



**SUBMISSION TO THE NATIONAL INQUIRY INTO
MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS**

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Kasari Govender, Raji Mangat, and Isabelle Busby
West Coast LEAF
555 - 409 Granville Street
Vancouver, BC V6C 1T2
Unceded Coast Salish Homelands
Tel: 604.684.8772

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Introduction

1. West Coast LEAF is grateful for the opportunity to contribute to the long-awaited and vital work of the National Inquiry into Missing and Murdered Indigenous Women and Girls (“Inquiry”). This submission is offered respectfully in acknowledgement of the women, girls and Two Spirit people who have been disappeared and murdered, and to the families and communities who mourn their loss.
2. West Coast Legal Education and Action Fund (“West Coast LEAF”) is an incorporated non-profit society in British Columbia and a federally registered charity since 1985. West Coast LEAF’s mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination in British Columbia. In collaboration with community, West Coast LEAF uses litigation, law reform, and public legal education to make change. In particular, we aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and the right to parent. Our office is located on the unceded and traditional homelands of the Coast Salish Peoples, presently known as Vancouver.
3. West Coast LEAF’s work is informed by the recognition that intersecting and overlapping markers of historic disadvantage pose unique, complex challenges to achieving substantive equality in and through the Canadian state legal system. Our work is attentive to the continuing colonization and oppression of Indigenous peoples, much of which has been perpetuated and continues to be perpetuated through the legal system within which we work.
4. There is no question that the work of the Inquiry must be rooted in the experiences, truths, and collective wisdom of First Nations, Inuit and Métis women, girls and Two Spirit persons from diverse communities across Turtle Island, speaking to their particular contexts. The Inquiry’s recommendations cannot be imposed from the outside or from above; they must be rooted in the expertise and self-determination of Indigenous women, girls, and Two Spirit people.

5. Indigenous women, girls and Two Spirit people are not objects or bundles of risks; they are leaders, experts, and agents of change. Over the course of the past two years, the Inquiry heard ample evidence of the strength, creativity, resilience, and resistance of Indigenous women, girls and Two Spirit people – their knowledge and experience is the key source of power in addressing all forms of violence they experience, wherever it takes place. The experts have spoken. The challenge that lies before the National Inquiry is daunting. In delivering its recommendations, the Inquiry must bring together all the experiences, information and analysis that the Commissioners have heard and offer a meaningful and accountable path forward.

6. West Coast LEAF views our role in the Inquiry as providing guidance on how to take the evidence and expertise that has been gathered through the hearings and create practical recommendations that will lead to meaningful and transformative change. The Inquiry has heard from those with both lived and professional expertise in the root causes of violence against Indigenous women, girls, and Two Spirit people; these closing submissions focus on how to forge a path forward from the current crisis towards gender equality, safety, justice, and decolonization.

7. West Coast LEAF's submissions begin by discussing the lens through which we believe the crisis of violence against Indigenous women, girls, and Two Spirit people must be viewed. We then offer a "life cycle" approach to considering such violence and how it may be resolved, through a focus on state apprehension of Indigenous children. Lastly, we offer a framework for recommendations and two sets of specific recommendations, the first focussed on accountability mechanisms and the second on child protection.

1. Applying an Intersectional Lens

8. Interpersonal and systemic violence against Indigenous women, girls and Two Spirit people is not a "women's issue" and it's not an "Indigenous issue." The fact of such violence and its ubiquity in our society implicates all of us – settlers and Indigenous people alike.

9. The evidence before the Inquiry establishes without a doubt that Indigenous women's, girls' and Two Spirit persons' lives are continuously and dynamically shaped by their experiences of the world as women, girls, or Two Spirit and as Indigenous persons coming from distinct communities. They are indivisibly gendered and racialized (along with other dimensions of experience).¹ As such, the recommendations of the Inquiry must be grounded in understanding the multiple dimensions and intersections of gender and race. The Inquiry's approach to its analysis of the evidence must both decolonize gender and gender decolonization by incorporating knowledge of how systems of oppression are recursive, mutually constitutive, and replicative. Dr. Cindy Blackstock's evidence is clear on the need for such an approach:

This issue of gender discrimination is not just distinct to Indigenous women and girls. But certainly, is amplified in many cases for Indigenous women and girls because it has a colonial overlay on top of it, and it also is affected by these multigenerational inequalities that have often been more pronounced in their disadvantage for Indigenous women and girls."²

10. For the Inquiry to study and report on the systemic causes of all forms of violence against Indigenous women and girls, as required by its mandate, it cannot shy away from calling out the manifold ways in which the historical and continuing colonization of Indigenous peoples perpetuates gendered violence. The experiences of Indigenous women, girls, and Two Spirit people are (as heard in the evidence) indivisible from their colonization, and the colonization of their communities.

11. This indivisibility, and the challenges of colonization particular to women and girls, were explored in the evidence of several witnesses. Jacqueline Hanson and Connie Greyeyes-Dick spoke about the experiences of Indigenous women concerning resource development in or near Indigenous communities.³ These witnesses testified that the disproportionate burden of

¹ E.g., ability/disability; access to resources; sexual orientation; gender expression; age, etc.

² Examination in-chief of Dr. Cindy Blackstock, "Child & Family Welfare", Winnipeg, 3 October 2018, [Parts II & III Vol 12](#) at p. 21.

³ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada* (2009) (Exhibit 17 from examination in-chief of Connie Greyeyes-

economic development is borne by and on Indigenous women's bodies, even as the development of natural resources may be welcomed by some members of their communities as a way to relieve poverty and revive economic prospects. The safety and well-being of Indigenous women and girls in this context becomes ensnared in, and subordinated to, the community's prospects.

12. Gendered and colonial violence specific to Inuit women was explored by Tracy Denniston in her evidence. Ms. Denniston testified that chronic housing shortages in her remote community has a particular impact on Inuit women experiencing intimate partner violence and living in poverty – because they have nowhere else to go but housing shared with an abuser in the sole social housing facility available in the community.⁴

13. Dr. Pertice Moffitt testified about the conclusions consistently reached by researchers identifying that Indigenous women are at greater risk of intimate partner violence than non-Indigenous women,⁵ and of course women overall are much greater risk of serious domestic violence than men. These are but a few examples from the evidence before the Inquiry that speaks to the need for a gendered and decolonizing analysis.

14. Without accounting for the intersectional nature of Indigenous women's, girls' and Two Spirit people's experiences of interpersonal and systemic violence, recommendations offered by the Inquiry will fail to provide a sustainable path forward to address the crisis.

15. For example, if the Inquiry recommends training of police, lawyers or judges, education about the history of residential schooling will not suffice without a strong focus on how residential schooling impacted mothers, grandmothers and girls disproportionately or uniquely. If the Inquiry's recommendations are aimed at relieving the disproportionate criminalization

Dick and Jacqueline Hansen, "Criminal Justice Oversight & Alternative Programs", Quebec City, 18 September 2018, [Parts II & III Vol 6](#)).

⁴ Examination in-chief of Timothy Argetsinger and Tracy Denniston, "Human Rights Framework", Quebec City, 14 May 2018, [Part III Vol 4](#) at p. 52-53.

⁵ Y. Nichole Faller et al., "A Web of Disheartenment With Hope on the Horizon: Intimate Partner Violence in Rural and Northern Communities" (2018) 1:26 *Journal of Interpersonal Violence* 1 at p. 3 (Exhibit 53 from examination in-chief of Dr. Pertice Moffitt, "Sexual Exploitation, Human Trafficking & Sexual Assault", St. John's, 16 October 2018, [Parts II & III Vol 16](#)).

and imprisonment of Indigenous people, they must specifically address the over-criminalization and over-incarceration of Indigenous women in high security, restrictive movement settings, as Indigenous women are the fastest growing group in prisons across the country. If the Inquiry recommends improved data collection by the RCMP, municipal policing services, Statistics Canada, or the Correctional Service of Canada, the recommendation must make clear that data be disaggregated on an intersectional basis – not just by sex and race, but also by gender identity, Indigenous nationhood, and mixed race identity. The lack of disaggregated data about Indigenous women, girls and Two Spirit people contributes to the erasure of their experience.

2. Systemic Violence Masked as “Child Protection”

16. An intersectional approach is essential to understanding the colonial project of “taking the Indian out of the child”. The harms of child apprehension are crystallized when seen through the eyes of Indigenous women and girls. As the evidence has shown, taking children away from their families and their communities has been central to the colonial project as a whole, and is key to the multi-generational perpetuation of violence against Indigenous women, girls, and Two Spirit people.

17. The Inquiry heard, for instance, from Dr. Amy Bombay⁶ that forcing Indigenous children into residential schools resulted in the 60s Scoop and the apprehension of children by state authorities, which we know has further contributed to the over-incarceration of Indigenous people, including youth. This recursive narrative of colonialism is key to understanding the current crisis in violence against Indigenous women, girls, and Two Spirit people. Dr. Bombay cited Maria Yellow Horse Braveheart to observe that: “Historical trauma is cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma.”⁷

⁶ Examination in-chief of Dr. Amy Bombay, “Child & Family Welfare”, Winnipeg, 1 October 2018, [Parts II & III Vol 10](#) at p. 178-179.

⁷ Powerpoint of Dr. Amy Bombay, “Transgenerational trauma and resilience: Understanding the Root Causes of Contemporary Health and Social Disparities Facing Indigenous Peoples in Canada” at slide 11 (Exhibit 18 introduced in examination in-chief of Dr. Amy Bombay, “Child & Family Welfare”, Winnipeg, 1 October 2018, [Parts II & III Vol 10](#)).

18. Today, there are three times more Indigenous children forcibly removed from their parents or kinship carers and placed into foster care than at the height of the residential school era.⁸ Indigenous children make up about 63% of the children in care in British Columbia, yet only about 10% of the general population of children and youth.⁹ Indigenous families are being investigated for ‘neglect’ at six times the rate for non-Indigenous families.¹⁰ The B.C. Representative for Children and Youth’s office receives 200 critical injury and death reports every month; 48% of those come from Indigenous children in care.¹¹

19. Indigenous families (and disproportionately, Indigenous mothers) are regarded as being unsafe to their children. The language used by the state and mainstreamed in the child apprehension context is not neutral: “child protection”, “child welfare” and “children’s aid” all presume that safety for children resides somewhere outside their homes, families, and communities. The system of child apprehension is powered by the myth that Indigenous children and youth are vulnerable with their families and communities, and will be “protected” in state care, be that residential school or foster home. And yet, the evidence strongly indicates otherwise – that the pipeline of taking children from their homes and communities and placing them in culturally inappropriate and ill-equipped temporary homes away from family and community puts Indigenous women, girls, and Two Spirit youth at a much heightened jeopardy.

20. Breaking family and community ties creates risk, rather than preventing it. The evidence before the Inquiry amply illustrates this point.

21. For example, evidence from Dr. Mary Ellen Turpel-Lafond highlighted the vulnerability of girls in state care, and how state interventions can not only fail to address the problem but in fact add further layers of risk and vulnerability on Indigenous girls. A disproportionate number

⁸ First Nations Child and Family Caring Society of Canada, *Wen:de: We are Coming to the Light of Day* (2005) at p. 8 (Exhibit 55(b) from examination in-chief of Dr. Cindy Blackstock, “Racism”, Toronto, 13 June 2018, [Part III Vol 10](#)).

⁹ Representative for Children and Youth, [Annual Report 2017/18 and Service Plan 2018/19 to 2019/20](#) (September 2018) at p. 40.

¹⁰ Truth and Reconciliation Commission of Canada, [“Canada’s Residential Schools: The Legacy”](#), *The Final Report of the Truth and Reconciliation Commission of Canada* (2015), Vol 5 at p. 33.

¹¹ Representative for Children and Youth, [Annual Report 2017/18 and Service Plan 2018/19 to 2019/20](#) (September 2018) at p. 32; Liza Yuzda and Simon Little, [“Kids watchdog warns of ‘disturbing’ number of youth injuries and deaths”](#), *Global News BC* (9 May 2018) online: Global News <<https://globalnews.ca>>.

of children and youth who are subjected to sexualized violence while in government care are Indigenous girls. In *Too Many Victims*, Dr. Turpel-Lafond reported that:

Of the 121 youth who reported being the victim of sexualized violence while in government care, a total of 74 – or 61 per cent – were Aboriginal girls, despite the fact that Aboriginal girls comprised, on average, only 25 per cent of the total children in care in B.C. during the time period covered by this review.¹²

22. In fact, sexualized violence is the most common type of critical injury involving children and youth in care, identified as 21% of all critical injury reports.¹³

23. The depth of the system failure at work in British Columbia’s approach to Indigenous children removed from their families is illustrated by the experience of Paige, as reported by Dr. Turpel-Lafond during her term as BC’s Representative for Children and Youth.¹⁴ Paige’s life was cut short from a drug overdose at age 19, shortly after she had aged out of the foster care system. During her life, Paige had been in and out of the foster care system. She had struggled with drug addiction and was forced into the drug trade to pay off debts associated with her addiction. At various times, Paige lived in shelters where she traded sex with older men for alcohol. Shortly after Paige’s death, her mother also died of a drug overdose.¹⁵

24. The report found that Paige was treated with professional indifference at every turn, including by the health, education and justice systems:¹⁶

Social workers and MCFD [Ministry of Child and Family Development] as a whole had by far the most and best opportunities to help Paige as well as the lead responsibility in law

¹² Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (October 2016) at p. 1 (Exhibit 39 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

¹³ Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (October 2016) at p. 2 (Exhibit 39 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

¹⁴ Representative for Children and Youth, *Paige’s Story: Abuse, Indifference and a Young Life Discarded* (May 2015) (Exhibit 40 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

¹⁵ Examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#) at p. 77-105.

¹⁶ Representative for Children and Youth, *Paige’s Story: Abuse, Indifference and a Young Life Discarded* (May 2015) at p. 5 (Exhibit 40 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

and policy. The ministry mishandled her file from the very beginning, failing to adequately assess the risk to her as an infant and then continuing to return her to her mother's care rather than pursue other more viable options. One of the best options – an aunt and uncle who were actively interested in caring for her and with whom she had developed a bond – were inexplicably never seriously considered as a placement option, even though they could have offered Paige connection to family, culture and stability – her rights under child welfare legislation in B.C. [...] Paige was left for 3 years in conditions that no reasonable person would find acceptable for their own child. Tolerance of this situation represents an abject failure of leadership and policies by governments at all levels.¹⁷

25. In her testimony, Dr. Turpel-Lafonde described the significance of this particular report:

The findings in this report were different than other findings in reports I made, because not only did I find that this was preventable, but actually the finding in this report was that it was predictable. And, that is a very significant finding, I think, for kind of like a statutory officer to make, which is it isn't that we can learn to prevent. **Actually, the system appeared to accelerate her circumstance to the point where she died.**¹⁸
[emphasis added]

26. Despite the absolute predictability of this tragedy, the child protection system, health care system, social service agencies, education system and police consistently failed in their responsibility to this child and passively recorded her life's downward spiral.¹⁹ The significance of this evidence to understanding the root causes of violence against Indigenous women and girls cannot be overstated. Paige was, like many Indigenous children and youth, rendered invisible within a system that does not and is not designed to appreciate their unique circumstances, particular vulnerabilities and needs.

27. Dr. Turpel-Lafonde's evidence identifies the harms to girls created by the child protection system. Cora Morgan's evidence, rooted in her work as the First Nations Children's Advocate in Manitoba, characterized child apprehension as violence against mothers. She

¹⁷ Representative for Children and Youth, *Paige's Story: Abuse, Indifference and a Young Life Discarded* (May 2015) at p. 7 (Exhibit 40 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

¹⁸ Examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#) at p. 80.

¹⁹ Representative for Children and Youth, *Paige's Story: Abuse, Indifference and a Young Life Discarded* (May 2015) at p. 36 (Exhibit 40 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

testified about how contact with the child welfare system can lead to mothers' murders and suicides:

...one of the things that I learned earlier on, we had this elder – [...] the elder said, you know, the most violent act you can commit to a woman is to steal her child. And, it is. When you take people's children, it is the most violent act. And, it takes your hope away, it takes your purpose away.²⁰

28. Building on the theme of hopelessness, Ms. Morgan talked about how difficult it is for mothers when the apprehension of their children becomes final. She said, "that's when hopelessness sets in. And I think that, you know, these women are losing their lives because the system is stealing their children."²¹

29. Ms. Morgan pointedly addressed the interaction of violence against women and the child protection system, saying:

...stop penalizing victims of domestic violence by apprehending their children; stop – and that one is important to me, because any woman who in – here in Manitoba, any woman or under particular urban centres, if you report a domestic violence, the child welfare system automatically responds. And so, we know that there is an enormous amount of mothers who aren't reporting violence, because they know that their children will be taken, and I think that they shouldn't be further penalized from being a victim of violence to losing their children.²²

Indeed, we know that generations of interference by the state in Indigenous families often means that women do not trust authorities in general and therefore do not report violence, in part because they fear apprehension of their children and in part because they fear the impact of policing in their communities.²³

²⁰ Examination in-chief of Cora Morgan, "Child & Family Welfare", Winnipeg, 1 October 2018, [Parts II & III Vol 10](#) at p. 70.

²¹ Examination in-chief of Cora Morgan, "Child & Family Welfare", Winnipeg, 1 October 2018, [Parts II & III Vol 10](#) at p. 72.

²² Examination in-chief of Cora Morgan, "Child & Family Welfare", Winnipeg, 1 October 2018, [Parts II & III Vol 10](#) at p. 82.

²³ Examination in-chief of Dr. Amy Bombay, "Child & Family Welfare", Winnipeg, 1 October 2018, [Parts II & III Vol 10](#) at p. 175; Catherine Richardson/Kinewesquao, "Creating Islands of Safety for Victims of Violence: A Critical Systems Approach," *Systemic Therapy as Transformative Practice* (Exhibit 55 from examination in-chief of Dr. Allan Wade, "Child & Family Welfare", Winnipeg, 5 October 2018, [Parts II & III Vol 14](#)).

30. The apprehension of Indigenous children and youth is all too often the first of many forms of violence perpetuated against them. For Indigenous girls, the child protection system is a risk factor for further and future experiences of violence, which in turn increases their risk of involvement in the criminal justice system.

31. Indigenous girls in the care of BC's Ministry of Children and Family Development are disproportionately more likely to be victims of sexual violence than non-Indigenous girls. BC's Representative for Children and Youth reports that of girls who had been subjected to sexual violence while in care, those who were age 12 and younger at the time, were four times more likely to be Indigenous than non-Indigenous, and those between the ages of 13 and 18, were twice as likely to be Indigenous.²⁴ Over 60 percent of children and youth who report sexual violence in government care are Indigenous girls.²⁵ Additionally, childhood sexual or physical abuse is statistically linked with a much higher rate of sexual assault in adulthood.²⁶ The high incidence of sexual violence in government care creates a life cycle of violence in the lives of Indigenous women and girls, often rooted in the operation of the child protection system early on.

32. The colonial state's paradigm of "child protection" is not inevitable. Children's safety is and should remain paramount for all of us – but the very system that is purportedly designed to keep children safe is putting them at greater risk for violence, now and in their future lives.

33. There are alternatives to the current approach including flipping the support/apprehension paradigm on its head. The focus must shift to prevention. It is essential to provide Indigenous led and culturally relevant services for pregnant women, families,

²⁴ Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (October 2016) at p. 1 (Exhibit 39 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

²⁵ Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* (October 2016) at p. 1 (Exhibit 39 from examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#)).

²⁶ Canada, "GSS", Canada, Juristat, *Criminal Victimization in Canada, 2014*, by Samuel Perreault, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2015) at 34: 36 per 1000 as compared to 15 per 1000; Alana Prochuk, *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault* (West Coast LEAF, November 2018) at p. 12.

parents, grandparents and other kinship carers to improve economic security, address addiction and mental health issues, and dismantle the legacy of intergenerational trauma.

34. There are several examples of innovative, culturally appropriate, and community-led or community-centred child protection programs and models being developed and implemented across Turtle Island.

35. For example, the Nisichawayasihk Cree Nation Intervention and Removal of Parent Program²⁷ removes parents from the home to help not only support children's immediate needs, but also to support their parents in developing parenting skills. This program also allows community to assist families in rediscovering methods to help them thrive and grow by reconnecting them to their Indigenous traditions and culture. The Nisichawayasihk program is founded in the Cree Nation's traditional teachings and practices about the role of children in the community. This program builds on research-based and traditional views of a child's best interests, which prioritize children remaining in the home and within the community. Many children have feelings of guilt when they are the ones removed from the situation. Cree elders (Keti'yatisak) say "it is the children that create the home." In Cree traditional teachings, the house belongs to them, they should never be forced to leave, and raising children is a community responsibility. This program builds on this wisdom to create a more child, mother, and community friendly model.

36. The Te Lalem program, located within the Sts'ailes Nation in British Columbia, aims at keeping children and families together in a residential facility upon the referral of a social worker.²⁸ Residents learn traditional parenting and basic life skills, participate in Sts'ailes cultural community events as part of their healing and growth experience, and develop and implement individualized safety and support plans.

²⁷ [Intervention and Removal of Parent Program Guidelines: A Community Approach to Reducing the Trauma of Child Apprehension](#) (Nisichawayasihk Cree Nation Family and Community Wellness Centre Inc., 2015).

²⁸ [Te Lalem – Specialized Resource Home](#), online: Sts'ailes: Welcome to Our Land <<http://www.stsailes.com>>; Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia* (2016) at p. 70-71 (Referenced in examination in-chief of Dr. Mary Ellen Turpel-Lafond, "Child & Family Welfare", Winnipeg, 4 October 2018, [Parts II & III Vol 13](#) at p. 260).

37. Another example arises from the United States. It uses the existing legal system and system actors to frame a preventative, more family-centered model of care. The Safe Babies Court Team is an interdisciplinary team including a judge, community members, and early childhood educators who work together to provide services to families and counter the structural issues in the child welfare system that prevent families from staying together and healthy.²⁹ In his report on child protection, Grand Chief Ed John describes the model thus:

The model prioritizes methods of encouraging family reunification, and offers individualized supports to birth parents and families. The program advocates for frequent opportunities for visitation and connection between parents and children, recognizing that this increases the likelihood for reunification, and helps to promote healthy attachments between parents and children. The local teams are working to provide parents with the necessary tools to assist on their personal healing journeys, recognising the need to help interrupt cycles of intergenerational trauma. Services to parents include supports for victims of domestic violence, programs for individuals struggling with substance abuse, and assistance to those facing enduring unemployment.³⁰

Teams undertake unique projects depending on the needs and ideas of the communities they are working with.

38. There are also a few illustrations of progressive programming through the health care system in British Columbia, such as the Fir Square Combined Care Unit³¹ at BC Women’s Hospital and the Sheway³² program in the Downtown Eastside. These programs exempt social workers from reporting requirements under the law to create “child apprehension free zones”. Under both models, mothers are provided with services and support instead of having their

²⁹ Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia* (2016) at p. 140-142 (Referenced in examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#) at p. 260).

³⁰ Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia* (2016) at p. 142 (Referenced in examination in-chief of Dr. Mary Ellen Turpel-Lafond, “Child & Family Welfare”, Winnipeg, 4 October 2018, [Parts II & III Vol 13](#) at p. 260).

³¹ See website: <http://www.bcwomens.ca/our-services/pregnancy-prenatal-care/pregnancy-drugs-alcohol>

³² See website: <http://sheway.vcn.bc.ca/>

children removed. Sheway provides prenatal services and services until the child is 18 months, while Fir Square provides a safe space for birthing mothers.³³

39. These are just a few examples to illustrate how child protection services can be done differently. If we as a society are to effectively address the ongoing crisis in violence against Indigenous women, these exceptions must become the norm.

3. Recommendations:

40. Three years out from the release of the Truth and Reconciliation Commission's Calls to Action,³⁴ few of the recommendations have been implemented. Principle 9 of the TRC's Principles of Reconciliation outlines the key components for transforming the relationship between Indigenous people, the state and settlers: "Reconciliation requires political will, joint leadership, trust building, **accountability**, and transparency, as well as a substantial investment of resources."³⁵ Right now, there is an accountability deficit, particularly in regard to ending the gendered and racialized violence against Indigenous women, girls and Two Spirit people. This accountability deficit hinders the building of trust, the potential for joint leadership and the development of transparency in growing relationships.

41. In this spirit, we urge the Commissioners to be realistic about how your recommendations will be used. The Inquiry's recommendations are non-binding; their implementation is dependent on the creation and mobilization of political will and joint leadership. As the Inquiry has heard repeatedly, recommendations from past inquiry or commission processes have gathered dust on the shelf. Let this knowledge inform how the recommendations are framed. As the Inquiry's work nears its end, the persuasiveness of the recommendations will now be the most important measure of the Inquiry's success.

³³ Lorraine Greaves and Nancy Poole, "[Victimized or Validated? Responses to Substance-Using Pregnant Women](#)" (2005) 24 Canadian Woman Studies 87.

³⁴ Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (2015) (Exhibit 63 from examination in-chief of Dr. Cindy Blackstock, "Racism", Toronto, 13 June 2018, [Part III Vol 10](#)).

³⁵ The Truth and Reconciliation Commission of Canada, [What We Have Learned: Principles of Truth and Reconciliation](#) (2015) at p. 4 [emphasis added].

42. The Inquiry’s final report and recommendations will be used to set the stage and the frame for how violence against Indigenous women, girls, and Two Spirit people will be addressed moving forward. For this reason, the Inquiry must **think big, bold, and nuanced**. Its recommendations must be grounded in, and imbued with, the experience, insight and knowledge of Indigenous women, girls and Two Spirit people. The scope of any recommendations will only be narrowed going forward; this is the opportunity for the Inquiry to frame both the enormity of the crisis, and the necessity and potential for change. The Inquiry’s recommendations must be intersectional. The path forward does not lie in detailing a framework that is solely about racism, or misogyny, or economic inequality. Rather, it lies in drafting recommendations that understand how these systems interact to put Indigenous women, girls and Two Spirit people in the most vulnerable place in our society. There may be a temptation among those reading the Inquiry’s final report and recommendations to frame the crisis as a “race problem” only; such a framing will inherently limit the effectiveness of recommendations and initiatives for change going forward.

43. Your report and recommendations will also be used by Indigenous and non-Indigenous advocates to shame and inspire politicians into action and investment. For this reason, we urge the Inquiry to **be strategic and targeted** in its recommendations. Make recommendations that speak directly to the public and will raise public understanding of both the scope of structural and systemic violence against Indigenous women, girls, and Two Spirit people and the path forward to dismantle systems of oppression. Engagement of the public is the key ingredient to raising political will, without which the implementation of a sustained and meaningful response is impossible.

44. The Inquiry’s final report and recommendations will also be used as a yardstick to measure progress. For this reason, we urge the Commissioners to **be specific and action-oriented** in the recommendations. If this process yields only vague or overbroad descriptive recommendations or recommendations that are more focused on the past than on the future, the ability of advocates to use the Inquiry’s final report and recommendations to hold governments to account will be significantly diminished.

45. West Coast LEAF has two sets of recommendations that we urge the Inquiry to adopt. The first set concern the need to create accountability mechanisms to ensure that the outcomes of this Inquiry live on beyond the tabling of the report at committee. The second set are specifically addressed at the various legal regimes in place across Turtle Island that purport to protect Indigenous children.

a. **Accountability mechanisms**

46. West Coast LEAF urges the Inquiry to recommend that within 12 months of the release of its report, Canada and each provincial and territorial government must:

(1) Table population-specific Action Plans which set out for each Recommendation in the Report, how they intend to address the gap, the resources that the governments will devote including specific funding commitments, and a timetable to complete the work (as recommended by Inuit Pauktuutit in their closing submissions). These action plans must be rooted in local cultures and communities, developed with local Indigenous nations and women's leadership, and widely publicized;

(2) Commit to annual interdepartmental reporting by government to the public;

(3) Jointly appoint a national watchdog for the implementation of the recommendations. Akin to a Representative for Children and Youth, a Correctional Investigator, or an Ombudsperson, the watchdog would monitor state responses to violence against Indigenous women, girls, and Two Spirit people. The office must be developed to ensure cultural safety, and be accessible and welcoming to the diverse communities and perspectives of Indigenous peoples. The office must, at minimum, be staffed with Indigenous women and Two Spirit people in key leadership roles.

The mandate of the watchdog should be to: (a) ensure accountability and transparency in the governments' implementation of the Inquiry recommendations, (b) continue the work of the Inquiry by engaging in ongoing systemic inquiries and investigations as matters arise, (c) receive complaints about specific incidences of inadequate state response to violence against

Indigenous women, girls, and Two Spirit people and investigate and report on those complaints where appropriate.

This office should be set up as an independent officer of both Parliament and the provincial and territorial Legislatures, holding **all** governments to account. Many governments have independent officers who report directly to the legislature, although none have been set up in this intergovernmental manner. While this cross-jurisdictional mandate will be unique and perhaps politically difficult to establish, it is necessary to have a national watchdog for a problem that spans jurisdictions and legal systems.

The role of the watchdog will be to hold government to account while having a direct role in government, which is what sets it apart from civil society organizations that already act as watchdogs of various sorts but do not have that official status or direct channels of communication and influence. Government simply reporting on its own progress, while an important mechanism for accountability, is insufficient and risks turning the work of the Inquiry into a political football.

Independence from government is built into the legislative framework and mandate of independent officers like this one, including pegging salary to judicial salaries. Systemic reports, investigations, and recommendations are presented directly to legislatures. Adequate resources and the ability to control their own staffing are key elements of independence.

There is a risk in setting up state funded accountability mechanisms that accountability can become paternalism dressed in sheep's clothing. In order to avoid the replication of colonial values in the implementation of the Inquiry's recommendations, all accountability mechanisms must be based on mutual or reciprocal accountability frameworks, agreed upon on a nation to nation basis. Key elements of mutual accountability frameworks include: nation to nation trust; sufficient, predictable, long term, and equitable funding; a focus on outcomes (rather than outputs); mutual reporting obligations; genuine dialogue between nations based on consent and common values; and a recognition of capacity (accountability framework should be tailored for individual nations based on their capacity).³⁶ Scholars argue that mutual

³⁶ [Review of Accountability and Mutual Accountability Frameworks](#) (Institute on Governance, May 2017) at p. 10-14.

accountability incorporates Indigenous values around relationships and accountability.³⁷ There are a number of mutual accountability frameworks in place or currently being negotiated, such as First Nations health services in BC³⁸ and the Assembly of First Nation and Government of Canada negotiations on a new fiscal relationship.³⁹ We urge the Inquiry to ensure that mutual accountability frameworks inform all of its recommendations.

b. Child protection reform

47. There must be a nationwide paradigm shift in child protection services. Apprehension must be the last option after all other methods of support for the family are provided.

48. This would have the following benefits: supporting mothers to parent and maintain deep bonds with their children; making mothers less vulnerable to mental illness, suicide, and violence; ensuring that children are able to maintain essential ties with their families, cultures, and communities; reducing the vulnerability of children by keeping them out of government care, which has itself been shown to harm Indigenous children through, among other things, high incidents of sexual and other violence; and rebuilding communities and allowing cultural and traditional practices to take root again, revive and adapt to social change, having been lost, eroded and misunderstood through colonialism. It is important to remember here that destroying community and family connections was not just an unfortunate collateral consequence of colonialism, but rather a key plank of the colonial philosophy. Decolonization or reconciliation necessitates righting this wrong. So keeping families and communities together has both the practical benefits of reducing the risk of violence for Indigenous women and girls, and also has the normative benefits of restitution with Indigenous peoples.

49. For all the reasons we detail above, your report must contain a strong recommendation for a national strategy on child apprehension. Legislation and attendant funding must support

³⁷ Derek Kornelsen, Yvonne Boyer, Josée Lavoie and Judith Dwyer, "[Reciprocal Accountability and Fiduciary Duty: Implications for Indigenous Health in Canada, New Zealand and Australia](#)" (2015/2016) 19(2) AILR 17 at p. 17.

³⁸ First Nations Health Authority, [Governance and Accountability](#), online: First Nations Health Authority <www.fnha.ca>; Oral closing submissions of First Nations Health Council (FNHC), Calgary, 28 November 2018.

³⁹ Government of Canada, [A new approach: Co-development of a new fiscal relationship between Canada and First Nations](#), online: Government of Canada <<https://www.canada.ca/>>

the jurisdictional transfer and exercise of governmental powers over child welfare to Indigenous communities, as highlighted in Grand Chief Ed John's report.

50. The strategy must be based on the principles of international law, including Articles 7 and 30 of the Convention on the Rights of the Child⁴⁰:

Article 7:

The child shall have [...], as far as possible, the right to know and be cared for by his or her parents

Article 30:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

The strategy must also be based on the relevant principles of the United Nations Declaration on the Rights of Indigenous Peoples,⁴¹ including:

Preamble: Recognizing in particular 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 7: Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

51. The national strategy must redefine the best interests of the child to ensure that it is responsive to the needs and interests of Indigenous children and addresses the underlying reasons for violence against Indigenous women and children, including the ongoing colonial project of removing children from their families. The revised definition of the best interests of the child must include: the right of children to be kept in the home wherever possible, so a parent or care giver should be removed before a child is; the right of children to be kept with

⁴⁰ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3 (entered into force 2 September 1990, accession by Canada 13 Dec 1991) [CRC].

⁴¹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Annex), UNGAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2007) 15 [UNDRIP].

their families, wherever possible, relying on a broad definition of family to include a child's primary attachment figures; the right to be raised according to one's traditional and cultural values and practices, including the right to learn the language of one's community and be raised within that community; the right to be free of violence and witnessing violence. Witnessing violence is violence and must be recognized as such. Families must be supported and violence addressed wherever there is family violence, even if the violence is directed at a parent rather than the child.

52. The rights and wellbeing of children are inexplicably bound up with the rights and wellbeing of their mothers, grandmothers and aunties. The national strategy must indicate that government services must support mothers in culturally appropriate ways to leave abusive relationships, including the provision of legal aid, housing, and social assistance. Mothers should not have to choose between their children's safety inside an abusive home and their economic insecurity if they leave that abuse.

53. Finally, the national strategy must commit to making all hospitals safe birthing zones for mothers by ending removals of babies from their mothers at the hospital. Care plans can be put into place immediately, led by family, community, and local organizations.

54. Innovative and tailor-made approaches must be the norm. There is no one model that will work for every family and every community. We have reviewed in these submissions just some of the innovative and culturally specific models for child protection that are emerging in many jurisdictions. The dominant paradigm for child protection of removing children from their families, homes and communities is not working. The national strategy must turn this paradigm on its head and reimagine how to keep children safe within their extended families and their communities.

55. While we recognize that the federal government has taken recent steps towards affirming inherent self government in the realm of child protection, we urge the Inquiry to ensure that this promise is followed through with measurable, well-resourced, specific, and timely actions, as required by Principle 9 of the TRC Report. The federal government's plan

must contain the commitments we have described above, and all actions must centre Indigenous women's leadership.

Conclusion

56. Over the last two years, the Commissioners have heard a clarion call to action. The path towards equality, justice and safety for Indigenous women, girls, and Two Spirit people – the path out of our ongoing national crisis – is paved with self-determination and mutual accountability. In particular, the state must relinquish those prevailing colonial and paternalistic attitudes that continue to oppress and subjugate Indigenous peoples. Decolonizing the relationship between the state and the diverse communities of Indigenous peoples, and between Indigenous peoples and settlers, must occur at the nation-to-nation level and at the grassroots level. In respect of the apprehension of Indigenous children and youth, the state must relinquish the arrogance of presuming Indigenous children are safer outside their families and communities than inside them. The evidence has clearly shown that the removal of children from homes, cultures, communities, and languages is an essential component of the vulnerability of Indigenous women, girls, and Two Spirit people at every stage of life. The submissions of West Coast LEAF and so many others express hope that change is possible: the Inquiry's recommendations will determine whether that hope is well-founded.