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# Order Bringing Individual Agreements with First Nations into Effect: SOR/2022-158

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Registration

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FIRST NATIONS JURISDICTION OVER EDUCATION IN BRITISH COLUMBIA  
ACT

P.C. 2022-818 June 24, 2022

Whereas an individual agreement has been entered into with each of the bands referred to in the annexed Order;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Crown-Indigenous Relations makes the annexed *Order Bringing Individual Agreements with First Nations into Effect* under subsection 5(1) of the *First Nations Jurisdiction over Education in British Columbia Act* <sup>a</sup>.

# Order Bringing Individual Agreements with First Nations into Effect

## Individual Agreements in Effect

### Individual agreements

**1** For the purposes of the *First Nations Jurisdiction over Education in British Columbia Act*, the following individual agreements are in effect:

- (a) the Canada-First Nation Education Jurisdiction Agreement between Canada and ʔaq'am Community, entered into on May 26, 2022;
- (b) the Canada-First Nation Education Jurisdiction Agreement between Canada and Cowichan Tribes, entered into on May 26, 2022;
- (c) the Canada-First Nation Education Jurisdiction Agreement between Canada and Lil'wat Nation, entered into on May 25, 2022; and
- (d) the Canada-First Nation Education Jurisdiction Agreement between Canada and Seabird Island Band, entered into on May 25, 2022.

## Related Amendment to the First Nations Jurisdiction over Education in British Columbia Act

**2** The schedule to the *First Nations Jurisdiction over Education in British Columbia Act* <sup>a</sup> is amended by adding the following after the heading "Participating First Nations":

- 1 ʔaq'am
- 2 Cowichan Tribes
- 3 Lil'wat Nation
- 4 Seabird Island

## Coming into Force

### Registration

**3 This Order comes into force on July 1, 2022, but if it is registered after that day, it comes into force on the day on which it is registered.**

# REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Order.)*

## Issues

Indigenous peoples' diverse histories, worldviews, languages and cultures are often not reflected in the education system and the current system continues to displace Indigenous youth from their families, leading to a further breakdown of the continuity of culture within Indigenous communities.

One way Indigenous communities have started to reclaim their identities, cultures and governance systems is through education. Some First Nations have been working to become fully responsible for the delivery of education services on their lands for students in grades K-12, subject to their own laws, including the ability to develop their own education curricula, graduation requirements, teacher certification, and school certification.

In British Columbia, negotiations towards recognizing First Nations jurisdiction over education have been ongoing since 2006, and the negotiating First Nations have been working to advance their vision of education self-determination since the 1990s. Agreements with these First Nations recognize their jurisdiction over education on their lands.

This Order brings four agreements into effect, per subsection 5(1) of the *First Nations Jurisdiction over Education in British Columbia Act* (the Act) and includes an amendment that adds these First Nations to the schedule of the Act. This is the final step to recognizing the authority of ʔaq'am, Cowichan Tribes, Lil'wat Nation and Seabird Island to make laws related to primary and secondary education on reserve in their communities. These First Nations will also receive financial resources to assist in delivery of education services to eligible students under the terms of those laws, as set out in the education jurisdiction agreements signed between Canada and these First Nations.

## Background

First Nations across Canada have long sought recognition of the right to self-determination over the education of their members on their lands. First Nations currently negotiating education jurisdiction agreements with Canada have been working to advance their vision of education self-determination since the 1990s.

Discussions over education jurisdiction in British Columbia have been underway since 2006 when Canada signed the *Education Jurisdiction Framework Agreement* with the provincial government of British Columbia and the First Nations Education Steering Committee (FNESC). This agreement included a template Canada–First Nation Education Jurisdiction Agreement and the related Canada–First Nation Education Jurisdiction Funding Agreement and Implementation Plan, which allows First Nations to assume control over education once ratified by individual First Nations and Canada.

Subsequently, Canada enacted the *First Nations Jurisdiction over Education in British Columbia Act*, which allows the education jurisdiction agreements between Canada and First Nations to be finalized. These individual education jurisdiction agreements will help ensure that the participating First Nations have the tools and authority they need to develop culturally relevant and community-tailored education programs. The Act also established the First Nations Education Authority (FNEA), which will support participating First Nations in the delivery of education services on their lands, for example, as they develop their own education curricula, graduation requirements, teacher certification, and school certification. Together, these instruments provided a negotiating framework for both education jurisdiction agreements and education jurisdiction funding agreements, as well as a legislative foundation for their implementation. In June and July 2021, Canada and 13 First Nations in British Columbia concluded negotiations to establish sectoral self-government arrangements in the area of education, pursuant to the Act. Since then, four of those First Nations – ?aq'am, Seabird Island, Cowichan Tribes, and Lil'wat Nation – successfully conducted ratification votes and are therefore eligible to be scheduled to the Act.

British Columbia and the 13 First Nations have been updating the *2006 British Columbia–First Nation Education Steering Committee Agreement* to align with current education practice. In fall 2021, British Columbia updated legislation to support the implementation of a joint Teacher Certification and Regulation Process. This legislation received Royal Assent in November 2021.

The First Nations Education Authority (FNEA) was established through the Act with a role to assist participating First Nations in developing capacity to provide education on First Nation land. First Nations with sectoral self-

government agreements in education will enter into co-management agreements with the FNEA and delegate their authorities over school certification, teacher certification, examination and graduation standards to FNEA. As these are the first participating First Nations to enter into agreements with Canada, this will be the first time the First Nations Education Authority has had a board of directors to operate.

## Objective

This Order and related amendment have the following objectives:

- to add four First Nations (ʔaq'am, Seabird Island, Cowichan Tribes, and Lil'wat Nation) to the schedule of the Act, and
- to give force of law, as per subsection 5(2) of the Act, to education jurisdiction agreements with ʔaq'am, Seabird Island, Cowichan Tribes, and Lil'wat Nation, thereby recognizing their jurisdiction over education for their First Nations as set out in the agreements.

The objective of the education jurisdiction agreements is to support increased success for First Nations learners. Jurisdiction gives participating First Nations the ability to direct their own education systems to best meet the needs of their communities and equip their learners with the skills they need for life and continuing education. Recognizing First Nations' inherent rights to make laws related to the education of their children via implementation of jurisdiction over education supports political, economic, social and cultural development for these First Nations. This also supports work by Canada and Indigenous peoples to co-develop solutions regarding the implementation of rights and title through discussion and negotiations while advancing their self-determination over governance institutions and

regimes. These outcomes are also in line with Canada's commitments to implement the United Nations Declaration on the Rights of Indigenous Peoples.

## **Description**

This order gives force of law, per subsection 5(2) of the Act, to education jurisdiction agreements with ʔaq'am, Seabird Island, Cowichan Tribes, and Lil'wat Nation, thereby recognizing their jurisdiction over education for their First Nations as set out in the agreements. The related amendment schedules the following four First Nations to the Act: ʔaq'am, Cowichan Tribes, Lil'wat Nation and Seabird Island.

## **Regulatory development**

### ***Consultation***

The discussions over education jurisdiction in British Columbia have been underway since 2006 when Canada signed the Education Jurisdiction Framework Agreement with the government of British Columbia and the First Nations Education Steering Committee. The Steering Committee coordinates the negotiations between Canada and negotiating First Nations to reach agreements pursuant to the Act. Together, the Framework agreement and the Act provide a negotiating framework for both education jurisdiction agreements and education jurisdiction funding agreements, as well as a legislative foundation for their implementation. Negotiations among the parties have been ongoing since.

Canada and 13 First Nations in BC concluded negotiations and between June and July 2021. Then, in August 2021 Canada made fiscal offers to the 13 negotiating First Nations. Seven First Nations accepted the fiscal offer.

Four of those First Nations have successfully conducted community ratification votes:

- ʔaq'am completed their ratification vote December 2, 2021
- Lil'wat Nation completed their ratification vote December 9, 2021
- Seabird Island completed their ratification vote December 10, 2021
- Cowichan Tribes completed their ratification vote January 8, 2022

Given that the education jurisdiction agreements are with these specific First Nations, it is not considered necessary to undertake consultations over and above those already conducted by the First Nation with its members.

There are existing education agreement holders in other parts of the country: *An Agreement With Respect to Education in Nova Scotia (Mi'kmaq Education Acts)* and the *Anishinabek Nation Education Agreement (Anishinabek Nation Education Agreement Act)*. There have been ongoing discussions between the Mi'kmaq and Anishinabek First Nations and the BC signatories to help to address any potential issues with existing education sectoral agreement holders. It has been determined that there will be no adverse effects on these other stakeholders.

### ***Modern treaty obligations and Indigenous engagement and consultation***

This initiative is expected to have a positive impact on First Nations people in British Columbia. The education jurisdiction agreements will help ensure that the participating First Nations have the tools and authority to develop culturally relevant and community-tailored education programs that will advance the quality of education for First Nations learners in British Columbia and support brighter futures for their students and communities. This initiative contributes to the Government of Canada commitment to rebuilding and renewing the relationship with Indigenous peoples, and to



implementing the United Nations Declaration on the Rights of Indigenous Peoples by supporting greater self-determination. With the agreements coming into effect, there are implementation obligations that Canada will need to uphold.

There are existing sectoral agreement holders in other parts of the country: *An Agreement With Respect to Education in Nova Scotia (Mi'kmaq Education Act)* and the *Anishinabek Nation Education Agreement (Anishinabek Nation Education Agreement Act)*. It has been determined that there will be no adverse effects on these other stakeholders.

There are no potential modern treaty implications, as this Order responds to the needs and interests of ʔaq'am, Cowichan Tribes, Lil'wat Nation and Seabird Island. This Order does not require the Government of Canada to fulfill any consultations or engagement requirements described in a modern treaty.

### ***Instrument choice***

The *First Nations Jurisdiction over Education in British Columbia Act* specifies the need for a Governor in Council order to bring the education jurisdiction agreements into effect and to schedule signatory First Nations to the Act. For this reason, no other instruments were considered.

## **Regulatory analysis**

### ***Benefits and costs***

Improving education for Indigenous peoples through agreements is an important step towards the path of reconciliation by advancing Indigenous interests, fostering self-determination, and helping close socio-economic gaps.

The amendment adding four First Nations to the Schedule of the Act is expected to cost \$4.6M<sup>1</sup> over 10 years starting in Fiscal Year 2022-2023. This funding will support the new governance responsibilities that these First Nations will take on when their agreements go into effect. This funding supports the incremental responsibilities taken on by the participating First Nations, which include law and policy making, intergovernmental relations and coordination, consultation with members, and delegation of co-management authorities to the First Nations Education Authority.

These amounts will supplement the funding currently in Crown-Indigenous Relations and Northern Affairs Canada's (CIRNAC) reference levels (\$ 0.6M per year ongoing for a total of \$6M over 10 years) under "Grants to Participating First Nations and the First Nations Education Authority Pursuant to the First Nations Jurisdiction over Education in British Columbia Act" for supporting ongoing governance activities. This funding expended to date has supported start-up activities for the First Nations Education Authority and has supported First Nations in their development of law making protocols and drafting their education laws. The use of these pre-existing, continuing resources will not significantly change with the regulation and in its absence would continue to be used for the purpose of supporting governance activities. For this reason, the \$6M over 10 years, while being a contributing factor to the achievement of the regulatory objectives, is not considered a cost of this regulation.

Therefore, the overall costs (new and existing funds combined: \$4.6M over 10 years + \$6M over 10 years) to implement education jurisdiction agreements with these four First Nations are expected to be \$10.6M over 10 years starting in FY 2022/23. This includes:

- \$1,039,286 during FY 2022-23 for the balance of one-time start-up activities for four participating First Nations, and
- \$690,900 during FY2022-23 (which is 75% of the annual expenditure need calculation to reflect the partial year) and \$939,624 in FY 2023-24, \$958,417 in FY 2024-2025, \$977,585 in FY 2025-26, \$997,137 in FY 2026-27 and \$997,137 ongoing to support governance activities of the four participating First Nations.

The four First Nations currently receive funding for education services from Indigenous Services Canada (ISC), which they will continue to receive. The use of these funds will not change once the education jurisdiction agreements are in force. Currently this funding flows through ISC, however, under the new agreements the funds will flow through CIRNAC so that participating First Nations have a single source of federal government funding for education and autonomy over expenditure. Funding may fluctuate from year-to-year for education programming, based on the number of students.

The implementation of education self-government arrangements has already proven to be successful with Mi'kmaq First Nations in Nova Scotia and Anishinabek First Nations in Ontario, with improved graduation rates and increased enrolment in post-secondary institutions. For example

- High school graduation rates among First Nation Students in Nova Scotia are nearly 94% (the Nova Scotia average graduation rate is 81.1%), 83% of First Nation Students are educated in Mi'kmaw Kina'matnewey schools with a 91% average attendance rate, and more than 600 First Nation students were enrolled in post-secondary institutions.
- In Ontario, the *Anishinabek Nation Education Agreement* recognizes First Nation control over K-12 Education on and off reserve, supports the

Anishinabek Nation's vision of quality Indigenous education promoting Anishinaabe culture and language, and improves education outcomes for Anishinabek students.

The methodologies to support both participating First Nations governance activities and First Nation Education Authority operations are benchmarked to relevant positions within the British Columbia public service. Operating and capital costs were estimated based on actual costs of the First Nations Education Steering Committee. Costing methodologies were developed in alignment with the principles and practices of Canada's *Collaborative Self-Government Fiscal Policy*.

There are not expected to be any adverse impacts of these regulations on businesses, consumers, the environment, health and safety, competitiveness, trade, or investment.

There are expected to be positive impacts of these regulations on participating First Nations communities. For example:

- Improved education outcomes could result in improved employment prospects and increased incomes; and
- Improved employment opportunities at schools on First Nations land.

Governance over education is important to nation rebuilding, which supports Canada's goals of increased self-governance and reconciliation with First Nations.

### ***Small business lens***

The small business lens does not apply as there are no associated impacts on businesses.

### ***One-for-one rule***

The one-for-one rule does not apply as there is no impact on business.

### ***Regulatory cooperation and alignment***

The assumption of jurisdiction by First Nations is consistent with Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes Indigenous Peoples' right to establish and control their own systems of education. The initiative also aligns with both the province of British Columbia's *Declaration on the Rights of Indigenous Peoples Act* and Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*, which is predicated on Indigenous peoples' inherent right to self-determination and self-government and, among other things, provides that Indigenous Peoples have a right to control their own educational systems in a manner consistent with their cultures and traditional practices.

The education jurisdiction agreements brought into force by this order are between Canada and specific First Nations. The province of British Columbia has a separate bilateral agreement with the First Nation Education Steering Committee and brought forward their own legislative changes on October 25, 2021, to make it possible for the province to provide operational support for the new teacher certification and regulation process.

This initiative does not impact other regulatory jurisdictions.

### ***Strategic environmental assessment***

There are no actions resulting from this initiative that could have a direct impact on the environment at this time.

### ***Gender-based analysis plus***

The gender-based analysis plus was co-developed by the First Nations Education Steering Committee, the negotiating First Nations, and Crown-Indigenous Relations and Northern Affairs Canada.

The Truth and Reconciliation Commission of Canada noted that the Indian Residential School System was an “education system in name only” and its true intent was to separate Indigenous children from their parents in order to weaken family and cultural linkages and indoctrinate Indigenous children in Euro-Christian Canadian culture. The Truth and Reconciliation Commission documented the many negative effects of the Indian Residential School system including abuse, racism, poor-quality education, and intergenerational impacts that echo to today.

While the last Indian Residential School closed in 1996, gaps in educational outcomes persist between Indigenous and non-Indigenous populations in Canada. In the province of British Columbia, on average for the years 2016/17 through 2020/21, 70% of Indigenous students finished Grade 12 within six years of entering Grade 8. This compares with 92% of non-Indigenous students. When broken out by gender, only 67% of young Indigenous men complete Grade 12 within six years, compared with 89% of non-Indigenous men. While 73% of Indigenous women complete Grade 12 within six years, 94% of non-Indigenous women do so. Education jurisdiction agreements are aimed at closing gaps in education outcomes. While data is limited on 2SLGBTQIA+ people overall, and even more so on a regional basis such as within BC, the Missing and Murdered Indigenous Women and Girls Inquiry (MMIWG) noted the special vulnerability of transgender people. The participating First Nations will include a gender breakdown (male, female, other) in their reporting.

Drawing on Statistics Canada's 2013 General Social Survey, the MMIWG Inquiry indicated that "Indigenous women who have experienced discrimination are much more likely to report having a somewhat or very weak sense of belonging to their local community." Indigenous children report higher levels of bullying and teasing compared with non-Indigenous children in British Columbia. In both grades 4 and 7, 15% of children say that they were bullied, teased or picked on all of the time or many times, compared with 10% of non-Indigenous children. This may be a contributing factor to Indigenous children's comparative lack of a sense of safety in school, with fewer than two thirds of grade 7 and grade 10 Indigenous children reporting that they feel safe at school.

The recognition of First Nations' jurisdiction over education will support First Nations control over First Nations education, thereby helping to provide First Nations students of all identities and backgrounds with access to educational opportunities that ensure they are confident in their self-identity, their families, their communities and traditional values, languages and cultures; give them the skills they need to thrive in contemporary society; and prepare them to access any opportunities they choose for higher learning and employment. Implementing First Nations education jurisdiction for K-12 education will enhance the quality of educational opportunities available to all First Nation students, which will include specific attention to promoting their self-confidence and understanding of their own identity – respecting each student's unique backgrounds, strengths, abilities, and specific needs.

Implementing education jurisdiction will also involve specific approaches that will contribute to enhanced opportunities for students in the participating First Nations and for the First Nations' citizens more broadly. The BC jurisdiction agreements over education include specific plans for the collective review and certification of schools, which will involve

monitoring how effectively the schools are supporting students and providing safe school environments for all students and staff, regardless of their diverse characteristics.

Additionally, the implementation of education jurisdiction agreements provide a new pathway for the certification of teachers who work in participating First Nations schools, which will broaden and enhance employment opportunities for First Nations people, including people of various gender identities, rooted in their own communities and cultures.

All of these aspects of the education jurisdiction initiative are directly related to the report on Missing and Murdered Indigenous Women and Girls and the related Calls to Justice, including

2.3 We call upon all governments to ensure that all Indigenous women, girls, and 2SLGBTQQIA people are provided with safe, no-barrier, permanent, and meaningful access to their cultures and languages in order to restore, reclaim, and revitalize their cultures and identities.

These are rights held by all segments of Indigenous communities, from young children to Elders. The programs and services that provide such access should not be tied exclusively to government-run cultural or educational institutions. All governments must further ensure that the rights of Indigenous children to retain and be educated in their Indigenous language are upheld and protected. All governments must ensure access to immersion programs for children from preschool into post-secondary education.

4.4 We call upon all governments to provide supports and resources for educational, training, and employment opportunities for all Indigenous women, girls, and 2SLGBTQQIA people. These programs must be available within all Indigenous communities.



# Implementation, compliance and enforcement, and service standards

## *Implementation*

For the signatory First Nations, this order confers force of law, per subsection 5(2) of the Act, on their bilateral education jurisdiction agreements. This recognizes the First Nation education law and discontinues the application of sections 114-122 of the *Indian Act* in respect of the First Nation and on the First Nation's lands. These agreements are in effect as of July 1, 2022, allowing the participating First Nations to prepare for annual school operations to begin in September 2022.

This initiative is implemented by Crown-Indigenous Relations and Northern Affairs Canada in collaboration with the participating First Nations, the First Nations Education Steering Committee, the First Nations Education Authority and Indigenous Services Canada. The parties will designate senior officials to monitor implementation of Canada-First Nation Education Jurisdiction Agreements. An implementation working committee may be established.

This order and related amendment enable the start-up activities of each of the participating First Nations including the drafting and enactment of their education laws, the establishment of a publicly accessible registry of laws and the establishment of policies, as well as ongoing governance activities of the individual participating First Nations, which include

- policy and legislative functions,
- community consultation,
- co-management with the FNEA,
- reciprocal arrangements with relevant school districts of British Columbia,

- intergovernmental relations with Canada and with British Columbia, and
- legal representation costs.

#### Key dates:

- July 1: school year begins
- September 1: annual school operations begin
- September 29: schools conduct an enrolment exercise. This corresponds to the Nominal Roll date for First Nations that operate schools under the aegis of Indigenous Services Canada programs.

#### Communications

Opportunities for events/announcements with the four First Nations who have ratified their agreements will be explored by a Communications working group including Canada and the participating First Nations. Messaging and events/announcements will be co-developed by the working group. Opportunities for announcements to further profile and celebrate the work that has been achieved could also be considered.

#### Performance measurement

All outcomes and performance indicators for this initiative are drawn from Crown-Indigenous Relations and Northern Affairs Canada's Performance Information Profiles and Departmental Results Framework, as well as the objective of the Government of Canada's Delivery and Results Charter, "Improving Relationships and Outcomes with Indigenous Peoples." Actual results for Departmental Results Framework indicators will be reported in the Departmental Results Reports. The Departmental Result "Indigenous peoples determine their political, economic, social and cultural development" includes the following indicators:

- the number of treaties, self-government and other constructive arrangements that have been concluded; and
- the number of communities where treaties, self-government and other constructive arrangements have been concluded.

The above indicators will also be reported publicly through GC InfoBase, which shows the number of active Indigenous rights and self-determination processes underway.

According to CIRNAC's Five-Year Evaluation Plan 2021-22 to 2025-26, an evaluation of the Negotiations of Claims and Self-Government Agreements is planned for 2021-22. As per the Policy on Results and the *Financial Administration Act*, the evaluation will cover issues of performance and relevance. The timing of this evaluation may need to be updated based on the priorities, needs and risks assessed through the annual departmental evaluation planning exercise. As applicable and upon Deputy Head approval, the Head of Evaluation will inform the Treasury Board Secretariat of any changes to this evaluation commitment and take the necessary steps to reflect the changes in the next Departmental Evaluation Plan.

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# Footnotes

a S.C. 2006, c. 10

1 Nominal, non-discounted Canadian dollars.

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