
Fourth Session, Forty-second Parliament
2 Charles III, 2023
Legislative Assembly of British Columbia

BILL 40

SCHOOL AMENDMENT ACT, 2023

Honourable Rachna Singh
Minister of Education and Child Care

Explanatory Notes

CLAUSE 1: *[School Act, section 1]* specifies that the shísháhlh Nation and the Westbank First Nation are included in the definition of first nation.

CLAUSE 2: *[School Act, section 74.2]*

- allows a first nation, a treaty first nation or the Nisga'a Nation to designate a school for certain persons who live on the first nation, treaty first nation or Nisga'a Nation to attend;
- provides the process for a first nation, a treaty first nation or the Nisga'a Nation to make a designation and sets out that a designation continues unless it is revoked by the first nation, the treaty first nation or the Nisga'a Nation;
- provides certainty that a person who is subject to a designation remains entitled to enrol in an educational program at a school as otherwise set out in the Act.

BILL 40 – 2023

SCHOOL AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 (1) of the School Act, R.S.B.C. 1996, c. 412, is amended by repealing the definition of “first nation” and substituting the following:

“first nation” means any of the following:

- (a) a band as defined under the *Indian Act* (Canada), including a participating First Nation, located in British Columbia;
- (b) the shíshálh Nation as defined in the *shíshálh Nation Self-Government Act* (Canada);
- (c) the Westbank First Nation as defined in the agreement approved under the *Westbank First Nation Self-Government Act* (Canada); .

2 The following section is added:

First nation schools of choice

74.2 (1) In this section:

“designated school” means a school designated by a first nation, a treaty first nation or the Nisga’a Nation under subsection (2);

“eligible first nation person” means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga’a Nation,
- (c) who is ordinarily resident
 - (i) on a reserve as defined in section 2 (1) of the *Indian Act* (Canada),
 - (ii) on treaty lands,
 - (iii) on Nisga’a Lands, or
 - (iv) on shíshálh lands as defined in section 2 (1) of the *shíshálh Nation Self-Government Act* (Canada), and

CLAUSE 2: *[School Act, section 74.2 – continued]*

(d) for whom the government of Canada provides funding in relation to the person's educational programs and services;

“specialty academy” has the same meaning as in section 82.1.

- (2) Despite sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4), if a first nation, a treaty first nation or the Nisga'a Nation designates, in accordance with subsection (3), a school in the school district of the board, the eligible first nation persons who meet the following residency requirements are entitled to attend the designated school in the next school year:
 - (a) the eligible first nation persons who are ordinarily resident of the first nation and are ordinarily resident or boarded in the school district;
 - (b) the eligible first nation persons who are ordinarily resident on the treaty lands of the treaty first nation and are ordinarily resident or boarded in the school district;
 - (c) the eligible first nation persons who are ordinarily resident on Nisga'a Lands and are ordinarily resident or boarded in the school district.
- (3) A designation under subsection (2) must be made in writing to the board of the school district of the school
 - (a) by the date established under section 74.1 (4) (a), or
 - (b) if the board establishes different dates for different grades, education programs, schools or children under section 74.1 (4) (b), by the earliest of those dates.
- (4) A designation under subsection (2) continues for each subsequent school year unless the first nation, the treaty first nation or the Nisga'a Nation revokes the designation.
- (5) Despite subsection (2), if a board offers a specialty academy at a designated school, an eligible first nation person may only be enrolled in the specialty academy in the manner specified by the board for general enrolment in the specialty academy.
- (6) For certainty, an eligible first nation person who is entitled to attend a designated school remains entitled to enrol in an educational program in accordance with sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4) provided by the board of a school district.

CLAUSE 3: *[School Act, sections 86.1 to 86.6]*

- allows the minister to specify a model local education agreement by regulation;
- allows a first nation, treaty first nation or the Nisga'a Nation to require a model agreement to apply, in certain circumstances, to the first nation, the treaty first nation or the Nisga'a Nation and a board;
- if a first nation, a treaty first nation or the Nisga'a Nation requires the model agreement to apply, then the model agreement becomes a contract between the first nation, the treaty first nation or the Nisga'a Nation and the board.

3 *The following sections are added:*

Model local education agreement

86.1 (1) In this section and sections 86.2 to 86.6:

“**eligible first nation person**” means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga’a Nation, and
- (c) for whom the government of Canada provides funding in relation to the person’s educational programs and services;

“**model agreement**” means a model local education agreement specified by regulation under subsection (2).

(2) The minister may specify, by regulation, any of the following:

- (a) a model local education agreement as a model agreement that includes terms and conditions related to
 - (i) the purchase of educational programs and services by a first nation, a treaty first nation or the Nisga’a Nation from a board,
 - (ii) improving first nation, treaty first nation and Nisga’a Nation student achievement, and
 - (iii) developing relationships between a first nation, a treaty first nation or the Nisga’a Nation and a board;
- (b) requirements in relation to the form and manner for a first nation, a treaty first nation or the Nisga’a Nation to require a model agreement to apply to the first nation, the treaty first nation or the Nisga’a Nation and a board;
- (c) information that must be included by the first nation, the treaty first nation or the Nisga’a Nation in the model agreement.

(3) The term of a model agreement starts on July 1 of the year specified in the model agreement.

First nation and board model agreement as contract

86.2 (1) Subject to section 86.5, a first nation may, by delivering written notice to the minister and a board, require a model agreement to apply to the first nation and the board.

(2) If a first nation requires a model agreement to apply to the first nation and a board in accordance with subsection (1) and any regulation under section 86.1 (2) (b), the model agreement is deemed to be a contract between the first nation and the board as parties and the terms and conditions of the model agreement apply as if it was a contract entered into by the parties.

CLAUSE 3: *[School Act, sections 86.1 to 86.6 – continued]*

Treaty first nation and board model agreement as contract

- 86.3** (1) Subject to section 86.5, a treaty first nation may, by delivering written notice to the minister and a board, require a model agreement to apply to the treaty first nation and the board.
- (2) If a treaty first nation requires a model agreement to apply to the treaty first nation and a board in accordance with subsection (1) and any regulation under section 86.1 (2) (b), the model agreement is deemed to be a contract between the treaty first nation and the board as parties and the terms and conditions of the model agreement apply as if it was a contract entered into by the parties.

Nisga'a Nation and board model agreement as contract

- 86.4** (1) Subject to section 86.5, the Nisga'a Nation may, by delivering written notice to the minister and a board, require a model agreement to apply to the Nisga'a Nation and the board.
- (2) If the Nisga'a Nation requires a model agreement to apply to the Nisga'a Nation and a board in accordance with subsection (1) and any regulation under section 86.1 (2) (b), the model agreement is deemed to be a contract between the Nisga'a Nation and the board as parties and the terms and conditions of the model agreement apply as if it was a contract entered into by the parties.

Conditions required for model agreement

- 86.5** A first nation, a treaty first nation or the Nisga'a Nation may only require a model agreement to apply to the first nation, the treaty first nation or the Nisga'a Nation and a board if
- (a) an eligible first nation person of the first nation, the treaty first nation or the Nisga'a Nation is enrolled in or will reasonably be expected to enrol in an educational program provided by the board, and
 - (b) no other agreement relating to the purchase of educational programs and services with government of Canada funding is in effect between, as applicable,
 - (i) the first nation and the board,
 - (ii) the treaty first nation and the board, or
 - (iii) the Nisga'a Nation and the board.

Amendments to model agreement

- 86.6** (1) If a model agreement is amended by ministerial regulation, the amended model agreement does not apply to a contract that is in effect under section 86.2, 86.3 or 86.4 on the date the amended model agreement comes into force.

CLAUSE 3: *[School Act, sections 86.1 to 86.6 – continued]*

CLAUSE 4: *[School Act, Division 2.01 of Part 6]*

- requires that boards establish Indigenous education councils and sets out the purposes of those councils;
- establishes that the minister may make orders related to how the Indigenous education councils are established and how a council will operate;
- limits voting rights for certain members of the Indigenous education council;
- establishes that the Indigenous education council may make rules related to certain matters if those rules are not inconsistent with the Act, regulations or ministerial orders.

- (2) If a model agreement is amended by ministerial regulation, the first nation, the treaty first nation or the Nisga'a Nation must give at least 60 days' written notice to the minister and the board that the amended model agreement applies.
- (3) If a model agreement is amended by ministerial regulation and notice is provided in accordance with subsection (2),
 - (a) the amended model agreement takes effect on the next July 1, and
 - (b) the term of the model agreement is amended and starts on the date that the amended model agreement takes effect.

4 *The following Division is added to Part 6:*

Division 2.01 – Indigenous Education Councils

Purposes of Indigenous education councils

- 87.001** (1) Each board must establish and maintain an Indigenous education council, for the following purposes:
- (a) advising the board respecting any matter relating to the following:
 - (i) providing comprehensive and equitable educational programs and services to Indigenous students;
 - (ii) improving Indigenous student achievement;
 - (iii) integrating into learning environments Indigenous world views and perspectives, in particular those of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates;
 - (b) advising on grants provided under this Act in relation to Indigenous students;
 - (c) approving plans, spending and reporting related to grants as set out in section 87.002;
 - (d) advising the board in relation to the distinct languages, cultures, customs, traditions, practices or history of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates, through advice from the Indigenous education council members representing those first nations, treaty first nations or the Nisga'a Nation.
- (2) For certainty, an Indigenous education council is not a committee of a board under section 65 (2) (a) of this Act.

CLAUSE 4: *[School Act, Division 2.01 of Part 6 – continued]*

**Approval of targeted grants –
plans, spending and reporting**

87.002 If the minister provides a direction for a targeted grant under section 106.4 and the targeted grant is related to Indigenous students, the Indigenous education council must,

- (a) before the grant is spent by the board, approve the board’s plan for the grant and the board’s spending of the grant, and
- (b) after the grant is spent, approve the board’s report, if any, on the grant’s spending.

**Minister may order board
to consult with Indigenous education councils**

87.003 The minister may specify, by order, that a board must consult with the Indigenous education council or specified members of the Indigenous education council on a matter specified by the minister.

**Ministerial orders in relation to
Indigenous education councils**

87.004 (1) Subject to this section, the minister may specify, by order, any of the following in relation to an Indigenous education council:

- (a) establishment and composition of a council;
- (b) the process to appoint council members;
- (c) voting rights of council members;
- (d) terms of reference in relation to a council;
- (e) rules governing the conduct of the business of a council.

(2) The following individuals may not be members with voting rights of an Indigenous education council:

- (a) a trustee;
- (b) a board employee.

(3) The minister may specify in an order under subsection (1) that different members of an Indigenous education council may have different voting rights in respect of different matters.

**Indigenous education councils
establish governance rules**

87.005 An Indigenous education council may make rules governing the following, but may not make a rule if that rule is inconsistent with this Act, the regulations or the orders of the minister:

- (a) the process to appoint members of a council;
- (b) the conduct of a council’s business;
- (c) terms of reference in relation to a council.

CLAUSE 5: *[School Act, section 93]* includes a former Indigenous education council member for the purposes of the application of the Division.

CLAUSE 6: *[School Act, section 95]* expands the list of people a board may choose to indemnify to include Indigenous education council members.

CLAUSE 7: *[School Act, section 166.4]* applies sections 86.1 to 86.6 for the purposes of Part 8.1 – Francophone Education Authorities.

CLAUSE 8: *[School Act, section 166.4]* applies Division 2.01 of Part 6 for the purposes of Part 8.1 – Francophone Education Authorities.

5 Section 93 is repealed and the following substituted:

Interpretation

93 In this Division, a reference to a trustee, officer, employee or member of an Indigenous education council includes a former trustee, officer, employee or member of an Indigenous education council.

6 Section 95 is amended

(a) in subsections (1), (2) (a) and (3) by adding “or a member of an Indigenous education council” after “a trustee, an officer or an employee of the board”,

(b) in subsection (1) (a) by adding “or a member of an Indigenous education council” after “a trustee, officer or employee of the board”,

(c) in subsection (1) (a) by striking out “the trustee’s, officer’s or employee’s” and substituting “the trustee’s, officer’s, employee’s or member’s”,

(d) in subsection (2) (a) by adding “or the member’s council duties” after “the performance of the trustee’s, officer’s or employee’s board duties”,

(e) in subsection (2) by striking out “on a trustee, officer or employee as a result of the trustee’s, officer’s or employee’s conviction” and substituting “on a trustee, officer, employee or member as a result of the trustee’s, officer’s, employee’s or member’s conviction”,

(f) in subsection (3) by striking out “the trustee, officer or employee” and substituting “the trustee, officer, employee or member”, and

(g) by repealing subsection (3) (a) and substituting the following:

(a) against a trustee, officer, employee or member if the claim for damages arises out of the gross negligence of the trustee, officer, employee or member, or .

7 Section 166.4 is amended in subsection (2) by striking out “85.1 to 86” and substituting “85.1 to 86.6”.

8 Section 166.4 is amended in subsection (2.1) by striking out “Division 2.1 of Part 6 applies” and substituting “Divisions 2.01 and 2.1 of Part 6 apply”.

CLAUSE 9: *[School Act, section 166.43]* expands the list of people a francophone education authority may choose to indemnify to include Indigenous education council members.

9 Section 166.43 is amended

- (a) in subsections (1) (a), (2) (a) and (4) by adding** “or a member of an Indigenous education council” **after** “a regional trustee, officer or employee of the francophone education authority”,
- (b) in subsections (1) (a) (i), (2) (a) and (3) by striking out** “the regional trustee’s, officer’s or employee’s” **and substituting** “the regional trustee’s, officer’s, employee’s or member’s”,
- (c) in subsection (4) by striking out** “the regional trustee, officer or employee” **and substituting** “the regional trustee, officer, employee or member”, **and**
- (d) by repealing subsection (4) (a) and substituting the following:**
 - (a) against a regional trustee, officer, employee or member if the claim for damages arises out of the gross negligence of the regional trustee, officer, employee or member, or .

Commencement

- 10** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Section 3	April 30, 2024
3	Section 7	April 30, 2024