add to 100%.

medium, or high interest) and the equivalent information from survey respondents (percentage of respondents in favour of the option). This information is followed by a summary of the overall comments, preferences and perspectives on each option, with attention to regional trends where relevant.

Reclaiming Indigenous Jurisdiction over Indigenous Childcare

Indigenous jurisdiction over Indigenous Childcare would enable First Nations to create their own laws, policies, and priorities to offer Indigenous Childcare that is aligned with how they have been raising children since time immemorial.

In the focus group, there were discussions about the inherent right of Indigenous Nations to govern Indigenous Childcare in their communities. Focus group participants discussed whether or not they would support reclaiming Indigenous Jurisdiction over Indigenous Childcare in BC, and the different options for how this might be formally recognized by the Canadian and provincial governments.

The views that emerged from these discussions are presented in an aggregate format, reflecting the diversity of discussions that occurred across the thirteen (13) focus groups.

The survey included a series of questions about respondents' interest in and support of the three (3) legal options for formal reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare. These questions were developed following the focus group engagements, in order to ensure the survey design would both reflect and build upon focus group questions. This resulted in the collection of additional information in the survey and explains the slight variation in the format of the results presented in each subsection below.

Focus Group Feedback

Overall, most focus group participants were interested in reclaiming jurisdiction over early learning and child care: participants in eleven (11) of the focus groups expressed support for the legal avenue while participants from two (2; one urban and one regional) focus groups were not interested in pursuing the legal avenue. All participants had many comments and potential concerns about the process to reclaim Indigenous jurisdiction over Indigenous Childcare. The continuum of perspectives shared by focus group participants has been aggregated and summarized as follows:

- The overall preference was for Nation-based jurisdiction over Indigenous Childcare;
- Reclaiming and recognizing Indigenous jurisdiction over Indigenous Childcares means acknowledging and respecting Nations' individual ways of being, teaching,

and living, and support Nations in developing the new system on their terms, for all their members (i.e., not just on-reserve);

- At the same time, it is important to recognize and address the complex needs of urban Indigenous populations and to include provisions for these unique needs when developing an Indigenous jurisdictional model for Indigenous Childcare;
- Similarly, there is a need to develop an equity-based approach to implementing an Indigenous jurisdictional model for Indigenous Childcare, such that Northern and remote communities and Nations have access to resources and opportunities in ways that support their unique, often less networked contexts;
- The process to gain Indigenous jurisdiction over Indigenous Childcare would likely take a long time and depend on political will, both from Indigenous Nations' leadership and provincial and federal governments. Many participants described current challenges they face in convincing their political leaders that Indigenous Childcare is a priority area, which has the potential to delay change;
- There is worry that any process to gain Indigenous jurisdiction over Indigenous Childcare would stall after many years of work. Some participants raised Indigenous Nations' negotiations on jurisdiction over education in BC as an example to learn from. Exploring whether Indigenous jurisdiction over Indigenous Childcare could be included under education jurisdiction was an area identified for further research;
- Some Indigenous Nations are ready to assume full jurisdiction over child care now, while others may need more time and support. Phased opportunities to assume jurisdiction over Indigenous Childcare, as well as the choice to opt into a jurisdictional framework, would support all Nations, no matter their starting place;
- Developing Nations' capacity to implement jurisdiction over Indigenous Childcare must begin now. Participants identified that securing funding immediately to support Indigenous Nations in developing their governance capacity, and training individuals to fill positions in the future system, are the most urgent capacity development needs;
- Participants are not interested in taking over an underfunded system. Funding structures for an Indigenous jurisdictional system must be developed to be reliable; long-term; equitable; supportive of wage structures that reflect the role of ECE workers in Nation building; and structured in a way that promotes collaboration (not competition) across Nations, among other considerations;
- In an Indigenous jurisdictional model over Indigenous Chilcare, there could be some shared standards across all Nations in BC (e.g., safety standards) which could be overseen by a central Indigenous body. However, some participants also shared concerns with how to administer oversight of Indigenous Childcare centres via a central Indigenous body, as this might divert funding away from communities into a bureaucracy (in addition to concerns raised in the previous bullet); and,
- There was widespread acknowledgment that Indigenous jurisdiction over Indigenous Childcare opens the door to creating early learning and child care systems, programs, and policies that are supportive and enabling, rather than the current punitive/enforcement-based approach to licensing. Many participants described this as an exciting possibility.

Survey Respondent Feedback

Support for Indigenous Jurisdiction over Indigenous Childcare

When asked if they support the legal avenue of reclaiming Indigenous jurisdiction over Indigenous Childcare, 53 survey respondents answered the question as shown in Figure 1. No respondents answered “no” to the question, indicating broad based support for the legal avenue.

Among ECE Managers: 73% yes, 27% unsure
Among ECEs: 60% yes, 40% unsure
Among Band administrators: 77% yes, 23% unsure

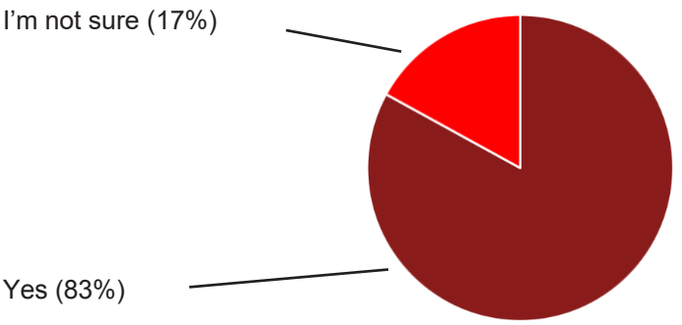

Figure 1: Survey responses (n = 53) to question of supporting Indigenous jurisdiction over Indigenous Childcare

What does Indigenous jurisdiction over Indigenous Childcare look like to you?

Responses to this open-ended question were sorted thematically into the following nine (9) broad categories according to “best fit”: culture and language, quality and excellence, family and community involvement, funding equity, Indigenous policy development, institutional and political support, self- governance, staffing and training, and supply meeting demand.

Many responses span more than one category, speaking to the interconnected nature of the topic. Reading the specific examples for each theme through a holistic lens is encouraged in order to make connections between the different elements of Indigenous jurisdiction over Indigenous Childcare, as shared by respondents. Where direct quotes best reflect the ideas put forward, they are copied verbatim in quotation marks. The survey responses to this question reflect many of the learnings summarized from the focus groups (see previous page).

Culture and language (14 responses):

- Culturally appropriate and culturally specific early learning and child care, with a focus on culture, traditions, and language, is vital; and,
- Indigenous jurisdiction over Indigenous Childcare is an important way to reclaim Indigenous culture.

Quality and excellence (6 responses):

- Following and/or exceeding provincial standards of quality and safety;
- Having a Nation-based notion of quality in place;
- A system that is respectful of individual children’s needs; and,
- A system that includes looking at Elders/ staff/child relationships, and culture and language, as indicators of quality.

Family and community involvement (8 responses):

- A system run by the community/band, local parents, and local workers, with community making decisions about the learning environment with parental and elder input and participation;
- Having elders and community members involved in the day-to-day operations;
- Seeking out and respecting elders' perspectives on early learning; and,
- Increasing parental inclusion and training.

Funding equity (3 responses):

- A system that pays fair wages for Indigenous ECEs; and,
- No longer having to adhere to provincial regulations for operating childcare in order to receive funding, and having equal access to funding for community-based early learning programs.

Indigenous policy development (14 responses):

- Developing Indigenous policy and practice that supports "reclaiming traditional methods of care, teaching, and sustenance to ground our children in a strong foundation of culture as it applies to today's world" where the learning environment is culturally nurturing;
- Indigenous control over licensing and program content;
- "Indigenous jurisdiction to me would allow the incorporation of traditional practices and teachings from local Elders and Knowledge Keepers in support of today's Western education system";
- Move away from Licensing Officers that focus on compliance, and toward positions that prioritize supporting community-based ECEs; and,
- Looking to current policies that work in Indigenous community contexts.

Institutional and political support (7 responses):

- Provincial and federal governments demonstrating their "acknowledgment and recognition of the value of Indigenous world views" and their understanding that Indigenous jurisdiction is essential to early learning.

Self-governance (21 responses):

- Communities and/or Nations determining what Indigenous jurisdiction looks like to them without provincial or federal interference, or the need to comply with the Act and Regulations;
- No longer being required to adhere to provincial regulations to access funding; and,
- Holistic governance for child care regulation that is unique to Indigenous people, includes cultural protocols, and safeguards First Nations' autonomy to plan, develop, implement, and evaluate ECE structures.

Staffing and training (1 response):

- Recruiting and retaining more qualified ECE workers.

Supply meeting demand (2 responses):

- Increasing on-reserve child care; and,
- Running programs that are in harmony with the community/ies they serve.

Legal Options for reclaiming Indigenous jurisdiction over Indigenous Childcare

The engagement process also highlighted three (3) possible legal options to reclaim Indigenous jurisdiction over Indigenous Childcare. These are:

1. Reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare through negotiations and the passing of federal legislation;
2. Bringing a test case to the courts to establish the Aboriginal right to governance over Indigenous Childcare; and,
3. Relying on the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") to advocate for change.

The legal options are listed on the next pages, with summaries of engagement participants' preferences and perspectives.

The legal options could be combined or sequenced in particular ways to achieve Indigenous Nations' aims regarding Indigenous jurisdiction over Indigenous Childcare; they are not mutually exclusive.

Engagement participants articulated the nuance and complexity inherent to each of the three (3) legal options, demonstrating an understanding that there is no one straightforward answer to resolve the challenges currently experienced in the sector.

Option 1: Reclamation of Indigenous jurisdiction over Indigenous Childcare through negotiations and federal legislation

The majority of participants in the Project's engagements (the majority of participants from 11 of the 13 focus groups and 84% of survey respondents) supported the avenue of reclaiming jurisdiction over Indigenous Childcare. Among survey respondents, 47.17% were in favour of reclaiming jurisdiction through negotiations while 43.40% were unsure and 9.43% were against pursuing this option.

Of those who did not express support for this avenue, the majority expressed uncertainty about the option, rather than opposition to it. This suggests that participants would benefit from additional information on this legal avenue in order to make an informed decision.

Focus group participant feedback:

- In discussions, participants identified the need for funding to engage in negotiations, as well as funding for capacity building starting during the negotiation process; and,
- Participants also described who they would want at the negotiation tables: ECEs, elders, parents, hereditary leaders, matriarchs, elected leaders, supportive advocates, with strong urban/off-reserve representation, as well as BC and federal government representatives.

Survey respondent feedback:

- Survey respondents in favour of the legal option spoke to the importance of collaboration; fair and proper negotiations that can allow for Nation-based dialogue reflecting the unique and varied needs of BC First Nations; conversations regarding funding inequities; and the opportunity to end prohibitive colonial practices and policies;
- Among those opposed to pursuing this legal option, some respondents stated that Indigenous peoples have an inherent right to self- governance and should not have to negotiate terms for Indigenous jurisdiction over Indigenous Childcare. Rather, Nations should simply be given equal access to resources to implement Indigenous jurisdiction over Indigenous Childcare; and,
- Respondents who remained unsure about the legal option spoke to the uncertainty of outcome when negotiating with provincial governments and worried about the potential negative effects that negotiations could have on funding continuity.

Survey respondents were also asked how effective they believed negotiations would be, if pursued (Figure 2).

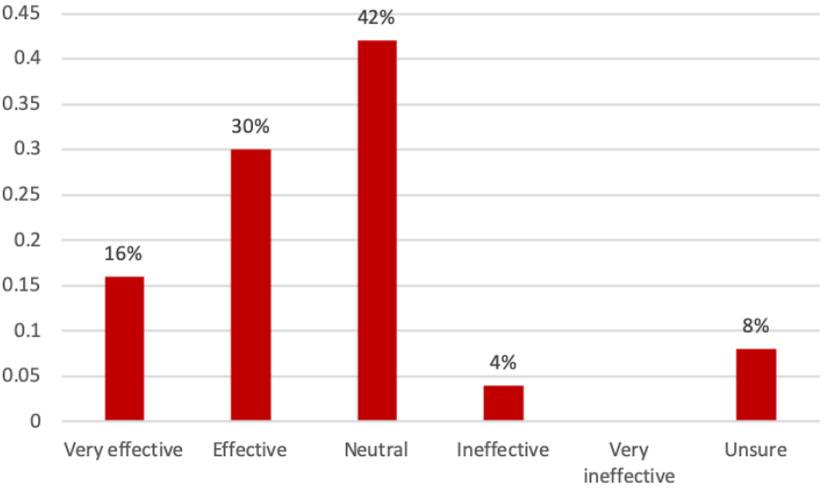

Figure 2: Survey responses (n = 50) to question of how effective negotiations would be for reclaiming Indigenous jurisdiction

Among survey respondents who believed negotiations would be effective, some stated that success would likely vary based on who is sitting at the negotiation table, as well as on the provincial and federal governments' priorities. Similar to focus group participants, survey respondents who shared additional comments advocated for a mix of Indigenous leadership and ECE experts to be represented at negotiation tables. Negotiations were seen as an opportunity to enact Nation-to-Nation protocols to bring a unified voice to the table, and then create a shared understanding and mutually agreeable decisions based on what is best for young children and their families.

According to survey respondents, potential risks of pursuing negotiations include:

- Finding consensus, first among Nations, then among government bodies;
- The potential power imbalances among negotiating parties, possibly advantaging more resourced Nations;
- Insufficient capacity of some Nations to pursue or implement Indigenous jurisdiction over Indigenous Childcare (pointing to the need, identified in many focus groups, for the option to opt into an Indigenous jurisdiction model as well as a phased approach to implementation); and,
- Uncertain outcomes of negotiations and the worry that negotiations may negatively affect current funding streams.

Option 2: Bringing a test case to the courts to establish the Aboriginal right to governance over Indigenous Childcare

This was the second preference among focus group participants in favour of recognized jurisdiction, but had more support amongst survey respondents. Among survey respondents who answered this question (n = 52), 65% were supportive of an Indigenous Nation going to court to establish jurisdiction, with 4% against, while 31% remained unsure. Participants in both the focus groups and the survey identified the strengths and challenges for the option, synthesized below:

Focus group participant feedback:

Most focus group discussions examining this option cited concerns about the high cost, uncertainty of outcome, and the potential that change may not come even with positive court rulings cited as cautions against pursuing this avenue. There were very few positive comments concerning this option at focus group tables.

Survey respondent feedback:

Reasons to support a test case to the courts included the opportunity to raise general awareness of the issue with the public, and that the process would result in a legally binding positive decision.

Those unsure of this avenue spoke to the time-consuming and expensive litigation process, uncertainty of outcome, and consequences to such a legal precedent.

Relying on the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") to advocate for change

This legal option received the least support as a standalone option, for both focus group participants and survey respondents. Although UNDRIP was generally seen as a positive support for the reclamation and recognition of Indigenous jurisdiction over Indigenous Childcare, this legal option was not considered to be strong enough on its own.

Focus group participant feedback:

This legal option was generally seen as too passive to effect necessary change, though the majority of focus group participants agreed that UNDRIP could be used as supportive leverage for the other legal options (negotiations or a court case).

Survey respondent feedback:

58.5% of respondents agreed that UNDRIP would support Indigenous jurisdiction over Indigenous Childcare.

41.5% were unsure as to its effectiveness as a standalone legal option for change.

Additionally, survey respondents shared why they thought UNDRIP would support Indigenous jurisdiction over Indigenous Childcare:

- It enshrines Indigenous peoples' rights to govern themselves according to their own laws and practices;

- It cultivates the development of Indigenous Childcare, institutions, cultures and traditions; and,
- It formally recognizes the inherent Indigenous right to self-determination.

Implementing Jurisdiction: Possible Barriers and Needed Supports

Both focus group participants and survey respondents identified the same types of barriers to implementing a new jurisdictional scheme in their communities, as well as the supports and considerations that need to be front and centre prior to any transition to full Indigenous jurisdiction over Indigenous Childcare. These are briefly summarized below.

Possible Barriers

- The cost;
- The varying capacities, geographies, and demographics of Indigenous communities, Nations, and organizations;
- Concerns about equity in implementation of jurisdiction over Indigenous Childcare;
- Reaching consensus among Nations and collaborating effectively;
- Effective transitioning; and,
- The time-consuming nature of legislative change.

Needed Supports

- Making immediate and significant investments in training and child care funding, to both address outstanding issues and deficits in capacity as well as prepare for the transition to self-governance;
- Focusing on capacity-building and recruitment and retention of ECEs, with a focus on wage equity;
- Developing meaningful collaboration pathways among Nations and organizations on all levels to be able to move the work forward, and ensuring the financial and institutional supports are in place to maintain such collaboration pathways; and,
- Sustained support from leadership to work towards a common goal.

Additional Considerations

Several focus group participants and survey respondents spoke to the importance of seeking input and mentorship from those involved in BC First Nations' work on jurisdiction over education, as well as the federal Indigenous Child Welfare process (Bill C-92). If BC First Nations choose to embark on a process to reclaim Indigenous jurisdiction over Indigenous Childcare, further research and engagement will be necessary to explore possible connections and opportunities for collaboration beyond those presented at this stage of the Project.

Making Changes to the Act and Regulations

Focus group participants and survey respondents were invited to consider potential amendments to the Act and Regulations. The various options for amending the Act and Regulations were based on child care legislation in other jurisdictions, as well as supportive measures that have been shared with BCACCS over the years by Indigenous ECEs, child care providers, and advocates.

The focus of the community engagement was to gauge participants' level of support for each amendment. The implementation process for each amendment will be the subject of future discussions and engagement, if and as amendments to legislation are developed.

Table 1 lists the proposed amendments that were presented to participants and discussed during the community engagement. The table includes both the aggregate level of support for each amendment in the focus groups, as well as the percentage of survey respondents who supported each amendment, allowing for a side-by-side comparison of responses from each engagement type.

The table is followed by a summary for each amendment of the focus group participant and survey respondent preferences, concerns, implementation and capacity development needs, and areas for further research and exploration. Note that two (2) options were developed for the survey based on feedback from focus group participants (the options with N/A labels in the focus group column of Table 1).

Proposed Amendments to the Act and Regulations	Focus Group Aggregate Support	Survey Respondent Support
Require cultural sensitivity/safety training for Licensing Officers and Medical Officers who are working with Indigenous early learning and child care providers	High	93.18%
Require training in Indigenous child care practices as part of early childhood employment certification	High	90.91%
Explicitly state that Indigenous and traditional foods are appropriate to serve in child care settings in the Regulations	N/A	79.55%
Provide a distinct approach to multi-age care in Indigenous communities in the Act and Regulations	High	77.27%
Provide the opportunity for an Indigenous organization to act as the licensing body for Indigenous child care spaces	High	75.00%
Delegate all licensing and monitoring powers and responsibilities to a centralized Indigenous body. This body would administer licenses to individual child care facilities and provide all training	High	72.09%
Provide a distinct approach to employment qualifications in Indigenous communities in the Act and Regulations, which acknowledges Elders and other cultural knowledge holders' experiences and education	High	70.45%
Develop a purpose statements to guide interpretation of current law in a way that specifically acknowledges and supports Indigenous peoples' needs, interests, and practices in provide child care in their communities	High	65.91%
Delegate part of powers/responsibilities of legislation by entering into agreements between the Province and Indigenous communities or a group of communities/organizations to develop their own licensing scheme. Specifics of the agreement could include conditions of license, oversight, inspection, employment requirements, funding and training, and other operation matters based on Indigenous knowledge and practices	High	53.49%
Formally acknowledge standards set out in the "Eating Well with Canada's Food Guide – First Nations, Inuit and Métis" in the Regulations	Medium-to-high	52.27%
Set up an Indigenous advisory board similar to the option below, but with additional opportunity to give advice to the Minister or other provincial decision makers about who should be given child care licenses in their territories and/or in their communities and what conditions should be part of the license	N/A	48.84%
Set up an Indigenous advisory board that would provide oversight on the operation of the Act and Regulations with respect to Indigenous communities and peoples	Medium-to-high	41.86%

Table 1: Proposed Amendments to Act and Regulations and Levels of Participant Support

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Require cultural sensitivity/safety training for Licensing Officers and Medical Officers who are working with Indigenous early learning and child care providers.

Focus group participants: high support for the amendment
Survey respondents: 93% supportive of the amendment (41 of 44 responses)

Focus group participant feedback

There was strong support for this option across all focus groups, with the recommendation that such training be ongoing (i.e., not a one-time workshop) and include training components specific to the Nation(s) that Licensing/Medical Officers work with, offered by the Nations on their terms and paid for by the Ministry.

Some participants expressed concern that cultural safety training does not guarantee changes in behaviours, and could equip people with the language to speak the “right” words while still negatively impacting communities.

Finally, some participants felt that, in recognition of the importance of relationships to doing work in a culturally safe way, the Ministry of Health should review and adjust the current process for assigning Licensing Officers’ catchment areas to reduce high turnover.

Survey respondent feedback

This amendment had the strongest level of support, as survey respondents felt that this option had the greatest benefits without significant potential risks. The amendment attends to the ongoing issues of bias in the application of the Act and Regulations in Indigenous community contexts.

One respondent suggested that any cultural safety or sensitivity training could be developed by BCACCS and provided to all individuals working with Indigenous communities and in the field of Indigenous Childcare.

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Require training in Indigenous Childcare practices as part of early childhood employment certification.

Focus group participants: high support for the amendment
Survey respondents: 91% supportive of the amendment (40 of 44 responses)

Focus group participant feedback

There was strong support for this option, with many comments that anyone wanting to work in ECE, including speech and language therapists, supported child development workers, occupational therapists, and others should also have such a requirement.

Some participants also advocated for a mandatory Indigenous language component for ECE training.

Finally, many participants agreed that working with Indigenous ECE instructors and curriculum developers would be a critical component to enacting this amendment.

Survey respondent feedback

This option was widely supported by survey respondents as another potential amendment with few perceived associated risks. The training requirement would address longstanding concerns regarding cultural competency among non-Indigenous ECE workers.

Benefits include Indigenous cultural empowerment and increased cross-cultural knowledge among ECE staff. A few participants also spoke to the multicultural backgrounds of ECE workers and the desire to encourage cross-cultural knowledge exchange at the ECE training level.

There were some concerns expressed regarding the barriers that might be caused by additional training requirements for staff, given that the field is already understaffed and Indigenous Childcare centres deal with chronic staffing challenges.

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Provide a distinct approach to multi-age care in Indigenous communities.

Focus group participants: high support for the amendment
Survey respondents: 77% supportive of the amendment (34 of 44 responses)

Focus group participant feedback

Many participants welcomed the opportunity to develop a distinct approach, particularly people serving small communities.

There were many comments that having a distinct multi-age approach would support ECEs in doing what was best for the child, as opposed to having to follow rules that do not place the child's wellbeing at the centre of decision-making.

Frequent comparisons were made between the Indian Residential School system, which separated siblings, and the current Regulations, which require children to change classrooms when they reach certain ages, thus often separating them from their siblings regardless of the children's readiness for such a transition.

Other participants worried that changing the ratio requirements to allow for a distinct approach may compromise the quality of care and safety of children.

Survey respondent feedback

There were few comments on this option. One respondent expressed some uncertainty around exploring this amendment due to the vast range in child development needs among children ages 0-6 years old, and thus different child care needs for different age groups.

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Provide the opportunity for an Indigenous organization to act as the licensing officer for Indigenous Childcare spaces.

Focus group participants: high support for the amendment
Survey respondents: 75% supportive of the amendment (33 of 44 responses)

Focus group participant feedback

There was broad interest for this option overall, with the First Nations Health Authority (the "FNHA") and BCACCS being suggested as existing bodies that could take this on.

Similar to the amendment option described on the next page, some Northern/remote and urban-based child care providers were not interested in and worried about this option, due to existing concerns and barriers to accessing province-wide supports.

Some participants advocated for Nation- or community-based licensing officers (i.e., a more localized option), while others recommended that there be a mandated number of Indigenous licensing officers within the existing licensing framework.

Survey respondent feedback

Respondents commented on the benefits to having Indigenous people working as licensing officers, as they would have a better understanding of the culture of child care in Indigenous community contexts. Having Indigenous licensing officers would alleviate concerns of cultural bias against Indigenous Childcare centres and staff.

As one respondent put it, "it is always good to have [an] Aboriginal person to understand where we're coming from."

Note that for this amendment option, the Indigenous organization may not necessarily be one centralized body.

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Delegate all licensing, monitoring powers, and responsibilities to a centralized Indigenous body. This body would administer licenses to individual child care facilities and provide all training.

Focus group participants: high support for the amendment
Survey respondents: 72% supportive of the amendment (31 of 43 responses)

Focus group participant feedback

There was broad interest for this option overall, with FNHA and BCACCS often being suggested as existing bodies that could take this on.

Some participants were not interested in the option, particularly members of Northern communities who cited existing barriers with accessing supports from other existing centralized Indigenous bodies (e.g., long travel times due to remoteness and inclement weather, low/no access to internet, too-large catchment areas for services stretching them thin, lack of housing in communities for visiting professionals). Some urban Indigenous group representatives worried that a centralized body may not serve on- and off-reserve needs equitably.

Many spoke to the challenges of having one (1) body representing many Nations, and the potential concern that the approach may end up being pan-Indigenous.

Survey respondent feedback

As one respondent put it, “It would be unrealistic to expect each individual First Nation to create its own high-quality system for educating ECE personnel and all of the other work associated with moving away from the present provincially- managed system. A single province-wide Indigenous system is more practical. As with the existing system, individual First Nations might prefer to remain independent.”

Stated benefits for one system included:

- More control over Indigenous Childcare within the current system;
- An opportunity “for immersion and complete integration of traditional knowledge and cultural practices”;
- The elimination of barriers experienced by Elders; and,
- The replacement of oppressive regulations, no further need to deal with licensing bureaucracy.

The potential risks included:

- Assuming delegated authority before being ready, potentially reducing the quality of ECE;
- Weak commitment from government to make serious changes;
- Segregation from the Canadian system, if not negotiated properly, which would be detrimental to the development and function of Indigenous ECE centres; and,
- The high financial cost.

Provide a distinct approach to employment qualifications in Indigenous communities, which acknowledges Elders and other cultural knowledge holders' experiences and education.

Focus group participants: high support for the amendment
Survey respondents: 70.5% supportive of the amendment (31 of 44 responses)

Focus group participant feedback

There was broad support for this amendment, and particular interest in exploring mirroring the legislation in Nunavut which empowers child care centre managers to make staffing decisions.

Many participants saw this amendment as a helpful tool to more easily involve known and trusted elders and cultural knowledge holders in ECE settings. There were also many comments about the positive impact such an amendment would have for communities to hire and mentor people on-the-job, increasing the opportunities to employ members of the community and encourage people to enter the ECE field from different education backgrounds and walks of life.

That said, some participants were concerned that this approach may negatively impact child care quality, as there is value to having an ECE background. Additionally, some urban-based child care providers commented that in larger cities, people do not always know elders and knowledge holders very well, indicating that this type of provision may not translate well or apply to urban settings. Finding balance between hiring people with ECE qualifications and others well-suited to child care should be encouraged if this option were to be pursued.

Survey respondent feedback

There was some concern that a distinct approach to qualifications for Indigenous child care workers may "limit the ability to hire workers" and also pose challenges "for potential employees to attend training, depending on the framework."

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Develop a purpose statement within the legislation to guide interpretation of current law in a way that specifically acknowledges and supports Indigenous peoples' rights, needs, interests, and practices in providing child care in their communities.

Focus group participants: high support for the amendment
Survey respondents: 66% supportive of the amendment (23 of 44 responses)

Focus group participant feedback

Generally speaking, there was positive response to this option, particularly as the Act and Regulations do not mention Indigenous peoples anywhere in the legislation.

Many people commented that this purpose statement may not be effective and recommended exploring structural adjustments to how Medical and Licensing Officers are trained to interpret the law (see the final recommendation in this subsection for an example).

Survey respondent feedback

This option received less support due to its perceived lack of power to bring about meaningful change, while others saw this amendment as low-barrier and a step in the right direction.

One respondent in favour of the amendment described how "the development of a purpose statement would validate practices and teachings that are wanting to be taught in local early learning and child care centres in communities."

On the other hand, another respondent stated that "these types of approaches lack the necessary teeth to provide significant change and attempts at small changes have already been advocated for are met with resistance and misinterpretation."

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Delegate part of powers/responsibilities of legislation by entering into agreements between the Province and Indigenous communities or a group of communities/organizations to develop their own licensing scheme. Specifics of the agreement could include conditions of license, oversight, inspection, employment requirements, funding and training, and other operation matters based on Indigenous knowledges and practices.

Focus group participants: high support for the amendment
Survey respondents: 53.5% supportive of the amendment (23 of 43 responses)

Focus group participant feedback

There was broad support for this option overall, particularly as it would be conducive to a Nation-based approach to monitoring and oversight.

Urban-based child care providers had some questions and concerns about how a Nation-based model might affect urban Indigenous organizations providing child care.

Finally, a number of participants in the focus groups were concerned that gaining partial or full delegated authority over child care matters under amended Act and Regulations could compromise future opportunities for Indigenous jurisdiction over Indigenous Childcare to be formally reclaimed and recognized.

Survey respondent feedback

This option appealed to its supporters as a measured step towards delegation of authority, with increased accountability mechanisms to balance power.

Considerations to ensure success of this model included establishing best practices that aim for the highest quality of service delivery, and delegating full or partial authority based on community readiness (i.e., high community readiness leading to full authority).

While some respondents saw the less drastic nature of this option as a benefit, respondents also identified some risks, including that change may take longer to occur, and that the province still holds the power to implement this option.

Note: 37% of survey respondents supported both full and partial delegation, indicating some openness to either approach. As one respondent put it, “the first option is ideal for self-governing communities; the second option may be a happy medium on the way to the first.” This statement underlines the importance of acknowledging that each First Nation is on their own journey of self-determination and that the proposed changes to the Act and Regulations must reflect Nations’ distinct context.

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Formally acknowledge standards set out in the "Eating Well with Canada's Food Guide – First Nations, Inuit and Métis."

Focus group participants: medium-to-high support for the amendment
Survey respondents: 52% supportive of the amendment (23 of 44 responses)

Focus group participant feedback

This amendment was mostly well received, particularly as a support for remote settings where accessing "approved" foods to serve in child care settings is a challenge.

Alternately, some were concerned that the Food Guide is out of date and quite prescriptive, and may not actually help increase Indigenous foods in child care settings. A broader statement explicitly listing Indigenous/traditional foods as appropriate for serving may be more useful.

Survey respondent feedback

Similarly to comments regarding the amendment to develop a purpose statement for the Act (see p. 23), comments from survey respondents focused on the lack of enforceability of such vague statements.

Survey respondents were asked to consider an additional amendment, which emerged from focus group participant suggestions to focus on a broader statement around Indigenous foods. The amendment is as follows: "Explicitly state that Indigenous and traditional foods are appropriate to serve in child care settings in the Regulations."

80% of survey respondents (35 of 44) stated support for this amendment. Far more respondents favoured this option, instead of acknowledging the Food Guide in the CCLR, as the amendment would provide an explicit statement geared toward greater Indigenous food sovereignty.

It is important to note that while the Act and Regulations do not explicitly deal with food safety, many ECEs continue to report challenges with their Licensing Officers challenging their right to serve Indigenous foods. An amendment to the Act and Regulations may help with these issues, as would reviewing all provincial legislation that deals with food health and safety to be supportive of serving Indigenous foods in child care settings.

Set up an Indigenous advisory board that would provide oversight on the operation of the Act and Regulations with respect to Indigenous communities and peoples.

Focus group participants: medium-to-high support for the amendment
Survey respondents: 42% supportive of the amendment (18 of 43 responses)

Focus group participant feedback

There was general support for this option, but only if the board's mandate was "toothy" enough to effect change. If the board exists without real influence or power, then it is not worth pursuing.

Many of the discussions explored possible processes to select representatives to the board. Suggestions included having one board member from each Nation, representation from strong advocates (e.g., BCACCS cultural advisors, ECE educators, licensing officers who have good relationships with First Nations) and ensuring equitable urban representation.

Some participants commented that the terms of reference for the board should mandate a two-way communication mechanism to ensure the board also reports back to First Nations communities.

There was broad agreement across focus groups that a board should not have power to influence who should be given child care licenses.

It was also suggested that a member of the Indigenous advisory board should sit at the existing Provincial Child Care Council as a liaison.

Survey respondent feedback

Comments on this option included the perspective that "having an Indigenous advisory board to work alongside the minister is imperative as they need to understand the importance of indigenous ways and protocol."

There was also optimistic curiosity around the potential for collaborative decision-making with the Minister.

However, multiple survey respondents stated concerns and possible risks inherent in an advisory model, including expressions of concern with the provincial government having the final say in decisions. One respondent explicitly advocated for the advisory board to have veto power over the provincial government's decisions regarding Indigenous Childcare.

Survey respondents were asked to consider an additional, similar, amendment option, as follows: "Set up an Indigenous advisory board similar to the previous option, but with additional opportunity to give advice to the Minister or other provincial decision makers about who should be given child care licenses in their territories and/or in their communities and what conditions should be part of the license."

49% of respondents (21 of 43) were in favour of the amendment, and stated the "collaborative approach, sharing decision-making to ensure equity" and opportunity for more Indigenous control over Indigenous Childcare as reasons to support this amendment.

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Implementing Amendments to Legislation: Needed Supports

In addition to sharing their perspectives on the proposed amendments, survey respondents were asked to identify the types of supports that communities might need in order for these amendments to be successfully implemented. These are briefly summarized below.

When survey respondents were asked what supports would be required to implement the option(s) chosen, the two most common categories for responses were Training (63% of responses) and Funding (55% of responses). These themes generally correspond with the support needs expressed during the focus groups and has been validated by previous BCACCS research and community engagement.

Training was indicated as the most important support, not only for ECEs and managers, but for families, leadership, host agencies, licensing officers, policy and guideline developers, and Band Administrators and Directors. Funding for training specific to First Nations contexts would support communities and Nations in building local knowledge and understanding of early learning, childhood development, and child care in general. Suggested training topics included: the importance of standards and best practices for child care; further education on the Act and Regulations; and how to access funding for ECE.

Adequate and sustainable funding was also recognized as imperative to the proposed legislative changes, in order for amendments to support: effective policy and regulation redevelopment; implementation, evaluation and reporting on ECE activities; continued community engagement; professional development; the development, operation, and maintenance of ECE infrastructure; enhanced programs and ongoing curriculum development; and obtaining legal, cultural and advisory services.

Other suggestions for supportive measures included: regional gatherings and workshops for increased communication across the sector; more opportunities for knowledge transfer and relationship building; ongoing research; professional development opportunities; curriculum design; fostering strong and effective leadership; and the application of a Memorandum of Understanding to facilitate meaningful collaboration among all areas of Indigenous Childcare.

Additional Comments

Several focus group participants commented that many of the proposed legislative changes would support their work by encouraging consensus-building and Nation-to-Nation collaboration, while also reducing the need to apply for variances (i.e., case-by-case exemptions from compliance with the Act and/or Regulations) and grants, and the associated paperwork required, ultimately making it easier for them to serve young children and families.

Similarly, multiple survey respondents shared comments indicating that the proposed amendments seemed preferable to the current system and would support them in their work to provide high quality, culturally appropriate child care.

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Emerging Learnings to Guide Next Steps

In examining the aggregate perspectives of focus group participants, as well as the individually articulated open-ended responses from survey respondents, it is clear that people who participated in the Project engagement were keen to see meaningful transformation and systems change for Indigenous Childcare in BC.

The Project engagement participants collectively showed a clear understanding of the complexity of the issues at hand, the benefits and drawbacks of potential legal avenues and options for change, the challenges inherent to effecting change successfully and equitably across the province, and the supports their communities would need to implement those changes.

The majority of participants in the Project's engagements (the majority of participants from 11 of the 13 focus groups and 84% of survey respondents) supported the legal avenue of reclaiming Indigenous jurisdiction over Indigenous Childcare. Of those who did not express support for this avenue, the majority expressed uncertainty about the option, rather than opposition to it. This suggests that participants would benefit from additional information on this legal avenue in order to make an informed decision.

Many of the proposed amendments to the Act and Regulations were developed based on previous BCACCS research on Indigenous Childcare. As a result, it is not surprising to find such strong support for the majority of the proposed amendments in both the focus group and survey engagement settings. 88% of survey respondents selected 50% or more of the twelve (12) options for amendments to current legislation. 44% selected nine (9) or more options (>75% of options). The strong support for the amendments overall suggests that each of the proposed changes support Indigenous Childcare and are appropriate to address current issues.

Survey respondents were also asked to rank the two (2) legal avenues in order of preference at the end of the survey. 70% of survey respondents ranked Indigenous jurisdiction over Indigenous Childcare as the most interesting legal avenue to explore further, followed by amendments to current legislation (26%) and not pursuing either legal avenue any further (5%).

While we do not have exact equivalent statistics for the focus groups, participants from eleven (11) of the thirteen (13) focus groups expressed overall support for the legal avenue, while one (1) group's participants preferred to pursue changes to the Act and Regulations over reclaiming Indigenous jurisdiction over Indigenous Childcare, and one (1) group's participants were not interested in either legal avenue. That said, the eleven (11) focus groups whose participants were supportive of reclaiming Indigenous jurisdiction over Indigenous Childcare also supported many proposed amendments to current legislation.

Regardless of what legal avenue Project participants preferred, there were repeated comments from both focus group participants and survey respondents advocating for a nuanced, phased, and holistic approach to any systems change work within the field of

Indigenous Childcare. Approaching such work in phases might also create the needed space to address the challenges that participants anticipate encountering during the transition from the current system to a future transformed Indigenous Childcare system.

Looking more closely for demographic trends within the survey responses, there are very few trends worth noting. For example, when examining the survey results within subgroups, there are no clear preferences for legal avenues and/or specific amendments along regional lines, among respondents who hold the same position (i.e., ECE, ECE manager, etc.), or based on the number of years of work in the ECE sector. Many survey respondents wear more than one hat within their community, making it additionally challenging to see whether people who share a profession or role also share the same preferences for legal avenues. The overall lack of trends within regions and “affinity groups” is also likely affected by the small sample size of survey respondents and speaks to a need for ongoing engagement with communities, Nations, and elected leadership.

While these Project engagement findings reconfirm previous BCACCS research on the failure of the Act and Regulations to support Indigenous Childcare, the proposed amendments are one piece of the bigger picture. Making changes to the Act, Regulations, and other legislation that impacts child care in BC does not resolve the issue of jurisdiction over Indigenous Childcare. Multiple focus group participants shared the perspective that making amendments to the Act and Regulations can be an important shorter-term step in improving Indigenous Childcare on the longer road to reclaimed and recognized jurisdiction over Indigenous Childcare. Multiple focus group participants and survey respondents commented that the impact of these amendments would only be felt if significant resources were allocated to implement the changes across the province.

Conclusion and Project Next Steps

Through the community engagement carried out in this Project, participants have identified that legal change is welcome, and that reclaiming Indigenous jurisdiction over Indigenous Childcare is a key and preferred strategy for change. Project participants have also identified the importance of legislative amendments to child care legislation in British Columbia.

The next steps for the Project are as follows:

- Engaging with First Nations leadership tables by sharing the legal research and the community engagement results, and seeking guidance on next steps and recommendations from elected leaders. This will include learning more about how Indigenous Childcare-related work might align with other ongoing initiatives (e.g., Bill C-92, BC First Nations' work on jurisdiction over education);
- Developing a final Project report that summarizes the legal report, and community-based and leadership perspectives;
- Circulating the draft final report to the Project Advisory Committee for feedback; and,
- Submitting the final report to the Project funder, the Ministry for Children and Family Development ("MCFD") and circulating to all engagement participants.

It must be reiterated that this Project, and the resulting final report, is a preliminary engagement and discussion of potential opportunities for change in the way that Indigenous Childcare is governed and regulated within British Columbia. BCACCS recognizes that much more engagement and deliberation will be needed to move forward with this important Nation (re)building work and looks forward to contributing to these discussions through this Project and other avenues.

Finally, BCACCS would like to acknowledge and express deep gratitude to all the community members, ECEs and advocates, parents, elders, leaders, and Advisory Committee members for their time, energy, and contributions to this Project to date.

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