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Office of the
Ombudsman and Child
and Youth Advocate

A REVIEW OF FIRST NATIONS CHILD WELFARE IN NEW BRUNSWICK: CONTEXT & OPPORTUNITY

The Mi'kmaq word Matenakaweno refers to a peacekeeper whose calling is to restore balance in the community.¹ First Nations social workers are increasingly looking to their language as a key to understanding the nature of traditional helping methods that were used before the fabric of their culture was disrupted. By allowing not only social workers but other community leaders, youth peers, teachers and elders to take on the Matenakaweno's mission, First Nations children and youth may obtain the equal opportunity they need to reach their fullest potential.

About the Review

The Office of the Child and Youth Advocate is currently performing an independent review of child welfare services in New Brunswick's fifteen First Nations communities. The Review will consider the historical, cultural and social issues that affect First Nations children and youth, and determine what improvements can be made to ensure that the Province of New Brunswick's commitment to equal opportunity extends also to First Nations children.

The Review will examine the current level of service provided by the eleven First Nations Child and Family Services agencies, and will focus on improvements that can be made with regards to service delivery, agency structure and governance, accountability, funding, practice standards and protocols, clinical supervision and auditing systems, information sharing, case management systems, and training.

Historical Context

The Mi'kmaq and Maliseet people were traditionally governed by a Grand Council. If an issue arose that required resolution, it was first brought forth to the immediate family members of those involved. Next, it was brought to the clan. If the family and the clan had not settled on a decision, the issue would be presented to the whole community for resolution.²

In 1876, the *Indian Act* formalized the various treaties and proclamations that existed between First Nations people and the federal government. Under the *Indian Act*, the federal Department of Indian Affairs and Northern Development became responsible for providing the basic needs of First Nations people, including education, health, housing and social needs.

Revisions were made to the *Indian Act* in 1951, including Section 88, which declared that provincial law (including child welfare laws) were now applicable to First Nations people. Legal responsibility for First Nations and funding for child welfare remained the responsibility of the federal government.

During the 1950s, 60s and early 70s, provincial child welfare services were available sporadically to First Nation families in crisis. The province did not offer any prevention services to First Nations families and usually only became involved in the later stages of a crisis. The involvement

¹ (Miigam'agan, 2009).

² Ennis and Ennis, 2006.

of the province often meant the child being taken from their family and placed in care outside the community.

In the mid-1970s, First Nations communities began expressing their dissatisfaction with the province's child welfare services. The First Nations communities felt that their families would be better served and protected by child welfare staff that came from within their own communities and cultures.

In 1979, the First Nations communities of Elsipogtog, Burnt Church, Eel Ground and Tobique joined with the province to present a three-year child welfare pilot project to the federal government. This was the beginning of the tripartite agreement negotiations between the First Nations communities, the provincial government and the federal government. During the negotiating process the three parties continued to expand upon a range of child welfare-related services based on the needs and priorities of the individual First Nations communities.

In May 1983, the Government of Canada, the Government of New Brunswick and the First Nations communities of Elsipogtog, Burnt Church, Eel Ground and Tobique signed a master agreement entitled the *Canada-New Brunswick-Indian Child and Family Service Agreement*. Under this agreement, the federal government was responsible for funding the First Nations child and family services; the provincial government had a legislative responsibility for First Nations child and family services, specifically ensuring that First Nations Bands met the legal requirements of the *Child and Family Services and Family Relations Act*; and the First Nations communities were responsible for the delivery of child welfare services.

From 1984 to 1985, seven additional First Nations communities (St. Mary's, Oromocto, Woodstock, Kingsclear, Eel River Bar, Metepenagiag and Masawaska) signed similar agreements with federal and provincial governments to establish their own child and family service agencies.

A federal cabinet decision in 1989 changed how the federal government funded the First Nations child welfare agencies. The new funding formula, under Directive 20-1, was instituted nationally in 1992. Unfortunately this new formula has worked to the detriment of smaller First Nations communities seeking to fund their own child welfare services.

In 1993, the New Brunswick First Nations Chiefs rejected the Directive 20-1 funding formula. They felt that the needs of the First Nations communities were not being met, and that the child welfare services their communities were receiving were inferior to those provided to non-First Nations people. In the absence of a tripartite agreement individual bilateral agreements have been negotiated year after year with each First Nation.

In July 1996, the *Canada-New Brunswick-First Nations Family and Community Service Agreement*, also known as the *MAWIW Agreement*, was signed by Elsipogtog, Burnt Church and Tobique First Nations. The agreement stated that the three parties were to be jointly responsible for developing and adopting an initial five-year strategic plan for delivering child welfare services. As with earlier agreements, the federal governments was to primarily provide

funding as well as logistical support; the province was to provide professional support and training, and was to act as a liaison between the First Nations communities and the provincial family service agencies; and the First Nations communities were responsible for the actual development and delivery of effective and culturally-relevant services.

To this day there is still no tripartite agreement in place for child welfare services, although negotiations are ongoing. The Directive 20-1 funding formula was reviewed in 2001 following considerable criticism but it has not been substantially revised.

Funding

The federal department of Indian and Northern Affairs Canada (INAC) funds the First Nations Child and Family Services agencies. This funding includes an Operations budget which is designed to cover the costs of staffing the agency, including salaries, travel, infrastructure and related administrative costs. The formula used to determine the amount of this Operations budget is primarily driven by the number of children living in the community who are registered with the *Indian Registry*. There are widespread concerns that the Operations budgets are insufficient to operate functional Child and Family agencies and that this funding model does not take into account the children and parents living in the community who are not “registered.”

In addition, INAC pays for the actual expenditures for children who have been placed outside of their parental home in such places as a foster home or a kinship home. As well, although the existing funding formula does not provide for such costs, INAC provides a fixed budget to cover the cost of services purchased on behalf of children living with their own parents. Finally, in New Brunswick, INAC also contributes toward the operation of a *Head Start* program.

Issues Affecting First Nations Children and Youth

A review of First Nations child and youth welfare cannot focus merely on how well First Nations Child and Family Services agencies are facing the challenges they meet. This review is undertaken from the perspective of the child. We seek to measure how First Nations children and youth are doing in comparison to their peers across the province. This will help us determine the needs of First Nations children and make recommendations to address those needs. An improved system of child welfare services delivery should support those needs and also further the goals of equal opportunity. The assessment of how well children are faring in New Brunswick’s First Nations will be done in accordance with the Child and Youth Advocate’s own annual *State of the Child* reporting process. The Review will therefore focus on how the following issues are affecting First Nations children and youth in New Brunswick:

- Historical issues (such as residential schools, the Sixties Scoop, the outcomes for those affected by these programs, and the ongoing effects of these programs, etc.)
- Education Issues (such as dropout rates, provincial exam results, access and participation in Head Start programs, pupil-to-teacher ratios, special education plans,

- post-secondary enrolment and completion rates, Mi'kmaq and Maliseet language instruction, etc.)
- Social issues (including divorce and separation rates, single parenting rates, teenage pregnancy rates, sexual abuse, domestic violence, etc.)
- Economic and employment issues (including employment rates, income levels, poverty levels, welfare rates, First Nations business development, etc.)
- Health issues (including tobacco consumption and second-hand smoke exposure, obesity rates, nutrition and food habits, prescription drug practices, infant trauma rates, mental health cases, infant and childhood disease rates, etc.)
- Addiction issues (including Fetal Alcohol Syndrome rates, alcohol addiction rates, illicit and prescription drug abuse, gambling addiction, access to culturally-appropriate programs for addiction counseling, etc.)
- Youth justice issues (including youth charges by offense type, youth incarceration rates, etc.)
- Recreation and wellness (including time spent watching television, participation in sports, music, traditional First Nations activities and ceremonies, and other organized activities, etc.)
- Racism and social isolation

By gathering information on the issues listed above, the Review will seek to assess the resiliency of First Nations children and youth. Self-esteem is essential to resiliency, and issues of language, culture and identity are crucial in strengthening self-esteem. The Review team will seek out First Nations youth to hear how they view their culture and identity, what it means to them, and how it may relate to their identities as New Brunswickers and Canadians.

Outcomes

Outcomes are generally considered in terms of the educational, social and physical outcomes of children who have been involved with Child and Family Services. For the purpose of the Report, we will consider both the individual child outcomes, as well as the larger context of community outcomes.

A complete analysis of First Nations children in care outcomes is extremely challenging due to the fact that most First Nations child welfare agencies do not have computerized Case Management Systems. However, the Review team is gathering information from various government agencies and from some of the First Nations agencies and organizations. Additionally, the Review team will collect information from surveys intended for the public, members of First Nations, and various organizations in order to get a better picture of individual and community outcomes.

A set of standards for tracking the outcomes of children has been set out in the National Child Welfare Outcomes Indicator Matrix ("NOM"). The NOM was designed to consider the complex balance that child welfare agencies must strike between a child's immediate need for

protection, a child's need for long-term nurturing and stability, a family's potential for growth and healing, and the community's capacity to meet a child's needs. The NOM is made up of the following categories and key indicators:

- Safety
 - Recurrence
 - Serious Injuries and Death
- Well-Being
 - School Performance
 - Child Behaviour
- Permanence
 - Out of Home Placement
 - Moves While in Care
 - Permanency Status
- Family and Community Support
 - Family Moves
 - Parenting
 - Ethno-Cultural Placement Matching

Additionally, the NOM has the flexibility to incorporate any number of sub-indicators that are necessary to capture the important variations that must be considered and contextualized in order to fully understand and adequately interpret child outcomes. The Review will consider outcomes measures in First Nations child welfare agencies to determine the quality of service provided, how it may be improved and whether the outcome measures are appropriate.

Designation of One or More Child and Family Services Agencies

There are eleven Child and Family Services agencies serving the fifteen New Brunswick First Nations communities. Ten of these agencies each serve a single community while the 4 Directions Child and Family Services agency serves Bouctouche, Indian Island, Fort Folly and Pabineau. Currently Masawaska has no social worker of its own and is served by the Department of Social Development office in Edmundston. Elsipogtog has the largest agency, with eleven staff members, while Woodstock is the smallest, with just one staff member.

Most of the New Brunswick First Nations Child and Family agencies were established in the 1980s. As a group they are among the smallest First Nations child welfare agencies in Canada, which is a disadvantage under the current INAC Operations funding formula. This national funding formula is driven primarily by the number of children resident in each community who are eligible for Band Registration under the *Indian Act*, and therefore favours large agencies who serve more than eight hundred registered children. Elsipogtog is the only New Brunswick First Nations agency to receive the full benefit of this formula. The Four Directions Agency is the only incorporated agency in the Province. As a result it is funded directly by INAC like most all other First Nations child welfare agencies in Canada. The other New Brunswick agencies all however

receive their funding through Band Councils, as they lack legal status themselves. The Review will consider whether this has benefitted child welfare service delivery.

In 2005, the Agencies Model Report project team conducted a review of potential agency models and concluded that there would be advantages in consolidating the number of agencies from eleven to either a one, two, or three model agency.³ To date, this recommendation has not been supported by the First Nations, although First Nations Chiefs have delegated a technical committee to continue working with INAC and the Province towards this end. Another tripartite process (with representatives from INAC, Social Development and First Nations) is now under way to again explore the potential of larger agencies.

When it comes to delivering a range of complex, legislatively-mandated child welfare services such as child protection, children in care, and foster homes, there appear to be significant challenges for smaller agencies. However, the First Nations communities appreciate having their own local social workers whom they know personally. These social workers have earned their communities' trust to provide the required services. If larger agencies are to be created in the future, it would be important to maintain this valued feature of the current service structure.

Although all the First Nations communities have agreed that they prefer the current eleven-agency model, they have also recognized its limitations. The smaller agencies suffer from high burnout and turnover rates among their staff, who feel they lack job security and health and pension benefits. Furthermore, staff members sometimes find themselves in a conflict of interest when delivering services in their own communities to families whom they know personally. Other issues that have been raised include: a lack of consistent practices among agencies; a need for help with specialized services; communication issues between the eleven agencies; problems with Band Chiefs or Council Members becoming personally involved in cases and overruling staff; and concerns that not all funding allocated to the agencies is being passed on to them through their Bands.

Child Welfare Program Standards

The range of services delivered by First Nations Child and Family Services social workers are legislatively mandated under the *Family Services Act* of New Brunswick. The Department of Social Development has a series of program standards for each child welfare service. These standards function as a policy and procedures document and provide direction to social workers who are delivering services. These standards are considered to be "minimum and mandatory," and typically describe what is to be done and the minimum time frame for completing the activity. Attention is paid to how critical decisions are made and who should be involved. Occasionally, the standards will also provide "helpful information" boxes, which are not mandatory, but which provide valuable information to assist the social worker or supervisor.

³ Agencies Model Report, March 2005.

In 1993, the First Nations Child and Family Services agencies developed the *MicMac and Maliseet First Nations Services Standard Manual*, which set forth their own set of program standards. These standards are based on the provincial standards but are adapted, where appropriate, to a First Nations context. The unique aspects of these standards include: a perspective on Mi'kmaq and Maliseet family values; provisions for the use of a Family Mediator (influential family member) to help resolve service issues; provisions for custom adoption; elders and community advisory committees composed of family mediators and other appropriate community members; and a list of preferential placements. These First Nations standards remained unchanged for over a decade, until a working group updated them in 2004.

The Department of Social Development has suggested that the two sets of standards be integrated into one common set of standards that include appropriate references to First Nations issues. This would eliminate the need for First Nations Child and Family Services social workers to use two sets of similar standards.

Operational Protocols between the Department of Social Development and First Nations Agencies

The Operational Protocol document is used to improve operational linkages between First Nations agencies and Social Development offices. The document addresses the following topics: determining who serves a case (and exceptions to the usual rule); procedures for transferring open cases between agencies; protocols for First Nations and Social Development accessing each other's placement facilities, such as foster homes or group homes; afterhours service; information sharing; in-service training; and case consultation. The Operational Protocols were last updated in 2006.

Clinical and Administrative Consultations

The Department of Social Development has inquired as to whether First Nations Child and Family Services social workers and supervisors have adequate access to consultations regarding case-related decisions (clinical consultations) and administrative matters. Standards require that social workers consult with a supervisor before making major decisions, such as removing a child from their home. But because most of the First Nations agencies are so small, some directors also act as social workers, and there is no one for them to consult with or to oversee their work. This issue is linked to the concern about how well smaller agencies can function clinically and administratively without outside help.

Standards Compliance Reviews and Clinical Audits

The First Nations Child and Family agencies are approved under the *Family Services Act*, and as such, the Department of Social Development is responsible for ensuring that these agencies are functioning in a minimally acceptable manner. Since 2002, Social Development has carried out periodic standards compliance reviews in all First Nations agencies. These reviews are primarily an audit of written case records to determine if specific standards have been met. The files are

related to child protection, children in care and foster home services. A process has been developed to conduct the audits and to work with agencies to address any shortfalls that are identified, although Social Development has questioned if the current standards compliance system is adequate.

The Review will examine the standards compliance data from each agency going back to 2002. Compliance data will also be sought from Social Development offices to provide comparisons.

To date, no clinical audits have been carried out in First Nations agencies. This qualitative type of audit would provide an in-depth assessment of how adequately services are delivered to a random sample of families and children. This process would require experienced social workers to review documents and discuss service provisions with staff. It should be noted that First Nations agencies do not lag appreciably in this area since the province as a whole is only now implementing its own clinical audit process.

Information Sharing

One of the key aspects of inquiry during the Review will be into the quality of information sharing among First Nations agencies, between the agencies and federal, provincial and band council oversight bodies, and between the agencies and other service providers dealing with the same individuals or families.

The Government of New Brunswick has publicly committed itself to a course of integrated service delivery. The Review will examine how First Nations can benefit from this service integration and how INAC, the province and First Nations agencies will ensure that First Nations children receive the benefits that service integration will achieve.

Case Management System

Throughout the province, First Nations Child and Family Services agencies run on a manual paper-based recordkeeping system (with the exception of Elsipogtog, whose shift to a computerized system came less than two years ago). This represents a technology gap of more than twenty-five years between the First Nations agencies and the provincial child welfare department, which implemented its first Case Management System ("CMS") in the mid-1980s.

Even the paper-based records systems in place among the majority of New Brunswick First Nations agencies are in need of upgrades, including fireproof filing cabinets. Most agencies have older computers which are used for email and note-typing. At present, transferring files between communities and between agencies on and off reserve is done manually. A computerized system would allow information sharing in a confidential manner between agencies and allow for interfacing with the provincial system.

Start-up requirements for technological upgrades include providing all agency staff members with computers which are sufficiently up-to-date to run a CMS program and network. However,

providing network access and ISP connections in some communities is an issue. Regarding long-term requirements, there are continuing services such as technological support, training, and upgrading which must be taken into account. In other provinces, the provincial governments generally provide these services only when an agency is directly using the provincial case management system.

It is our understanding that all First Nations agencies in the province would be amenable to a shift to a computerized Case Management System, although there are some notable hesitations and questions surrounding aspects of input redundancy, cultural sensitivity, funding and confidentiality.

Training

The province of New Brunswick has made significant strides in the last few years in terms of improving its training for child welfare social workers. First Nations social workers have benefited significantly from this training. Appropriate training and professional development opportunities are a critical component of quality service delivery in child welfare.

The Review will focus on the issues of recruiting qualified First Nations staff with Bachelor's and Master's degrees in Social Work to fill positions in First Nations agencies and on continuing educational and professional upgrading for agency staff. The Review will also look into the broader training and public education needs in First Nations communities related to child welfare matters, such as foster parent training.

Accountability

Reforming child welfare service delivery in New Brunswick First Nations raises important issues of accountability. Canada's constitution places all Indian matters under federal jurisdiction, but the Province is constitutionally empowered to deal with civil rights, including child welfare matters. Moreover the trend towards self-government by Indian Bands has resulted in a de facto responsibility for child welfare service delivery lying with the Chief and Council in each First Nation. The danger is that with all these varying levels of accountability, there is a real possibility that each level of government will point fingers at the others and seek to avoid being made accountable.

New Brunswick is also different from other Canadian jurisdictions in that child welfare agencies here have no legal status, and therefore funding is advanced through First Nations band councils. This has opened up the child welfare system here to the possibility of political interference and financial mismanagement and abuse. The Review will focus on providing recommendations for altering and improving the accountability mechanisms currently in place.

Conclusion

For many New Brunswickers, the issues raised in this document may seem to be of little relevance to their own lives. There are less than 18,000 First Nations people in New Brunswick, which is less than three percent of the population, and First Nations children under the age of eighteen account for less than one percent of the province's total population. This document however is directed at all New Brunswickers and Canadians alike because the welfare of First Nations children here is critically important to our society.

Whether we like it or not, disparities in child welfare among First Nations and non-Aboriginal children, the precariousness of the Maliseet and Mi'kmaq languages, or the quiet tragedy of teenage suicide in a First Nations community help define New Brunswick society. The plain facts challenge the worldview we may have bought into with regards to equal opportunity, minority language education or the treatment of children, but the world is looking to New Brunswick for solutions to these challenges. The UN Committee on the Rights of the Child has repeatedly called upon Canadians to account for the unequal treatment of First Nations children.

The solutions must come from the New Brunswick First Nations themselves, but all New Brunswickers need to be engaged and committed to achieving real progress in the area of First Nations child welfare. All are invited to take part in the review process and to contribute to solutions that are identified along the way. Please provide your feedback by filling out our online survey, taking part in the Community Engagement Sessions that we are conducting at First Nations communities throughout New Brunswick, or by calling or emailing us. We ask that you share this document with others and invite the organizations and agencies to which you belong to be part of the solution.