



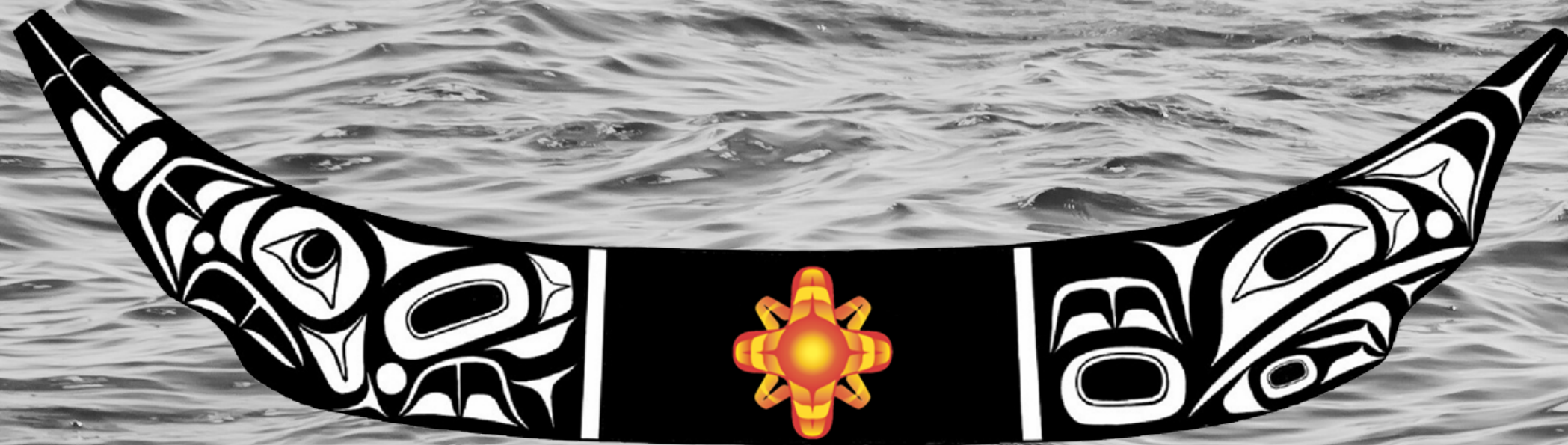
Pathways and considerations to legal transferring of authority and upholding Inherent Rights in Indigenous Child & Family Services




Jurisdiction Tool-Kit

V 2.0





A note about using this resource:

Many of the text boxes contain external links to access supporting documentation—[click](#) as you go through! 

This tool-kit uses publicly available information. The Our Children Our Way Society holds no opinion on content presented and inclusion in this resource does not equate recommendation or endorsement

All information provided is subject to change

***Tool-Kit up to date as of January. 15, 2024**

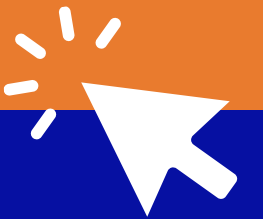


What is the federal legislation:

**'AN ACT RESPECTING
FIRST NATIONS,
MÉTIS AND INUIT
CHILDREN, YOUTH
AND FAMILIES'**

Legislation previously known as 'Bill C-92'

[Canada's two-pager overview of the Act accessible here.](#)



The Act does two things:

1. Sets out national minimum standards for Indigenous child and family service delivery, mandatory and enforceable as of January 2020
2. Recognizes inherent jurisdiction of Indigenous peoples in child and family services, and clears a path to make the legal exercise of jurisdiction accessible



What is an

INDIGENOUS
GOVERNING
BODY?

It is the **Inherent Rights-Holders**

-Judy Wilson,

Red Hummingbird Woman

Canada defines an IGB for the purposes of federal legislation as...

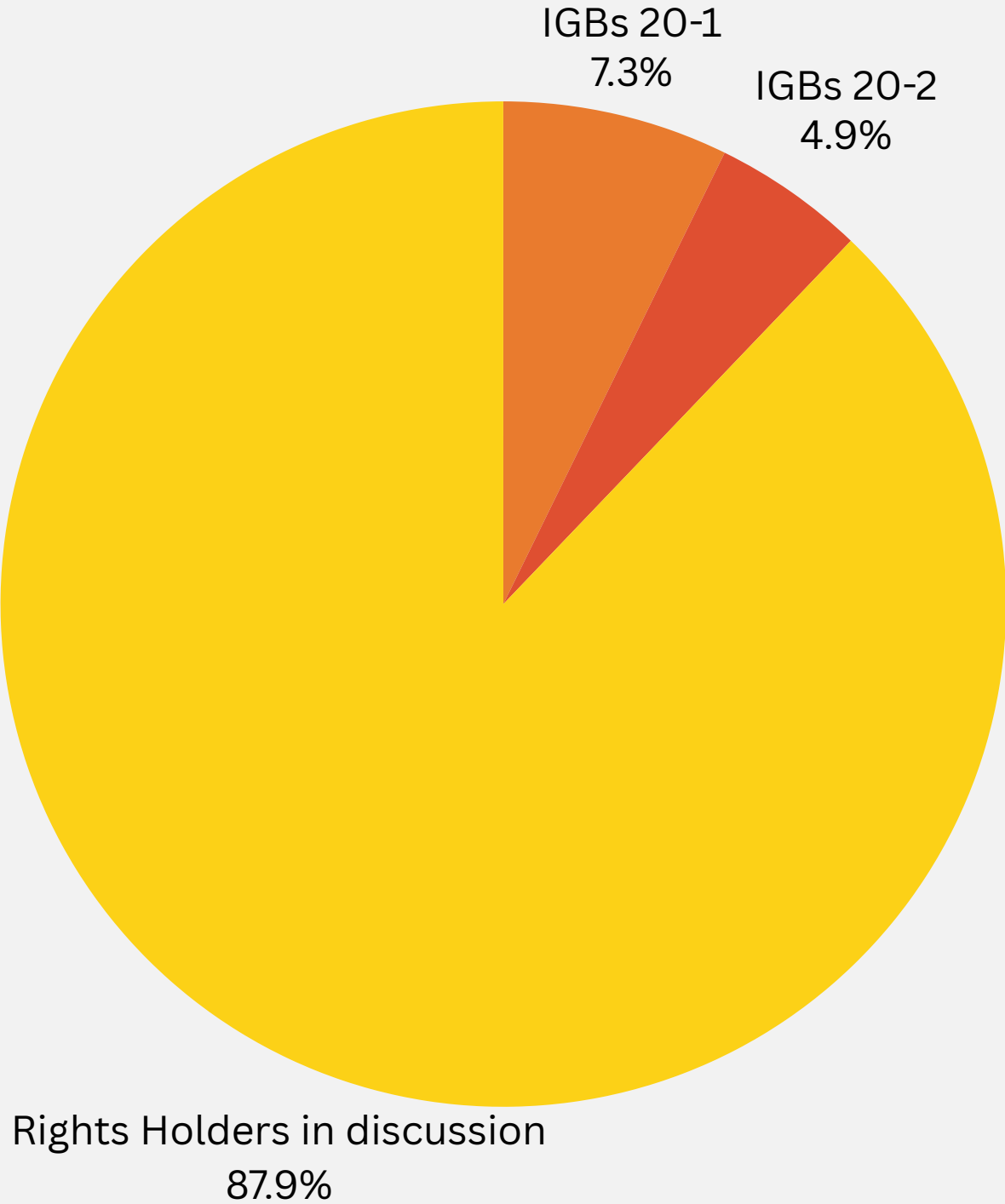
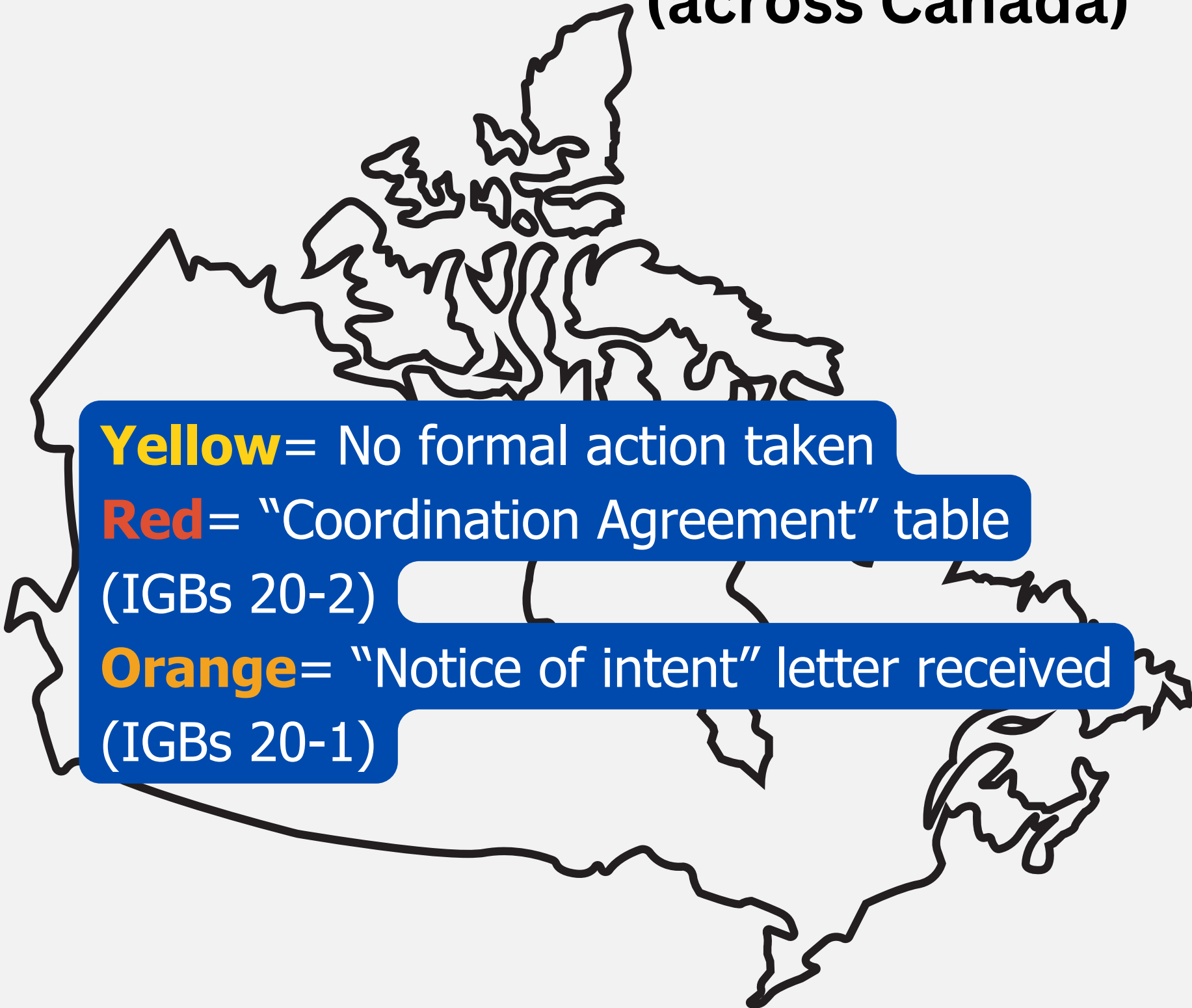
- a council
- government
- or other entity that is authorized by Section 35 Rights-Holders (group, community, or people) to act on their behalf.

An IGB would need to

- submit a Band Council Resolution, or
- an authorization letter, that explains why the IGB will be acting on their behalf (e.g. to apply for and carry out eligible activities under Capacity Development funding or Coordination Agreement Discussion funding.

Section 35 Rights Holders pursuing legislated IGB status

(across Canada)

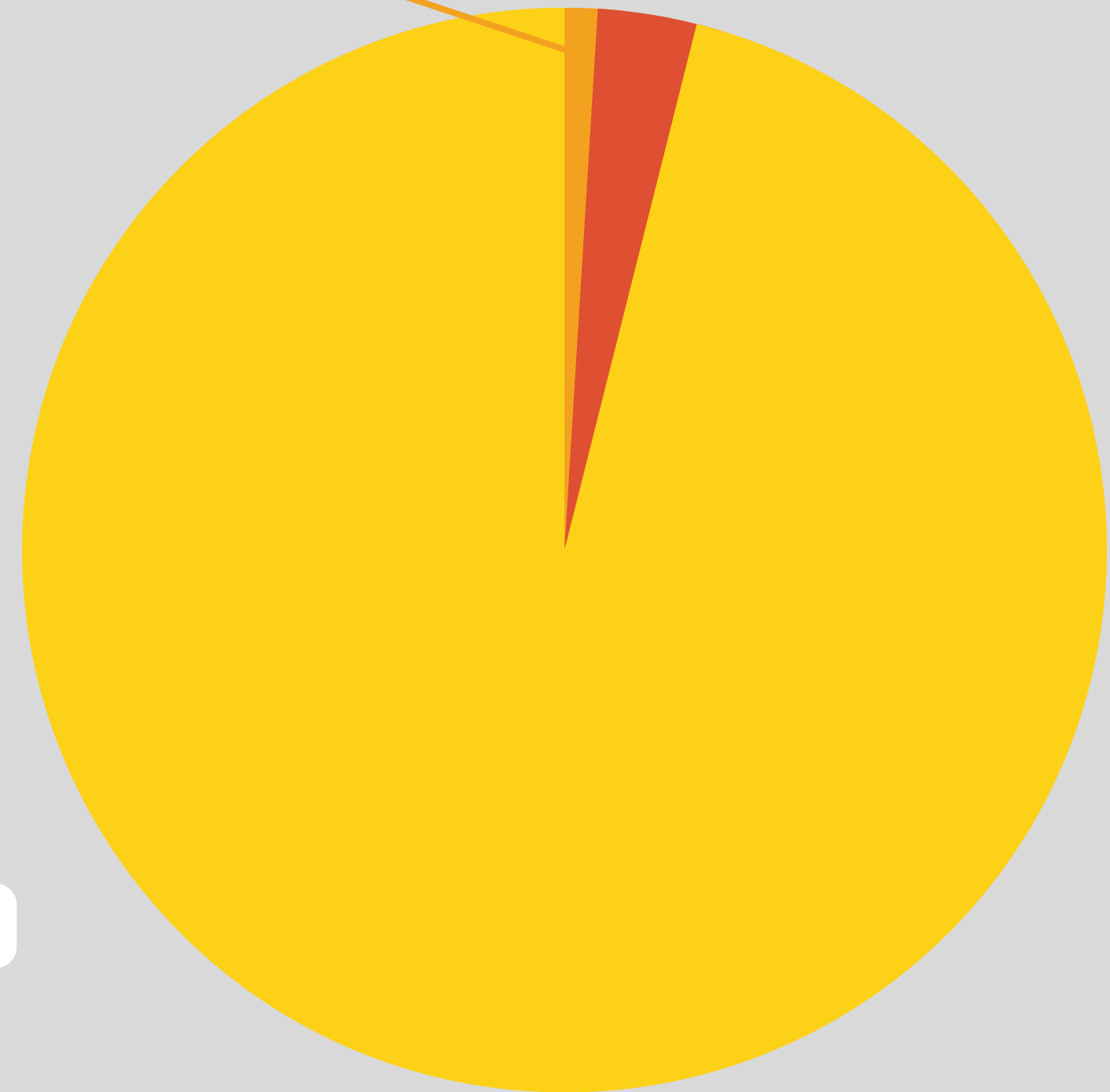


Section 35 Rights Holders pursuing legislated IGB status (in BC)

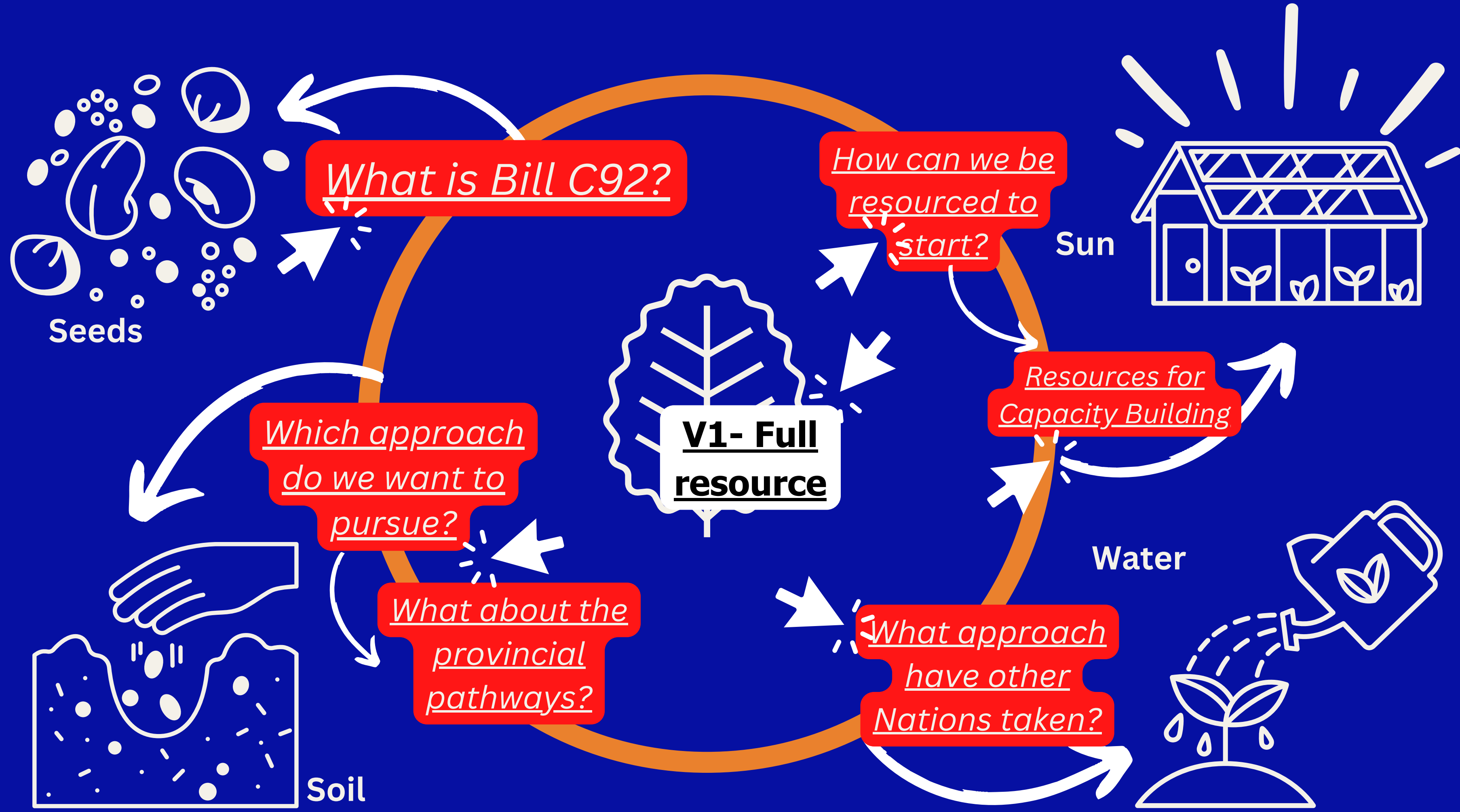


Yellow= No formal action taken
Red= "Coordination Agreement"
table (IGBs 20-2)
Orange= "Notice of intent" letter
received (IGBs 20-1)

20-1 IGBs in BC
20-2 IGBs in BC
2.9%



Rights Holders in discussion
96.1%





The Purpose of C92

Affirm the inherent right to self determine child & family services

Set national principles and standards

National Principles

Best Interests of an Indigenous child

Cultural Continuity

Substantive Equality

National Standards

- **best interests of an Indigenous child**
- **effects of services**
- **notice of significant measures**
- **personal information**
- **representations and party status**
- **priority to prevention care**
- **prenatal care**
- **socio-economic conditions**
- **reasonable efforts**
- **placement priority**

Funding for Capital Assets, Prevention and Delegated Services

Funding for Capital Assets:
Jordan's Principle and First
Nations Child and Family
Funding

First Nation Child
and Family Services
Funding

Funding to support Legislative Jurisdiction

Capacity-
Building funding

Coordination
Agreement

Giving Notice under C92

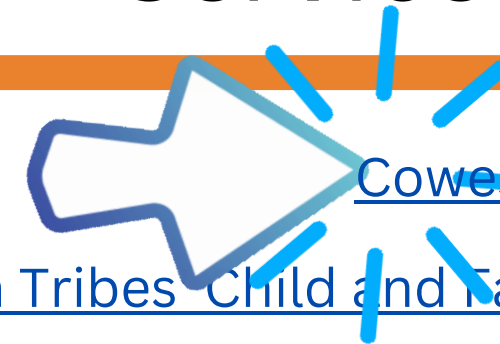
(Assembly of First Nations, 4 page Overview)





Key Question:

What are other Nations' approaches to pursuing jurisdiction over Child and Family Services?



[Cowessess First Nation - Miyo Pimatisowin Act](#)

[Cowichan Tribes Child and Family Wellness Law Project \(Powerpoint\)](#)

[Huu-ay-aht First Nations Citizen Development Objectives \(Video Presentation\)](#)

[Ktunaxa Nation and BC Data Governance Initiative \(Video Presentation\)](#)

[Sesiyomelh \(Sto:lo First Nations\) "Great Grandmothers Reclaiming Jurisdiction Program" \(Video Presentation\)](#)

[Simpcw Child Welfare Agreement \(News Release\)](#)

[Splatsin First Nation "A by-law for the care of our Indian children" \(Video Presentation\)](#)

[Wabaseemoong Independent Nations - Customary Care Code - Wabashki](#)

[Wet'suwet'en Wellness Jurisdiction \(Video Presentation\)](#)

[Bill C92 Community Intro Guide \(Video, "Wahkotowin Law- Alberta"\)](#)



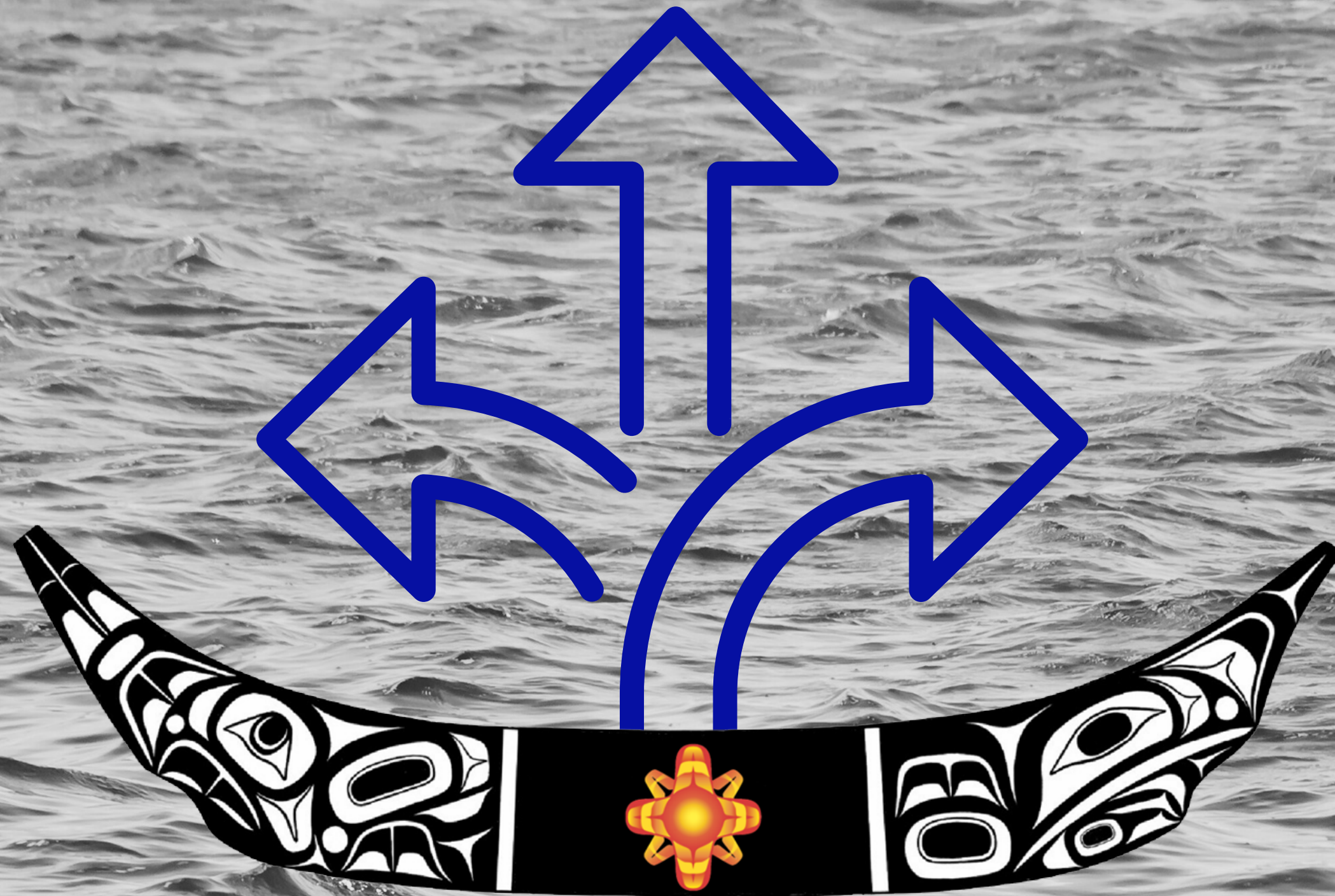
Indigenous Child & Family Services Directors
Our Children Our Way Society

Part 2- Transition Planning



Jurisdiction Recommendations
from the Alderhill Report, 2022
(Commissioned by First Nations
Leadership Council)

- **Consultation** on child wellbeing
- **Define** own Best Interests of the Indigenous Child (BIOIC)
- **Determine** the extent to which you want to exercise jurisdiction
 - Including potential for off reserve services
- **Explore** collaborations with other Indigenous organizations on law development and service delivery
- **Jordan's Principle**
- **Funding** for capacity building and service delivery



Community Self-Assessment:

"Where are we now? Where do we want to go? What do we need to get there?"



Who and **where** are all our children?

Who is currently caring for them, and under which legal authority?



Cowichan: started by defining “Who is a Cowichan child”

-Dr. Sarah Morales, sharing experience at Our Gathering, kexwkexwntsút chet, tə sǫ́ǫ́ip 2023



Nisga’a: started by reviewing all government documents and registry of their children, getting new families registered, family finding...

-Maurice Squires, sharing experience at “No Further Harm” Northern Region GEMs, 2023



No 'Section 12' or Additional Legislation Required



- participate in planning & decisions made about your children and youth
- make representations in court proceedings
- information sharing
- significant measures
- best interests of an Indigenous child

Federal Legislation Upholds Section 35 Rights Holders to exercise their inherent jurisdiction*:

**Which doesn't mean that other government bodies (eg. MCFD) are necessarily adhering freely to this. You will likely still need to advocate and make your interests known by providing letters asserting authority etc.*

**The Federal Act
establishes
National Principles
& Minimal
Standards and
overlaps Provincial
or Territorial Laws
on child and family
services**

In BC

The Child, Family and Community Services Act (CFCSA), contains a provincial legislative pathway for Nations to be involved in the care and services of their children and youth through:

- Traditional Decision Making
- Custom Adoptions
- Participate in the planning and decisions made about your members/citizens
- Representations & 'party status' in court
- Information sharing
- Community Agreement (92.1)
- Declaration Act



**How do we define the
'Best Interests of Our
Children'?**

**What do we need to actualize or
operationalize their best interests in the
short term, medium term, and long term?**





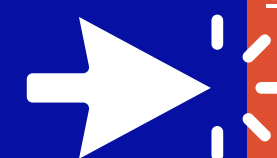
How would we like to be involved in providing our children with care?



“Notice of Significant Measures” Sec 12(1)

Under **Section 12** of the federal Act, the service provider must inform the Indigenous child’s IGB ***before*** taking any significant measure (intention to remove the child, notice of court proceedings)

To receive notice, the Section 35 Rights Holding group must inform MCFD that their IGB is authorized to act on their behalf for the purposes of notice under Section 12.



Simp^{pcw}: Gave notice to MCFD and other provinces in Canada that they are to be notified under Sec 12.1 as an interim measure while developing their “Walking Together” legislation.

-Allen Cummings sharing experience at Our Gathering, kexwkexwntsút chet, tə sǫǫǫǫ 2023

Levels of service

ISC BC Region - Prevention/Protection Definitions,

Protection Services

- Ensure children and youth are safe, well, healthy, and living free of **harm or child maltreatment**. This may include the services associated with placing child(ren) into alternate care.

Tertiary Prevention Services

- When a child is identified as being **at risk of harm**. Services include interventions to enhance protective factors and mitigate the risks to the child(ren) and promote family preservation

Secondary Prevention Services

- When **children may be at risk of harm**. Services build on secure and responsive social relationships and support parents in meeting their family's needs.

Primary Prevention Services

- Aimed at the **whole community**. Focus on family retention, **healing, cultural connection** and belonging.



What is an Indigenous Child & Family Agency or Society?

- ICFS Agencies (formerly known as DAA's) are service providers, governed by boards/Nations
- Agencies Deliver Federally funded Prevention and Well-Being services
- Agencies Deliver Provincial Child Safety Services (delegated services)
- Agencies deliver contracted services for Government, and can deliver contracted or partnership services for Nations exercising inherent rights, exercising legislative authority, or legislative jurisdiction (IGB)

ICFSA's are experienced service providers who have been providing culturally based child and family services in community for decades

The agencies meet collectively as the ICFS Directors Our Children Our Way Society, and are now expanding their table and scope to include those who do not have ties to an ICFS agency

BC ICFS Agencies & Societys deliver provincial CFCSA services as as an interim step on our jurisdiction journey



Delegation Model*

Protection

Adoption Delegated Agencies

Full Child Protection, Guardianship, Voluntary Services and Adoption

C6 Delegated Agencies

Full Child Protection, Guardianship, and Voluntary Services

Prevention

C3 Delegated Agencies **Voluntary Services**

C4 Delegated Agencies
Guardianship, and Voluntary Services

C3 Delegated Agencies

HAIDA CHILD AND FAMILY SERVICES SOCIETY (Northwest)
HEILTSUK KAXLA SOCIETY (Coast North Shore)
K'WAK'WALAT'SI ('Namgis) CHILD AND FAMILY SERVICES (North Vancouver Island)

C4 Delegated Agencies

AYAS MEN MEN CHILD & FAMILY SERVICES (SQUAMISH NATION) (Coast North Shore)
CARRIER SEKANI FAMILY SERVICES (North Central)
DENISIQI SERVICES SOCIETY (Thompson Cariboo)
GITXSAN CHILD & FAMILY SERVICES SOCIETY (North West)
NEZUL BE HUNUYEH CHILD & FAMILY SERVICES (North Central)
NIL/TU,O CHILD & FAMILY SERVICES SOCIETY (South Vancouver Island)
SURROUNDED BY CEDAR CHILD AND FAMILY SERVICES (South Vancouver Island)

Adoption Delegated Agencies

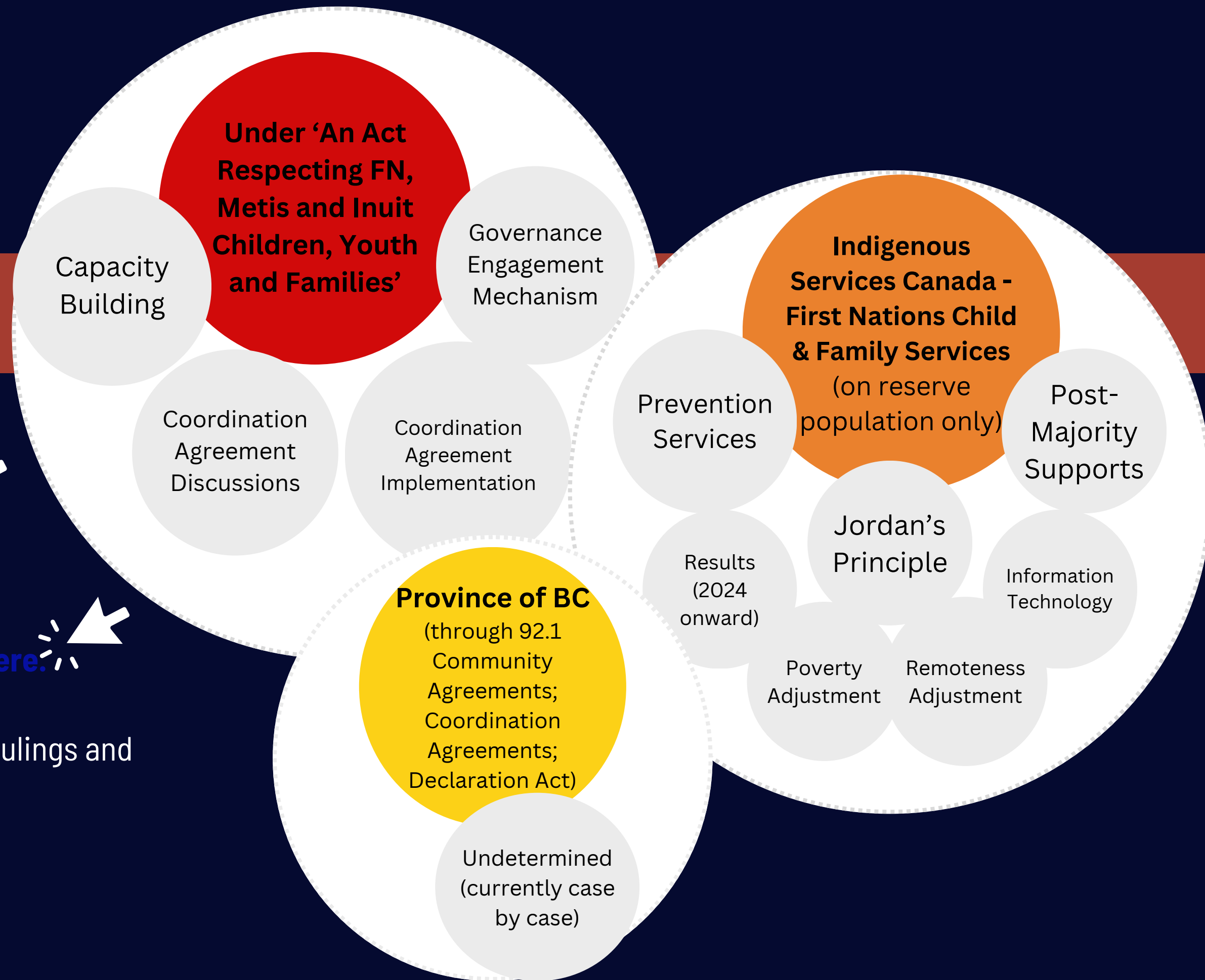
LALUM'UTUL' SMUN'EEM CHILD & FAMILY SERVICES (South Vancouver Island)
MÉTIS FAMILY SERVICES Also known as LA SOCIETE DE LES ENFANTS MICHIF (South Fraser)

C6 Delegated Agencies

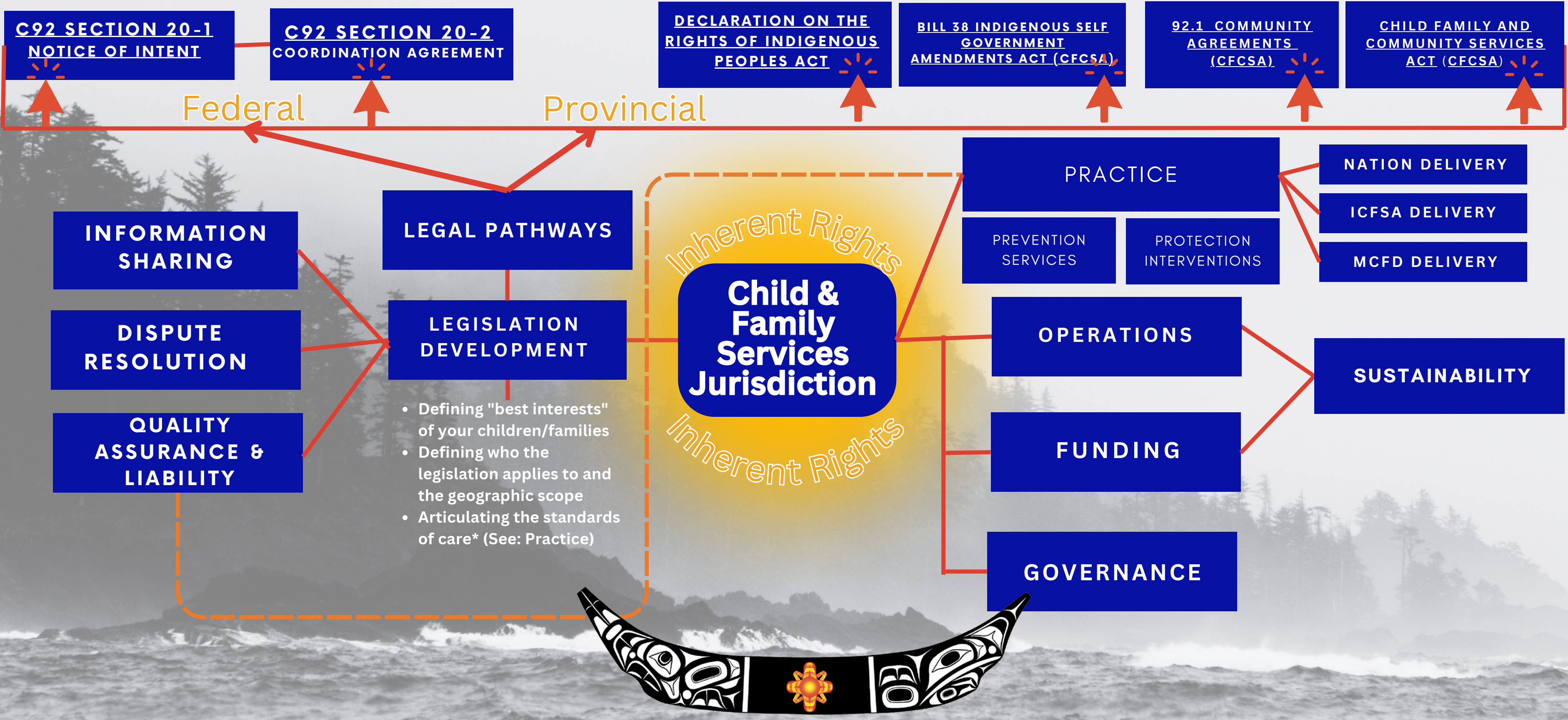
FRASER VALLEY ABORIGINAL CHILDREN AND FAMILY SERVICES SOCIETY (East Fraser)
KNUCWENTWECW SOCIETY (Thompson Cariboo)
KTUNAXA/KINBASKET CHILD & FAMILY SERVICES (Kootenays)
KW'UMUT LELUM CHILD & FAMILY SERVICES (North Vancouver Island)
LII MICHIF OTIPEMISIWAK FAMILY AND COMMUNITY SERVICES (Thompson Cariboo)
NISGA'A CHILD & FAMILY SERVICES (North West)
NLHA'7KAPMX CHILD & FAMILY SERVICES SOCIETY (Thompson Cariboo)
NORTHWEST INTER-NATION FAMILY AND COMMUNITY SERVICES SOCIETY (Northwest)
NUU-CHAH-NULTH TRIBAL COUNCIL USMA FAMILY AND CHILD SERVICES Or Usma Nuu-chah-nulth (North Vancouver Island)
SCW'EXMX CHILD & FAMILY SERVICES SOCIETY (Thompson Cariboo)
SECWPEMC CHILD & FAMILY SERVICES AGENCY (Thompson Cariboo)
VANCOUVER ABORIGINAL CHILD AND FAMILY SERVICES SOCIETY (VACFSS) (Vancouver-Richmond)

****An interim measure for capacity building under the 'Child, Family and Community Services Act' in BC***

Funding



- First Nations Leadership Council: Federal Funding Chart [accessible here](#)
- Institute of Fiscal Studies and Democracy: Measuring to Thrive Framework [accessible here](#)
- Dr. Cindy Blackstock's presentation on CHRT rulings and prevention funding [accessible here](#)



THE PATHS TO JURISDICTION

Since the announcement of Bill C-92- an Act xxx



FIRST NATIONS AND INDIGENOUS COMMUNITIES

Responsibility Independence



Accountability Liability

PROVINCIAL LAW

NATION LAW

PROVINCE DELIVERS SERVICES

OR

PROVINCE DELEGATES AN
INDIGENOUS AGENCY TO
DELIVER SERVICES



Child, Family and Community Service Act



Needs-based funding

NATION DELEGATES A SERVICE
PROVIDER (I.E. Province,
Indigenous Agency/Society)

OR

NATION DELIVERS SERVICES



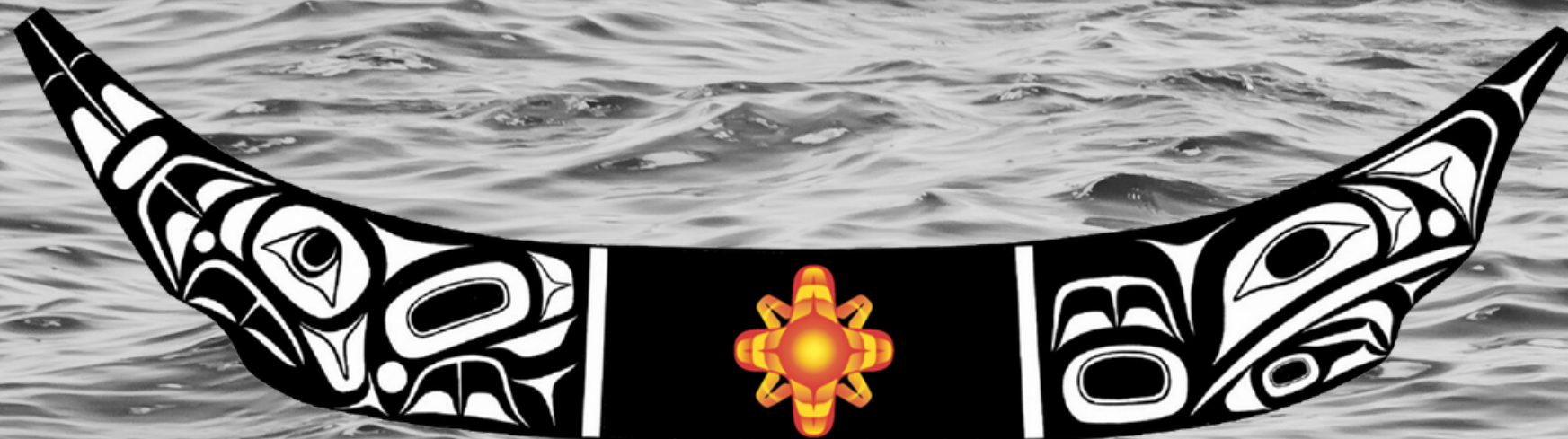
- 1) Bill C-92 20.1 First Nation's Law prevails
- 2) Bill C-92 20.2 First Nation's Law does not prevail
- 3) Modern Treaty (i.e. Nisga'a)
- 4) Agreement (ie Yukon)
- 5) Declaration (i.e. Splatsin)



Per-capita funding

This is a new, uncharted landscape.

Multiple jurisdictions are interacting and overlapping.
Kids are most vulnerable to falling through the cracks at this time.



The complexities of:

- government-government, Nation-Nation and Nation-government communications,
 - funding,
 - decision making authority,
 - process to fully operationalize,
 - information sharing, etc.
- have only increased since the legislation has come into force.


Funding is not keeping up and can be unreliable.

Connect with service delivery experts in your area to understand the nature and scope of the work you are considering taking on.

Be wary of the liability you are taking on and government off-loading responsibility without providing ongoing supports. Ensure the ability to re-negotiate your sustainability and growth needs over time.



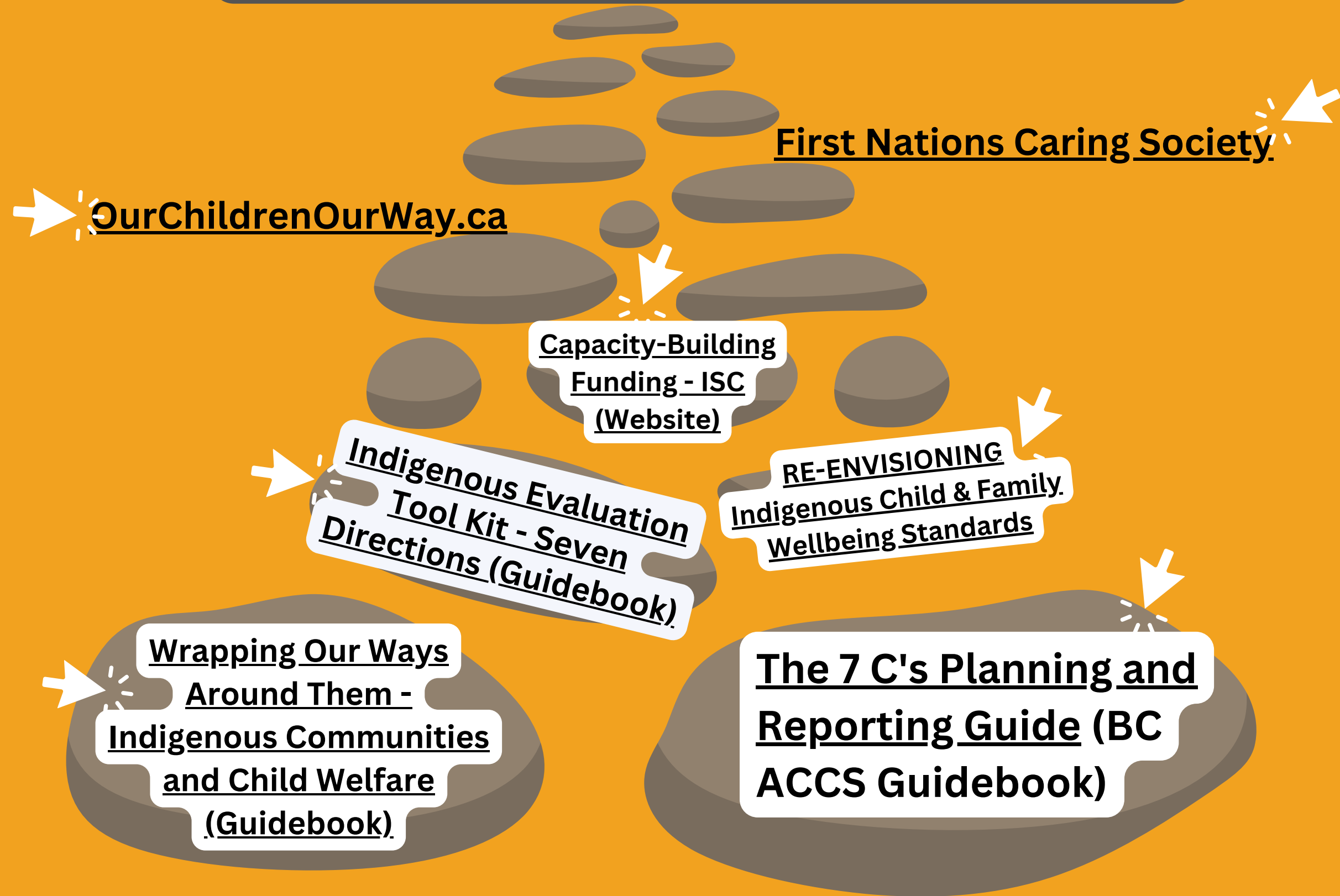
Our Children, Our Way Society Recommendations:

1. Exercise your *inherent rights* from where you stand
2. Continue *building and developing capacity* within your Nation
3. Strengthen partnerships with  service providers and those who understand the nature of the work to *actualize the vision* for your children, youth, families and communities.

Legal Contacts Rostér

Please note that these are individuals who have expressed interest in Indigenous Child and Family Services jurisdiction. Their views and opinions are strictly their own. **This contact list is not an endorsement** of these individuals or their work, and they are not employees of or representatives of the Our Children, Our Way Society.

Additional Resources to Support Community Reflection and jurisdiction in Indigenous Child & Family Wellbeing



Community Self-Assessment & Reflection

Where are we now?

Where do we want to go?

What do we need to get there?

What problems are we trying to solve by drawing down legislative jurisdiction?

Who can support you and your communities as you discuss and plan for legislative jurisdiction?


What is currently being done that is serving you well?



Feb. 12, 2024

Have you heard about...



The **Supreme Court of Canada's decision upholding the validity of Bill C-92** Indigenous child welfare legislation? **Listen in** with Pam Palmater interviewing special guests Cindy Blackstock, Naomi Metallic, and Mary Teegee [here](#). 



Recommendations and considerations highlighted in this interview...

What are the problems you're trying to solve with jurisdiction?

We have always had inherent jurisdiction of our children and families, what we have not had was the resources to breathe life into our own laws.

Think about a phased in approach. Don't feel rushed. Build your capacity. Build those resources. And then get going. Good practice makes good standards, makes good policy, which makes good laws.



Indigenous Child & Family Services Directors
Our Children Our Way Society

Check back soon for more resources as they become available!

Would you like to contribute to this tool-kit?

Please email:

Ky.Scott@OurChildrenOurWay.ca