

Written Submissions for the Association of Native Child and Family Services Agencies of
Ontario

To the National Inquiry into Missing and Murdered Indigenous Women and Girls

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ANCFSAO Association of
Native Child and
Family Services
Agencies of Ontario

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Introduction

The members of the Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) practice child welfare, delivering services to Indigenous children, families, and communities throughout Ontario. They do so within a statutory, policy, and funding regime that at times requires them to adhere to practices that they know are not only ineffective in protecting Indigenous girls and women, but actually harms them and diminishes their safety.

This Inquiry has heard extensive evidence of the risks and harms arising from non-Indigenous child welfare practices. Not every missing or murdered Indigenous girl or woman had direct contact with the child welfare system, but virtually all had at least indirect involvement, through relatives or community members. Many, and likely most, of the girls and women lost did have direct involvement with child welfare authorities, whether as children in care, adoptees, as siblings of children in care or adoptees, as the daughters of women raised in care or adopted out, or as the mothers of children taken into care. Some had been subject to all of these forms of child welfare. The ANCFSAO urges the Commissioners to find, based on the evidence that has been placed before it, that non-Indigenous child welfare practices are a readily identifiable cause in the deaths of Indigenous girls and women. There is ample evidence before the Inquiry for the Commissioners to find that *but for* their experience of non-Indigenous child welfare practices, many of these sisters; daughters and mothers would still be alive today. There is no longer any doubt that transforming child welfare practices is a critical and urgent task. Yet it is one that has not seriously begun throughout Canada.

The legitimacy and purpose of child welfare regimes are premised exclusively on promoting the “best interests” and protection of children. Sadly, but certainly, the history and current practice of child welfare in the lives of Indigenous children, families, and communities have failed to protect children and promote their best interests. Beyond this failure, the evidence before this Inquiry makes clear that the practice of child welfare has not only failed to prevent tragic losses, but has created or contributed to risk and harm that created the conditions for loss.

The risk, harm, and suffering caused by systemic structural discrimination (of which child welfare is only one component, for Indigenous peoples) is not limited to the girls and women who have been lost, or their families and communities. For every life lost, there are hundreds of other Indigenous girls and women who experience pain and vulnerability and who cannot live in comfort or safety. Identifying and addressing the systemic factors that create vulnerability that leads to the loss of life will help to prevent further losses and improve the lives of Indigenous girls and women, their families and communities.

Given that the proportionate rates of Indigenous children in care are increasing rather than decreasing, the ANCFSAO submits that the immediate transformation of child welfare practices, as they relate to Indigenous peoples, is a crucial element in preventing further losses and suffering.

The ANCFSAO’s members know which practices and services are effective in serving and protecting Indigenous children and families. The members have identified approaches, legal

bases, and resources that they believe will change the practice of Indigenous child welfare from a source of risk and harm to a mechanism for intergenerational recovery and healing.

The ANCFSAO's recommendations and submissions are intended to assist the Inquiry in arriving at findings and recommendations that, if adopted, will transform Indigenous child welfare and thereby prevent further loss, suffering, risk and harm to Indigenous girls and women.

History of Indigenous Child Welfare in Canada

Residential Schools

Canada opened its first "Indian Residential School" in British Columbia in 1840. The last Indian Residential School was not closed until 1996. During the 156 years that Indian Residential Schools existed, Indian Agents would travel across their designated jurisdictions and take children from their families and their communities. These acts were part of Canada's strategy of assimilation, to remove the so-called "Indian problem." Small children were suddenly away from all the people who loved them and cared for them. They were alienated from their territory, community, culture and language.

As Dr. Amy Bombay testified:

[W]e heard a lot of stories from service providers who described that their client talked about the -- being removed from their communities and their traditional teachings. And so, Step 1, you know, they isolated children from their normal socialization process. [...]

They then also with -- created punitive and deprived living conditions in residential schools. [...]¹

Sixties Scoop

In the 1960's, there was a systemic shift to welfare as the basis upon which children were removed from their families. Children were regularly being taken from their parents permanently and adopted to settler families. Whether we are discussing the above mentioned circumstances within the context of residential schools, the 60's Scoop, or current group homes and foster homes, it remains the case that children in care are the most vulnerable in our society.

Intergenerational Harm

The policies underpinning the Indian Residential School system and the 60's Scoop have been condemned as the wrongdoings of a past generation. However, the harm continues to be felt by communities in what has been termed 'intergenerational harm'. Intergenerational harm represents the passing down of behaviours associated with having suffered, and not recovered, from childhood collective trauma linked with the removal and placement in residential school. [2]

Risk and Harm: The Experience of Indigenous Children and Families of Child Welfare

Exposure to Harm while in Care

In the first hearing, the Commission heard from Diane Lilley. She told the story about her sister's experience in foster care. Tina Selena Washpan was the victim of sexual abuse by her

foster/adoptive father. He would send Diane and her other siblings away and while their foster/adoptive mother was working night shift would:

“molest her, and then he would give her money to keep her quiet, and he’d tell her if you ever told anyone I would kill you, I’m gonna kill you and I’m gonna tell your sister and brothers that you ran away and we don’t know what happened to you, you vanished.”ⁱⁱ

This is one of many examples of violence against Indigenous girls in care. As the Commission heard, Tina was silenced and ultimately entered an abusive relationship. She attempted to escape and was hitchhiking to Saskatchewan when, as Diane states in her testimony, “on the way there she never made it.”ⁱⁱⁱ

Dislocation from Community and Culture

This Inquiry has heard numerous accounts of Indigenous children and youth being moved far, even thousands of kilometers, from their communities and families, in order to secure a foster placement or to receive specific services not available within or near their communities. Children are sometimes removed for years and lose any meaningful access to their families, cultures, territories, and communities. This practice not only precludes culturally and community-based placements and services, it severs the very relationships that ANCFSAO has found to be vital to the safety and well-being of the child, in the moment and throughout their lives.

Children taken so far from home are left without vital connections and supports when their placements break down, or when they encounter the dangers and influences in, for example,

group home care. They become vulnerable to all the harms that this Inquiry has heard contribute to tragic loss.

In Thunder Bay, there are a significant number of Indigenous children who must travel there for school, due to their own communities not having enough resources to provide a comparable local education. Following a concerning spike of deaths of children in care, Ontario's Coroner established an Expert Panel to examine the deaths of 12 young people who died while in the care of a Children's Aid Society or an Indigenous Child Well-Being Society between January 1, 2014 and July 31, 2017. Of the 12 young persons, 8 were Indigenous, and all of them had a history of mental health challenges.

The Office of the Chief Coroner of Ontario tasked the Expert Panel with:

- Reviewing and assessing the services and supports provided to the 12 young people;
- Identifying any commonalities and/or trends arising out of the review and assessments of the deaths;
- Identifying any systemic issues or concerns arising out of the review and assessment of the deaths;
- Providing expert opinion on the extent to which current and forthcoming plans, activities, legislation, regulations, policies and practices, including the activities outlined in *Safe and Caring Places for Children and Youth: Ontario's Blueprint for Building a New System of Licensed Residential Services* and initiatives underway in the child welfare and children's mental health sectors address any issues or concerns identified; and

- Making recommendations that may assist in preventing further deaths.

Following a process that involved examining the records of various service organizations, reviewing details regarding the deaths of each youth, receiving information from families, meeting young people with lived experience and meeting with society workers, the Expert Panel produced its report in September 2018, titled *Safe with Intervention: The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*. The recommendations contained in this report should inform the recommendations from this Inquiry.

The Panel made the following recommendation which addresses dislocation as an aggravator of harm:

Caring is a shared responsibility that crosses organizational, sectoral, geographic and jurisdictional boundaries. Barriers between systems must be eliminated or be made unnoticeable to clients. Services must be provided to young people and their families where they are, wherever possible. Where it is not possible, distances should be minimized.^{iv}

ANCFSAO requests that the Commission adopt this recommendation, and make the following recommendations in order to prevent such removals:

RECOMMENDATIONS

- 1. Adopt the Expert Panel's Recommendation, above, regarding locality of services.**

2. Ensure that provincial and federal funding models permit and prioritize the delivery of services to children living within Indigenous communities, no matter how remote. In particular, governments ensure the availability of dedicated, permanent funding for Indigenous communities:

- Infrastructure for emergency family receiving homes,
- Homemaking for families struggling with home maintenance, hygiene, etc.
- Mental health services;
- Funding formula that supports families, including extended family members, caring for children

Harm to Mothers as a Result of Child Apprehension

The Commission has heard numerous times that the most violent act that can be committed against a woman is apprehending her child. That first instance of violence from the apprehension of a child then spirals and leads to further violence.

During the Thunder Bay hearings, Diane Geissler testified about the devastating impact of her and her brother's apprehension by Child and Family Services from their mother. They were victims of the 60's Scoop. Diane testified:

The loss of her children devastated my mother. She didn't know where her children were, even though we were adopted into the nearby community of Fort Frances.^v

After significant investigation by Diane, she was able to piece together the last few days of her mother's life.

She was hitchhiking from Thunder Bay to B.C. because she heard one of her children might be out there. My brother was. She never made it. Ten kilometres outside of Calgary, she was killed.^{vi}

Mothers are not only at risk of physical violence as a result of their children being apprehended, but they are also subjected to deep and profound psychological and emotional harm. In the closing submissions in Calgary, Awo Taan Healing Lodge's counsel submitted:

And here's what else happens in shelters, because [the] Alberta government has an apprehend first policy in child welfare, folks, the kids have gotten apprehended. The woman comes to Josie and says, 'Oh. I don't have my kids. I guess I'll just kill myself.' Last night on the phone Josie told me that. I said, 'Josie, what happened to her?' Silence. 'Darrin, she killed herself.'^{vii}

This Inquiry has heard countless examples of the harm caused to Indigenous women from the apprehension of their children and the intergenerational effects of the residential school system, 60's Scoop and the modern but inadequate child welfare system.

The Children of Victims Placed in Care

In Thunder Bay, the Inquiry heard from Cee Jai Julian, who shared her truth and her experiences in foster care after her mother was violently assaulted. Cee Jai shared about how she and her brother were forced to eat on the floor simply because they were Indigenous. Cee Jai testified about the numerous negative experiences she had and that out of everything, she just wanted to be with her mom. Cee Jai testified that:

Growing up in foster care, I just wanted to be loved, and not live out of a suitcase. I wanted to be with my mom, and my brother, and sister. All the broken promises from social workers.^{viii}

Cee Jai's observations about the negative impacts of the child welfare system are important. First, her initial engagement with child welfare was not due to protection concerns in the conventional sense of neglect and abuse, but rather because her mother was a victim of abuse. Second, once in foster care, she was actually subjected to abuse.

Similar, stories to Cee Jai's have been heard throughout the Truth Gathering Process. ANCFSAO submits that children should not be apprehended and removed from their families and placed in non-Indigenous foster care. This is particularly true if the primary concern and reason for apprehending the child is that the mother is a victim of violence. Rather, supports should be in place to keep the mother and children together.

While in Edmonton, the Inquiry heard testimony from Melanie Dene who shared the story of her cousin Shelly Tannis Dene. Shelly has been missing since August 2013.^{ix}

Melanie gave testimony about the son of her cousin, Ivan. When his mother went missing in 2013, Ivan was apprehended and placed into foster care. He has since been adopted by a family in British Columbia. Melanie said before the Commission:

Through this whole process, as our family, we try to – to adopt him. And because that was the only thing that we had of her left.^x

When asked whether or not she was given reasons as to why Ivan could not be placed with her and other members of his family, Melanie testified:

I don't know what the reasons are, you know? When you – when you can be able to provide a home for a child, especially when it's a – a member of your family, you would think that the courts would be more open to placing that child into their family circle, as opposed to outside of that.

I'm not sure why Ivan was not placed with you know, Shelly's auntie who had applied, myself who had applied, Candace, which is Shelly's sister. I don't know what it is that you need to do or to be recommended, or to be looked at as a safe home.^{xi}

As a result, Ivan will now be raised away from his family and without connections to his community.

Promoting Safety: Effective Interventions

The evidence before the Inquiry establishes that there is a clear need for child welfare service providers to promote safety through effective interventions. In this regard, the ANCFSAO invites that Commission to consider and adopt the recommendations of the September 2018 Coroner's Expert Panel's report on the deaths of children in care in Ontario.

One of the findings of the Expert Panel on the Deaths of Children and Youth in Residential Placements concerns the lack of service system integration in the child welfare context. A lack of

service integration between, for example, schools, police, recreational programs, cultural programs, local treatment, children's aid societies and other service providers meant that none of the twelve young people who were the subject of the Expert Panel's report received coordinated and integrated care from the outset of their involvement with the systems designed to protect them.

The Panel made the following recommendations to the Ministries of Children, Community and Social Services, Education, Health and Long-Term Care, and Indigenous Affairs:

- Identify and provide a set of core services and support an integrated system of care for young people and their families across a wholistic continuum, to every child in Ontario. Services must include health, mental health and wellbeing, education, recreation, child care, children's mental health, early intervention services, prevention services and developmental services. Service provision should be geared to the needs, and intensity of needs, of each young person and family.

Specifically:

- a. Undertake community needs assessment to identify service gaps and opportunities for service realignment against the identified set of core services.
- b. Address systemic pressures, inequities and gaps in the availability of mental health treatment beds for young people.
- c. Define and make public standards pertaining to the geographic availability of each core service.^{xii}

The Panel found that although many of the young children interacted with multiple systems of care, the services they received were fragmented, suffered from a lack of information-sharing amongst service providers, and were driven by the structures and systems in place, rather than the needs of the young people, their families and communities.^{xiii} In some geographic areas, there was an absence of structures in place, resulting in limited to no service availability (let alone coordination amongst service providers). The experience of limited service availability, as this Inquiry has seen, is most pronounced in Indigenous communities. To address this disparity, the Expert Panel called for standards to be put in place regarding maximum distances for core services, including schools in place in each First Nation community in Ontario.^{xiv}

The concept of integrated systems of care goes hand in hand with the concept of a holistic approach to supporting and protecting children. The Panel further recommended:

- Develop a holistic approach to the identification of, service planning for and service provision to high-risk young people (with or without child welfare involvement) that supports continuity of care to age 21.

In addition to a number of specific sub-recommendations, the Panel recommended:

- Establish local transdisciplinary teams responsible for service planning for young people identified as high-risk youth, regardless of ongoing child protection involvement. Include the Navigator and Indigenous Elder(s) as part of the team.^{xv}

The Panel identified the establishment of a transdisciplinary team, in a circle of care model, as a means to address the current deficiencies in system integration. A transdisciplinary team is better equipped to share information, to understand what services are actually available for the young person and to understand and to agree as to who has the responsibility of providing the specific services.^{xvi}

RECOMMENDATIONS

3. Adopt the recommendations of the expert panel report relating to early interventions and best practices.^{xvii}

Prevention as Protection

Preventing children from being taken into care (“Prevention”) is something that most First Nations’ organizations have been doing outside the scope of provincial legislation and funding, and completely outside the scope of federal funding, until the Enhanced Prevention Funding Approach was established in partial and interim response to the First Nations Child and Family Caring Society case against Canada at the Canadian Human Rights Tribunal.^{xviii}

The type of work associated with Prevention has largely been developed by First Nation organizations, in accordance with the unique practices and traditions of the Nations they serve. It has expanded, partly in response to the harm occurring from mass removal of Indigenous children due to modern non-Indigenous child welfare practices, and partly down to there being increasing space for inherent principles to inform the best practices of Indigenous child welfare, through program devolution and funding of Indigenous communities to control and deliver their own services to their communities.

Prevention is what enables children to continue to have loving relationships with healthy parents, who can address their needs. Prevention is truly what protects children from the types of harm that we see associated with being placed in foster care.

The most important bond a child can have is with their own biological family. Where there are issues affecting the ability of the parents to ensure the health, safety, and emotional wellbeing of their children, the go-to response has historically been to replace the parent, rather than help the parent with the issues affecting them, so they can be the strongest support for their child. This has the effect of protecting a child temporarily from being affected by what their parent is suffering, but has the long-term impact of restarting the clock on Intergenerational Colonial harm every time this method is used.

Courts repeatedly decline to be places to right historic wrongs in respect of child welfare cases.^{xix}

The legislation in place continues to repeat historic wrongs against Indigenous children because it is focused too heavily on removal of children and replacement of parents, rather than healing the intergenerational effects of Colonialism, displacement, and residential schools (the impacts of which Courts must take judicial notice).^{xx}

As Mohawk Activist, Ellen Gabriel, testified (to paraphrase), it is not a matter of using history as an excuse for why harm should happen to a child, it's a matter of rebuilding Indigenous Nations to recover from the harms enacted against their parents, grandparents and ancestors. She testified that Indigenous mothers continue to be stereotyped as dysfunctional or incapable.^{xxi}

“If the system wants us to work with it and to trust us, it needs to change dramatically”^{xxii}

“...all of those things as definitions [political, social, cultural, religious, moral, economic, biological, and physical genocide]^{xxiii} have been attacked, our very identity, our very essence has been attacked as a people.

We have been - - you know, I think genocide is a word that people tend to go away from, but the elders that taught me, taught me that it was genocide that happened”^{xxiv}

RECOMMENDATIONS

- 4. Provinces reform child welfare legislation to make “prevention measures”, i.e., services, resources, and interventions that serve and protect children within their families and communities, mandatory for Societies;**
- 5. Provinces reform child welfare funding formulae to dedicate most resources to prevention services than to protection resources.**
- 6. All governments (Indigenous, provincial, and federal) enhance prevention and protection services specifically oriented towards intergenerational recovery from the effects of colonization, residential schools, and non-Indigenous child welfare practices.**
- 7. Indigenous child welfare services models be developed, reformed, and resourced which prioritize the availability and delivery of services within**

communities, such that services are available to children, at home and delivered in a timely way.

Indigenous Laws and Practices: Inherent Jurisdiction

Provincial statutes:

ANCFSAO's members operate within a legal, statutory, and regulatory framework constrains their ability to work effectively with and on behalf of Indigenous children.

Ontario's CYFSA, for example, permits and requires Societies to emphasize preventative and "least intrusive" measures (s.1(2), *Child, Youth and Family Services Act*) but fails to particularize such measures. Instead, the statute belabours and details the procedural requirements and considerations for Societies apprehending children. Funding models reflect these imperatives with unlimited funding available for the care of children who have been apprehended, but severely limited funding available for truly preventative measures that would permit children to safely remain at home.

The statute does not acknowledge or permit the operation of Indigenous jurisdiction over the care and protection of children, other than through the delegation of authority from the province to Indigenous agencies. The regulatory regime that accompanies the provisions of the statute effectively prescribes the delivery of services. The combined effect of the statute, regulations, and funding models employed is to preclude the exercise of Indigenous jurisdiction over the care and protection of children, and to prevent Indigenous agencies from employing best Indigenous practices in relation to the services they provide to Indigenous children and families.

No Indigenous people or nation in Canada has ever, to the best of our knowledge, surrendered its right to govern itself with respect to the care and protection of its children and families. Nor has the right of any Indigenous people or nation ever been extinguished through a constitutionally valid instrument. The operation and paramountcy of provincial law was merely assumed by federal and provincial governments, from the Sixties onwards.

This assumption is and must be challenged, if the necessary transformation in the care of Indigenous children is to occur.

RECOMMENDATIONS:

- 8. All provinces adopt legislative reform that both acknowledge and encourage the exercise of inherent jurisdiction over the care and protection of children and families by FNMI communities, where such communities have asserted and have chosen to exercise such jurisdiction.**

- 9. All provinces and the federal government fund programs, research, and services by FNMI communities whose objective is to articulate, recover, and adapt Indigenous laws and practices with respect to the care and protection of children and families, and to assist in their and their communities' recovery from the legacy of colonization, residential schools, and non-Indigenous child welfare removals.**

Funding

Child welfare, in its current form, is often too little, too late, with Societies left to pick up the pieces through traumatic protection measures when earlier, dedicated and focused prevention measures would and could have served to actually protect Indigenous children and families by addressing the manifestations of colonization, poverty, and intergenerational trauma, in a supportive manner, at home, with and through an intact family. But the resources are not there for these approaches.

In Ontario and elsewhere, all services for Indigenous children who have been apprehended and are in the care of the state, are fully funded by the province, regardless of the number of children a children's aid society has in its care. Funding for services for Indigenous children that will address risk and harm, but leave them in the care of their family, is the subject of restricted program funding; agencies must limit the services they provide to Indigenous children and families they provide based on capped budgets. The extent of funding provided for children in the care of their families is dwarfed by the funding available and provided for children in care. This funding approach has the unfortunate but foreseeable result of incentivizing the removal of Indigenous children from their families.

Canada has, very recently, recognized this paradox as one of the causes of the human rights and humanitarian crises of Indigenous child welfare.

In statements made November 30, 2018, Ministers Philpott and Bennett emphasized the importance of moving forward with federal legislation. Particularly, in the words of Minister Bennett,

The proposed legislation will reaffirm the rights of Indigenous children and place the much needed supports for communities to ensure that Indigenous children can grow up as proud First Nations, Métis and Inuit with a strong sense of secure personal cultural identity and better health, education and economic outcomes.^{xxv}

ANCFSAO submits that the emphasis needs to be placed on supports for communities and that without adequate and equitable supports, addressing the crisis of Indigenous children in care will not be possible.

The premise of this proposed legislation and commitment to providing supports to Indigenous communities arises out of an emergency two-day meeting on Indigenous child welfare, hosted by Minister of Indigenous Services, Jane Philpott, having labelled it a humanitarian crisis.^{xxvi} The emergency meeting was premised on the severe over-representation of Indigenous children in child welfare systems.

Federal, provincial and territorial governments and Métis, Inuit and First Nations leaders, Elders, youth, community service organizations and advocates were gathered together for the purposes deliberating on solutions to the crisis. Again, there were calls for effective collaboration based on partnerships, yet this time with talk about transference of jurisdictional control and legislative reform, adequate and flexible funding, culturally appropriate prevention and needs-based service delivery, and data strategies to support effective solutions.^{xxvii}

Following the two-day emergency meeting, Minister Philpott made the following statement:

Full reform of the child welfare system is needed. To achieve this, all partners – federal, provincial and territorial, First Nations, Inuit, and Métis Nation – must work together, and put children and families first. The focus must shift to prevention and family reconciliation, and away from apprehension. This meeting served to acknowledge the severity of the crisis and helped determine how everyone must be part of the solution.^{xxviii}

Minister of Crown-Indigenous Relations and Northern Affairs, Carolyn Bennett also made remarks following the conclusions of the two-day meeting. Her remarks are worth noting:

Youth in care, youth aging out of care and the grandmothers have been very clear – the current system is not working for Indigenous children. First Nations, Inuit and Métis children have the right to grow up proud of their history, language and culture. Outcomes will only improve when communities regain control over the decisions affecting their children and families. Communities want to focus on healing, caring for their children, and bringing their children home.^{xxix}

A summary of this emergency two-day meeting has been tendered as evidence as a Rule 33 Submission from the Government of Canada. At the conclusion of the meeting, the Government of Canada publicly committed to the following six points of action:

1. Continuing the work to fully implement all orders of the Canadian Human Rights Tribunal, and reforming child and family services including moving to a flexible funding model;
2. Shifting the programming focus to prevention and early intervention;
3. Supporting communities to draw down jurisdiction and explore the potential for co-developed federal child welfare legislation;
4. Accelerating the work of trilateral and technical tables that are in place across the country;
5. Supporting Inuit and Métis Nation leadership to advance culturally-appropriate reform; and
6. Developing a data and reporting strategy with provinces, territories and Indigenous partners.^{xxx}

With respect to point of action number 3, on November 30, 2018, the federal government announced that it would be introducing federal child welfare legislation which will be co-developed with the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis Nation.

The goals of this proposed legislation are to:

1. Affirm that the inherent right to self-government under Section 35 of the Constitution Act, 1982, includes legislative authority in relation to child and family services;

2. Affirm that the legislation will provide for a distinctions-based approach, consistent with the Nation-to-Nation, Inuit-to-Crown and Government-to-Government relationships with Canada;
3. Affirm the right of First Nations, Inuit and the Métis Nation to create laws and policies in relation to child and family services while also recognizing distinct and diverse rights, histories and practices;
4. Acknowledge there is no ‘one size fits all’ model or approach, but rather a range of possible models which can be freely determined by Indigenous peoples through their representatives and governments;
5. Include a comprehensive ‘best interests’ provision for First Nations, Inuit and the Métis Nation; and
6. Establish guiding principles to ensure Indigenous children, youth and families receive equivalent care and outcomes as other Canadian children, youth and families.^{xxxii}

The announcement of this legislation comes at an important, yet inconvenient time. It is important that the federal and provincial and territorial governments act to address the crisis of Indigenous children in care, but the timing is inconvenient in that a draft cannot be examined for the purposes of this Inquiry.

The goals associated with the repatriation of jurisdiction over children and families to Indigenous communities in addition to the use of a flexible model or approach that recognizes the diversity of Indigenous nations is promising. This legislation would, however, only relate to services

provided to Indigenous children living on reserve and therefore the subject of federal funding. Many Indigenous children in care received services and child welfare interventions from provincially funded agencies. For this reason, ANCFSAO recommends not only Canada follow through with the contemplated legislative change, but that all provinces adopt similar legislative reform.

With respect to funding Indigenous versus non-Indigenous child and family agencies, the ANCFSAO submits that immediate action needs to be taken to address the current funding pressures and shortcomings facing Ontario child welfare agencies. The ANCFSAO urges the Commission to recommend that a distinct, equitable and sustainable funding model for Indigenous agencies be immediately developed and implemented. The ANCFSAO submits that there is ample evidence before the Commission upon which to find that a distinct, equitable and sustainable funding model is the best and most appropriate means to address historic and ongoing harms.

It is clear that Indigenous women and girls face systemic barriers, discrimination and poverty, and that this, in turn, places unique funding stresses on Indigenous child welfare agencies. Part of the solution must be the development of a distinct funding approach for Indigenous agencies, grounded in Jordan's Principle and the vision of full restoration of child welfare services to Indigenous communities and to Indigenous children and families on and off-reserve.

RECOMMENDATIONS:

- 10. Provincial Child Welfare legislation must reflect the jurisdictional transfer and recognition of rights that is intended to be achieved by Federal Child Welfare legislation.**
- 11. Indigenous Child Welfare Agencies be provided distinct, equitable and sustainable funding to address historical injustice, intergenerational trauma, and systemic poverty.**
- 12. Funding needs to be made available to permit and encourage FNMTI communities to develop and maintain their own services and resources for prevention and repatriation, including, but not limited to:**
 - a. Funding for capital projects, including the construction of family care homes (i.e., supportive housing and programs for families/mothers and children);**
 - b. Dedicated, local, full-time, culturally based mental health resources for children and youth;**

Policing and Other Services

Unsuccessful child welfare interventions lead overwhelmingly to the demand for police, coroners, court workers, probation officers, lawyers, judges, corrections officers, and other systems, to address the outcome of such harm. Chief Superintendent Mark Pritchard of the Ontario Provincial Police (OPP) testified before the Commission that they have between 500 and 800 youth missing every year that are reported to the police.^{xxxii} He was open to finding new

ways to help runaways, like the Operation Runaway pilot project established in Saskatchewan, where youths are given cell phones as a preventative measure to ensure their safety.

Chief Superintendent Mark Pritchard identified the unique vulnerabilities of foster care runaways, and the need for a broad collaborative approach to addressing their safety:

“...ultimately, many of those kids will end up in the justice system or as potential targets of human trafficking. And that’s just one other way of, you know, attacking problems from a broad spectrum and bringing every tool to the table as an analogy to address those issues.”

Retired Chief Weighill of the Saskatoon Police and Canadian Association of Chiefs of Police personally recommended increasing the infrastructure for youth programming, and agreed youth crime was a foreseeable consequence of the lack of these services.^{xxxiii} There is an urgent need for services to support youth who are vulnerable to human trafficking or exploitation, as well as a pressing need to support youth through positive action programs and recreational and educational activities, which enable them to thrive. Developing positive identities as Indigenous children, youth, and eventually tomorrow’s parents, is crucial to reducing the vulnerability of the most vulnerable Indigenous women, girls, and 2SLGBTQAI individuals.

RECOMMENDATIONS

- 13. Require development of MOU’s for communication/operational coordination between Societies and police, mental health and other**

institution/agencies, with a view to facilitating coordinated, interdisciplinary care to Indigenous girls in crisis.

14. Prioritize the care and protection of Indigenous girls in care or running in policing practices, rather than their criminalization.

15. Provide research funding to examine the causal link between involvement in the child welfare system and human trafficking and exploitation.

Current Legal Services in the Child Welfare System

Customary care is the bedrock of the First Nations' Service Model. Each First Nation community has the right to determine their own Customary Care vision regardless of provincial/federal legal definitions. Inputting services into communities and utilizing Customary Care defined by communities is a primary strategy for keeping children in their communities. Customary Care ensures a concerted effort to engage parents, extended family and communities to find solutions before considering the option of court, as this is no longer the primary method of intervention in First Nations Child Welfare matters.

Another best practice is utilizing a Family Case Conference approach to allow for prevention of court involvement by exploring alternative resolutions for communities actively involved and pursuing culturally-based processes embedded into common practice. There is strong evidence indicating that access to a range of culturally-relevant prevention programs is highly effective in mitigating risk factors that contribute to First Nations Child Welfare concerns.

Previously, child welfare services have been delivered by a mainstream child protection agency without incorporating culture, traditions, and First Nations' values into service delivery. Currently, community-mandated agency, Nogdawindamin Family and Community Services, has built a Cultural Service Team to ensure Elders-in-Residence, the agency's Drum, and ceremony initiate each person and are present and active throughout. Combined with community and staff feedback, Nogdawindamin has evolved into a multi-service agency that aims to support holistic wellness through the Family Well-Being Program and Children's Mental Health Program.

Neonatal Services

In response to significant community challenges and concerns regarding alcohol and drug use, Nogdawindamin Family & Community Services, at the urging of their chiefs and communities, has piloted a 15-month project to provide neonatal services for mothers struggling with addictions and drug use. After intensive community outreach, the Baby Lucius Neonatal Hub opened in November 2018 with experienced neonatal service workers, coordinators, and an assistant. This is the first program of its kind in Canada: not only is it at the immediate direction of the North Shore First Nations and Chiefs and Council, but it is specifically designed to provide families with the tools and resources to create a safe environment for the infant in order to allow the family to stay together.

The goal is to work with struggling families in order to minimize the number of First Nations children being brought into care. The Neonatal Services program has been particularly well-received by the communities, with client feedback increasingly positive and optimistic, especially around comprehensive services. With a foundation in the Seven Grandfather

Teachings, this program also reconnects service users with their heritage and introduces infants to their culture. This first-of-its-kind, community-driven program shows immense opportunity for growth, foregrounding best practices of client-centred, community-directed, culturally-based service provision.

RECOMMENDATIONS

- 16. Immediately build infrastructure within each First Nation, grounded in the culture and values of Anishinabek culture and reflecting the individuality and authority of each distinct First Nation to provide care for their own children.**
- 17. Each First Nation to develop their own definition of customary care in order to move away from the Ministry's description.**
- 18. Improved training to cultural and agency values, challenges with the western system and documentation required, flexibility lacking.**
- 19. Equitable funding, as per Jordan's Principle of substantive equity, is an immediate and paramount need.**

For Children who are in Care

- 20. Development and resourcing of services intended to maximize and facilitate lifelong and intergenerational relationships with immediate and extended family members and members of the child's community of origin.**
- 21. Develop and resource placements and services within communities, to permit children to remain near or within their communities if they come into care.**

Endnotes

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- ⁱ Transcript of Parts 2&3 Hearings: Institutional & Expert/Knowledge Keeper, 21 September 2018 (Winnipeg, Manitoba), public vol X, p 155.
- ⁱⁱ Transcript of Part 1 Hearings: Families and Survivors, 31 May 2017 (Whitehorse, Yukon), public vol 2, p 87.
- ⁱⁱⁱ Transcript of Part 1 Hearings: Families and Survivors, 31 May 2017 (Whitehorse, Yukon), public vol 2, p 88.
- ^{iv} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 9.
- ^v Transcript of Part 1 Hearings: Families and Survivors, 4 December 2017 (Thunder Bay, Ontario), public vol 37, p 112.
- ^{vi} Transcript of Part 1 Hearings: Families and Survivors, 4 December 2017 (Thunder Bay, Ontario), public vol 37, p 113.
- ^{vii} Transcript of Closing Oral Submissions, 28 November 2018 (Calgary, Alberta), public vol 3, p 159.
- ^{viii} Transcript of Part 1 Hearings: Families and Survivors, 7 December 2017 (Thunder Bay, Ontario), public vol 39, p 14.
- ^{ix} Transcript of Part 1 Hearings: Families and Survivors, 7 November 2017 (Edmonton, Alberta), public vol 21, p 28-29.
- ^x Transcript of Part 1 Hearings: Families and Survivors, 7 November 2017 (Edmonton, Alberta), public vol 21, p 30.
- ^{xi} Transcript of Part 1 Hearings: Families and Survivors, 7 November 2017 (Edmonton, Alberta), public vol 21, p 30-31.
- ^{xii} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 68.
- ^{xiii} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 68.
- ^{xiv} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 69.
- ^{xv} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 69.
- ^{xvi} *The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements*, September 2018, at page 70.
- ^{xvii} The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements.
- ^{xviii} *FNCFCS v. Canada*, 2016 CHRT 2.
- ^{xix} Transcript of Parts 2&3 Hearings: Institutional & Expert/Knowledge Keeper, 21 September, 2018 (Quebec City, Quebec) public vol. VII p 167-169; also cross reference *M.M. v. T.B.*, 2017 BCCA 296.
- ^{xx} *R. v. Ipeelee*, 2012, 1 SCR 433.
- ^{xxi} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p 169.
- ^{xxii} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p 171.

^{xxiii} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p 160.

^{xxiv} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p 161.

^{xxv} Indigenous Services Canada, “Government of Canada, with First Nations, Inuit and Métis Nation leaders, announce co-developed legislation will be introduced on Indigenous child and family services in early 2019” News Release, 30 November 2018.

^{xxvi} November 4, 2018, Ahifa Kassam, reporting for the Guardian Toronto. Available at: <https://www.theguardian.com/world/2017/nov/04/indigenous-children-canada-welfare-system-humanitarian-crisis>.

^{xxvii} Overview of Indigenous Services Canada policy and program initiatives concerning Family and Child Welfare – Family Supports and Domestic Violence, Government of Canada Rule 33 Submission, p 7.

^{xxviii} Indigenous Services Canada, “Federal Government commits to six points of action in working with Indigenous partners to address number of indigenous children in care” News Release, 26 January 2017.

^{xxix} Indigenous Services Canada, “Federal Government commits to six points of action in working with Indigenous partners to address number of indigenous children in care” News Release, 26 January 2017.

^{xxx} Indigenous Services Canada, “Federal Government commits to six points of action in working with Indigenous partners to address number of indigenous children in care” News Release, 26 January 2018.

^{xxxi} Indigenous Services Canada, “Federal legislation as an important step toward reducing the number of Indigenous children in foster care” News Release, 30 November 2018.

^{xxxii} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p 60.

^{xxxiii} Transcript of Part 2 Hearings: Institutional, 26 June 2018 (Regina Saskatchewan) public vol VII p347-348.