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Lundi 12 décembre 2005

Standing committee on social policy

Comité permanent de la politique sociale

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

Chair: Mario G. Racco
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 12 December 2005

Lundi 12 décembre 2005

The committee met at 1622 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 again, and thanks for waiting for us. We had to deal with the votes upstairs, but now we are here. I want to make sure everybody is aware that there are four presentations right now. Some of you have only two on your agenda. Two other people did attend, as you remember. We were open-minded that the people who showed interest prior, if they would notify us, we would allow them to speak if time allowed. Since we had only two on the agenda, we added two more, so we have four. In fact, there is space for additional people if they do attend.

ASSOCIATION OF IROQUOIS AND ALLIED INDIANS

The Chair: We will start then with the first presentation this afternoon, and that is the Association of Iroquois and Allied Indians, Chris McCormick, Deputy Grand Chief. Thank you, Mr. McCormick, for waiting. We have 15 minutes for your presentation. If you don't use all the time, we will be able to leave it for questions or comments. You can start anytime.

Deputy Grand Chief Chris McCormick: I was wondering, Mr. Chairman, if you could give me an indication of when I'm around the 10-minute mark.

The Chair: Yes, when you've used 10 minutes, so you'll have five to go. I'll do that.

Deputy Grand Chief McCormick: I'd just like to acknowledge the committee and the work that you're about to do and to wish you every success.

The Association of Iroquois and Allied Indians is a political organization. We represent eight member First Nations. We have an approximate population of 20,000 people. To put this in perspective, I just need to ask if any of the committee members have ever lived on a reserve?

The Chair: Have any?

Interjection.

The Chair: Ms. Wynne has.

Deputy Grand Chief McCormick: Then I think it's important to put this in perspective. Because we're a tribal people, in a First Nation, for the child, both sides of her parents live there, her mother and father, her brothers and sisters, her aunts and uncles from both sides of her parents, her nephews and nieces, her grandparents, everybody who's important to that child in her life lives in that community. I think that's important for you to understand when we're talking about First Nations and their relationship to the amendments to the bill.

I wanted to point out a few statistics: 30% to 40% of children in care in Canada are aboriginal. This is from the INAC study. According to the United Nations human development report, Canada rates fifth and First Nations rate 63rd. According to the minister's statistics in our meeting with her the other day, 17% of the 9,000 children in care in Ontario are First Nation children, and First Nation children make up only 2% of the population in Ontario. So there's a big problem with First Nation people and the apprehension of our children.

Part of this problem has developed because the government has failed to meet its obligation to consult with First Nations. In regard to consultation, there is a political, legislative and legal obligation to consult with First Nations. The Prime Minister recently made promises to the five national aboriginal leaders that no longer would they be presenting legislation without consultation with First Nations. Premier McGuinty also promised First Nations that there would be consultation. Legally, the Supreme Court's decisions and the Constitution, section 35, say that aboriginal treaty rights are recognized and affirmed. Customary care is an aboriginal right. It's also an international human right that people can look after their own children.

Legislatively, you have the 1965 welfare agreement, which states that there has to be consultation with the province or with the province and the federal government with the agreement of First Nations before there are amendments regarding their constitutional aboriginal rights.

There was only a short period of time in which the ministry invited comments, from January 21 to 31. It was

on their Web site. That's not considered consultation, as far as I know. We did have a Chiefs of Ontario resolution in 2004, which was passed on to the minister, requesting a separate consultation process.

Section 2.2 of the Indian welfare agreement states, "No provincial welfare program shall be extended to any Indian band in the province unless that band has been consulted by or jointly by Canada and by Ontario and signified its concurrence." That has not happened. The purpose of 2.2 was to ensure First Nations had control over programs that are extended to them.

The welfare agreement also provides that the level of services will be comparable to the rest of Ontario. The services that we have are not comparable to the rest of Ontario. We want to point out that the 1965 welfare agreement is cost-sharing and open-ended. The minister has the prerogative to act if First Nations services aren't comparable to Ontario; past ministers have not. A glaring example is the discontinuation of the band rep, who was the representative of the community in court cases where children were being reviewed for apprehension. We are hoping that this minister will see fit to exercise her authority and jurisdiction.

There's also the legal obligation under Ontario law that the act be reviewed. For there to be a proper review, there should be consultation with the people who are affected under section 10, which pertains to aboriginal people. There was no formal consultation with our First Nation people.

Bill 210: Section 44, amending section 223 of the act, proposes that the Lieutenant Governor of Ontario have the power to make regulations pertaining to "(c) governing procedures, practices and standards for customary care." This is in conflict with the current definition which states that customary care means the care and supervision of Indian or native children by a person who is not the children's parent according to the custom of the child's band or native community.

This is the point: Customary care is deeply rooted in First Nation culture. It is an aboriginal and treaty right and therefore it is supported by the Constitution. First Nations maintain that the finding of customary care rests with each individual community. For example, I might point out that there's as much assimilation between an Ojibway and an Oneida as there is between a Swede and a Norwegian. So again, it's in perspective with what a First Nation community is about.

1630

A recommendation: Part X of the Child and Family Services Act includes section 212, "Subsidy for customary care," which states that "a society or agency may grant a subsidy for the person caring for a child." Not paying a subsidy has led to placement of First Nations people in non-cultural, non-Native families. The word "may" should be removed and replaced with "shall" or "will," and a full subsidy equal to the current foster care rate should be granted, not a partial subsidy through Ontario Works. Part X has been in place for 20 years. It's part X that must be fully implemented and dealt upon. With us, we would hope that it would lead to a First Nations welfare act.

The band representative—we mentioned that. It was a crucial link between the children, the children's aid society and Family Courts. It was discontinued in 2002, and that's the reason the minister is telling us that 17% of the 9,000 children in care are First Nations children. The discontinuation of that program has had a dramatic effect on First Nation children. The 1965 welfare agreement provides for equity of services comparable to Ontario.

The Association of Iroquois and Allied Indians statement on customary care:

It takes a whole community to raise a child. In order to ensure long-term, positive social, emotional, physical and spiritual development of our children, it is imperative that a child in need of protection is placed with their extended family or community in a customary care arrangement, as practised by the individual community.

In order for First Nation children to succeed and reach their full potential, we must develop programs and services that are rooted in the First Nations culture, language and customs, and meet the specific needs of our communities.

In order for there to be a true and significant change to the dismal numbers of child protection issues within our communities, First Nations need to be full partners and take a lead role in child welfare reform that occurs in Ontario.

With this being said, we are asking the legislative committee to consider the following:

(1) That section 44, subsection 223(c) of Bill 210 be removed from the act.

(2) The Association of Iroquois and Allied Indians expects the Ministry of Children and Youth Services to respect the wishes of First Nations that a separate consultation process be developed for First Nations to review and provide recommendations.

(3) The Association of Iroquois and Allied Indians is asking the Minister of Children and Youth Services to exercise her authority under the 1965 Indian welfare agreement to appropriately fund child welfare programs on reserve.

(4) The Association of Iroquois and Allied Indians is also asking for the support of the minister in the development of a First Nation child welfare act.

I'd like to leave it there and to answer any questions that any of the committee members may have.

The Chair: Thank you. There are about four minutes left, and we'll give about a minute and a half each. Should I start with you, Madam Munro, please?

Mrs. Julia Munro (York North): All right. Thank you very much for coming today and providing this for us to give consideration to. I wondered if you would speak to a couple of the issues that you have referenced at the back. Particularly, I'm interested in issues around the openness orders and the alternative dispute resolution. As you've defined the part in the current bill that says that the openness orders are meant to facilitate communication or maintain a relationship etc., I just

wondered if you wanted to comment on (a) the appropriateness of openness orders, and (b) the way in which you would wish that idea to be put forth in an amendment.

Deputy Grand Chief McCormick: I guess to try to put it in perspective, there may be a problem in the child's community, but as we pointed out, the child's extended family exists in the community. The ability to be taught our language, to be taught our traditional dance, to know the history of our community and those perspectives that are important to our life need to be a component of this openness. Presently, there isn't that avenue there, where the community is going to have access to that child, and that's what is important.

The overall, long-term objective of the province of Ontario, which we agree to and support, is an Ontario where all children have the opportunity to succeed and reach their full potential. For that child to receive its full potential, the person has to know who they are, what their history is, what their language is. That's when they will reach their full potential.

The Chair: Thank you very much. Ms. Horwath, please.

Ms. Andrea Horwath (Hamilton East): I'm glad that I got a chance to get in while you were still talking. I'm sorry I was a few minutes late.

I wanted to ask you about your comments around two pieces. One is the lack of equal services for First Nations children, as well as the issue of funding. If you could just expand on those two issues a little bit, I would appreciate that.

Deputy Grand Chief McCormick: We've mentioned that the department cut services to the band rep. A scenario is, if you go to court, the child has a lawyer, the parents have a lawyer, the CAS has a lawyer, but the band doesn't have a lawyer. That's an example where there isn't equitable funding. It's a component where the minister has the prerogative under the 1965 welfare agreement to make sure that services are comparable to Ontario's. I think that's an example that could be used to answer your question.

The presenter after me is going to more fully answer your question, in particular to the First Nation of Tyendinaga. You'll get a full, comprehensive review of the services that aren't being provided for presently by the minister.

I just wanted to point out that some First Nations are presently paying for a band rep under the monies that they're getting from Casino Rama. My response to that is that you have an act that deals with children. That act has got to be able to stand on its own. It shouldn't have to borrow from monies that First Nations people get from Casino Rama to pay for a band rep to represent their child and themselves in the court. If you want a good act, it's got to stand on its own.

The Chair: Thank you, Ms. Horwath. Mr. Ramal?

Mr. Khalil Ramal (London–Fanshawe): Thank you for coming today. I had a chance to meet with your group three weeks ago. I learned a lot about your issues. We also heard from various native groups that came before this committee and spoke about customary care. Do you have any communication with other groups in order to establish some kind of method you're looking for in terms of customary care? We heard about different styles. Is there anything like a style proposed by all the native communities across the province?

Deputy Grand Chief McCormick: That would be hard to accomplish. For example, I'll use the Oneida and Ojibway. Oneida is a matriarchal society, Ojibway is patriarchal, so there is a distinct difference there. The languages are different. The history of the community and people is different. The way they dance is different. So what they develop in the community of Batchewana, which is Ojibway, they wouldn't even think about trying to say to the Mohawk people of Tyendinaga, "This is the way you should have your customary care." That's why the position of the association is that that responsibility to define what's good for their children or community rests with the chief and council and the people of that community.

Mr. Ramal: These details—we're talking about the concept, the method, the way we have to deal as the law rules should be applied across the province the same, with provision for native communities. I'm not talking about how you implement on the ground, whether a matriarchal society or patriarchal society.

The Chair: Mr. McCormick, could you answer quickly, please? We're over time already.

Deputy Grand Chief McCormick: The method, I guess, would have to be in a consultation process, which we haven't had the opportunity to proceed with. We're just reacting to a bill that's been put on us. We've had a review of it, and we haven't had a chance to come forward with recommendations that might be reflective of what First Nations want.

The Chair: Thank you again for your presentation. We'll move on to the second presentation. I know there were some more questions, but we are over time.

Deputy Grand Chief McCormick: I would just like to thank you for giving us the opportunity to come here.

1640

MOHAWKS OF THE BAY OF QUINTE

The Chair: The Mohawks of the Bay of Quinte, Mr. Donald Maracle. Chief Maracle, you can start any time.

Chief Donald Maracle: *Remarks in Mohawk.* Good afternoon, everybody. Bonjour. I'm Don Maracle. I'm the Chief for the Mohawks of the Bay of Quinte, the fourth-largest First Nations in the province of Ontario, the sixth-largest in Canada. I would first like to thank each and every one of you for the opportunity to address the standing committee on social policy on this most important piece of legislation, Bill 210.

As we approach the holiday season, the topic of children and their special place in our world is on everyone's minds. It is the season of joy and hope for the future. With this in mind, I feel this is a most opportune

time to address this committee on this most important topic.

A long-term goal of the Ontario government is to create "an Ontario where all children have the opportunity to succeed and reach their full potential." The Association of Iroquois and Allied Indians and the Mohawks of the Bay of Quinte fully support this goal and we are committed to working in partnership with the Ontario government to achieve the goal for our First Nations children. In order for First Nations children to succeed and reach their full potential, we must develop programs and services that are rooted in First Nations culture, language, customs and tradition, and that meet the specific needs of our communities.

There is the appearance that the ministry is readying itself at an operational level for quick passage of this bill and, as First Nations communities, we find this insulting and very inappropriate.

My presentation will highlight three key issues that the Mohawks of the Bay of Quinte have with this bill in its present incarnation: (1) The obligation to consult with First Nations communities—this is protected in the 1965 welfare agreement and has been ignored; (2) jurisdiction as it relates to customary care—a one-size-fits-all approach is not acceptable or in keeping with any nation-to-nation recognition; (3) immediate action—First Nations do not have the luxury of time on these matters.

Firstly, there's an obligation to consult with First Nations in Ontario. The Prime Minister of Canada, the Right Honourable Paul Martin, made the following statement in his opening address at the Canada-Aboriginal Peoples Roundtable on April 19, 2004: "No longer will we in Ottawa develop policies first and discuss them with you later. The principle of collaboration will be the cornerstone of our new partnership." If it's Canada's model, we wonder why it's not Ontario's.

The Premier of Ontario, Dalton McGuinty, has also committed to a new relationship with Ontario's Aboriginal people. He has committed to "build a brighter future for aboriginal children and youth" in partnership with aboriginal people. Ontario, through its new approach to aboriginal affairs, has committed to meeting its duty to consult with aboriginal peoples where actions may adversely affect an established or asserted aboriginal or treaty right. Under the 1965 Canada-Ontario welfare agreement, the province is obligated to consult with First Nations about any social program changes covered in the agreement: child welfare, day care, welfare and homemaking programs. Clause 2.2 of the 1965 Canada-Ontario welfare agreement states, "If and as First Nations agreed to accept these services as a result of consultation with the federal government, or through consultation with the federal and provincial representatives."

Review of the Child and Family Services Act: As a legal obligation, the minister must review the CFSA every five years. A review, as we understand it, must include complete and proper consultation, which did not occur. The public notice for input was very short—January 28, 2005, to March 31, 2005—and was via the ministry's Web site.

The Chiefs of Ontario, at a special assembly from November 9 to 11, 2004, in Thunder Bay, passed resolution 04/70, First Nation Child Welfare: 2005 Legislative Changes. The resolution called for a separate consultative process for First Nations to review and provide recommendations on any proposed legislative changes pertaining to child welfare. A First Nations process of consultation was not pursued by the Ministry of Children and Youth Services.

In the previous review of the Child and Family Services Act in 2000, the ministry failed to consult with First Nations. Sweeping changes to the CFSA were introduced and actually increased to a record number First Nations children being apprehended by children's aid societies. Some examples are:

—grounds for protection: 2000 CFSA changes introduced neglect as grounds for protection. This change increased apprehensions of First Nations children. The changes did not take into consideration existing socio-economic factors on reserves, such as housing shortages. It is common for two or more families to share a house. This was considered neglect by the children's aid society, and children would be apprehended.

—lowered threshold of risk: The language was changed in the 2000 amendment from "substantial" with regard to harm to a "likelihood" that the child would be harmed. Coupled with neglect as being grounds for protection, this increased the number of First Nations children involved with children's aid societies.

Jurisdiction, customary care: Section 44 of Bill 210, adding clause 233(c) to the CFSA, proposes to strip authority in the area of child welfare by giving the power to make regulations, policies and practices to the Ministry of Children and Youth Services. First Nations in Ontario have always maintained that the defining of "customary care" rests with each individual community, as nationality, customs and practices vary among First Nations. This is also supported by the current wording in the Child and Family Services Act. First Nations, as peoples, possess the human right to care for our children based on our customs, practices, traditions and culture.

There needs to be a First Nations-specific home study completed for customary and foster care. This needs to be done based on the principles of community and cultural respect. Currently in our community, Mohawks of the Bay of Quinte have no available foster homes for our children when they are taken into care of the children's aid society. They must leave their homes and, as a result, attend public schools off-reserve, where there is no Mohawk language for them. They are forced into French classes, but they have never had any previous French training.

If this bill passes without significant rewriting and a major overhaul, it will be another five years before any of this dialogue gets brought to the forefront. As First Nations, our issues are pressing, and another five years of inactivity is simply not acceptable.

We met recently with Minister Chambers and we all got the very real sense and commitment that proactive

change was needed and that the status quo was not going to cut it. Although we appreciate the need for a process, our programs and services continue to be overstretched and underfunded while the process unfolds. I cannot overemphasize that our needs are real and they are right now.

Funding levels: Our programs are funded using archaic formulas and have not increased in many, many years. Our needs continue to increase. More and more people are moving back into the territory. The impacts of Bill C-31 have been enormous. Our conditions are ever-changing and becoming more and more complicated, yet our funding remains stagnant in any real terms. Since the 1994-95 fiscal year, our funding from the ministry has increased by a total of 4%. This is unacceptable. Our funding is statistically 22% behind the mainstream. For every dollar mainstream family and child services receive, we receive 78 cents. How can this possibly be explained? The salaries of our professional employees lag behind any reasonable standard. Program money is exhausted quickly, program development desires are thwarted by a lack of funding, and yet we continue on as best as we can. We slide further and further behind and, at the grassroots level, we never see any real change or commitment.

Band representation: This is mandated in provincial legislation. It's a critically important component in the process, yet no funding exists for this mandated position. If band interests are to be brought forward at child protection proceedings, it cannot be done with legislative text. There needs to be a real commitment of resources so that the intent of the text can be operationalized. Our approach to the band representative is ad hoc at best. This only serves to confuse the clients, the judges and the court system. This in no way serves the interest of our children.

Adoptions: I am told that once a native child enters the system, after only 12 months can they be put up for adoption. It is measures like these that need to be addressed imminently. Our children are being lost and these arbitrary measures need to desist. Just waiting out the passage of the bill and no real action is not an option. Things are happening on the ground yesterday, today and tomorrow that need a logical, respectful and resourced approach.

1650

In closing, I would like to again state that in terms of Bill 210, the Mohawks of the Bay of Quinte are particularly concerned with the issues of obligation to consult under the requirements laid out in the 1965 welfare agreement and the entire gambit of customary care as it relates to mutual respect and appropriate funding. Nonetheless, I want to underscore my third point, that the time for action is now. Our funding is stagnant. There are short, quick fixes but there is no tangible change to the status quo in terms of funding. One thing has changed, though: Our need has changed. Society is becoming more and more complicated, and issues concerning children and families are becoming more and more difficult. Without adequate resources, we continue to play catch-up, and we are never in a position to offer what we feel is needed in terms of support.

Please bring these important points forward as you continue to deliberate on this bill. We believe in a foundation of mutual respect and we have every confidence that you will see the amendments and approach that we seek.

Just to emphasize the point, a record number of First Nations children are currently in care in the province of Ontario, more even than before the 1960s scoop. The CFSA mandate is twofold: protection and prevention. It's the prevention component that's seriously underfunded. All of the funding seems to support protection, with very few resources for prevention programs. We believe that prevention programs will work best in our community before there is a need for a children's aid society to become involved with our children.

There is a chronic shortage of housing. If housing is the issue, people can be on a waiting list for several years before they can get a mortgage. The band in our community only builds 12 houses a year; that's what we have funding for. If they don't qualify for a bank loan, then there's going to be the housing issue. That doesn't reflect on the quality of parenting that the parents provide; it simply speaks to the community's lack of resources to address very basic needs.

The Chair: Thank you for your presentation. We have about a minute each. Ms. Horwath, you're the first..

Ms. Horwath: Thank you so much for taking the time to come in and enlighten us with your experience as to how this bill has come about and how it has been raised with you as a community. You mentioned in your presentation—and I thank you for it; it's very detailed—that you had an opportunity to meet with the minister already. Did you get a sense that she's prepared to deal with some of the issues that you raised, or do you get a sense that she's more prepared to just ram the bill forward and not address your concerns?

Chief Maracle: The sense I get is, first of all, that the minister is committed to a specific First Nations child welfare act, which we do support. There is something similar to that in the United States. Our socio-economic circumstances are much different than Ontario's. As a matter of fact, the Canadian government now has a policy of allocating $5.1 billion to close the gap between the standard of living of First Nations people and other Canadians. The national government recognizes that the quality of life in First Nations communities is less than the Canadian norm, and that's the kind of environment in which our children grew up. I grew up in a very poor family, but I had a very good mother and a very good grandmother and good uncles and aunts who all shared in the rearing of the children. The whole family pitched in, because we are a traditional society; that's what we do.

The other sense I get from Minister Chambers is that the plight of First Nations children is a very serious matter that she takes seriously, and she wants to see improvements made so there are not so many children being apprehended and taken into care.

Mrs. Linda Jeffrey (Brampton Centre): Chief Maracle, it's nice to see you again. You spoke eloquently the day you met with Minister Chambers. I was lucky enough to be in the room while you spoke. I was very impressed with your comments that day.

I was surprised by what you said in your presentation about the discussion we're having today on the bill being, because of its quickness, insulting and inappropriate. Then in the next paragraph, you talk about how we need immediate action. I guess I just want to say that when I heard Minister Chambers speak, she did talk about the need for taking care of children, that we needed to act quickly and that it's really important. That was the message I got that day, as you've mentioned today: that you don't have time, that there are children who need protection now and that we need to put amendments in place that will protect those children. It's important.

You didn't speak about customary care. Do you have concerns about the legislation and customary care? You didn't mention it in this deputation.

Chief Maracle: Customary care has to be defined by our own people, by the standards of our own First Nation. The people who live in our community know our people the best and the people who provide and render services tend to know who's best to give customary care, as opposed to the local children's aid society, which may not know anybody there. Fortunately enough, we have Christine Claus here, to my left, who is our representative on the Hastings Children's Aid Society, but many First Nations do not have any representation on the children's aid societies that serve their communities, so you have people making very serious decisions about the children who don't know any of the circumstances of the families. Sometimes they tend to be very judgmental, in a very inappropriate way. I think the decisions need to be made in the community.

If resources are going to be allocated for customary care, then those resources should be managed by the First Nations community government as part of our move toward self-determination. If they're given to the children's aid societies—most of you know they have been chronically underfunded and have had to come to the government for bailout funds to clear up their deficits. Usually, the board will prioritize many things, including their own salaries. We want customary care to benefit the children that need it in our community.

Mrs. Munro: Thank you very much for coming today. I want to ask you a question related to what is obviously a very complex issue in terms of customary care. You mentioned in the response a few moments ago about looking at other jurisdictions, and I wondered if you had any opportunities to see best practices in the area of defining customary care and the kinds of things that you would want to see included in those potential changes.

Chief Maracle: In terms of customary care, it has to deal with the person as a whole person. It has to look at their basic needs for food, shelter and clothing and to be sent to school and those sorts of things, but it also has to develop their spirituality and intellect to make them a well-rounded citizen. The only way they're going to achieve that is if they're reared by people who actually love those children. In First Nations communities, there are many, many people who love the children if their parents are unsuitable. There are lots of aunts and uncles. Many of them are professional people. Some are nurses, lawyers, accountants, some are truck drivers and some work in factories, the same as anyplace else.

In many First Nations communities, there are people who come from abusive environments. The father may have been an alcoholic. Because you've been exposed to an alcoholic parent, you're going to be seen to be a person at risk, even though you may not drink at all. Because of the circumstances you grew up in, it's a mark against you. If you were in a residential school, that's going to be a mark against you. Most people who have suffered those circumstances don't want to rear their children that way; as a matter of fact, they go out of their way to spare them from the experiences they suffered in life.

Those things are not taken into account properly. There needs to be a specific aboriginal home study to qualify for foster care under customary care because of the circumstances our people have experienced throughout life.

The Chair: Thank you very much for your presentation and for your answers.

MARK AUSTERBERRY

The Chair: We'll move to the next presentation now, Mr. Mark Austerberry. You can start any time you're ready. You have 15 minutes total time. If there's any time left, we'll ask some questions of you.

Mr. Mark Austerberry: Good afternoon, committee members. My only previous presentation before a political body was about 15 years ago when I appeared before the mayor and city council of the former city of North York, where a handful of others and I voiced opposition and recommended changes to a proposed residential development. Even though the developer had their own expert address the city council, after I spoke the developer voluntarily agreed to make changes to the development as per our desire. I hope to be equally persuasive to this committee in what I am about to say today.

1700

My ex-wife has a couple of decades of experience working as an insurance broker, having sold a great many personal lines insurance policies. Years ago, when she was then my wife, the vice-president of the Insurance Bureau of Canada appeared on a local radio call-in show and answered a number of callers' questions. Later, after the show was over, my wife stated that some of the information this vice-president gave to callers was incorrect. She stated that to really know what's going on, you have to be someone working in the trenches. So although this person may have been qualified to be vice-

president, to really know the consumer of the service, it really helps to be working in the trenches.

Having myself been a recent consumer of the services offered by a children's aid society, I'd like to think that I'm someone who is in the trenches. I appear before this committee today to voice my opposition to the proposed changes to section 68 of Bill 210, which greatly reduces the accountability of children's aid societies by significantly weakening the complaints procedure against these societies.

After reviewing the Ontario Association of Children's Aid Societies' position paper titled Proposed Child and Family Services Act Amendments, I note that the recommendations on page 45 of this document very closely resemble the proposed changes to section 68 of Bill 210. The Ontario Association of Children's Aid Societies' position paper attempts to justify these changes—to remove complaints to the board of directors and to the ministry director—by saying that the board of directors has not proven to be an effective complaints-resolution step, given the reluctance of board members to overturn decisions made by social work staff and the society's executive director. The ministry director has also proven to be an ineffective complaints-resolution step, given the lack of statutory authority to overturn or rescind decisions made by a society.

Secondly on section 68, complaints against the society are further weakened by proposing that the complaints policy change from a written policy, reviewed and approved by a director, to one that is established by each individual children's aid society. Ontario's chief child and family services advocate, Judy Findlay, confirmed the ineffectiveness of making complaints against an individual with a children's aid society. In a publication titled Voices From Within: Youth in Care in Ontario Speak Out, Ms. Findlay writes, "Often, each step up the complaints ladder seems to simply legitimize the decision made by the person previously reviewing the complaint. There is a lack of independence and impartiality in reviewing complaints. Using the advocate to facilitate a more unbiased review is often discouraged by staff."

Last week, this committee heard from the Ontario Ombudsman. In a press release dated December 7, 2005, Ontario Ombudsman André Marin writes, "Currently, my office cannot accept complaints directly about children's aid societies, even though we receive hundreds of complaints each year," and further adds, "It is deeply disturbing that my office is unable to help our most vulnerable citizens: children who are at risk."

Although Bill 210 is not addressing the following item, it is again a further indication that accountability of children's aid societies and their workers is being reduced and eliminated. Child protection workers employed by a CAS are trained in social work and indeed work in social work. Yet children's aid societies in Ontario do not require their workers to hold membership in the Ontario College of Social Workers and Social Service Workers, an organization established by the 1998 social service act to maintain standards and that has the ability to discipline its members.

Another organization, the Ontario Association of Social Workers, in a release titled Ontario Association of Social Workers Admonishes CASs for Reduced Accountability, "strongly recommends that a regulation be established requiring all children's aid societies which hire individuals with academic degrees in social work to require these individuals to register with the Ontario College of Social Workers and Social Service Workers," and makes a compelling case in this report on why this should take place.

In Ontario, no individual can work as a lawyer without being a member of the Law Society of Upper Canada, no individual can work as an engineer without being a member of the Association of Professional Engineers of Ontario and so on, yet persons dealing with our most precious resource, our children, are not required to be a member of any professional body.

Failure of sound system.

The Chair: Someone must have had their BlackBerry close to the microphone. Go ahead.

Mr. Austerberry: In a publicly available document, Marvin Bernstein, director of policy development and legal support of the Ontario Association of Children's Aids Societies, attempts to justify his organization's support for the weakening of the complaints procedures by writing, "External accountability will continue to exist for CASs through ministry audits and other statutory review mechanisms, as well as through ministry approval of CAS multi-year results-based plans and by means of independent agency accreditations."

So what have I described so far? Children's aid societies' unwillingness to have their workers have membership in any professional and accrediting body, such as the Ontario College of Social Workers and Social Service Workers; children's aids societies' unwillingness to have the complaints procedure reviewed and approved by any third party; children's aids societies' admission that they are unwilling to follow ministry recommendations with respect to complaints made against them; and children's aid societies' unwillingness to have complaints against them heard by any third party.

A political analogy of what happens when an organization operates without accountability and oversight would be the so-called federal Liberal Adscam, which is currently being investigated by Justice Gomery.

Most of us are familiar with high-profile cases of individuals who, through no fault of their own, are charged, tried and convicted of crimes when they are completely innocent: Susan Nelles, the nurse who was charged with murdering babies in her care and later completely exonerated; Donald Marshall, convicted of murder and later exonerated and compensated for his time in jail; and many other similar cases. I once read an article on how such travesties of justice occur. That article was by a psychologist who, after examining many such cases, concluded that these travesties of justice occur when individuals charged with investigating the police and prosecutors ignore and dismiss compelling evidence that these persons are innocent because they believe them-

selves to be morally superior, without fault and, by extension, beyond any questioning of their judgment and motives.

This raises some questions. Are children's aids societies unwilling to take complaints against them seriously because they believe themselves to be morally superior? Do children's aids societies rally to the support of one of their own because they believe they are without fault? Is the judgment of a CAS child protection worker with a diploma in social work from a community college beyond question? Does such a person have the wisdom and experience to be beyond question? If not, then why is it the habit of a children's aid society to dismiss, out of hand, complaints against its workers?

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I have with me a discussion paper put out by the federal Department of Justice titled Allegations of Child Abuse in the Context of Parental Separation. Pages 20 and 21 describe the background and outcome of the case known as D.B. versus CAS of Durham Region. Mr. D.B., whom I have met and heard his story about this case, is rather infamous for being the first person in Canada to successfully sue and win damages against a children's aid society. Despite the Durham region CAS putting up a vigorous and lengthy defence, they lost their case in 1994 and were ordered to pay Mr. D.B. a considerable sum of money as various forms of compensation.

Basically, the case involved two separated parents fighting over custody of their two children. The Durham region CAS case worker unjustly took sides with the mother. The allegations of the Durham region CAS against Mr. D.B. were found to be groundless, and Mr. D.B. ended up winning sole custody of his two children.

The decision went to the Ontario Court of Appeal, which upheld the decision against the Durham region CAS, which was found to have been considerably negligent and acting in bad faith. According to Mr. D.B., the CAS case worker in question has never been disciplined by the CAS and continues to work for them. What did they learn from this? Did they learn not to take sides in a custody dispute?

Going from the Durham region CAS case in 1994, fast-forward a decade to my involvement with a children's aid society. My ex-wife and I were involved in high-conflict litigation involving our two children, where I found, in my opinion, a children's aid society worker again unjustly taking sides in the dispute, which caused considerable emotional and financial damage to my family.

Have I made a complaint to the children's aid society, and if so, did my complaint have any effect? Was it taken seriously? The fact that I'm appearing before this committee asking for changes in the way complaints are handled against children's aid societies should answer those questions, I trust.

One person who has appeared before this committee wrote with regard to complaints against a particular children's aid society, "Through my experience with the complaint procedure the CAS is currently offering, it is highly unlikely that they are capable of auditing themselves. In fact, it is more likely that once a complaint has been heard, they react as if they have been 'tipped off' and rush to destroy evidence and cover up their misdeeds."

So what would I like to see in place of the proposed changes to section 68 of Bill 210? The answer is two things: first, an effective complaints procedure formulated and approved by an independent third party, and secondly and most important, an independent third party with the ability to review complaints against the children's aid society with decisions binding upon such society.

Ontario Ombudsman André Marin points out that there's currently less independent oversight of child protection issues in Ontario than exists in other provinces. The changes to section 68 of Bill 210 would even further weaken this. Thank you.

The Chair: Thank you very much for your presentation. There is no time left. You were right on 15 minutes. So thank you again.

KAROL KAROLAK

The Chair: We will move on to the last presentation of the evening, as far as I know. Is Karol Karolak here? Mr. Karolak, please have a seat. There will be 15 minutes for your presentation. If there's any time left, we'll allow some questions to you from the members.

Mr. Karol Karolak: Thank you for the opportunity of speaking in front of this committee. My battle with the CAS was long and hard. The battle over the custody of my children is still ongoing. I've been to the court. Last Tuesday—allegations—all my photographic evidence and everything I did was dismissed and used against me. I've been punished once again for trying to protect my own children. It is well documented. My son was abused in front of my eyes—sexually abused, pretty much. I don't want to get into details of this. Probably most of you have read all the materials I've been sending out over the last three years. I have photographic evidence if anybody wants to take a look at it.

The allegations that I made in court the last Tuesday were not even disputed. They were not repudiated. They were dismissed out of hand. I don't even know where to start with what is wrong with the CAS and what is wrong with what we're trying to do as a society. To be honest, we would have to start about 5,000 years ago with the cavemen and cavewomen; however primitive that society was, at least they had children. It seems like we, as a society, are heading for extinction. We've got to a point where no man wants to marry and no woman wants to have children on her own for fear, especially some of them, of those children being stolen after they're born. Given the fact that there is fully available abortion, given the fact that we have fully available contraceptives, women have control over whether or not they want to have children. That's a very difficult task; they have to carry this child for nine months and try to raise them for

another 20. The only thing this woman really needs to commit herself to such a tremendous undertaking is someone she can rely on who will stand by her. So she needs a man in order to decide to have a child, because it takes the two—even more. It's not only his commitment; it's his mother's commitment, his father's commitment, and pretty much the whole family's commitment.

Now we're talking about the man who is going to decide to share this burden with the woman. He would like to be something more than a throwaway subject. Four years ago, I was a very successful consulting engineer, working for a US firm. One of the things I was working on was developing a system on how to apprehend people anonymously sending anthrax through the US postal system. I was developing machines that would produce US postage at the rate of half a million dollars per hour in face value. I was very appreciated for what I did. Four years later, my business has been completely destroyed. My relationship with those people is destroyed beyond repair. I haven't been working for over a year now.

At the time, I was forced to pay more money than I was making. In court on Tuesday, despite the fact that I informed the judge that I haven't been working for a year—child support is supposed to be based on income. I will still pay, I don't know how, or maybe I will pack up and leave like so many fathers that already did. These people are bailing out of this country left, right and centre. Why? Because nobody wants to listen to anything they have to say. All the evidence, all this manoeuvring of the children's aid society, all these fraudulent letters that were sent to my ex-spouse, both copies, and the section 68 review by Mr. Giesbrecht, who has a side business that you all know about—he co-operates with the children's aid society to get money on the adoption deals.

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In the good old days, there were children who were somehow orphaned or abandoned by their parents. Today, they are a very precious commodity. We should be very careful about how we tread in these waters, because what happens right now is that we're wiping ourselves out. Yes, we do. It seems like nobody wants to look at it, face it, and say, "OK. We'd better start to rethink this whole deal about this co-operation and financing of private organizations that have a great many purposes other than protecting children." There are a great many ways to spend this money that have nothing to do with child protection. That's the way it is.

As an adult, if I'm stripped of all my rights in front of Family Court, at least I can count on police protection 24 hours a day, seven days a week. My children, on the other hand, are granted protection five days a week from 9 to 5, when most of them are at school and are very unlikely to be abused, but in those hours when it mattered, there was nobody there.

My son put a belt around his own neck in front of my eyes as a result of abuse. There was nowhere I could go with it. I tried the police. They would submit to CAS. Unfortunately, I would have to return my children on Sunday by 6, and they would arrive at my place on Friday at 4. There was no way I could take my child—no matter how badly he behaved, no matter what happened—to the children's aid society. So I would report to the police and they would report to the children's aid society. The worse that would happen is that on Monday someone would call my ex-spouse, who would turn everything around. This child, standing next to the person who abused this child so badly, wouldn't tell anybody at the CAS what actually occurred.

So where do we stand today, three and a half years later, after the gathering of all these documents? I was very patient. I went through the whole process. I went through the whole complaint process with the children's aid society of the region of Peel. Duly noted, all the manoeuvres they did: They were shredding of the documents they didn't like. They lied. Then I go through the section 68 review. The lawyer who does it lies, but he's better at it. He lies by omission. He omits the facts that were on the record but would not—

The Chair: If I could give you a suggestion, the word "lie" is not a word we allow. So if you can use another word, it would be appreciated.

Mr. Karolak: So "misrepresentation": He misrepresents by omitting facts.

Then I go to the Ombudsman's office, and at the Ombudsman's office, certain facts were selected. Out of the whole list of misgivings of the children's aid society, only certain facts were selected for the review. As it turned out, yes, the lawyer missed certain facts. He missed mentioning my son's underwear. He missed mentioning all the documents and the pictures that ended up in court. He missed so many other things that were indicative of the prior abuse of all three of my children. Nevertheless, even the Ombudsman wouldn't—I'm so radical in my opinions. You have all heard about these baby breeding farms and baby stealing and baby selling and this artificial—what is that?

Ms. Kathleen O. Wynne (Don Valley West): Insemination.

Mr. Karolak: —artificial insemination to resolve the birth crisis in Canada. None of that is true, but I wrote it and I sent it to all of you just to show you the possibilities that are out there. This is all in the realm of possibilities. If somebody has a crooked enough mind, he can use the system to do exactly what I wrote about in my letters. To this very day, nobody is willing to investigate whether or not my allegations are true. I sent them to the police, I sent them to the RCMP, I sent them to the provincial government and the federal government. The only letter I received, recently, in response to my allegations is from the International Criminal Court.

I don't know. We should at least try to preserve decorum. Even if we don't try to preserve decorum for the citizens of this province, we should try to preserve decorum in front of the rest of the world, because people read this stuff, and there are enough coincidences and things that somehow—this conflict-of-interest thing.

People are connected in such a way that, from outside, from where I sit, it all looks possible, it all looks plausible. So if somebody in Europe gets a letter with all those documents where it seems plausible to me, it looks almost certain to them. We shouldn't really shame ourselves in front of the world in the way we do things.

There are so many other things I would like to say if I were to be permitted another chance to speak in front of this committee, because we would really have to look into what child abuse results in. There is very good research being done by Dr. Martin Teicher, at the Psychiatric Hospital in Boston, where he tells that this is what causes all the mental problems people have later in life. This abuse has an almost irreversible effect. There is a very good article, Scars That Won't Heal, and anybody can look it up on the Internet. This guy is an expert. People write right, left and centre about it. We should look into that and start from there. How are we going to go about it and be serious? Not some piece of legislation that's going to be twisted left, right and centre.

The Chair: Mr. Karolak, thank you very much for your comments. There is no time for questions, but we thank you for what you presented to us.

At this point, there are no other presentations, so the meeting will be adjourned until tomorrow at approximately 3:30, when the final presentations will take place. Thank you and good evening.

The committee adjourned at 1729.

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