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Tuesday 6 December 2005

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Mardi 6 décembre 2005

Standing committee on social policy

Child and Family Services Statute Law Amendment Act, 2005

Comité permanent de la politique sociale

Loi de 2005 modifiant des lois en ce qui concerne les services à l'enfance et à la famille

Chair: Mario G. Racco
Clerk: Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 6 December 2005

Mardi 6 décembre 2005

The committee met at 1548 in committee room 151.

CHILD AND FAMILY SERVICES STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE LES SERVICES À L'ENFANCE ET À LA FAMILLE

Consideration of Bill 210, An Act to amend the Child and Family Services Act and make complementary amendments to other Acts / Projet de loi 210, Loi modifiant la Loi sur les services à l'enfance et à la famille et apportant des modifications complémentaires à d'autres lois.

The Chair (Mr. Mario G. Racco): Good afternoon, everyone. Thanks for attending. Today we will continue our discussion of Bill 210. The first presentation is from the Grand Council Treaty No. 3 Nation, Grand Chief Arnold Gardner, if he is here.

We are going to have three groups speaking at the same time. In addition to Grand Council Treaty No. 3 are the Fort Frances chiefs' association and Weechi-it-te-win Family Services. The three groups will have a grand total of 45 minutes that you can share. Of course, for any time left, there will be the possibility for us to ask questions or make comments.

SUBCOMMITTEE REPORT

The Chair: But before you start, I do have to receive some information, so give me a few minutes, please. Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): I'd like to move the report of the subcommittee.

Your subcommittee met on Monday, December 5, 2005, to consider proceedings on Bill 210, An Act to amend the Child and Family Services Act and make complementary amendments to other Acts, and recommends the following:

(1) That the Ombudsman be offered 30 minutes to speak on December 6, 2005.

(2) That the clerk of the committee contact those groups who requested by faxed letter that the hearings be extended and determine how many are willing or available to appear on December 12 or 13.

(3) That if those requesting to appear can be accommodated on December 12 and 13, the clerk is authorized to schedule immediately.

(4) That if there are more witnesses wishing to appear than time available on December 12 and 13, the clerk will provide the subcommittee members with the list of witnesses, and each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled.

(5) That those to be considered for scheduling first be those who contacted the clerk's office prior to the deadline on Thursday, December 1, 2005.

(6) That the time to be allotted to organizations and individuals in which to make their presentations be 15 minutes.

The Chair: Are there any comments on this? If there are no comments, I will ask for a vote. Anyone in favour? Anyone opposed? The motion carries.

GRAND COUNCIL TREATY NO. 3 NATION LAC LA CROIX FIRST NATION WEECH-IT-TE-WIN FAMILY SERVICES

The Chair: At this time, we'll go back to your presentation. You can start any time.

Mr. Arnold Gardner: *Remarks in Ojibway*.

I just want to make some comments in English. First of all, my English name is Arnold Gardner, and I'm the Grand Chief. Two years ago, the title was changed to a traditional one: Ogichidaa of Grand Council Treaty No. 3 Nation. An Ogichidaa, as best as I can interpret from traditional practice, is the protector of the people and the protector of the lands. That's the title that's been entrusted in me.

I represent 28 First Nations in northwestern Ontario, comprised of 55,000 square miles west of Thunder Bay to the Manitoba border, north to Red Lake and south to the United States border. There are approximately 25,000 aboriginal people in our territory. I want to note that the population of young people is growing at an astounding rate. Consider this in some of the presentations that we're making.

The other opening comment that I want to make prior to reading the presentation that I've prepared is that I think, in terms of consultations, it is a big one. It's understood, when we're talking about consultations, you'll hear from the communities that I certainly support a lot of the initiatives that were from our territory, from our

nation of Treaty 3. We do have a lot of things that are happening in terms of native child welfare: We have a lot of technical support, we've had systems in place for many years now and individual communities that have initiatives that we run. The knowledge, the experience that we have, we're going to hear about from my colleagues who are here today.

First of all, I want to say thank you to the Chairman and to the honourable MPPs around the table; to the people, the ladies and gentlemen who are sitting here today; and the honourable members who are sitting at the back. We thank you for your interest in this issue that's very critical to us as Anishinabe people. I want to say thank you publicly to the group from the Treaty 3 Nation that is accompanying me here today.

I'm rubbing my stomach against this thing here, sorry. I'd better move this thing up a bit.

This morning, I prayed for a good day. I prayed for all people in here, and I prayed for all the people in our vast land. It is a good land, and we have beautiful people living on it. It is something we all share.

Today, we are making presentations on the proposed amendments to the Child and Family Services Act. Bill 210 will have significant impact on First Nation citizens and communities who are not part of the native child welfare agency. It is by no means a surprise that we are opposed to this piece of legislation. We are also stating that we should be exempted from this legislation. However, that is probably unlikely, given the atmosphere surrounding the circumstances of First Nations people.

It is with this in mind that our presentation will outline our culture, our way of life, the Creator's sacred laws as the basis of our constitution, our traditional governance, and the child as a sacred gift from the Creator and our sacred responsibility to protect and provide care for that child. Our presentation will speak to the ethnocentric view which leads to the imposition of policies and legislation on First Nation communities; the proposed amendments; customary care practices; Anishinabe Abinoojii law; building on part X of the CFSA; administrative harmonization; designation process; and customary care technical capacity.

To begin the process, we affirm our nationhood. To begin, we do find it necessary for us to become known as to who we are as a people and as a nation. It must be hard for members of the standing committee to comprehend that a group of people who are subjected to imposed policies and legislation want to take the time to explain ourselves and to be known as a nation.

There are four components to being recognized as a nation: (1) people, (2) language, (3) land base, and (4) culture. We have all those. By being signatories to the treaty of 1873, known as Treaty 3, we acted and continue to act as a sovereign nation.

1600

Since time immemorial, the Creator granted to the Anishinabe the duties and responsibilities to govern ourselves. It is the traditional constitution—Miinigoisewin—of the Anishinabe, as given to them from the Creator's sacred laws. Traditional Anishinabe law recognizes that the child is a sacred gift and that the best interests of the child is the paramount consideration in all matters relating to the child. The Anishinabe carry the responsibility to provide care and protection for their children and families. The child is a sacred gift from the Creator and represents the continuity of the Anishinabe nation. Traditional Anishinabe law recognizes that the child must live, belong and grow within an environment of human relationships rooted in the family, the clan, the community and the culture, and that these needs are essential to the best interests of every Anishinabe child.

Anishinabe culture comprises the whole accumulated knowledge and wisdom that has enabled the people to survive and to live a good life. Traditional Anishinabe law requires each Anishinabe person to protect and uphold the culture for the benefit of future generations, and gives the Anishinabe people guidance for their lives. Since time immemorial, the Anishinabe people have passed down to successive generations, and adapted for each generation, temporal law consistent with traditional law to meet the needs of successive generations as they may arise, including law for the care and protection of its children and families. The Anishinabe Nation in Treaty 3 has never relinquished or surrendered their sacred duties and responsibilities for their children and future generations.

The introduction of assimilation policies and practices had very negative impacts on the First Nation people in our territory. Alcoholism, loss of livelihood, and loss of culture and language contributed to family breakdowns and the erosions of the sacred duties and responsibilities bestowed upon the Anishinabe. Foster home care, residential schools and other factors led to the loss of parenting and family life skills, both in contemporary and traditional settings.

The culture and the traditions are regaining their stability in their practice. The Anishinabe Nation in Treaty 3 is getting stronger within the gifts of the Creator through the sacred laws and traditional knowledge. The child remains the gift of the Creator, and it is our duty and responsibility to provide care and protection.

In 1996, during the self-government discussions in our territory, which led to the signing of the framework agreement, the women in Lac Seul, one of the communities within our territory, stood up and insisted that child care be part of the discussions and be a priority. It was set and became a separate table to be regarded as a priority of the government and Grand Council Treaty No. 3.

Child care is a priority in our territory. For the past few years, we have sought to understand our sacred and traditional laws. We have developed a written law in a temporal form that will better enable our people, communities and agencies to regain the responsibilities and duties that are rightfully ours. It is also an opportunity to harmonize the laws of the provincial and federal governments with the sacred and traditional laws.

Section 35 of the Constitution of Canada entrenches our inherent right to self-government, which includes the

care of children and law-making authority. As a matter of fact, the Grand Council of treaty number 3 has enacted a resource law and has been developing a child care law.

To move forward in a respectful manner, we recommend that the amendments are geared toward strengthening part X of the CFSA. This would provide opportunity to provide better working relations between First Nations and the province. Our traditional laws plus your amendments would be a huge step in providing better care for our children and gaining a better understanding of our diversities.

I want to give my heartfelt gratitude to the many individuals, leadership and technicians who have contributed to this process and their undying belief that the government, through this committee, will understand that this type of working together is long overdue and that we must engage in focusing our efforts toward Part X as a step toward both of our visions.

Meegwetch.

The Chair: Thank you. Please proceed.

Mr. Larry Jourdain: First and foremost, I want to thank members of the committee for allowing me the privilege to speak before the standing committee. My name is Chief Larry W. Jourdain. For the record, I'm here for the Lac La Croix First Nation, not for the Fort Frances chiefs' association. My Anishinabe name is Maminotequenab. I belong to the Lynx clan. I belong to the Anishinabe, and I come from Lac La Croix. My profession is child welfare. Most recently—two years ago—my profession has become chief.

The subject matter to be discussed in my presentation is: the changes to the child welfare system in Ontario; their existing and potential impacts on the aboriginal community; ethnocentric preoccupation and the Indian and native provisions in the Child and Family Services Act, 1984 and amendments thereafter; and the experience and enterprise of the Lac La Croix First Nation.

There are noticeable periods of history that have had an enduring impact on the aboriginal community, and in particular on the aboriginal socio-cultural systems and structures, which include the customary family system. The historical evidence and research indicate the degree of the damage and the extent of incapacitation of these vital socio-cultural systems and structures. The introduction of a different set of socio-cultural systems and structures began the deconstruction of the customary aboriginal family system. This process of deconstruction advanced to the residential school system and was later transferred to the child welfare system. The deconstruction and its impact are well documented and it is both too lengthy to discuss here and not up for consideration by this committee.

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Child welfare services were not extended to the aboriginal community until changes occurred to the Indian Act in 1958 which permitted provincial authorities to have access to federal lands. The signing of the memorandum of understanding in 1965 outlined the permissible services and the payback scheme: For every dollar spent in child welfare, $91 is paid back by the feds. This began the involvement of the child welfare system with aboriginal communities and families, and their overzealous efforts resulted in the 1960s scope.

Another significant development was the enactment of the Child and Family Services Act, 1984, which included Indian and native provisions. From 1984, aboriginal communities have had the opportunity to develop their own family service authorities. Currently, there are six aboriginal societies and four agencies. Interestingly enough, four aboriginal societies are situated in northern and northwestern Ontario—our understanding of geography; we're further north than Barrie—with five aboriginal agencies in central Ontario and prevention programs in southern and southwestern Ontario.

From 1998 to 2000, the child welfare system experienced a major makeover in a process that has come to be known as child welfare reform. These changes resulted in the following: legislative changes; a new funding framework; mandatory risk assessment tools; a standardized approach known as the Ontario risk assessment model—in my profession, ORAM; a fast-track information system; and the revitalization of foster care.

In 2002, the child welfare evaluation was initiated and it resulted in the following: stronger emphasis on outcomes; investment in research; development of a single information system; and more attention to shared services and infrastructure. The evaluation encouraged: less reliance on court interventions; implementation of Looking After Children; clearer and stronger connection with children's mental health services; a differential approach to intake and assessment; rethinking of the funding approach; and an increased recognition of Indian and native provisions. The evaluation included an interjurisdictional review.

In 2004, the Child Welfare Secretariat was created to advance the recommended changes. Their key foci include: system service redesign: differential response; permanency strategy and court processes; accountability linked to outcomes; comprehensive research and evaluation agenda; a single information system; and a multi-year funding arrangement.

Although the changes to the child welfare system are refreshing, there are existing and potential impacts to the aboriginal community.

The child welfare reform in 2000 resulted in a moratorium not to designate new aboriginal societies and agencies, effectively halting our aspirations and any further development. The changes to the Child and Family Services Act included the lowering of the paramount status of entitlement to have services provided by our own child and family services. The purpose dropped from second to the last and fifth purpose. This is not surprising, because it created the premise for a policy framework to implement changes that completely ignored the Indian and native provisions and any involvement of the aboriginal community.

The funding framework and the Ontario risk assessment model failed to take into consideration the

socioeconomic realties and geographical distances of northern Ontario; completely dismissed cultural determinants in aboriginal child welfare practice. The lowering of the protection threshold and a new pattern of neglect resulted in higher apprehensions. The new emphasis on permanency planning led to hasty decisions and no time available for family reconciliation. The standardization of child welfare practice is simply culturally destructive and assimilative. The aboriginal community has rejected the new changes and called for greater involvement, warning the child welfare system that the changes would bring a new millennium scope and increased costs.

All of these outcomes have come to be true, as the child welfare system is now attempting to adjust to the unexpected results. The total number of children in care has increased 66%. Crown wards have increased 92%. There is $1.1 billion in expenditures. There's an increase of 41% in the ongoing case load for CASs, a 51% increase in investigations and, it should not be surprising, an overrepresentation of aboriginal children in the child welfare system. As a matter of fact, aboriginal children in the care of the child welfare system have now drastically surpassed the number of children that were in the residential school system, as a national average.

In response, the child welfare apparatus initiated the transformation agenda. Aboriginal child welfare practitioners and researchers have been attempting for some period of time to get the attention of policy-makers and promote culturally competent and congruent aboriginal child welfare practices. There is some indication that someone may have listened to the advice: openness agreements, differential response, prevention focus, safe home declarations and relative placements, family preservation models, kinship care and alternative dispute resolution are all well-established practices in the aboriginal community. These practices are being promoted by the transformation agenda as the new change.

Although the transformation agenda and its recommended changes are a welcome change to an antiquated system, there is cause for uncertainty in the aboriginal community. At this time I would really like to thank Bruce Rivers and his team at the Child Welfare Secretariat for their involvement in these changes.

The new changes to the Child and Family Services Act lack any involvement of the aboriginal community, and in particular the band, and do not enable culturally competent and congruent approaches as the original version in 1984 appears to have done. The sections dealing with alternative dispute resolution and service complaints do not include traditional systems as a vital process for reconciliation. The section dealing with assessment is discerning, because of the authority given to clinical practice without due consideration for culturally competent and congruent approaches. The sections dealing with placements and post-adoption agreements do not include any provisions for the involvement or notification of the band representative.

The sections dealing with crown wards need careful reconsideration: Any access order is automatically terminated; no notification or participation provisions for the band representative. Reviews do not include the band representative; however, legal representation for a child in ADR and openness processes is permitted. The sections dealing with the standardization of service are problematic, because these provisions may be applied to isolate and regulate societies and agencies that are practising in a manner that is outside the expected child welfare practice.

1620

The most discerning section is the section that gives authority for making regulations that will govern procedures, practices and standards for customary care. There is no indication in the act if there is going to be any involvement of the aboriginal community in the development of such regulations. Failure to involve the aboriginal community in meaningful consultation and participation will lead to major discontent, possible legal actions and possible revolt to the child welfare system and apparatus. At a minimum, the new changes must legislate a consultation requirement with respect to customary care.

Both the reform and the transformation agendas have been preoccupied with an ethnocentric approach and only paid attention to enabling and advancing sections of the act that deal with conventional child welfare practice. Any validity that would promote or enhance the Indian and native provisions has been completely ignored.

There are 31 Indian and native provisions in the act, an exclusive section commonly referred to as part X, and a provision for exemption in part XI. These provisions obligate the courts, ministry, bands and societies to a multi-party practice and extend authority to the band to be involved and participate in child welfare proceedings.

It is safe to assume that the Indian and native provisions have never been fully understood or applied by the child welfare system or apparatus. Any compliance reviews have never taken into account any adherence requirements for the Indian and native provisions. Most recently there are signals that minor attention is being paid. The extent of application of the Indian and native provisions in the judicial process or in child welfare proceedings remains unclear and questionable. A judicial review may be warranted.

The potential of the Indian and native provisions to be able to contribute to the reform and transformation agendas has not been explored, examined or considered. The potential to expand customary care from a voluntary service to a service response that includes the development and implementation of community codes for involuntary proceedings and custom adoptions has not even made it to the radar screen of the transformation agenda. Instead, kinship care has been quickly advanced and has been introduced as a preferable model.

The Chair: It's eight minutes, and there are two more speakers. It's up to you how you want to use it.

Mr. Jourdain: OK. I will go quick.

The Indian and native provisions include the ability of the aboriginal communities to develop family services

authorities and for the ministry to negotiate the delivery of these services. There appears to be no requirement for these authorities to become societies or agencies. This has been a ministry practice. Now there is a designation process, but the process remains absent from the act or regulations.

The Anishinawbe community of Lac La Croix has been concerned about and dealing with social deviance, including the care of children, for some time. The community has been implementing customary healing strategies aimed at improving the quality of life for our children and families.

The community is a proud and progressive traditional Anishinawbe community. The people insist on and expect social services to be biculturally proficient, culturally competent and congruent. Any other form of service is not relevant, and is harmful to the community.

A few years back, the First Nation had negotiated a project with then-Minister Tony Silipo to deal with sexual abuse. The project was a success, leading to the development of the Rainbow of Healing, an aboriginal treatment model; Anishinawbe Way, a community model for child welfare; community code development, developing a code for customary care; a sexual abuse program, a community model for managing sexual abuse; and Akwiinoowin, an integrated social services model. However, the loss of the NDP led to the loss of financial resources and, eventually, closure of the program.

Some remnants of the program continue to exist, implemented with the assistance of Weech-it-te-win Family Services. The rest of the province may indeed benefit from such models of healing.

Lac La Croix is serious about protecting our children. The council has instructed Akwiinoowin to track all our children outside of Weech-it-te-win. Despite these concerted efforts, we continue to lose our children. The most recent was a crown ward who died from a degenerative disease while in the care of the CAS. The family wanted interment in the community with a traditional burial; the CAS and foster parents objected. The ministry advised the band that they would not intercede and they would strongly support their agent, the CAS. The matter went to the courts and the CAS was awarded judgment. Even in death, the CAS seems to have the final say.

The CAS used the female sibling of the child to defend their position against the band. The girl has since turned 18 years old and has returned to the community of Lac La Croix, where she now makes her ordinary residence.

No matter what type of laws, regulations and directives are developed to restrict interaction and keep the children away from the aboriginal community, they always come home. Wouldn't it be easier to legislate expanded and enduring Indian and native provisions?

I have spoken.

Apichi Gitchi Meegwetch.

The Chair: Thank you. Mr. Simard or Madam Stevens, you have about five minutes left.

Mr. George Simard: Five minutes?

The Chair: Yes. Before you proceed, may I recognize Madame Horwath.

Ms. Andrea Horwath (Hamilton East): Thank you, Mr. Chair. I'm just thinking of the committee meeting yesterday, where we had a few minutes of an extension because there were a few people whose voices were important to hear. We extended the hearings by a few minutes yesterday afternoon. I'm wondering if we could allot the same consideration to this group, which has come from so far away to provide us with their insights and their experience and their important points.

The Chair: It's up to the committee. As the Chair, I try to obey the agenda, but if there is support in every corner, I think we can do it. Is there support, if necessary, to extend? We have to keep in mind that there are people waiting, so let's not waste too much time debating it. Why don't you proceed, sir, and then, if necessary, we'll add a few more minutes.

Mr. Simard: What we're trying to convey to the standing committee—and I'm sorry for not acknowledging you; I do that now. We're trying to tie in for you and give some graphics to the verbal that has been presented here. What we're trying to demonstrate to you is, over the 20 years that Weech-it-te-win has been on the ground, in the trenches, providing First Nation child welfare services, how we visualize our communities in relation to their regard for their children.

We draw these circles in this fashion here—the child is the centre—and various layers within the community have responsibility, as our grand chief and Chief Jourdain have said, about caring for those children. So you see the child, the biological family, the extended family, the First Nation community and then Treaty 3 as a whole in relation to how we visualize the system of caring.

What has been perpetuated on us, however, is not to utilize these layers of security and protection within our system. What has prevailed is the mainstream practice to rip that child out of that protective environment and traumatize them again by putting them in a non-native environment. Generally what happens with that is we get them back at 16 as damaged goods, something that we refer to as a split feather syndrome.

As a result of our women, as the chief has mentioned, Treaty 3 has decided to initiate their own process in terms of creating their own Anishinabe law for child care in Treaty 3. That process began in 1996.

1630

Being a technical person, then, in order to make it palatable to the government, we had to start inventing words so they would understand the concepts that we're trying to promote. We talked about harmonization and we talked about world view, but there are a number of paths to the Creator. Catholicism is only one of them; the Anishinabe way is another one. I heard that from a Jesuit one time. When we talk about CFSA mainstream practice and our Anishinabe law that has now been created, we're talking about an administrative harmonization that has to prevail, and that's what that diagram is trying to demonstrate.

Further, to try to convey our message to the people, this is how we visualize Weech-it-te-win. Yes, we have a designation from the provincial government. It is secondary to our caring for our children under our inherent right. So what we've done is used Anishinabe tools and mainstream tools, what we call our bicultural practice, to reach the same end that you have related to the protection of children.

How we continue to measure that in relation to its compliance: We take in the statutory care provisions under the various orders, in terms of their policies and procedures and file compliance, and what we've done under customary care, part X, is Weech-it-te-winized it, adopted them and built our own compliances in that regard. What's significant about it is that they still use their regular, mainstream tools to come and evaluate us over here. It's another way of looking at our manner of practice. When a client comes into Weech-it-te-win seeking service, our workers, in order to operationalize this bicultural practice, must be proficient at providing what we call the Anishinabe Way, which are those traditional practices related to our healing that have been historic to us and that we implement.

We do not negate, however, that there is an acculturation that has gone on with our people, so we provide those supports to them as well. These yellow lines represent the levels of acculturation that an individual may have. So a person can come in and access mainstream practice if they want it at Weech-it-te-win, but if they want to go see a healer or have a shake tent consultation, they have the privilege to do so also.

Appreciate that none of this is necessarily funded or acknowledged under the current funding framework. As a matter of fact, related to our subsidies under customary care, they are not even recognized in the current funding framework. We have to use subterfuge and temporary care agreements in order to have those subsidies funded.

In order to empower our First Nations people, this is the process of our placement. We use the immediate family and the extended family. You'll notice here that it's somewhat contrary to the usual practice of removing the child into a non-native environment. That is one of our last resorts. I say to you that we do consider that, we're not averse to that, and we thank our white brothers who provide that service to us from time to time, but we want to emphasize this: As far as we're concerned, related to our aboriginal children, they are in fact citizens plus, and these then are those rights that are beyond the regular rights that you see offered to a child in care in mainstream practice.

We are saying that an aboriginal child has a right to his Anishinabe name. There are Ojibway words for what that means. It predates any legislation. I'm talking from that premise as well. Understand that these things are in the language. They predate any CFSA that has ever prevailed. We're saying that that Indian child, because of his identity, has to know his spiritual name and he has to know what clan he comes from. He has to have an identity. He must know his language and he must know about his cultural and healing ways. He must know about the good life that's part of everything that we believe in. He must have ownership of his land. He must have an Anishinabe lifestyle. He must have an Indian education. In "protection," these are the Ojibwa words that emphasize the various essence of care in our communities. He has a right to his family. This is what we mean related to special rights for our kids, which we believe, through the 1965 agreement, we are paying for 91 cents on the dollar.

In that regard, then, I'd ask you to consider this in terms of this concept of administrative harmonization. You have the CFSA in relation to its various parts. We too at Weech-it-te-win, in terms of our customary care, are beginning to develop our own parallels, if you want, related to your legislation.

What we want to say is this: Will you not consider this on behalf of these children that I represent? We're asking you to build on part X, to work with us, and we extend our hand to this committee for that purpose. We want you to consider building on part X as an interim measure. We know that this ethnocentric world view that you have primarily concerns itself with mainstream practice, and that's OK. We understand that; that's where you are. What we're suggesting to you is that in part X, which is also within the legislation, we are prepared to take those amendments and adopt them. We are also prepared to take our Anishinabe laws, as declared, and lend you some of that knowledge into part X, to build part X. But make no mistake, as far as we're concerned, that is an interim measure, because the ultimate goal is to have our own stand-alone law declared in Ontario by 2010. That's what the chiefs have authorized.

So I say this to you, and please appreciate it this way: Customary care to us is about our life. Customary care was not designed by the Child and Family Services Act. It is a concept we use to develop our services. It is much bigger than part X, but part X does give us an opportunity. It's broad enough for us to start a process of our own governance.

What is our ultimate goal? To rebuild and revitalize the core of Anishinabe society and structures. This is the self-governing aspiration of our First Nations: "Self-government is our right as a people, a gift from the Creator." This is what our people are saying.

In closing, we want to honour these men who, in the 1970s, began a process of healing child welfare in our territory: Moses Tom and Joseph Big George. We're grateful to them for their perseverance in pushing this agenda.

For the children of Weech-it-te-win, we say to you, miigwetch for listening.

The Chair: Miigwetch. Thank you to all of you for your presentation. We went over by seven minutes, which is fine. The committee agreed. We'll move on to the next presenter, if you don't mind.

Mrs. Linda Jeffrey (Brampton Centre): Is there a chance to get a copy of their presentation today?

The Chair: The last presentation? Yes.

Mrs. Jeffrey: Can we get a copy of the written presentation today? Is that a possibility?

The Chair: Yes. I think we have two pieces already. The last one we don't have, to my knowledge.

Mr. Jourdain: To extend my hand, I give that to you as part of building our relationship.

Mrs. Jeffrey: Perfect. Thank you very much.

The Chair: Mrs. Jeffrey will share that with all of us. Maybe the clerk could get it, and then all of us could have a copy. We thank you again for your presentation.

Can we move on to the next presentation, Aneurin Ellis?

Interjection.

The Chair: Yes, Mr. Hampton.

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Mr. Howard Hampton (Kenora–Rainy River): It would have been good to have had an opportunity to ask a few questions. I don't think we're going to see information presented by anyone else like this. As is clear from their presentation, there is a lot more here than has been discussed heretofore.

The Chair: I hear your request. Again, as the Chair, if there is support, I will certainly allow that. We've got to keep in mind that we are behind by almost half an hour, but that's fine with me. There are people waiting. Is it the wish of this committee to extend and allow some questions? Do I hear any comments? Otherwise, I'll ask for a motion and we'll take a vote.

Ms. Horwath: Perhaps even just one question from each party would be helpful.

The Chair: A minute each, you're suggesting? Could the four of you please come over here? What we are going to do is allow only one question for each party, one minute in total between the question and the answer. If all of us can keep that in mind, please, mostly because there are other people waiting. Mr. Hampton, would you like to start, and we'll go around?

Mr. Hampton: I do have a question. My question boils down to this: I think Mr. Jourdain and Mr. Simard both indicated that the child and family service organization they work with, Weech-it-te-win, is audited from time to time by the ministry to determine to what extent they are meeting the objectives of the Child and Family Services Act. I want to ask them, to your knowledge, are non-aboriginal child and family service agencies ever monitored or audited to determine to what extent they are meeting the cultural needs of aboriginal children who from time to time may be under their authority?

The Chair: If you can answer, please.

Mr. Jourdain: Not to my knowledge. I said in my presentation that certainly there are signals that the compliance reviews now do pay small attention to those provisions in the act, but not to my knowledge, no.

Mrs. Jeffrey: I don't have a question, but I guess I would agree when Chief Gardner spoke about how he prayed for a good day. This is really important, and I know that the ministry supports customary care. We're going to try and do as good a job as we can. I think everybody around this table believes that the safety of children is paramount, and I'm very grateful you came today. You spoke very well, all three of you. Thank you.

Mrs. Julia Munro (York North): I want to also add my thanks for you coming here and coordinating your presentation. I think that was very effective for us to get a full picture of some of the issues. I look forward to reading the presentations and also looking at the areas where we might be making recommendations for amendment.

The Chair: Thank you again for your presentation.

FAMILY SERVICE ONTARIO
CATHOLIC FAMILY SERVICES OF PEEL-DUFFERIN

The Chair: At this time, we will ask Mr. Ellis. Is he here? Would you please have a seat, and while you get ready, I'll just remind you that you have a total of 15 minutes for your presentation. If there is any time left, there will be comments or questions for all three parties. So you can start any time you're ready, please.

Mr. John Ellis: Thank you very much. John Ellis is my name. I'm the executive director of Family Service Ontario. With me is my colleague Mark Creedon, who is on the board of directors of Family Service Ontario and who is also the executive director of Catholic Family Services of Peel-Dufferin. We are both going to speak to you this afternoon—me, relatively briefly; and Mark will finish after I have completed my remarks.

First of all, I would like to thank the committee for giving us this opportunity to present to you. From the perspective of nearly 50 family service agencies in Ontario—

The Chair: Just for the record, you are Mr. Ellis?

Mr. John Ellis: I am.

The Chair: You are here representing Catholic Family Services of Peel-Dufferin and Family Service Ontario, which is not the next presentation. It's a few down. That's fine. We'll continue with your presentation. There is also another Mr. Ellis, but that's fine. You can proceed. We just want, for the record, to—

Mr. John Ellis: OK. So anyway, we are Family Service Ontario, which is a provincial umbrella body representing approximately 50 family service agencies in the province, of which the Catholic Family Services Peel-Dufferin is one.

We have basically three things that we do as a provincial body. The first is to provide a number of specific services to our member agencies. That includes educational and information opportunities.

Second, we have an accreditation program, and I might mention to the committee member—I think it was Mr. Hampton who asked a question about whether family service agencies are monitored. This is a very timely question because one of the services that we offer to our member agencies is an accreditation program. You're probably familiar with the hospital accreditation system, and there are other similar ones around the province. But

the fact is that we also have a very sophisticated accreditation program for our agencies. As part of the standards, they are required to show that they are not only sensitive but they also offer services to multi-ethnic communities. This is part of the requirements of accreditation. I thought that might be useful information pursuant to the last question.

The third thing we do is advocate on behalf of our agencies for improved legislation, policies and funding.

The Child and Family Services Act is a very important part of the reform of child welfare that's currently taking place in the province. Its goal of helping children and families is very consistent with our goals as well. It's a complicated reform process, and includes differential response, permanency planning, adoption, customary care and alternatives to court, and the concomitant and supporting activities of quality assurance, evaluation, management information systems, funding models and training.

Family service agencies in the province are very pleased to be part of this reform process and see our agencies playing an important role in attaining its objectives. In her message introducing this legislative reform, the previous Minister of Children and Youth Services, Marie Bountrogianni, said the following: "Legislation should reflect the values held by the people of Ontario and provide the appropriate tools for professionals to carry out their work." We wholeheartedly agree with this statement.

The two key conclusions drawn from the legislative review that are most closely related to helping the children and families supported by family service agencies in Ontario are the following: (1) increase supports and services available to families to prevent the need to take children into care; and (2) integrate and coordinate children's aid society services and programs with other community services. Children's aid societies are not mandated to provide counselling support to families and are currently preoccupied with protection and investigation activities.

Referrals to family service agencies are made to help many families at risk who come to their attention, but there is no accompanying funding. In fact, core government funding for these family support programs was taken away from the family service agencies in 1995, as many of you know. Without the restoration of this funding through legislation, this reform cannot be implemented successfully. Provisions in the act have to include the funding of such support services.

The good news is that now there is an opportunity to rectify this situation with the effective implementation of the differential response model. Family Service Ontario and our member agencies would like to see reference to this in the legislation. We support the goals of this model as evidenced in our submission to the Ministry of Community and Social Services in response to its discussion paper Linking Child Welfare and Social Services. This model integrates the identification of children at risk, seeks the support of local agencies like family service agencies and, where appropriate, works with them to strengthen the families.

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The results, as demonstrated in the research done in the United States, Australia and Alberta, show that the number of children coming into care is reduced, that recidivism of referrals to CAS declines, and that the pressure on the health, mental health and criminal justice systems diminishes. These conclusions can be drawn also from the results of the Safer Families project in Peel region, which is based on the differential response model that Mark is going to talk to you about momentarily.

These are our mutual goals, and family service agencies look forward to playing an important role in the new paradigm.

Now I'd like to ask Mark to make some further remarks pursuant to my presentation.

Mr. Mark Creedon: I'd like to thank all the committee members for inviting us here. I'd like to say a special hello to Linda Jeffrey and Peter Fonseca, who represent Mississauga and Brampton. We have offices in both.

The reason I'm here is because I'm the executive director of Catholic Family Services of Peel-Dufferin and also because I was asked to represent Family Service Ontario on the Child Welfare Secretariat reference group. I think the reason I was asked to do that is because I spent the last 16 and a half years working in family service agencies and the prior 13 and a half years working in child welfare agencies. When the province began to look at where a differential response could make sense, I was asked to represent both of those sides of the same coin.

Just to give you a very quick understanding of the kinds of things that a family service agency does would take too long to explain in this short amount of time, but I think there are certain core services that are provided in each of the 50 family service agencies throughout Ontario, and that would be individual, couple and family counselling. Unfortunately, it's a reality that something like 50% of marriages are going to get into serious trouble, according to Stats Canada, and a third of them are actually going to pull apart altogether, and that's without help—the kind of help that family service agencies can provide. Many families get torn about in the same process. Some 29% of women are going to experience some form of woman abuse in their lifetime in their relationships. Adult survivors of childhood abuse: about 15% of women and 10% of men are sufferers of that. These are some of the core services that family service agencies provide.

I think that Bill 210, from my experience in looking at it, is an excellent bill, because it really tries to balance the two priorities that a children's aid society has: the first one to protect children, and the second one to enhance the wellness of children by supporting their parents. My fear is that in the last 10 years, that last priority has been given very scant help. In looking at Bill 210, it reminds me of going back to the future. It looks a lot like the kinds of things that child welfare was doing in the 1970s,

1980s and the early 1990s, only it has got better tools now, so it still is an advance into the future.

One of the things that Bill 210 will do is encourage the natural partnerships between child welfare and family service agencies. There's a family service agency located pretty much in every region of Ontario where there is a CAS. In the 30 years of my professional social work experience, I don't think a day ever went by that I didn't see a family that was involved in child welfare that couldn't use the kind of services that family services could provide. So often, those families have really blossomed and really grown when they've been given a kind of a counselling program based on their strengths.

I think what I'll do with the last two minutes is just talk a little bit about an example, which is Safer Families. Safer Families is a partnership between Peel CAS, Family Services of Peel, and Catholic Family Services of Peel-Dufferin that tries to get services very quickly to survivors of woman abuse, the children who witnessed the abuse and the men who committed the abuse. The family service worker goes out with the CAS worker and tries to engage. There was a pilot study done with 15 families; 14 of those 15 families decided to stay working with the family service agency after the initial time that they met. There was a 32% lower re-referral rate in this pilot study. There was a four-month-less time spent with the CAS and there were three children who were clearly prevented from coming into care as a result of it.

When you compare how things were done before this kind of differential response—let's say the neighbours called because a man had been yelling at his wife for an hour. CAS would go out, but because of the eligibility criteria, they wouldn't be able to force the family to stay involved. Maybe two months later, they'd go out again, and the man would be yelling for two hours, but again the woman is afraid. She doesn't ask for help; she's afraid to do that. CAS has to go and close the case again, as do the police. Finally, he throws her out on to the front lawn, but he doesn't cause physical harm, so again, the family does not have to stay involved. Another two months goes by, and he does her harm: He sends her to the hospital. Now he's charged. Now the woman goes to the hospital. Possibly the children's aid society has to take the children into care. There are tremendous taxpayer costs, but more so, tremendous harm to the family; the children have been exposed for months.

I believe that Bill 210, in many regards, will give the kind of flexibility to the children's aid societies and community agencies to really give families the right kind of service at the right time at the right cost. I think, like all bills, the ultimate test will be: How well is it managed, and how well is it funded?

The Chair: Thank you. There is no time left for asking questions, but thank you for both presentations.

ANEURIN ELLIS

The Chair: So that I can get back to the agenda here, Mr. Aneurin Ellis is coming in. You're next, sir. You have 15 minutes in total for your presentation. If there is time left, we will ask some questions. Please start whenever you're ready.

Mr. Aneurin Ellis: Good afternoon, everybody. I'm really pleased to be allotted 15 minutes of your time. I do appreciate it.

I come before you as a father, a husband and a man who has taken on the non-traditional role of stay-at-home dad. I've been a stay-at-home dad for quite some time, since my children were born, basically.

We're here today to address amendment 26 of Bill 210, which changes the way the societies deal with complaints. We believe the amendments do not go far enough to protect children; in particular, subsection (3), "No review if matter within purview of court."

We had our own personal experience with family and children's services, with the society. We filed a complaint early in their dealings with us. The complaint was filed back in December 2002, and to this very day we still haven't been able to get through to their third step, which is their board of directors. We've been turned down over and over again for the last three years. We've made numerous attempts, then requesting a meeting with the ministry, and we've been able to do that.

My concern with the complaint procedure is that in some cases it takes a couple of years. In our case, it took our case about two years before we were able to get to trial. Our complaint issues were the issues that were at court. In situations where the society fraudulently brings a case against a family, like in our case they have, and what I mean by fraudulently bringing a case against somebody—in particular, my wife had called the police, and therefore the police were involved. We're all together to this very day, but the police got involved and I was arrested. The charges were eventually withdrawn, but the police were involved; the society was called.

1700

I was released on the condition that I should go to counselling, which I had no problem with at all. I'm quite a reasonable person. It was very important to me. I believe most reasonable people would see that if someone has addressed a concern to you regarding the well-being of your children, and you're willing to recognize that concern and you're willing to do something about it, address it and maybe make some changes in your life if necessary, that would be a good thing, a positive thing, you would think. In this situation, even though I was willing to go to counselling, they opened up a case and put before the court that I wasn't willing to go to counselling, and were able to obtain an order to apprehend our children.

A few days later, after that apprehension, they took my little daughter here and were able to question her over a period of—I don't know, because we had no contact with the children; we didn't have any contact with the children for six days. What I mean by no contact is that we had no phone calls and no physical contact with our children. We had requested that our children have contact with our friends and families; we requested that the

children have contact with a doctor. The society said no. We also requested that our children have contact with the daycare supervisor. The society said no.

This went on for six days. At the end of six days, the police called me, asked me to come down to the police station and charged me with a terrible crime against my daughter, a sexual assault crime against my daughter, the most horrific type of crime you could ever be accused of.

Over this period of time, these six days, there was a video interview that basically consisted of two video interviews and also an off-camera interview where in the third interview, let's say—that we know of—the worker enters the room, kicks the chair out of the way, sits down beside my little sweetheart here, and she would ask her these questions. Well, she actually didn't even ask her the questions. She basically said to her, "Now, during the break," when the camera was turned off, "you had said certain things about your Daddy." She just repeated exactly what maybe—who knows? —they wanted her to say or whatever.

The bottom line is, if anybody had any concerns regarding a sexual assault on anybody, especially in the nature of this sexual assault that apparently took place against my daughter, you would think that someone would take the child to a doctor, a psychiatrist. They had my daughter there for three months. You would think this would be important, some kind of examination, but that wasn't going to happen in this situation for some reason.

Anyway, they were able to be successful in removing me from the home with regard to that. It took a period of 10 months before the charges were withdrawn and everything else. But what I'm trying to say here is that there's a problem with the complaint procedure, being that it's taken our complaint three years to get anywhere. The other problem is that if you're going to wait for a court proceeding to end, the issues in the court proceeding may be related to the complaint. The complaints have to be addressed, because the well-being and the protection of a child has to be paramount, and it has to be paramount even if it is protection from the society. These children have to be protected. It's the responsibility of the government and the people who make the laws in this country to put in place protection laws for our children, even if the society or organizations or agencies intend to exploit children for whatever gain. For me, it's totally beyond my imagination. It repulses me. What is the gain, what is the purpose for these types of actions?

The other thing is that when I reported these allegations that I'm bringing to your attention this very day, the director of the children's aid society filed a lawsuit against me for $500,000. On the very same day while we were going to court, while we were in a court proceeding, on the way to trial, the director filed a lawsuit against me for $500,000 and apprehended my two children on the very same day. In his affidavit of that lawsuit, he indicates that the reason why the lawsuit was brought against me was to teach me a lesson. Now, if he's filing a lawsuit against me and taking my children—it's absolutely insane to fathom what has actually taken place here. It's very difficult to believe. Then, when we went to court—because we had to take it to trial. We didn't have our children; they apprehended our children. We proceeded to trial, and while at trial—my wife was pregnant. The trial ended on May 27, 2004. My daughter here was born on May 20, 2004, but while at trial—this trial took three months, and we were defending ourselves, because it's extremely expensive for a family. It can certainly break a family, and actually make you bankrupt, trying to find a lawyer. We went through five lawyers. I had two criminal charges against me; they were both thrown out by the crown. We went through all of this, and while we were at trial trying to get our children back, they started sending us letters threatening the baby that was growing in my wife's belly. Here they are, threatening the child that is growing in her belly, and, once the child was born, they threatened the child again, at birth. My wife, at that point, just couldn't take it any more.

At that point, I just couldn't—I mean, what could I do? I'm in a situation—I'm a stay-at-home dad. It's very hard to understand, because it's so non-traditional, that a man could be like the mother. I cook for the children, have dinner for them at 5 o'clock every single day when they come home from school or daycare. It's very hard for anybody to understand. They threatened the baby, and my wife just couldn't take it any more. She decided to settle in the case. We would never have settled in the case had they not started threatening. We've only had the experience with them for two and a half years. They've taken our children twice, and now they're threatening our newborn. Both myself and my wife, and particularly my wife—I would have just pursued it continuously, and I will not let go; but my wife—a newborn child; how could you have the child leave?

Let me just show you one other thing. I do have something that's very important. This is a thing that was given to us while we were at trial. We were at trial with the Family and Children's Services of Kitchener, and this was handed to us by a person like yourselves, who was concerned; just a regular person within the court.

The Chair: Yes, we'll pass it around.

Mr. Aneurin Ellis: If you read that, it's a little note telling my wife to not have the baby in the—that's the original note. I've photocopied that and blown it up. It's a note, coming from a person in the courtroom, just like yourselves. "Do not have your baby in the hospital. They will take the child away." Then she goes on to give my wife a phone number of a woman, a midwife, who will deliver the baby at home, and she also indicates on there, that it's top secret, "Do not even pass this information on to the lawyer," in particular the children's lawyer, from the office that a lot of people have a lot of complaints regarding. "Do not pass it on to that lawyer in particular," she indicates in there, and she indicates "top secret"; don't tell anybody.

Here's a person, just like yourselves—what is wrong when a person can't even stand up? There's something wrong with the system here, when someone who has

some decency and some ethics can't even stand up, and is terrified to do so. There's something wrong with that. She indicated there, "Don't tell anybody."

If we can reflect back to the 1930s in Germany: Out of that era, from the Second World War in Germany and the people who were involved in the Resistance, a lot of these people today are recognized as heroes. A lot of these people at that time were terrified to identify themselves or even say some things, but today they're recognized as heroes for saving many lives of Jewish people who were on the way to be executed. In this case, this lady has decided to give my wife this information and let her know that it's very important to keep it a secret. There's something wrong with that.

My concern is the complaints can sometimes take a long time, the court proceedings can sometimes take a long time, and the children need to be taken care of. The protection of the children has to be paramount, even if it is against the society. Thank you very much.

1710

The Chair: Thank you. There is about a minute and a half left—30 seconds for each party. Anyone has a question or comment, for 30 seconds only?

Ms. Horwath: You mentioned that you think that the section needs to be changed. Do you have any recommendation in that regard as specific?

Mr. Aneurin Ellis: I just feel that the complaints have to be addressed. If there's a complaint regarding the protection of a child, even this—my child is being abused by the society. I know this organization is in place—the child advocacy office and the court system—but in many cases, the families just do not have proper legal representation. We went through five lawyers. When we finally did get to a trial, we didn't have a lawyer at all. We had to represent ourselves. In some cases, this can happen. I just feel that it's very important that the act in itself has to protect the children, and it has to clearly identify the exploitation of children. How do you take a child and coerce her into saying something that was totally false, simply to create this—to almost create a diversion, or even to create a reason, justification or some type of legitimacy to the fraudulent apprehension?

The Chair: Thank you very much for your answer. Thank you for letting us know your story.

Mr. Aneurin Ellis: Thank you very much.

The Chair: Have a lovely balance of the day.

Interjections.

The Chair: The kids are watching themselves on TV; that's why they're all excited there. Thank you again.

Interjection: Bye-bye.

The Chair: Bye-bye. Thanks for coming. Thank you again; bye-bye. You'll be on TV shortly. If you want to know what time, ask the clerk, OK?

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair: Can we then move to the next one, which is the Ontario Association of Children's Aid Societies. You have 15 minutes total, for presentation and all questions. Thank you. Sorry for the delay. We did ask for Mr. Ellis, but we had two of them. I didn't know that.

Ms. Kristina Reitmeier: It's no problem. Good afternoon. My name is Kristina Reitmeier, and I am chief counsel at the Children's Aid Society of Toronto. I'm honoured to address the committee, together with my colleague Dr. Nutter, on behalf of the Ontario Association of Children's Aid Societies, to which we refer as the OACAS.

The OACAS is an umbrella organization that represents 52 of the 53 children's aid societies in Ontario. I note that Ms. Jeanette Lewis, the executive director of the association, is present today as well.

The association is pleased to have this opportunity to address the committee and express the support of its member agencies for the general direction of Bill 210. We have also provided to you a written submission which we have prepared hoping that it would assist the committee not just in today's deliberations but also in the clause-by-clause a little later in this process. In our written submission, the association identifies specific provisions in Bill 210 that it supports and offers some suggested enhancements to other proposed provisions—enhancements which the OACAS membership believes will strengthen Ontario's child protection legislation to an even greater extent. We're not going to read our written submission today, but rather we'll address three particular areas of reform addressed in the bill.

As a CAS lawyer for more than 15 years, I have experienced the tremendous impact of the CFSA on child protection practice on the front line. The act governs all aspects of child welfare law, in both substance and in procedure. More importantly, it sets the tone and outlines the parameters within which we work. We are therefore very pleased that those parameters are being expanded to include a broader range of options for permanency for children.

In particular, we wish to express enthusiasm for the renewed emphasis on family and community that is evident in the bill. It starts with the expanded definitions of a child's extended family and the child's community, and it continues through provisions that will encourage placement with kith or kin as early as the first days following removal of a child from the parents, and always provided that an assessment has shown the placement to be safe. Under current legislation, it's not possible to place with family within that five-day window prior to the first court appearance that's required by law when a child is removed from family. Finally, this emphasis is evident in the provisions for making custody orders in the context of a protection proceeding. In all of these ways, Bill 210 emphasizes that children need families, and that these families and community placements require support.

I wanted to focus briefly on the custody orders. CASs have been challenged and at times quite frustrated by the narrow range of available options under the existing legislation. For example, currently, the only mechanisms

available for placing a child with extended family are, first, to make the child a CAS ward and the family or community member a provisional foster home. This option has the attendant intrusion by the worker and the lack of autonomy of the family, as there are regulations for foster homes, and workers need to visit and to document things frequently. A second option is to place the child with family under a supervision order, but this can be for a maximum period of 12 months at a time, requiring returning to court prior to expiry for a status review. The third available option currently requires that the family members bring a separate, second court application for custody against the parent under a different statute.

If Bill 210 is passed, it will permit the court, in appropriate cases, to make a custody order directly under the Child and Family Services Act right in the midst of a child protection proceeding after determining that a child cannot safely return home to a parent. Under Bill 210, custody orders would be available to those whom the child defines as his or her family or community. For a crown ward, this circle could include the foster parents. This, we feel, is a very good thing.

Overall, the amendments proposed in Bill 210 with regard to engagement of family and enabling family and community solutions support the clinical directions which the field believes are key to the transformation of child protection practice.

Dr. Brenda Nutter: Good afternoon. I appreciate the opportunity to speak with you briefly this afternoon, and I'd like to focus my comments with respect to most of the work in this legislation that pertains to adoption.

My name is Dr. Brenda Nutter. I've worked in child welfare for the last 36 years. I'm currently the resource supervisor at the Children's Aid Society of Northumberland, and have responsibility for both foster care and adoption programs. Over the past five years, I've been chair of the adoption task force of the Ontario Association of Children's Aid Societies, and also a member for three years of the CFSA committee. Today, I bring this accumulated knowledge and experience on behalf of the OACAS and in support of Bill 210.

I would like to make a few comments, but before so doing, I would like to draw your attention to page 3 of our written submission. That's where you'll find that there are nine statements that reflect inclusions in Bill 210 that collectively will create the opportunity for adoption to be a more effective path to permanency. We highly support this increased attention to permanency and to the changes that will provide the opportunity of adoption to children who under the current legislation would not be eligible for placement.

The openness provisions of Bill 210 combine the security of permanency within an adoptive family with the opportunity for a lifelong connection with the birth family. That connection might be as simple and as infrequent as a yearly letter or a gift at Christmas or on a birthday, but for some children it holds the promise of a real, lifetime connection to two supportive families who work together to jointly support, encourage and enjoy a child whom they both love.

1720

For years, this type of openness has been available to children who have been placed through a private adoption system. Bill 210 will allow children who come into the care of children's aid societies to have the same opportunities when it is safe to do so.

Be assured that the OACAS is not under the illusion that fully open adoption is possible for all children. We do believe that, somewhere along a continuum of openness options, there will be a place for many children to have some sort of contact with their birth relatives, but not for all. That is why it is so significant that, under this legislation, a crown wardship order must be obtained before an openness order can be made. Openness has not been conceived as a bargaining tool to entice parents into consenting to crown wardship. Openness cannot be guaranteed. That said, we do heartily support the development of a practice that allows the greatest amount of openness appropriate to the circumstances, and we applaud the fact that the nature of the contact can be defined through either an order or an agreement. In addition, we strongly support the fact that, under the provisions of Bill 210, the failure to implement openness provisions does not make an adoption order invalid.

In conclusion, I'd like to say that we recognize that this legislation will require a substantial commitment by the government to the education of the public and of those in the field who will be charged with the implementation of Bill 210. It changes the face of public adoption. It is true that more children will receive better service through permanency initiatives. In addition, in-care costs will be reduced. But as this process moves ahead, it is important that the needs of adoptive families be recognized and fully supported as they manage the ever-changing needs of their older and special-needs children. In the public sector, we believe that the expansion of post-adoption services is a critical part of the infrastructure that will allow the openness provisions of Bill 210 to be successfully implemented.

In concluding my comments, I would just like to say that if I can answer any questions with respect to openness at the end of our discussion, I would be happy to. Thank you.

The Chair: We've got three minutes.

Ms. Reitmeier: I just wanted to address briefly a third area, and that relates to complaint and review processes under the act. The field recognizes that provisions regarding complaint review and complaint resolution are very important to the goals of accountability and transparency. They should not, however, result in delays for children such as the rest of the statute aims to reduce. That is why the OACAS feels it is important that there be timelines and clear expectations around the review of complaints. That's why the association suggests that duplication be avoided wherever possible, and you'll find in our written submission a suggestion that one review be available for a single circumstance, and not more than

one, so as to reduce delay. Similarly, where a matter is before the court, it should not be the subject of a review or a complaint process at the same time. That's a set-up for different decisions in different forums.

Complex and protracted processes create unconscionable delay for children and excessive costs, and that is why the field favours streamlining the complaint review procedures under the act. Because the complaints often involve clinical and practice issues, it is important that the ultimate reviewer have an appreciation for and experience in the field of child welfare.

Subject to any questions my friend and I would be pleased to answer, I would conclude here with thanks for listening to us.

The Chair: Thirty seconds each. Mrs. Jeffrey, you are next.

Mrs. Jeffrey: You've provided a really in-depth document. I've been trying to follow along, but it's hard, because you've provided so much detail.

I think you're the second delegate who has spoken to post-adoptive services for crown wards. Could you give me a little more detail than you've provided here? Is it just for special-needs children or the complexity of the children you're seeing that you recommend that?

Dr. Nutter: It's the complexity of the children, but it also speaks to the openness issue that this legislation brings to the fore. Once we have families who will be taking on children and also those children's families, we can anticipate that our adoptive families will need greater support in order to navigate through what that process will be like.

Mr. Ted Chudleigh (Halton): I'm wondering if the children's aid society, yours or any others—have you ever known them to conduct exit surveys with children who have grown up through the children's aid society and have reached adulthood and moved on? Do you go back and interview them as to what their experiences were, good, bad or indifferent?

Ms. Reitmeier: Many societies do that and are informed by that. Also, the ministry's crown ward review that takes place annually speaks to children as they go through the system and leave the system, and there's that feedback.

Mr. Chudleigh: All of them, or is it sporadic? How is that done?

Dr. Nutter: Societies often have exit interviews at the time that children leave care, but in terms of a longitudinal study that would look at what happens five or 10 years later, those are very infrequent.

Ms. Horwath: Thank you. I don't know if you were in the room earlier when we heard from some of our First Nations presenters, but one of the issues that came up was the extent to which children's aid societies are audited with regard to the success they have in meeting the needs of aboriginal children, particularly meeting their cultural needs. Are you aware if that occurs, if there are audits of children's aid societies to ensure that they are meeting the cultural needs of aboriginal children?

Dr. Nutter: I know that will come up when we're doing crown ward reviews, with respect to whether we're meeting the needs of children who have different cultures. That would be something that our crown ward reviewers would look for in our files, to ensure that we've taken some steps and, if it happens to be a First Nations child, have we connected that child with their First Nation and their culture?

The Chair: Thank you very much for your presentation.

DURHAM CHILDREN'S AID SOCIETY

The Chair: We'll move on to the children's aid society of Durham region. There are 15 minutes total that you can use for your presentation or a mix of your presentation and questions and comments.

Mr. James Dubray: Thank you, Mr. Chair. Good afternoon. My name is Jim Dubray. I'm the executive director of Durham Children's Aid Society. I'm in my 39th year of practice, and that's why I have a few of these little white things on my head.

Good afternoon, Kathleen. I haven't seen you for a while.

Ms. Wynne: Good afternoon.

Mr. Dubray: I wanted to go through our presentation and limit my concerns to issues around the openness in adoption, so I'll start there.

On behalf of the Durham Children's Aid Society, I want to thank the members of the standing committee for permitting us to make a brief presentation to you on the proposed legislation. We are supportive of the amendments to the Child and Family Services Act. Our association, the Ontario Association of Children's Aid Societies, has spoken today to their concerns on proposed changes, and we support our association in this endeavour. These changes, combined with other initiatives such as Healthy Babies, Healthy Children, Best Start and early leaning centres, have the potential to establish a social safety net for children and families, a move that is long overdue in our Ontario.

Our intention today is to primarily focus on the potential implications of the Children's Law Reform Act on some of the proposed changes to the Child and Family Services Act. In addition, there are some other minor issues that we might propose to highlight for the committee itself.

This afternoon, we will be highlighting our concerns that are rooted in our agency experiences. In the past year, we have been piloting open adoption. Our experiences generally have not been positive. We have learned that in the making of and having agreements in place for adoption placement, the natural family sometimes have changed their minds with regard to the adoption placement and have sought to have it overturned by using the provisions of the Children's Law Reform Act. The Superior Court justice has agreed to hear the matter in September and is currently deliberating and deferring her decision on which act has primacy.

If the justice rules that the application has merit and can proceed, there is a good chance that the adoption placement can be overturned using the provisions of the Children's Law Reform Act. Needless to say, other counsel are watching this process very carefully, and if a door is opened to allow provisions of the Child and Family Services Act to be assailed by another piece of provincial legislation, we may find ourselves in a bit of a legal quagmire with respect to child protection and adoption proceedings. Our purpose today is to highlight for you those sections where you may want to further review the provisions to make it clear that the Children's Law Reform Act cannot be used to overturn rulings made under the Child and Family Services Act.

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We are certain that you are aware of how intricate and complex family matters can be. Emotions are strong, and when family issues are being discussed, and in some cases disputed, that is even more highlighted. Given that context, we want to appeal to you not to complicate these situations further by having these matters heard under two pieces of legislation.

The following are some of the examples to which we are referring.

Article 59.1 talks about the review of an access order made concurrently with a custody order. What this section seems to be contemplating is that if a person is not happy with a ruling under the Child and Family Services Act, then it is permissible, and in fact encouraged, for them to seek a further ruling under the Children's Law Reform Act. We would like to have family matters that originate in child protection settled under the Child and Family Services Act alone. Leaving another avenue of review is only going to prolong the family's angst and increase their costs. Would it not be better to simply state that such provisions under this legislation have primacy over the Children's Law Reform Act?

Article 65.1(9), no review if a child is placed for adoption: This agency supports the intention of this section. However, because of our experience locally where a family member has made an application under the Children's Law Reform Act to have its provisions trump the articles in the Child and Family Services Act, we are suggesting that a clause be added to this section that would prevent the Children's Law Reform Act from being applied to this section.

Article 65.2(6), custody proceeding: Our concern in this section is the same as articulated above. The article permits a justice to rule that an applicant has leave to proceed under the Children's Law Reform Act, and we believe that this should not occur.

Article 145.1(3)(c), openness order: The ministry is very courageous, I believe, in sponsoring openness in adoption in this legislation. You've heard earlier testimony today of how it can really benefit a child. However, human nature being what it is, any legislation must anticipate and regulate most anticipated uses of the legislation. With this in mind, we want to make some generic comments that may help to promote a further refinement of these amendments that are being proposed.

As noted earlier, Durham Children's Aid Society has had a bit of a negative experience with open adoption wherein the grandparent of the adopted child is requesting, through the Children's Law Reform Act, that the adoption placement be overturned. We have mentioned previously that there needs to be a strong signal in the legislation that child protection and adoption matters are not subject to review by the Children's Law Reform Act. Currently, there is no strong signal to stop such action being taken.

In our review of the proposed revisions to the Child and Family Services Act, we have noted two additional concerns that we would like to bring to your attention. They are as follows:

Article 59(2), termination of access to a crown ward: We wanted just to highlight to the committee that the wording in sections 59(2) and 59(2.1) seems to be at odds: 59(2) seems to state that "any order for access made under this part with respect to the child is terminated," while 59(2.1) goes on to talk about the access orders and their different variations. In our view, the two things don't seem to jibe. Given the close connection of the sections, there seems to be some disconnection between their intent. Perhaps it is intended to mean something different than what it states, but we would ask that you further review it and ensure that what is meant is being said.

Article 59(4), society may permit contact or communication: The Durham Children's Aid Society thinks this section could be improved if there were a further sentence in that section that talks about "terms and conditions for contact and communication need to be agreed upon by the society in advance," much like is currently in article 153.6. So there is a further provision that you have around these issues in the current amendments.

We believe that the transformation agenda and these legislative changes are fostering more positive working relationships with children and their families. One of the key benchmarks of positive working relationships is the ability to reach agreements in advance on how parties will conduct themselves in any relationship. Given that there is the potential for situations and emotions to change, a more rational resolution can be reached in court or in alternatives to court if there is an agreement in place initially.

On behalf of the agency and our clients, I want to express our gratitude to the standing committee for your time and patience this afternoon. Again, we applaud the changes that are being introduced by the legislation and we would hope that today we have prompted some further discussions toward the goal of improving service to Ontario's children and families.

The Chair: Thank you for your presentation. We have at least one minute each.

Ms. Horwath: One thing came up yesterday afternoon. There was a presentation from some young

women, a very powerful presentation. As children who had been through the crown ward process, they didn't feel that their own voices were ever heard, or no one ever talked to them about the situation. The workers talked to them and a number of different people were dealing with their issues, but nobody actually heard their voices. Do you have any comments on that or any suggestions?

Mr. Dubray: Yes. There are different ways. I think that different agencies may have different provisions for taking stock of what children are saying. In our particular agency, we have a provision that children who are either on extended care and maintenance or who have just graduated from the system also come back to sit on our board of directors. So we have a feedback loop back to the agency at the board level and we've found that this kind of provision helps us a lot in coming to an understanding of how children can be impacted.

Ms. Wynne: Thank you, Jim, for coming today. Two quick questions. First of all, on the open adoption, you're just putting a caution in place. You're not worried about the general direction. Is that accurate?

Mr. Dubray: No, I'm not having any concerns about the general direction whatsoever. I think our concern is that frustrated clients with agreements may seek redress under the Children's Law Reform Act, and I don't think that should be legitimized.

Ms. Wynne: OK. Then the second thing, quickly: As I read 59(2) and (2.1), (2) is when there's an order that has been put in place, and (2.1) is a step before that, where it puts some parameters in place for an order being put in place. Do you know what I mean? It's almost like (2.1) precedes (2), as I read it. I don't see them as mutually exclusive. I'm not a lawyer, so I will check that out, but could you comment on that?

Mr. Dubray: It just seemed to me, when I read it—and I went back to the legislation and tried to insert both sections there—the two things seemed to be saying something different. If I'm seeing it that way, others may as well.

Ms. Wynne: Yes, so maybe we need some clarification, but often in these things the sequence is out of order.

The Chair: Mr. Chudleigh, any comments?

Mr. Chudleigh: Thank you. I was pleased to listen to your presentation. It sounds like things have improved a bit. I was a crown ward personally for about three years. I think your organization is probably doing a little bit better job than it did in my day.

Mr. Dubray: Thank you.

The Chair: Thank you for your presentation

SECOND CHANCE FOR KIDS

The Chair: We'll move on to Second Chance for Kids, Terry and Sheila. Thank you for coming. You can start any time you're ready.

Ms. Sheila Volchert: Good afternoon, committee members, ladies and gentlemen. I'd also like to introduce Terry Hrankowski. I'm Sheila Volchert. We represent the Second Chance for Kids organization from the Niagara Peninsula. Terry and I will be doing a joint presentation this afternoon.

Second Chance for Kids is a support group for grandparents and extended family members raising children, as well as grandparents who have been denied access to their grandchildren. Terry and I really appreciate this opportunity today to raise more awareness of our situations.

We support Bill 8, An Act to amend the Children's Law Reform Act, which requires parents and others with custody of children to refrain from unreasonably placing obstacles to personal relations between the children and their grandparents. In other words, grandparents will be given recognition in our courts.

We also support Bill 210, An Act to amend the Child and Family Services Act and make complementary amendments to other Acts. This would include openness in adoption, legal custody orders to permit relatives to care for children permanently, and a requirement for the court to consider relatives before an order placing a child in foster care.

Both of these bills have recently received second reading.

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Terry and his wife, Barb, have been raising their three grandchildren for the past three and a half years. My husband, Hermann, and I have been raising our two granddaughters for the past seven years, and they are now eight and nine years of age. Hermann died on October 18 of this year after a two-year illness, and I am now raising my grandchildren alone.

Terry and I are members of the newly formed steering committee of the Canadian Association of Retired Persons, known as CARP. This committee was initiated by Judy Cutler and Bill Gleberzon, co-directors of government and media relations. I am also a committee member of the Consumer and Advocates Reference Group with the Provincial Centre of Excellence for Child and Youth Mental Health, which is striving to make some necessary changes needed in Ontario regarding children and youth. This committee is funded by the Ministry of Children and Youth Services.

Some statistics that may interest everyone here today: Statistics Canada numbers for grandchildren being raised by extended families with no parents present are steadily increasing. In 2001, there were 17,000 children in Ontario and 57,000 in Canada being raised by grandparents; in 2002, just a year later, there were 20,000 in Ontario and 70,000 in Canada.

Mr. Terry Hrankowski: In 2001, we were instrumental in bringing our concerns to the attention of the local community services department, which, with its input, generated a resolution with recommendations that were submitted to the Niagara regional committee and council in April 2002. These recommendations were approved by the regional municipality of Niagara.

In June 2004, Sheila presented a delegation speech to the regional municipality of Niagara committee members

regarding grandparenting issues. As a result, the same 2002 recommendations were reintroduced at that time and subsequently approved by both committee and regional council on June 7 and June 17, 2004, respectively. These recommendations are as follows:

Supports to extended families caring for children:

(1) that the province of Ontario amend the Child and Family Services Act to recognize custodial care by extended family members as a legitimate intervention and that the related funding to support these care arrangements be made available;

(2) that the temporary care allowance rate pursuant to the Ontario Works Act be altered to reflect established rates for similar care by foster parents;

(3) that the province of Ontario be encouraged to consider legislative changes to permit open adoptions.

Ms. Volchert: As I mentioned earlier, we sincerely support Bill 210 and are pleased that it has obtained second reading.

The regional municipality of Niagara council endorsed the above recommendations for caregivers of children. The same recommendations were also supported by the board of Niagara region's family and children's services agency as well as the Ontario Association of Children's Aid Societies.

Mr. Hrankowski: June 10, 2002, regarding provincial policy on the national child benefit supplement, NCBS: resolution approved by regional municipality of Niagara council. It recommended that the NCBS be exempt as income for families in receipt of the temporary care allowance. Unfortunately, retired grandparents on fixed incomes, widowed and disabled grandparents raising their grandchildren qualify for the benefit, but in most cases this automatically disqualifies their grandchildren for much-needed medical benefits such as prescriptions, preventive and emergency dental, eyeglasses and other discretionary benefits through social assistance and employment opportunities, also known as Ontario Works. Other provinces have wisely declined clawback of this federal financial assistance.

Ms. Volchert: The temporary care allowance, TCA, also provides assistance for children in financial need while in the temporary care of an adult who does not have a legal obligation to support the child. It has been mentioned in many conversations that Ontario Works is not the appropriate funding agency for the temporary care allowance. It has been suggested that the Ministry of Children and Youth Services should be responsible for these children and payment given to their caregivers as such. In this way, it doesn't carry with it the stigma of being on welfare.

Presently, the TCA gives $220 for the first child in the home and $181 each month for each additional child. This equates to $7.33 a day for the first child in the home and $6.03 a day for additional children. In comparison, foster parents receive a daily allowance of between $25 and $40 per child or more, depending on the needs of the child or special-needs child etc., plus other amenities for the children in their care.

Grandparents raising grandchildren also have special needs and concerns. Most grandparents are retired, widowed or disabled and living on fixed government pensions. We feel that grandparents should receive parallel funding similar to what foster parents are receiving, as we are raising children when their biological parents cannot. Statistics have proven that in most cases being raised by grandparents is definitely in the best interests of children. They take on the care of their grandchildren out of love, concern for their well-being, to give them a sense of belonging and to keep families together.

At the present time they receive very limited help and often are depleting their retirement savings to provide for them. Many have spent their life savings on lawyers, attempting to gain permanent custody. Grandparents are also concerned about furthering their grandchildren's education, which will be an additional financial burden on the grandparents' limited resources.

We have often said that it would be more beneficial for our government to ensure our grandchildren are given the financial supports needed now, rather than having to financially support their grandparents in later years as a result of depleted savings.

Mr. Hrankowski: In March 2004 in Ontario, there were 3,223 temporary care assistance cases receiving social assistance on behalf of 4,351 children. In Niagara region alone there are 396 temporary care cases. In some homes, grandparents are raising two, three or even four grandchildren.

We feel that children being raised by grandparents and extended families are unfairly discriminated against. Kinship families need government's help immediately to ensure that our grandchildren are taken care of financially. Most of these children have had a rough start in life. Please assist us in making sure that these children have a better future.

Ms. Volchert: On a personal note, as mentioned earlier, I am now raising my two grandchildren alone and will soon have no health benefits for either of them: These are prescription drugs, dental, eyeglasses and other discretionary benefits. I have been told that I must apply for the orphan's benefit on their behalf, and this amount plus the national child benefit supplement will be clawed back from the temporary care allowance that they have been receiving thus far. Also, they will no longer be eligible for the back-to-school and winter clothing allowances, community start-up benefits and PRO-kids, Providing Recreational Opportunities for Kids, which is now offered in the Niagara area.

As I mentioned during a presentation speech on June 10, 2005, at CARP, my husband had expressed his desire not to have lifesaving measures taken. However, keeping him on life support would have the benefit for his grandchildren to continue receiving health coverage. As a result, during his final hours, when hospital staff asked me again if I wanted to put him on life support, I really had to struggle with that question. I decided to abide by his last wishes and he ultimately succumbed to his illness later that evening. It was a heart-wrenching decision, and

yet I had to choose what I felt was best for my beloved husband.

This situation has happened to many widows on fixed government incomes and their grandchildren do not have much-needed medical benefits. It would appear that these children are being discriminated against due to the death of their grandparent. Apparently, one cannot collect the temporary care allowance and the survivor benefit at the same time.

Our present government has indicated that they want to eliminate child poverty, and yet, in many grandparent-headed families in Ontario there is child poverty. I know of many families who contact their local food banks just to make ends meet.

Mr. Hrankowski: In closing, I would like to say that grandparents have always helped to care for their grandchildren. However, when parents are unable to look after their children and the grandparents assume the parental role, they are now involved full-time, raising children for the second time in their lives. This role is accepted even though it comes at a time in their lives when they should be able to enjoy the retirement they had planned for. We have now undertaken one of the most challenging, most rewarding, most widespread tasks facing grandparents today. We've raised our children; now, we're raising theirs. We're involved full-time.

We love our grandchildren dearly, but we were not prepared to set new goals, fill new roles and meet new needs. We've had to re-examine our skills and develop new ones. We've had to reinvent.

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Ms. Volchert: In general, the public is not aware of this new entity. We, as parenting grandparents, are reaching out now. We need to tell our stories. We need to be recognized, acknowledged, respected, understood and supported. We are, after all, playing a vital role in raising the next generation. We are speaking out for all Ontario children, not just Niagara area's children.

Thank you for listening. We welcome any questions that you may have.

The Chair: Thirty seconds each. Ms. Jeffrey?

Mrs. Jeffrey: You would please Kim Craitor, a member from Niagara, who has Bill 8, the Children's Law Reform Act. He supports grandparents.

Can you tell me, do you speak on behalf of CARP? You've mentioned CARP in here, the Canadian Association of Retired Persons. Is this an amendment or a recommendation of that organization?

Ms. Volchert: No. CARP actually have joined our ranks. They are advocating for us 100%.

Mrs. Jeffrey: So they do support the legislation.

Ms. Volchert: Yes.

Ms. Horwath: Can I just ask, is there anything, in your review of the bill, that you would like to see changed specifically?

Ms. Volchert: Bill 210? No, we're just thrilled that there is the openness for what we would like to see, and we've heard so many in discussions: Young couples who aren't able to have children perhaps could adopt, say, our grandchildren, and then the grandparents would still have that involvement. They would never lose sight of their own grandchildren. A lot of grandparents just aren't able to raise their grandchildren, for health reasons or whatever. They just can't do it. But they would love to still have that involvement.

The Chair: Thank you very much for your presentation.

ANISHINAABE ABINOOJII FAMILY SERVICES

The Chair: At this time, we have Mr. Marin, but I understand there is agreement with all three groups to allow, for up to five minutes, Ms. Theresa Stevens. Could we hear from Ms. Stevens now, please, for up to five minutes, and then we'll got to—

Interjection.

The Chair: It has been agreed by the three parties already: Ms. Jeffrey, Mr. Chudleigh and Ms. Horwath. Unless there is a motion on the floor—you can proceed, please.

Ms. Theresa Stevens: Thank you. My name is Theresa Stevens. I'm the executive director at Anishinaabe Abinoojii Family Services in Kenora, Ontario. I want to thank the committee for the opportunity to present. My sacred name is Menobagiizhimoong and my clan is Kiishkamanizii.

I do want to preface my comments by saying I am Anishinabe Cree, and our traditional role is the care of children. I am an experienced aboriginal child welfare practitioner. That's where I'm coming from in relation to my comments. I support the position of the leadership from treaty 3. Their comments aren't meant to be seen as negating the need to still consult with First Nations. I am making commentary in terms of being a technician. I see this current system as only an interim arrangement on our way to the development of our own law.

Historically, child welfare reforms do not bode well for First Nations children, families and communities. First Nations were not consulted during the last round of the reforms, and those that managed to present to panels were told that First Nations issues were beyond the scope of the panel or committee's mandate and needed to be addressed in another forum. We are still waiting for a special forum to deal specifically with First Nations issues in child welfare.

When the ministry decided to conduct a review of aboriginal agencies, they never released the report publicly, so we do not know if there were any recommendations that would have benefited our communities and what those recommendations were. Even in the child welfare program evaluation conducted by Lucille Roch, it was strongly encouraged that there be increased recognition of the Indian/native provisions in the act. There were no recommendations to ensure compliance by ministries and agencies with those provisions, and in the one area where there was some autonomy for First Nations, they recommended legislative changes to give those

powers to the Lieutenant Governor. In this round of reforms, aboriginal representation in the Child Welfare Secretariat team occurred a year and a half after the process started. It was like we were an afterthought.

First Nations consultation takes place after the reform or policy has already been decided, when our leadership and technicians should have been part, right from the beginning, of the design and the development of those reforms and polices that have a direct impact on our children, families and communities. The government continues to make the mistake of assuming, when they consult with us as technicians, that they're consulting with First Nations leadership.

So what has been the result of the last round of reforms for First Nations children when we talk about outcomes and report cards? We have more children in care now, as Larry Jourdain mentioned, than during the height of the residential school era. Our numbers are disproportionately higher: 17% of those children in care. One of the reasons our number is higher is because the inclusion of chronic neglect and families with multi-complex problems such as domestic violence are now in the eligibility spectrum. This is in great part due to our socio-economic conditions, as well as the impact of the residential school program, over which our families, children and communities have little control.

Just as with the last round of reforms, the government continues to make the mistake of thinking they can apply one standardized approach for the whole province. Not all of the reforms and policy changes are negative, and we want some of the same things for our children. We too want better outcomes for our children. We want our children to know who they are and where they come from. We want them to maintain meaningful connections with their families, clans and communities. We want our children to have the same access to services that other children in the province have in order to be healthy and happy. We want our children to grow up to be successful and finish high school and go on to college and university.

We have practised a place of safety for our children through safe home declarations for a number of years now. We believe and practise placement priority, which stipulates that if children are not able to stay with their parents, we would first consider extended family and community members and other First Nations community members before we would consider a placement outside of the community with a non-native family.

We also practise least-intrusive, which means that if there is any way we can keep children from coming into care while ensuring safety, we are obligated to do so, as mandated by our communities. We use court as a last resort; in fact, the two Treaty 3 agencies have the lowest court costs in Ontario.

We are also mandated by our communities to work with families by bringing together extended family, interested community members, service providers, family service committee members, elders and agency workers in similar forums that are now being proposed, like talking circles, family group conferencing and alternative dispute resolution. We too have struggled with wanting to find ways to include the child's counsel in order to maintain voluntary customary care placements, so these legislative changes will not radically change our practice or philosophy. We are already doing them.

The development of best practice guidelines for independence planning is a positive move. First Nations children have unique needs in this regard. How can we best transition our young people back to their community, and how best to ensure they have the resources they need at the community level in order to continue to grow and develop, to be healthy, happy and successful young adults who become contributing members of their community? Of course, we would welcome extension of extended care and maintenance in order to more firmly establish our young people, and to be able to provide it under customary care is a welcome change.

In the area of prevention, providing resources to prevent children from coming into care is a good investment, as is the flexibility to respond to families when they're in a financial crisis in order to keep children from coming into care. Families shouldn't be penalized financially for trying to help their own.

We too believe in prevention and early intervention, but these reforms and policy changes should not allow agencies to off-load their protection clients on prevention. Prevention and other community services need to be adequately resourced to take on an increased demand for services through deferential response.

Kinship care: There is a concern by First Nations that the intent of the expansion of kinship care is to erode or replace customary care. Having said that, more flexibility in licensing of foster homes is a good thing. It will encourage more aboriginal family and community members to take care of their own. The CAS will no longer be seen as being overly intrusive and bureaucratic when families are interested in caring for family members.

In the area of customary care, the First Nations we represent are against giving the Lieutenant Governor the authority to set regulations and standards for customary care. Customary care is a First Nations model of caring for our own. The government has no right to define them for First Nations. The aboriginal agencies which provide service to them are afraid that the intent is to erode the practice of customary care, and the setting of best practice guidelines is only the beginning.

1800

Foster care: Foster parents are being better resourced and supported to care for children, whether it be through adoption or legal custody, which is also a positive thing. This will encourage First Nation families who would like to assist relatives, but do not have the resources, to meet the needs of some high-risk, high-needs children and youth, as long as foster parents going for custody do not bypass the community and the band's party status in those proceedings.

This is my last point: It is not a given that all foster families will maintain access to communities for reasons

of culture and identity. This is why access orders enforcing compliance is important. Further, any training or curriculum developed for foster parents needs to be adapted for First Nation agencies and workers.

For example, the pride curriculum needs to have input from the elders of the Nations that is incorporated into the curriculum. Looking after children would be another example where aboriginal-specific developmental needs would be incorporated into the assessment, which is region-specific.

In order for these reforms and policy changes to be successful, there needs to be a corresponding investment in capacity and infrastructure building at the community level. This is greatly needed, as most First Nations do not have services that are available to mainstream agencies, such as children's mental health services and child developmental services.

Again, I thank the committee for the opportunity to present.

The Chair: Thank you, Ms. Stevens. I know you wanted to speak to us. Thank you very much.

OMBUDSMAN ONTARIO

The Chair: We will move to the last presentation for the day, a presentation from Mr. André Marin. I believe there's half an hour allocated for your presentation. Thank you. You can start any time you wish.

Mr. André Marin: It's an honour to be here this evening. I'd like to introduce as well Wendy Ray, to my right, who is the senior counsel in our office. I plan to make a short presentation and to open up to some questions.

As this committee knows full well, Bill 210 is not without its fair share of controversy. However, the objection I bring for your consideration is one that has not been heard publicly and one which I believe I am duty-bound to raise. In a nutshell, whereas other provinces have seen fit to provide independent oversight over their respective child protection agencies, the Ombudsman's office has, in Ontario, an extremely narrow opening to investigate complaints about the services sought or received by the children's aid societies.

That small window will close once this bill passes, unless this committee makes its voice heard. If that small window closes, Ontario will have the dubious distinction of having solidified its position as being at the back of the oversight pack in Canada in ensuring that the most vulnerable of our children have an independent avenue of redress.

We all know who the most vulnerable citizens are: children at risk, children whose parents are unable or unwilling to care for them. The importance of ensuring that we succeed in rescuing and protecting these children and in helping their families cannot be overestimated. After all, our children are our future. Today's children are tomorrow's citizens, tomorrow's parents, tomorrow's workers, tomorrow's governors. When today's children are protected and given a sense of self-worth, they can take care of tomorrow. But when things go wrong, today's children can become tomorrow's burden. Worse, when things go wrong, today's children can be today's tragedies. When they are not given the effective support and protection that is their simple birthright as human beings, they are neglected, even abused. They are left unfed or unsupervised. At times, they are beaten or sexually violated, or in the horrifying case of Jeffrey Baldwin and his young sister, they can be denied their humanity entirely. As that case also shows, these tragedies can happen under our watch.

Fortunately, Ontario is blessed with good citizens who are prepared to make the protection of children their life's calling. There are 53 independent non-profit organizations in this province, children's aid societies staffed by dedicated people who try to pick up the pieces when our children are being failed. Their work could not be more important. The effectiveness of what they do could not be more urgent. But as is true of all humans, these societies sometimes fail, and the systems we have put in place to help them sometimes fail as well. When this happens, families can be broken apart needlessly or children can be deprived of stable foster care or adoptions can fail or, at times, children can suffer continued abuse or even die, as Jeffrey Baldwin did.

Jeffrey slowly starved to death in 2002 at almost six years old. He was only 21 pounds and stood at only 37 inches. Evidence now being called at the trial of his grandparents, who are charged with first-degree murder, is that he was living in his own feces in his bedroom while his lungs were filled with pneumonia. He was "treated like a dog" and forced to eat in a corner and urinate and defecate on the floor. Sadly, according to media reports, the Catholic Children's Aid Society of Toronto not only did not prevent this horrifying situation from happening, but facilitated it. This CAS gave custody of Jeffrey and three of his siblings to these two accused murderers. One of the co-accused had been convicted years before of assault/bodily harm in the death of her baby, who suffered broken bones.

If honourable members wonder how in God's name the CAS, our child protection agency in Ontario, could ever facilitate providing custody to someone in these circumstances, you are not alone. We received a complaint in the last month about this case and were asked to investigate. We had to turn it down. We have no jurisdiction over the CAS. If Jeffrey had had the good fortune of being born in any other province in Canada, lingering questions about the role or complicity of the CAS in the death of Jeffrey could be probed. Alas, in Ontario we are forced to simply turn a blind eye and move on.

Jeffrey's case may be an extreme case, but it is not a unique one. Children can die as 25-day-old baby Jordan did in 2001 when he starved to death while his 19-year-old mother was supposedly being supervised, because CAS workers assumed staff at a community women's shelter would take care of things.

It is never time to stop trying to improve things. It is never time to stop making the system and the people who administer it as good as they can be.

Like any thinking citizen of this province, I am therefore pleased to see many of the improvements to our child care practices being taken in the Child and Family Services Statute Law Amendment Act, things like increasing the flexibility of dispositions to meet the needs of each child, making the system friendlier for adopting parents, and the attempts to reduce the expense and acrimony of litigation by encouraging mediation.

But I did not come here simply to applaud the act. I am here because the legislation will fail in reaching another of its underlying objectives, namely, strengthening the complaint procedure to provide higher standards of accountability for children's aid societies. Not only will Bill 210 fail to achieve this, it will make it worse.

Currently, my office cannot accept complaints directly about children's aid societies, even though we receive hundreds of complaints annually; last year we received 305. In the first six months of this fiscal year, we received 94. Because of limits on our mandate, we cannot address them. We have to tell affected individuals caught up in what are likely to be the most important events in their lives—struggles relating to the welfare of their children—that we cannot help.

Other provincial Ombudsmen are not so limited. In her 1991-92 annual report, my predecessor lamented that "all provincial Ombudsmen except for Ontario and Quebec have jurisdiction over children's aid societies or their equivalent." Meanwhile, last year Nova Scotia passed amendments to increase the relevant jurisdiction of its Ombudsman.

Quite evidently, there is no public policy reason why my office should not be dealing with CAS complaints. Other provincial Ombudsmen do. Indeed, as long ago as 1986, a Canadian Ombudsmen conference in Ottawa passed a resolution to give priority to the investigation of complaints made by or involving children.

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Our inability to consider CAS complaints is not because of any concrete policy choice or because of concern that it would be unsuitable to have an Ombudsman help achieve inexpensive and expeditious solutions to the litany of problems that arise. Our inability to provide oversight is an accident of history. It is because Ontario is the only province in Canada where children's aid societies, although publicly funded and provincially monitored, developed as private institutions, and, like other provincial Ombudsman, my office generally oversees only government agents. At present, this gives me only a sliver of responsibility to oversee what I will call directors' reviews that are undertaken under subsection 68(3) of the Child and Family Services Act. Directors' reviews occur rarely, where the ministry chooses to exercise its discretion to assign a director to review a CAS decision. Since the director is appointed by government I can examine the way he or she conducts the review, but not the underlying cause.

So what does Bill 210 do in an attempt to improve the handling of complaints? Not only is the Office of the Ombudsman of Ontario not taken advantage of, it is totally ignored. Bill 210 removes the jurisdiction of the Ombudsman of Ontario over directors' decisions by abolishing directors' reviews under subsection 68(3). While other provinces are moving forward in lockstep to give their citizens the benefits of an expeditious, inexpensive, informal complaints procedure relating to some of the most important matters those citizens will ever face, we in Ontario are moving backwards. How, then, can the government present Bill 210 as legislation that will increase CAS accountability by improving the complaint procedures? We do not yet know the details because they will be housed in regulations. What we do know is that the Ombudsman of Ontario provides the ingredients necessary for effective oversight, expedition, informality and effectiveness.

As Bill 210 recognizes, with its call for increased mediation, not every problem requires formal adjudication. Most of the complaints we receive can be resolved quickly and inexpensively through timely intercession. Sometimes it happens because our impartiality enables us to see obvious solutions that the parties are too invested to see. At other times we serve as honest brokers.

For deeper and more intransigent problems, particularly when those problems are systemic, there must be an investigation and there must be credibility in reporting. The Ombudsman Act provides our office with the tools needed to find the facts, including the statutory power to demand production and, if necessary, compel testimony and conduct hearings. We have the track record to employ reason and exercise moral suasion to secure results.

An elaborate statute has been crafted to make this office effective at external oversight. That statute is called the Ombudsman Act. This office, which administers that statute, is not only in place, it is well established. Giving the Ombudsman of Ontario jurisdiction to oversee the work of children's aid societies will provide the most expert, expeditious, informal and effective form of oversight possible. This is why my predecessors have been calling for this power for more than 20 years. This can be achieved easily, without having to amend the Ombudsman Act and without setting any precedent, as I already have some authority relating to private contractors operating under the Ministry of Correctional Services Act. The solution can be achieved by adding a single provision to the Child and Family Services Statute Law Amendment Act to give the Ombudsman of Ontario authority over children's aid societies.

I would propose that Bill 210 be amended by adding the following provision: "Approved agencies designated as children's aid societies under subsection 15(2) shall be deemed to be governmental organizations for the purposes of the Ombudsman Act."

In the end, this should be done for the most compelling of reasons: for the children and their families. If this power had been given when my predecessors called

for it in an effort to correct a technical accident of history, much of the grief experienced by the parents of disabled children told about in my report Between a Rock and a Hard Place may have been avoided. Those parents were forced to give up their children to children's aid societies in order to secure residential care they could not afford. While the societies were supportive in most cases, some of the bureaucrats they dealt with were insensitive to the realities of the situation and subjected these families to humiliation and degradation without apparent appreciation that they were dealing with loving, capable parents. And I wonder what kind of contribution we could have made to improving the protection for the Jeffrey Baldwins and the Baby Jordans of the world.

The province of Ontario provides over $1 billion to fund child protection services through 53 independent children's aid societies, yet fails to provide the checks and balances that would ensure that administrative decisions taken by these societies, which have life-and-death impact on children in need, be exposed to independent investigation.

If we as a province want to discharge our deep moral and legal responsibility by using private children's aid agencies to perform one of the most important functions of government, that is fine; for the most part, those societies have acquitted themselves well and we are in their debt. We must, however, do what we can to make sure that they operate as effectively and as fairly as possible. They do the groundwork, but in the end, the children of this province are our responsibility. Their well-being is under our watch. Tragically, at times, we know that their very lives can be lost under our watch. We can never let that happen because we have not been watching effectively, nor can we permit families and adopting parents to suffer needlessly because we have developed an incomplete and ineffective oversight system.

This office was devised to improve the quality of decisions affecting the lives of Ontario's citizens. This is my plea to make use of it where it is most required.

Thank you, Mr. Chair.

The Chair: Thank you for the presentation. We still have about 12 minutes left, four minutes each. I'll start with Mr. Leal.

Mr. Jeff Leal (Peterborough): Mr. Marin, thank you very much for your presentation. You indicated that your predecessors have been making this request for over 20 years? What has been the response over that 20 years? What's been the formal reply back to the Ombudsman's office on this issue?

Mr. Marin: I think there's little appetite for oversight unless a crisis happens. You know, ministers do their work in good faith. They rely on public servants to give them advice. Unfortunately, it's not very high on the list of public servants giving advice to ministers to propose oversight, because oversight means someone looking over their shoulder. It's not popular; it requires a champion of oversight.

I have worked very hard behind the scenes in the last few months. I met with the Minister of Children and Youth Services. I met with senior public servants, one of whom is present in the room today. I met with the deputy minister. I get very polite acknowledgment of my position. No one appears to challenge it, but it requires political fortitude and it requires the ability of public servants to recognize the need and not wait for the crisis. Unfortunately, that's what has been lacking in the last 20 years.

Mr. Leal: Along those lines, over 20 years, governments of all political stripes have been in power. Has any correspondence gone from the various ministers of the day back to the Ombudsman's office, formal correspondence with regards to this particular issue?

Mr. Marin: Certainly. I have correspondence from the current minister as of July 21 right here. I don't have the rest here, but I'm sure there is correspondence, yes.

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Mr. Leal: Could that possibly be tabled?

Mr. Marin: Certainly.

Mr. Leal: One last question; I'll make it very quick. In your presentation, you indicated that 305 complaints have been made to your office regarding CAS. Do you have the resources to handle these complaints, to do a thorough job?

Mr. Marin: If we were extended the oversight of CASs, I assume there would have to be an adjustment in terms of the resources given our office. I don't have an exact number on that. But if you look at the Jeffrey Baldwin case, the media have called for a public inquiry; the last public inquiry cost in the tens of millions of dollars. Our annual budget is $9 million to handle 23,000 complaints a year. So whatever the adjustment in our budget, it would be infinitesimal compared to the contributions we could make.

Mrs. Jeffrey: A quick question. It's my understanding that you have some statutory authority already. I understand you said that when you were doing MPAC, you had very robust investigative tools, and you could do informal interviews, seizing evidence, summoning witnesses and conducting public hearings.

Mr. Marin: Yes.

Mrs. Jeffrey: How would this change your ability to do what you're asking for now? I guess I was under the impression you had tools to provide those kinds of special reports, that because of your SORT team, you could go in and do the kind of work you're asking to do.

Mr. Marin: Because the CAS is outside our jurisdiction, we can't do anything with regard to any complaint about the CAS, contrary to every other province in this country. We can't. The tools are there, but because the CAS is private and not public—our legislation only gives us authority over provincial public institutions; it doesn't include the CAS. That's why we're proposing this amendment to you today.

Mr. Chudleigh: Are you saying that there's absolutely no oversight from any organization over children's aid societies?

Mr. Marin: That's correct. The act provides for an internal review process. The amendment to the act—

Mr. Chudleigh: From within the children's aid society.

Mr. Marin: That's within. There's no outside investigation of complaints about the CAS.

Mr. Chudleigh: But if there's a serious complaint, surely the police would have the authority to go in and to do an investigation.

Mr. Marin: A criminal investigation. With the Jeffrey Baldwin case, the allegation about the CAS is that administratively they dropped the ball, not that they committed a criminal act, so the police will not investigate that.

Mr. Chudleigh: Under the municipal regulations for the municipal area, there's no organization, no branch of the municipal governments that would administer that, the health unit, for instance, or some other organizations? They don't have any responsibility for looking at children's aid society cases?

Mr. Marin: No.

Mr. Chudleigh: None whatsoever?

Mr. Marin: None.

Ms. Horwath: It's interesting, because in fact we had a presenter today who had a complaint about the CAS. I find it interesting that we're hearing from you at the end of this day, when we had someone who came to us this afternoon to actually highlight that very issue. He's been through the courts, with five different lawyers, trying to get some justice for the way he was treated by the CAS in his particular case.

I wanted to make the point, and I think it's an important one, just to add to the point you raised around the issue of costs, and the cost of inquiries versus the cost of perhaps an enhanced budget to oversee this particular area, let alone the costs that children or families would have to pay if they're not getting appropriate treatment from the CASs. I'm very pleased that you've brought this forward. I think it's an extremely important issue.

I wanted to ask if, in your opinion, this recommendation you've put forward could easily be put into legal language and submitted as an amendment to this bill. Is that something you would see as being—

Mr. Marin: Absolutely, and we provided you the legal wording in the submission.

Ms. Horwath: So the language on page 4 is in fact the appropriate language to be added to the bill?

Mr. Marin: Yes, subject of course to what your legislative drafters would have to say, but it is appropriate legal language.

The issue here is, who will champion this? That's really the issue. I think this act generally does a lot of very good things. Over the last 20 years, we've had excellent ministers in charge of this file. The issue is not a political one. That's why I'm appealing to this committee to approach it on a non-partisan basis. The minister takes advice from his or her public servants; it's not popular for public servants to advocate oversight. When is the last time you heard a public servant ask for increased oversight in their area? They'll do it, as they're doing it in Ottawa after a royal commission costing $100 million, when there's an election on their heels. I think it would assist the minister to know that there are champions in the form of this committee who are prepared to step up to the plate for the children.

The Chair: Thanks very much. I think it's very clear. We thank you for coming and giving us your view on the matter. Enjoy the balance of the evening, all of you.

At this time, we will adjourn the meeting. We will reconvene on Monday, December 12, at 3:30 or so in this room. Thank you again.

The committee adjourned at 1825.

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