

Supporting ʔoʔtaɣimštəm:
A Protocol Respecting Child and Family Services and the Inherent Right of Self-
Government between Canada, the Province of British Columbia, and
Tla’amin Nation

This Protocol is dated _____, 2023

BETWEEN:

Tla’amin Nation

AND:

**His Majesty the King in Right of the Province of British Columbia, as
represented by the Minister of Indigenous Relations and Reconciliation and the Minister
of Children and Family Development**

(“Province”)

AND:

**His Majesty the King in Right of Canada, as represented by the Minister
of Crown-Indigenous Relations and the Minister of Indigenous Services**

(“Canada”)

(Individually a “Party” and collectively the “Parties”)

WHEREAS:

- A. Tla'amin Nation is a self-governing Modern Treaty Nation, and is pursuing jurisdiction to deliver child and family services on and off Tla'amin Lands;
- B. In 2015, the Truth and Reconciliation Commission of Canada ("TRC") released its Calls to Action which call on federal and provincial governments to commit to reducing the number of Aboriginal children in care and to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* (the "UN Declaration");
- C. The Canadian Human Rights Tribunal's decision in *First Nations Child and Family Caring Society v. Attorney General of Canada*, 2016 CHRT 2, found racial discrimination against First Nations children by Canada in the funding and provision of child and family services and reflected the urgent need for transformation of child and family services for First Nations children;
- D. In 2015, Canada committed to fully implement the TRC Calls to Action, starting with the implementation of the UN Declaration. In 2017, the Province committed to implementing the TRC Calls to Action and the UN Declaration;
- E. In 2019, the Province enacted the *Declaration on the Rights of Indigenous Peoples Act* (the "Declaration Act"). The federal *United Nations Declaration on the Rights of Indigenous Peoples Act* (the "UN Declaration Act") came into force in 2021;
- F. In 2020, the *Act respecting First Nations, Inuit and Metis children, youth and families* ("Federal Act") came into force. The Federal Act states that the inherent right of self-government, recognized and affirmed by section 35 of the *Constitution Act, 1982*, includes jurisdiction in relation to child and family services without geographic limitation;
- G. The Province, in consultation and cooperation with Indigenous peoples, has amended the *Child, Family and Community Service Act* ("CFCSA") and the *Adoption Act* to recognize the jurisdiction of First Nations in relation to child and family services;
- H. The amendments to the CFCSA and *Adoption Act* reflect progress toward the implementation of the Federal Act, the Declaration Act and the UN Declaration Act;

- I. Modern treaties provide a foundation for reconciliation and establish government-to-government relationships based on mutual respect and established section 35 rights;
- J. Canada, the Province, and the Tla'amin Nation all seek to align their ongoing and evolving treaty relationships with the UN Declaration; and,
- K. Canada, the Province, and the Tla'amin Nation wish to enter into this Protocol in order to strengthen their relationships with one another, to ensure Tla'amin Nation has the ability to continue to align its relationships with governments in relation to the UN Declaration, and to further progress towards the exercise of jurisdiction over child and family services by Tla'amin Nation on an equal footing with other Indigenous peoples and in the spirit of *łołʔayumštəm* (we will raise the children):

1. PURPOSE

1.1 The purpose of this Protocol is to:

- (a) establish principles that will guide the Parties in their discussions relating to matters addressed herein;
- (b) set out the Parties' commitment to work together to identify and implement interim and long-term solutions related to the exercise of Tla'amin Nation's jurisdiction over its children and families; and,
- (c) open dialogue to further the exercise of Tla'amin Nation's inherent rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*, in a manner that respects the self-determined priorities of Tla'amin Nation and that is consistent with:
 - (i) the UN Declaration;
 - (ii) the Tla'amin treaty, including as it may evolve through amendments, or through any processes for periodic renewal or orderly process that the parties may incorporate into the Tla'amin treaty; and,
 - (iii) modern treaty relationships grounded in the recognition of rights, predictability, and evolution.

2. PRINCIPLES

2.1 Under this Protocol, the work of the Parties will be guided by the following principles:

- (a) The rights and principles of the UN Declaration constitute the “minimum standards for the survival, dignity and well-being of the Indigenous [P]eoples of the world”.¹ It is a “a universal international human rights instrument with application in Canadian law”;²
- (b) Canada and the Province must take all measures necessary to ensure their laws are consistent with the UN Declaration;
- (c) Tla’amin Nation and Tla’amin Citizens enjoy the rights and freedoms recognized in the UN Declaration without discrimination;
- (d) Tla’amin Nation has the right to recognition, observance and enforcement of its treaty, and other agreements and constructive arrangements concluded with Canada and the Province, and to have the treaty, and other agreements and constructive arrangements honoured and respected;
- (e) Tla’amin Nation has an inherent right of self-government, including jurisdiction in relation to child and family services, that is exercised consistent with its treaty as it may evolve through amendments, or through any processes for periodic renewal or orderly process that the parties may incorporate into the Tla’amin treaty;
- (f) The Tla’amin Nation, as represented by the Tla’amin Government is an Indigenous Governing Body within the meaning of the Declaration Act;
- (g) Tla’amin Nation has the power to enact its own Indigenous laws, administer and enforce its laws, including the power to create dispute resolution processes; and,
- (h) The evolution of the Parties’ treaty relationships may take place in stages and will require innovative and flexible arrangements.

3. COMMITMENTS

3.1 Based on Tla’amin Nation’s self-determined priorities and informed by the Crown’s deep commitment to reconciliation and to Nation-to-Nation and

¹ United Nations Declaration on the Rights of Indigenous Peoples, Article 43

² *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c. 14)

government-to-government relationships that support self-determination, the Parties will discuss and, subject to obtaining any authorities that may be necessary, may negotiate:

- (a) Amendments to the Tla'amin treaty in support of furthering the exercise of jurisdiction in respect of child and family services, and in support of other matters in respect of self-government as appropriate and mutually agreed by the parties to the treaty;
- (b) Agreements to coordinate the exercise of provincial and Tla'amin Nation jurisdictions over child and family services; and,
- (c) Other agreements relating to law making authority of the Tla'amin Nation over child and family services pursuant to applicable legislation.

4. GENERAL

- 4.1 In this Protocol, "Modern Treaty Nation" and "Modern Treaty Nations" mean, as the case may be, the Nation or collective of Nations signatory to this Protocol and the Nations or collective of Nations that have signed a protocol that is substantively similar to this Protocol.
- 4.2 This Protocol is not legally binding and does not constitute a treaty or land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.
- 4.3 This Protocol and the negotiations, discussions, communications and documents produced by any Party pursuant to this Protocol are without prejudice and will not be admissible in any proceeding before a court or other forum or construed as an admission of fact or liability by any Party.
- 4.4 For greater certainty, 4.2 and 4.3 do not affect the Parties' ability, in furtherance of the commitments in this Protocol, to enter into subsequent arrangements, including legally binding agreements, with different terms and conditions, to be determined by the Parties in those arrangements.
- 4.5 This Protocol may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Protocol. For greater certainty, this does not preclude the Parties from signing this Protocol simultaneously and in person.

- 4.6 The Parties acknowledge and agree that this Protocol may be signed by electronic signature, which will be considered as an original signature for all purposes and will have the same effect as an original signature on paper. Without limitation, “electronic signature” will include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature.

SIGNED Friday on the 19 day of May, 2023

ON BEHALF OF TLA'AMIN NATION:



John Hackett
Hegus
Tla'amin Nation



Witnessed by:
toq^wanən, Dillon Johnson
Title:
Executive Councillor
Tla'amin Nation

SIGNED IN OTTAWA, ONTARIO on the 14 day of JULY, 2023

ON BEHALF OF HIS MAJESTY THE KING IN RIGHT OF CANADA:



The Honourable Marc Miller,
P.C., M.P.
Minister of Crown-Indigenous
Relations

Bouchard

Witnessed by: Camancha Bouchard

Title: EXECUTIVE COORDINATOR

SIGNED _____ on the 23 day of August, 2023

ON BEHALF OF HIS MAJESTY THE KING IN RIGHT OF CANADA:



Beth Robertson

The Honourable Patricia Hajdu,
P.C., M.P.
Minister of Indigenous Services

Witnessed by:

Title: Minister's EA (Acting)

SIGNED _____ on the ¹³ day of June 23, 2023

ON BEHALF OF HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA:



The Honourable Murray Rankin
Minister of Indigenous Relations and
Reconciliation

SIGNED _____ on the 23 day of June, 2023

ON BEHALF OF HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA:

A handwritten signature in black ink that reads "M. Dean". The signature is written in a cursive style with a large initial "M" and a stylized "D".

The Honourable Mitzi Dean
Minister of Children and Family
Development

