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Mardi 13 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
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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 13 December 2005

Mardi 13 décembre 2005

The committee met at 1605 in 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. Welcome to the meeting of the standing committee on social policy in consideration of Bill 210, An Act to amend the Child and Family Services Act and make complementary amendments to other Acts. The agenda for today is full. Unfortunately we are half an hour behind, so keep that in mind when you ask questions and make comments.

It is the fourth day of the four-day schedule, so this will be the last day. I want to remind the membership that before we leave today, we may wish to discuss the clause-by-clause timing. Keep that in mind for the end of the meeting, please.

CHIEFS OF ONTARIO

The Chair: With your permission, I will start with the first presentations: Chiefs of Ontario and the Association of Iroquois and Allied Indians. You have 15 minutes for your presentation. If there is any time left, we will be able to ask some questions. Please start any time you are ready.

Regional Chief Angus Toulouse: First of all, I'd like to acknowledge the Mississaugas of New Credit, whose territory we're at today.

The Chiefs of Ontario is a secretariat which acts on behalf of the 134 First Nations based on resolutions passed from time to time at general and special chiefs assemblies. I'd like to acknowledge this opportunity to make a presentation to the committee on the all-important topic of child welfare in general, and Bill 210 in particular.

Child welfare is a high priority for First Nations. I'd like to acknowledge Minister Chambers and also the parliamentary assistant, Linda Jeffrey, for taking the time to meet with our chiefs' committee on child welfare on at least two occasions. I was really glad to sit down with Minister Chambers yesterday to talk about her wanting to know much more about First Nations people, and certainly wanting to educate herself on our history and of the good work that our chiefs' committee is doing and various First Nation activities in this whole area. It was really good to see the minister taking the time to sit down and work with us in that regard.

In Ontario, our First Nation families were affected by the infamous child scooping and adoption practices of child and family services agencies which continued well into the 1960s. Individuals, families and communities are still suffering the consequences today. This negative experience was one of the factors behind the significant infusion of First Nation provisions in the current version of the CFSA. The key First Nation part of the act is part X. While the provisions are not perfect, they are generally viewed by First Nations as a significant form of protection against past abuses, and a recognition of the special circumstances of First Nations. First Nations want to build on these provisions, not diminish them.

Among other things, the CFSA established respect for Indian culture as a fundamental principle within the preamble. The CFSA required that decisions about a First Nation child by the courts and child welfare agencies be based in part on consideration of the culture and traditions of that child and his or her community. For example, the CFSA made provisions for First Nations to represent as full parties, in protection cases, their collective interests in those children and families who become involved in the system.

First Nations take the position that their inherent right to self-government, which is confirmed by section 35 of the Canadian Constitution Act, 1982, includes jurisdiction over child welfare. This means that First Nations can pass independent laws dealing with child welfare. This jurisdiction is being implemented gradually. In the meantime, it is recognized that CFSA has a direct impact on First Nations families and children. Therefore, First Nations have a direct interest in any changes to the CFSA, particularly any changes to the existing First Nations provisions in the CFSA. My purpose today is to outline procedural and substantive concerns that First

Nations have with Bill 210, which proposes to amend the CFSA in different ways.

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Inadequate consultation: Based on section 35 of the Constitution Act, 1982, the government of Ontario is obliged to consult First Nations in a reasonable way when draft legislation is likely to prejudice First Nations' rights and/or interests. This obligation has been confirmed in several leading decisions of the Supreme Court of Canada; for example, the decision in Delgamuukw v. BC. It is clear that some of the CFSA amendments contained in Bill 210, which are outlined below, do prejudice First Nation rights and/or interests. Therefore, the constitutional duty to consult is triggered.

There's also a legal duty to consult First Nations based on section 2.2 of the 1965 welfare agreement, which is an active federal-provincial cost sharing agreement dealing with various social programs, including child welfare.

In summary, the province is under a legal duty, constitutional and contractual in nature, to consult First Nations on those parts of Bill 210 that affect First Nation rights and interests. The required consultation must be fair and reasonable. It cannot be pro forma or in bad faith. The honour of the provincial crown, in its dealings with First Nations, is at stake. Failure to consult according to the legal standard can lead to the invalidation of parts or the whole of the legislation.

The duty to consult has not been satisfied in the case of Bill 210. There has been little or no effort to consult First Nations. The consultation problem is illustrated by the current committee process which originally took no account of First Nations' input. First Nations had to protest to get a minimum level of involvement. Therefore, if the bill is passed into law in the immediate future, there is a real risk that parts, or even the whole, may be struck down in court later on. First Nations are ready to work with the government to identify reasonable changes to the legislative package.

Customary care is a fundamental component of the First Nations' approach to child welfare. It is also a fundamental component of part X of the CFSA. Only First Nations themselves can define and implement First Nations' customary care. The opening and all-important section 208 of part X of the CFSA provides as follows:

"208. In this part,

"'customary care' means the care and supervision of an Indian or native child by a person who is not the child's parent, according to the custom of the child's band or native community."

These all-important words recognize First Nation customary care and First Nation control of such care.

A major concern with Bill 210 is the new regulation-making power that would permit the provincial government, with little or no notice, to define and redefine First Nation customary care, in particular section 44, which amends section 223 of the CFSA, an existing regulation-making power that only applies to part X of the CFSA. Section 223 of the CFSA currently permits regulations exempting First Nations and other First Nation-related entities from parts of the CFSA and regulations, requiring consultations with First Nations in certain cases. These existing regulation authorities represent the positive approach of part X and the CFSA.

In contrast, section 44 of the bill adds a paragraph to section 223 of the CFSA, permitting regulations "governing procedures, practices and standards of customary care." This undermines part X in a fundamental way. It undermines the principle that customary care is in the control of First Nations. Customary care will be subject to control and change by the province.

The new regulation-making power is consistent with First Nation jurisdiction over child welfare matters. It is necessary for this regulation-making power to be removed from the bill. This definition of customary care should be controlled by First Nations. The province should respect the principles of part X of the CFSA.

Seeing that I'm really running out of time, I'm just going to go to the summary. I know you have the written text and there are other presenters behind me who will talk specifically to some of the experiences that they have. If there's an opportunity to answer a question or two, I'll have the opportunity.

That there are at least two components of Bill 210 that will do real harm to First Nation families affected by the CFSA. First, there is the new regulation-making power that would allow the province to arbitrarily define and redefine First Nation customary care. Second, there is the cut-off of access to crown wards which will affect First Nation children and families in a disproportionate manner, cutting them off from collective cultural supports.

In addition, Bill 210 fails to address fundamental problems with the CFSA in terms of First Nations. There is no guarantee of resourcing for the important role of band representative. There is no recognition of the First Nation prevention philosophy in child welfare as opposed to overreliance on protection in the courts.

Based on what it addresses and does not address, Bill 210 represents a significant pullback from the spirit of part X of the CFSA. This, in turn, represents a significant risk of a gradual return to the bad old days before the modern CFSA. That would not be in the best interests of First Nation children or the province as a whole.

Bill 210 has a significant prejudicial effect on First Nation rights and interests in relation to child welfare. As a result, based on constitutional principles in section 2.2 of the 1965 child welfare agreement, the province is legally obliged to consult First Nations, accommodate their positions and, in some cases, obtain their consent. In fact, the province has not made a serious effort to consult First Nations on Bill 210. This puts the legislation in constitutional jeopardy.

The best course is simple and straightforward. The rush on Bill 210 should be stopped. Instead, the package should be suspended to permit meaningful consultation with First Nations. If the consultations are conducted in good faith, the inevitable result will be a better legislative and program package. This will be in the best interests of the children.

That's a quick presentation in going right to the summary, understanding the time limits that we have today.

The Chair: Thank you. There is 30 seconds for each party for questions.

Mrs. Julia Munro (York North): I'm trying to digest this. I did have a question and I'm afraid I can't do it in 30 seconds, so I'll pass. Thank you very much for bringing such a thoughtful presentation forward.

Mr. Howard Hampton (Kenora–Rainy River): You've delineated many problems with the amendments that have been proposed by the government. Is it fair to say that what you would like the government to do is to stop this process insofar as it might affect First Nations or has the potential to affect First Nations and begin a longer-term consultation process with First Nations to arrive at some measures which have the support of aboriginal people and which will work for aboriginal people? Is that a fair conclusion?

Regional Chief Toulouse: Absolutely. Actually you hit it right on, Howard Hampton. Our long-term goal is our own First Nation child welfare act, which means that we drive it with our own jurisdictions that would protect our children, as historically we've always had. Long before the colonization of our people, we managed our own affairs with our own families and our own children. So we're more than capable of continuing to do that.

Mr. Dave Levac (Brant): Thank you, Chief. It's good to see you. Do I have this correct, that your understanding is that rights are according to the constitutional agreements that the province signed off on, which could make this process that you're concerned about in terms of the consultations remove the bill from validity? That means you see that if we do move into the consultation phase you're recommending, that would be more protective of the constitutional agreements you've referenced and protect the bill in its desire to improve the circumstances for the kids.

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Regional Chief Toulouse: Absolutely. I think any measure of consultation that is developed by us and agreed to by your government certainly would go much further than something being imposed, that has no consultation from our viewpoint and from our people. I think we're more than willing to engage in developing a consultation process that's more meaningful and makes more sense.

The Chair: I will certainly let Minister Chambers know your comments. Thanks for your presentation.

ANISHINABEK NATION
UNION OF ONTARIO INDIANS

The Chair: The next presentation is from the Anishinabek Nation; Mr. John Beaucage, please. You can start any time you're ready, the usual 15 minutes total.

Grand Council Chief John Beaucage: First of all, I'd just like to correct something that was missed in the House today. I was in the House for most of the afternoon and there were no birthday greetings for Mr. Leal. I understand there was another birthday today that was recognized, and we all forgot Mr. Leal. So happy birthday, Mr. Leal.

Mr. Jeff Leal (Peterborough): I appreciate that.

Mr. Hampton: How many?

Mr. Leal: Well, it's not 39.

Grand Council Chief Beaucage: I bring you greetings on behalf of the 43 member First Nations of the Union of Ontario Indians. Our territory stretches from Thunder Bay to the Ottawa Valley in the east and from the north shore of Lake Huron and Manitoulin Island to Sarnia in the south. The Union of Ontario Indians represents over one third of the First Nations people in Ontario.

It's a pleasure to make this presentation to the standing committee on social policy. I would like to thank all those members who met with me earlier today on another matter, involving Bill 36, the health integration act. I look forward to making that presentation to you in the near future.

Today I wish to raise some of our concerns and recommendations concerning Bill 210, An Act to amend the Child and Family Services Act. I have organized my presentation into four main areas: authority and jurisdiction, consultation requirements of the government, customary care and termination of access.

With regard to authority and jurisdiction of First Nations, it is important for the government of Ontario, within its legislation, policy and initiatives, to recognize the special status and rights of First Nations, which are based on section 35 of the Constitution. There are two sets of rights that are protected. These include aboriginal rights and treaty rights. Aboriginal rights are all those rights that are inherent and not addressed by treaty. Responsibility for the safety and security of the next generation was bestowed upon First Nations by the Creator. It is an inalienable and inherent right that has not been and could never be extinguished by any agreement, treaty or otherwise.

The legislation process undertaken to amend the Child and Family Services Act fails to recognize the authority and jurisdiction of First Nations in child welfare matters. It is important that any law passed, especially with regard to the future of our children, include the jurisdiction and involvement of our people.

We recommend the following measures: An amendment is needed to this legislation to recognize First Nation jurisdiction and rights. This amendment would state that First Nations authority and jurisdiction be recognized by Ontario in all matters pertaining to child welfare, including involvement in the legislative process as well as program development and delivery. In addition, provincial standards must be replaced by First Nation standards regarding foster homes, customary care and safe homes, and financial resources must be allocated to ensure that these are comparable to mainstream practices.

Consultation: With regard to consultation, it is apparent that the government of Ontario has failed to live up to its obligations under the Constitution and under the Supreme Court decisions of both Haida Nation and Taku River, and most recently in the Mikisew decision. The Supreme Court is clear that in any circumstance that a decision, initiative or legislation may directly affect the aboriginal and treaty rights of First Nations, a jointly established consultation process is required. In some cases, when that aboriginal or treaty right is adversely affected, the government has an expressed requirement to accommodate First Nation interests. My question to the committee is this: Has the government analyzed these court decisions and reflected its requirements in this piece of legislation?

I want to be on record with you, as members and as a committee, that the Union of Ontario Indians has not been happy with the government of Ontario's so-called new approach to aboriginal affairs. When this relationship was first put forward, it was pitched as a partnership between First Nations and the government. However, over the past few months, new policy and legislation have continued to be developed unilaterally. This is certainly not indicative of a true partnership and certainly doesn't respect the government-to-government relationship that the Union of Ontario Indians is insisting upon.

Further, Ontario has stated in their aboriginal policy framework and the new approach to aboriginal affairs that they are dedicated to developing processes for consultation with First Nations. However, this has not happened with regard to Bill 210. I want to make it clear that First Nations have not been consulted on this bill and the proposed amendments to the Child and Family Services Act.

I recommend the following: that a commission be developed specifically to address First Nation issues, and ask that that commission hold public hearings on Bill 210; secondly, that a jointly developed consultation process be developed, based on principles expressed in our written submission; and that consultation should be carried out as early as possible so that it is meaningful to the implementation of the initiative and provides the best protection for all parties' rights.

Customary care: Section 10 of the Child and Family Services Act was established as a means to provide for customary care. It is the contention of the Union of Ontario Indians that Bill 210 and its amendments do not adequately reflect the spirit and intent of section 10 of the legislation. Customary care remains an open-ended concept for the purpose of allowing First Nation communities the flexibility to determine their own customs regarding alternative care for children in need.

The province, under Bill 210, is removing the authority of First Nations in determining their customs for caring for children and placing responsibility for these arrangements with the government. This is entirely unacceptable to the Union of Ontario Indians, our 43 member First Nations and, frankly, all the First Nations in Ontario. As far as I'm concerned, this is an affront to our people.

My recommendation is straightforward: Strike section 44 of Bill 210 to preserve the authority of First Nations currently protected under the Child and Family Services Act regarding customary care. Furthermore, the subsidies provided to alternative care homes, including customary care homes, on First Nations must be equal to the rate non-natives receive for their foster homes.

Termination of access: In an attempt to address the impediments to adoption for crown wards, section 17 of Bill 210 calls for termination of all access orders for any child made a crown ward. We certainly have a concern in this regard due to the close and sometimes complex extended family relationships we have with our children in our communities. There have been many cases on our First Nations that a child has been made a ward of the crown and has maintained strong relationships within their community and their extended family. The proposed changes, however, will terminate all access, with children's aid societies as the only partner permitted to apply for openness orders. Once again, this does not consider the needs and special circumstances of our First Nation children nor does it respect the wishes and jurisdictions of that particular member First Nation. By terminating all access orders, vital relationships between the child and extended family members will be severed. The repercussions of such actions to the development and well-being of First Nations children have been demonstrated by similar attempts to sever vital relationships through the residential school experiences and the sixties scoop.

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Just to elaborate a little bit on the sixties scoop, because of the residential school experience, there were generations of our people that lost their parenting ability. Parenting was not a skill that was passed on because the children were taken away from our communities and sent to these residential schools. In the 1960s, some of these problems manifested themselves in a care problem with our children. Children's aid at that time came into our communities, took these children away and adopted them outside of our communities. They were adopted in huge numbers to urban areas and lost all their contact with our people and with their families. As a result, you had a whole number of people growing up without the benefits of the teachings of their families at home. That's the sixties scoop, and we don't want that to happen again.

In addition, these proposed changes fail to take into consideration the backlog in family court that could impede the process of obtaining an openness order, which would result in disruption of contact between children and their families. It is our recommendation that section 17 of the act be rephrased to allow for a seamless transition of access orders into openness orders where the relationship is still in the best interests of the child. Access orders should not be terminated unless they meet the current requirement under the Child and Family Services Act, that the access order is not in the best interests of the child or impairs the child's opportunity for a permanent or stable placement. Secondly, the act should give equal right and opportunity for all parties to apply for an openness order. This will ensure that families and

significant people have an avenue to pursue to re-establish contact with a child once they are made crown wards.

Additionally, the legislation should include provisions to enforce adherence to the native provisions of the CFSA to ensure the rights of First Nations children and their communities are protected.

In conclusion, I respectfully ask the standing committee on social policy to ensure that Bill 210, An Act to amend the Child and Family Services Act, first and foremost, respect the constitutionally protected rights of First Nations people in Ontario. These include our aboriginal rights, our inherent rights and our treaty rights. For so long, the government has developed legislation, initiatives and policies in isolation from First Nations people and our governments. As in the past, the government continues to do what it sees as in the best interests of our people, and in this particular case the best interests of our children.

Ladies and gentlemen, I want to state something so simple that it may even sound absurd: From our perspective, it is First Nations parents, communities and governments that know what's best for our own children.

We expect the government of Ontario and this Legislature to uphold the Constitution and our rights protected therein. We also expect the government of Ontario to live up to its rhetoric to include First Nations as an active partner in the development of policy and legislation. Ensure that the recommendations of the Union of Ontario Indians contained in our written submission and this presentation are incorporated into the final reading of Bill 210.

Meegwetch. Thank you very much for your attention.

The Chair: Thank you for your presentation.

SIX NATIONS OF THE GRAND RIVER

The Chair: The next presentation is from the Six Nations of the Grand River, Chief David General.

Chief David General: Before I begin, Mr. Chair, I would ask your indulgence to allow two other people to sit with me, please. They've been my sidekicks in the House committees in Ottawa and also in the Senate.

The Chair: It's a pleasure to have both of the ladies with you. You can start any time you wish. If you need more seats, we will be happy to add them.

Chief General: I'll try to get through it as quickly as possible.

My name is David General, Chief of the Six Nations. Before I begin my presentation, I'd just like to say that we've been on this treadmill of the FMM. Probably one of the most important discussions that came out of the FMM was not about money, but about the recognition of the place of our women in our communities. It was advanced to the assembly that if we look after our women, if we honour and care for our women, we will have strong, healthy children and strong, healthy communities, and that delivers strong, healthy nations. I use that as a backdrop to what I'm about to present. Again, thank you very much for the opportunity.

On behalf of the people of the Six Nations of the Grand River, I would like to offer greetings to the standing committee on social policy. I am David General, elected chief of the 53rd Council of Six Nations. In attendance with me from the Six Nations community is Arliss Skye, director of social services, Councillor Melba Thomas, who's a portfolio holder for that, and Elder Josephine Harris.

First, I would like to take the opportunity to acknowledge the cooperation that has been extended to us this day. Initially, these committee meetings were scheduled for last week. Unfortunately, that posed a scheduling conflict for us. The Assembly of First Nations Special Chiefs Assembly was scheduled for last week. We sought an alternative time and our request was granted. Thank you for exercising your discretion. You've exercised a degree of flexibility in your busy schedule in order to accommodate our busy schedule. I trust the presentation today will be worth the wait.

Part X of the Child and Family Services Act is a unique component of the laws of Ontario. Subtitled "Indian and Native Child Family Services," this part provides provincial recognition of the unique position of aboriginal peoples in Ontario.

Further, part X is unique in its progressive outlook in the consideration of aboriginal people.

It is the product of considerable thought and deliberation. It provides a platform for further development. With the great diversity of First Nations within the boundaries of Ontario, further development should always be expected. However, for these further developments to be of mutual benefit, full and meaningful consultation must take place.

The great diversity of First Nations within the boundaries of Ontario is no small point to be taken for granted. In order to illustrate the point, consider the following: If you were to cut out a map of Ontario and then superimpose that map over Europe, how many different European nations would then be covered? How diverse would be the group of people? In that manner, one should similarly consider the great diversity of First Nations within the boundaries of Ontario. The Cree of the north are distinct from the Ojibway, and the people of the Six Nations are distinct from the nations mentioned above.

Today, I would like to deliver the following message: Six Nations has the ability to take care of its own. We have the talent, we have the ability, we have the desire and we have the commitment. All we need is your further co-operation. Your co-operation is required in the following way: We need the opportunity for our capable bureaucrats and technicians to review the proposed changes. In brief, we need the opportunity to consider the full implications of part X of Bill 210, the Child and Family Services Act, or more specifically, how the proposed changes of Bill 210 will affect the delivery of services to aboriginal communities.

In order to have the full and complete consultation on Bill 210, Six Nations and all First Nations need the opportunity to complete our own internal consultation.

We require further time to discuss these considerable changes with our own people. We need to talk to our directors, our policy advisors and our lawyers. This all requires more time. Therefore, our discussion today must not be considered as consultation. Today's discussion will focus on the need for an extension of time to enable us to do our work. After the work is complete, only then can we have full and complete consultation.

In the spring of 2005, the current government presented its new approach to aboriginal affairs. With its insightful subtitle, "Prosperous and healthy aboriginal communities create a better future for aboriginal children and youth," I, along with other leaders in First Nations communities, were hopeful that it would indeed mark the start of a new approach.

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To refresh our memories, I would like to remind you of the opening paragraph from Ontario's New Approach to Aboriginal Affairs: "Ontario is charting a new course for a constructive, co-operative relationship with the aboriginal peoples of Ontario, a relationship that is sustained by mutual respect and that leads to improved opportunities and a better future for aboriginal children and youth." I agree and concur with Grand Council Chief John Beaucage when he says, "To this point in time, we're a little disappointed."

I believe that everyone in this room is working for the better future of aboriginal children and youth, as everyone in this room, as a parent, is working for a better future for each of our own children. Bill 210 touches on fundamental aspects of the new approach. Most importantly, Bill 210 addresses those children who are not our own children but those children who are most in need: those children who need protection. For everyone in the room, I have no doubt that there is a general desire to help all such children, regardless of background or location. I hope we can use our mutual interest and find a mutually agreeable solution.

On a preliminary basis, the majority of the proposed amendments may be beneficial. The proposals would be flexible and adaptable to the cultural environment of the agencies. However, Bill 210 also proposes some amendments that may have adverse consequences on part X of the Child and Family Services Act; more specifically, to the amendments that may affect the delivery of services to aboriginal communities.

With the announcement by the Liberal government of the new beginnings, we may be on the threshold of a new era. To cross this threshold, we need to rethink our roles and apply our knowledge and skills to the tasks of disassembling the past, which must be left behind, and assembling what we want and need to have for our future. We need to blend the past, the present and the future to serve our nations.

We ask the standing committee to have the courage to respect the view of First Nations. We ask the standing committee to encourage the government of Ontario to work together with us in a practical, concrete way to advance the vision of taking care of our own.

The people of the Six Nations believe that we have the solutions for child welfare on Six Nations. The solution: allowing our people to apply our traditional practices to our community. In the past, outside practices have not worked. The solution will be found in our traditions and in our people.

I'd like to thank you very, very much for the opportunity to present here today. Again, I go back to the teachings I have received from my community and my elders. Our children are a gift. They are something the Creator provided to us, with the responsibility that we be there at every step of their development. We—their parents, their grandparents—are responsible for them. We applaud any effort of any government to make sure that children are safe, but in the development of any new legislation, we need to be included. It's a very, very important part, and I bring that message from the elders at Six Nations.

Season's best to all.

The Chair: Thank you, Chief. General. There is about a minute each for questions. Mr. Hampton, would you like to start?

Mr. Hampton: If I can jump ahead, I suspect that some government members are going to take the position that some mistakes were made in drafting of this bill, but those mistakes can now be fixed by introducing a few other amendments. What I think I hear you saying, however, is that trying to put in a few amendments at a later time is not going to fix a process that has been fundamentally flawed from the beginning. What I think I hear you saying is the government should stop. If it wants to proceed with those elements of the bill which would not affect First Nations, would not affect aboriginal children, and if it's prepared to give an undertaking that they would not be applied to First Nations and would not be applied to aboriginal children, you might be prepared to live with that. But insofar as this could potentially affect aboriginal people, aboriginal children and First Nations, I think what I hear you saying is you want the government to stop and begin a real process. Is that a fair assessment?

Chief General: That's a fair assessment, Mr. Hampton. Also, we're talking about the duty to consult being between the government and First Nations. Myself and council as a government on our First Nations, we also have the duty to consult our people. Something as important as the issues of child care, welfare and safety—that has to grow from the community up. Too many times, the care and attention that should be provided is directed down, and I think there needs to be this consultation building from the ground up so there's buy-in from the communities, from the nations. That's going to be the strength of any changes or amendments to your legislation.

The Chair: Ms. Jeffrey.

Mrs. Linda Jeffrey (Brampton Centre): Do I have a minute?

The Chair: Less than a minute.

Mrs. Jeffrey: That's not enough time to ask any questions. We're grateful that you accommodated our schedule as well to be here today, and we thank you for

your thoughtful presentation. You're right, you do have the talent in your own community to take care of your children, and I look forward to seeing the amendments that we'll bring forward to reflect what you've asked for.

Chief General: *[Remarks in native language.]*

The Chair: Ms. Munro, please.

Mrs. Munro: I do have questions, but we don't have time to discuss them. I think it's very important that the parliamentary assistant has given you some assurance in terms of amendments. We'll certainly be looking forward to those, and assume that they are going to be ones that you will have an opportunity to look at.

Chief General: Mr. Chair, we invite any questions that the members of the committee have. Forward them to us. We'll deal with them at the political level, at the administration level. We look forward to that dialogue.

The Chair: Thanks very much. You heard the PA comment and I think that should give you some relief.

NOG-DA-WIN-DA-MIN FAMILY AND COMMUNITY SERVICES

The Chair: We will be getting the next presentation from Nog-da-win-da-min Family and Community Services.

Sir, you can start whenever you're ready. There's 15 minutes total time.

Mr. Bill Gillespie: Good morning; bonjour. I'd like to start with a history of native child welfare in our area.

For over a decade, the First Nations in the catchment area of Nog-da-win-da-min Family and Community Services have been waiting for any significant developments pertaining to native child welfare to take place. Several significant events have taken place over the past 10 to 15 years, but did not involve First Nations. We have not had an opportunity to present our concerns during the amendments to the legislation in 2000 and remain optimistic with the opportunity to present here today to the standing committee.

A ministerial review of the aboriginal agencies was conducted, but that report was never released to the public. Although the final draft number 9 version has surfaced in First Nation communities, the ministry has never officially released this review; any noteworthy facts and/or recommendations to benefit aboriginal communities have never been revealed.

With the latest proposed changes to the legislation, First Nations were not consulted until the process was well underway. With the lack of both human and financial resources, our communities have not been afforded the opportunity to thoroughly review and analyze the impacts that will affect our communities once again.

At present, there are 10 native child and family services agencies in the province that have the task to deliver services to First Nations with the mandate of improving children's lives. Five of these agencies have the child protection mandate and five are pre-mandated and primarily do prevention services. Pre-mandated agencies have very little authority regarding the apprehension and placement of native children, yet we are expected to keep our children in their communities, or at least as close as possible to their home community and in native homes.

Although Nog-da-win-da-min Family and Community Services has the authority to license our own foster homes, it is up to the children's aid society whether they will utilize our homes. We have a number of children in care, yet we are not able to place every child within our communities. Nog-da-win-da-min continues to advocate for additional resources to expand our service delivery model as we strive to keep our children in our communities.

Severe social problems—for example, poverty, violence, addictions and multi-generational issues—lead to other more traumatic issues for our families. We acknowledge the change in direction from a protection to a strengths-based family and community approach in caring for our children with adequate resources to accompany this. Responding to any reform will be very difficult, given the enormity and weight of the issues, as well as the long-term effects of these issues.

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All children in Ontario should benefit from the reforms and policy changes, especially access to services. Some of the reforms and policy changes are seen as positive and very helpful to our children. We strive to have our children know who they are, where they come from and what it takes to maintain the connections to family, clans and communities.

There is a lack of native agencies to provide culturally based services to native people in the province. We acknowledge that our First Nations leaders have rejected Bill 210 in its entirety until such time as there has been proper consultation. Providing resources to prevent children from going into care is a good investment, as is the flexibility to respond to families when they are in financial crisis, which would result in children going into care with our help.

Families shouldn't be penalized financially for trying to help their own. Prevention and other community services need to be adequately resourced to take on the increased demand for services through differential response. Our belief that native services should be delivered by native people for native people is reinforced by a report by Frank Maidman in October 1998, titled Aboriginal Child Welfare Prevention Practices Project.

We view fostering our children as being positive, whether it be through adoption or legal custody. We believe that foster parents should be provided with the training and supports needed to assist in caring for our children. 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, providing the foster parents applying for custody do not bypass the community and the band's party status in these proceedings.

It's 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 Nations agencies and workers; for example, the Pride Curriculum and Looking After Children.

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 many First Nation communities do not have the services available as compared to mainstream agencies. First Nations do not have access to children's mental health services or child development services on reserve, for example. Our children are put on long waiting lists.

Customary care: The ministry acknowledging the use of customary care is hopeful. Our apprehension, however, is in section 44 of Bill 210, which would allow the Lieutenant Governor to regulate customary care. We're basically opposed to the province making regulations "governing the procedures, practices and standard for customary care."

Regulating and/or defining the procedures, practices and standards for customary care falls under the authority of the First Nations. Customary care is a traditional aboriginal custom, and it should be the First Nations communities who develop and define how customary care is practised. Furthermore, customary care is defined and practised differently throughout the province, as developed according to the tradition custom of each First Nation to meet community needs. Customary care practices also vary across cultural groups.

The Child and Family Services Act, as it reads today without any changes, contains provisions that enable the use of customary care by First Nations authority, as facilitated through existing legislative arrangement. These provisions have been in effect and productively utilized for over 25 years. We are firmly opposed to amending the act to regulate customary care, but we are open to work with the ministry to resolve any issues or concerns that have come up.

We are experiencing an increase in apprehensions in our catchment area. Our fear is that if the children's aid society receives an enhanced protection mandate status, they will be even less co-operative with those communities that are now served by them. This will undoubtedly further increase the number of our children being apprehended.

The children's aid society continues to place our children in non-native homes and refuses to place our children in our licensed foster homes that are available.

Inadequate funding and not being able to hire more workers will greatly deter us from resolving problems and maintaining our focus of early intervention. There has been little or no increase in funding since the late 1980s. Actually, there was a decrease of 5% in 1996. Our prevention programs were driven by demand for services beyond primary prevention to include secondary and tertiary prevention. Our recent strategic planning has refocused our programming to do just primary and secondary prevention. Our staff is more than capable of providing prevention services, but they do not have the capacity to meet the existing demand for services.

That concludes my presentation.

The Chair: Thank you. We have about a minute for each party for questions. Mrs. Jeffrey, do you wish to start?

Mrs. Jeffrey: Thank you very much for being here. I have no questions. I appreciate your thoughtful paper. That's very helpful for us to have a sense of what you think is important. I appreciate your being here today, and I appreciate your patience. Sorry we're running late.

The Chair: Mrs. Munro?

Mrs. Munro: Thank you very much for being here with us. Much has been said about the issue around customary care. On page 4, you talk about it as well, because obviously this is a critical part of the concerns you have. In here, it suggests that it should be the First Nation communities that develop and define how customary care is practised. I wondered if you had developed some initial sort of best practices and things like that that you would want to offer as, if I might say, remedies—just simply best practices that you would want to promote.

Mr. Gillespie: I think those are being captured. We have a committee that sits right now. I'm part of that committee, as a member of the association, along with the chiefs' council. We are developing those guidelines, to be reviewed eventually, I guess, by the legislation, hopefully in the future.

The Chair: Mr. Hampton?

Mr. Hampton: I just want to be sure I've got the understanding of this. Your agency is not a mandated agency, so you don't have the child protection/child welfare mandate under the CFSA.

Mr. Gillespie: No.

Mr. Hampton: So you, by necessity, have to work in co-operation with a non-native child and family service agency.

Mr. Gillespie: Yes.

Mr. Hampton: And part of your fear is that where this act is headed, it will give considerably more power to that non-native child and family services agency.

Mr. Gillespie: Yes.

Mr. Hampton: They would not have to take into account culture and extended family. They would not have to take into account the wishes of First Nation leadership.

Mr. Gillespie: Hopefully, they would take into account First Nation leadership. In apprehending our children, hopefully, they would contact our band representative first or go on reserve to investigate any concerns. That is our fear, yes.

The Chair: Thank you for your presentations and your answers.

1700

KINA GBEZHGOMI CHILD AND FAMILY SERVICES

The Chair: The next presentation is from Kina Gbezhgomi Child and Family Services.

Ms. Margaret Manitowabi: Good evening. My name is Margaret Manitowabi, and I come from a First Nation

called Wikwemikong Unceded Indian Reserve. I'm also a board member of Kina Gbezhgomi, which is also a child and family service that is not mandated. We've been trying to seek mandation for a number of years. We became incorporated in 1981.

I'll begin my presentation. You have an outline of what I'm going to present today. It was produced by our executive director. She could not be here, as we are meeting with our foster families and some of the children this evening and having a Christmas party.

The history of Kina Gbezhgomi Child and Family Services: The development and design of Kina Gbezhgomi, which means "We are one," came as a result of the amendments to the Child and Family Services Act in 1985, which provided First Nation communities with certain native provisions in addition to part X of the act, which supports band authority in native child welfare proceedings. Kina Gbezhgomi has been incorporated since 1991 with the original intent, as with all the chiefs of this area, of becoming a protection agency for the seven First Nations; namely, Wikwemikong, Aundeck Omni Kaning, Sheshegwaning, Sheguiandah, M'Chigeeng, Whitefish River and Zhiibaahaasing. We're from Manitoulin Island. I drove six hours to get here, alone, to speak to you today. Fourteen years later, our agency continues to operate as a prevention-based agency, although a number of proposals have been forwarded to the ministry to build our capacity to provide protection services to our community members.

Since 1985, the spirit and intent of the native provisions, including part X, has not been implemented in a manner that truly respects First Nation contribution to the practice of child welfare. Kina Gbezhgomi continues to operate with the same budget that was negotiated with the Ministry of Community and Social Services in 1991. Our budget continues to be $1.4 million. Comparatively, the children's aid society of Sudbury and Manitoulin districts operates with a budget of approximately $25 million. Before the child welfare amendments created in 2000, the children's aid society had a budget of $2.4 million. As you are aware, the funding formula implemented for mandated agencies increased as the number of children in care increased. These children are from our communities.

Manitoulin Island is a beautiful island with seven First Nations. Eighty per cent of the Manitoulin Island work of the children's aid society is with our children.

Our communities were not consulted regarding the reforms in 2000, nor do we seem to be included in the reforms for 2005. Currently, 80% of the children in care of the children's aid society are from our seven First Nation communities. The current risk assessment tool is discriminatory of First Nation realities. The tool does not consider the economic realities of our communities. As you all know, most of the native communities, if not all, in Ontario do not have an economic base. The strengths of the families are not considered, nor the strength of the extended families or the community.

Currently, families who are referred to the children's aid society and are eligible for child welfare service receive a standardized intake investigation as prescribed by the Ontario risk assessment model. The implementation of this model has crippled our ability to respond effectively to the ever-increasing number of apprehensions occurring within our jurisdiction. Over the past five years, the amendments to the Child and Family Services Act have devastated our families and communities as we have lost yet another generation of our families to the child welfare system.

The intergenerational effects of residential schools and the well-documented sixties scoop compound the mistrust and trauma suffered by our communities. The residential school impacts are still very much alive today as we are faced with families raising children by those very survivors who were tortured, sexually abused and forced to forget their culture, languages and customs that bonded native families and communities. The sixties scoop was also an era that reached through the 1970s and into the 1980s, whereby a disproportionate number of native children were forcibly removed by well-intentioned social workers who believed that our children had to be removed from our communities in order to protect them.

Today, a number of these survivors are involved in the child welfare system with their own children being removed from their care. The lack of infrastructure within our communities to address the intergenerational effects of our past is compounded with the lack of both human and financial resources to address the multiple issues faced by our communities. However, the resiliency of our families and communities continues to be demonstrated and documented, and we believe that our communities possess the strengths, knowledge and skills necessary in keeping our families and communities together.

Band representation as defined in Child and Family Services Act: The CFSA provides for band representation as legal parties since 1985 in the various decision-making processes regarding native children and is intended to ensure that our children are cared for within our own respective communities. The CFSA further permits the minister to exempt a First Nation agency from sections of the CFSA, which broadens the scope of developing a truly unique and culturally appropriate approach to child and family services. The power and authority to effectively represent our community's interest in protection cases has been compromised, as the native provisions lack regulations from the ministry to ensure that mainstream societies adhere to the consultation process with First Nation communities and the placement of native children with extended families within our communities.

Regardless of the native provisions and part X, the amendments to the Child and Family Services Act, 2000, have further resulted in a significant increase of our children being apprehended, leading to the adoption of our children to non-native foster homes throughout the province.

Our communities' interest in protection cases has been compromised by long debates between the federal and provincial governments and lack of commitment to

ensuring that First Nations remain as an active party to all child welfare proceedings involving our band membership. The lack of funding to support the role of the band representatives further impairs our ability to respond to numerous protection cases filed by the society. Some communities can no longer afford to participate in child protection hearings, as we do not possess the additional funding required to support this critical role within our communities.

In 2003, First Nations were advised that Indian and Northern Affairs no longer has the authority to fund our band representation program, stating that the treasury board has taken the position that the band rep program is an anomalous activity.

Currently, my First Nation, Wikwemikong, which has a population of approximately 8,000 on and off reserve, is using its Casino Rama dollars to fund this program. We would like to use our Casino Rama dollars on economic development, but currently we are using them to hire three of the band reps in our community, and they go to court all over Ontario. As a matter of fact, one of the gentlemen who was supposed to be here this evening left the community on December 7, to go down south toward London and Windsor. He is supposed to be back here this evening. Those are the kinds of things we're struggling with, not only my reserve but other First Nations.

Further to this, the provincial government fails to recognize and support the native provisions contained in the Child and Family Services Act by providing regulations and funding for First Nation communities to respond as a community to children involved in the child welfare system.

Customary care provisions: Under part X, "customary care" means "the care and supervisions of an Indian or native child by a person who is not the child's parent, according to the custom of the child's band or native community." Further, "Where a band or native community declares that an Indian or native child is being cared for under customary care, a society may grant a subsidy to the person caring for the child." Currently, we don't get a subsidy. If you go into customary care, we have to run to the welfare office to ask for some money to look after that child.

I looked after a child and received $210 a month, which is $7 a day, to take care of a young lad—all his needs.

1710

Currently, customary care is a voluntary arrangement, not regulated under the Child and Family Services Act, which may be entered into by the child, the child's parents or the child's band, pursuant to the band's customary care declaration and arrangements with the children's aid society. A customary care agreement may be changed or extended as long as all parties who participated in the original agreement consent to any changes or extensions. Customary care arrangements must remain within the authority of the child's community, and that cannot be governed by the time restrictions for children in care.

First Nations communities have advocated for the placement of children with customary care givers for over 20 years—and long before that—with very little consideration provided by the mainstream children's aid society. The reality is that raising children in today's economy often forces well-intentioned family members to relinquish the care of their children simply based on the fact that they cannot afford to care for another child. As a result, our children continue to be placed in ministry-regulated foster placements as defined in the Child and Family Services Act.

When a child is apprehended by the children's aid society, that caregiver gets $25 a day, but for us, it's $7 a day if we look after that child.

Customary care is distinctly different from foster care, as the standards and regulations for licensing requirements do not consider First Nation customs, practices and realities. Customary care must remain as a First Nation-driven and controlled process in order to effectively deliver the decisions and processes that are required by the service providers, families and leadership.

Given the expansion of family-based care opportunities for children in the current welfare transformation, the need to regulate compliance rates of mainstream society to engage First Nations is essential. There has never been any regulation or policy or practice in place to assess the compliance rate of non-native children's aid societies, including: notification requirements; consultation with First Nations, including the apprehension of children, the placement of children in residential care, the placement of homemakers and the provision of other family support services; the preparation of plans of care; status reviews under part III; temporary care and special needs agreements under part II; adoption placement; the establishment of emergency homes; and the practice of customary care as defined in the legislation supported by a subsidy for our customary care givers.

The Chair: Thank you for your presentation. We've run out of time, so there's no time for questioning. We have the statement, of course. We all have this to make reference to. That was all of your presentation, am I right?

Ms. Manitowabi: That's right, but the rest is in here.

ONEIDA NATION OF THE THAMES

The Chair: The next one is the Oneida Nation of the Thames. You can start any time, sir.

Chief Randall Phillips: Thank you, Mr. Chair. I didn't prepare a written submission for you. It's not my style to provide written submissions. The other thing too, as I'm looking at this, is that you've got a mountain of paperwork and for the most part I think they're reflective of everybody's concerns. That's another reason why I think I saved myself and the committee the heartache of reading through another one. Nevertheless, I hope the committee does take my points and what I have to say into consideration when dealing with this particular topic.

I bring you greetings from the Oneida Nation of the Thames. My name is Randall Phillips. I'm the current

elected chief at Oneida. I'm a member of the bear clan. I say that simply because it's important when we have these discussions about customary care that within Oneida, we have a different family line. I want to say that now, and I'll get back to that point a little bit later.

First of all, what I want to do is talk a little bit about Oneida. I'm representing a community here that is one of three Oneida communities throughout North America. That forms our nation—our nation. I just want to repeat that. We're not a First Nations community; it's a nation. It's that kind of thinking that I want committee members to start to realize. I certainly understand that what we're here to talk about is legislative amendments, but where I'm coming from is a different reality with respect to that. I just want committee members to appreciate that.

I say that I'm elected to council, because we have two styles of governments back home. One, we have a traditional council. The traditional council for Oneida Nation is made up of nine titleholders. Out of those nine titleholders, eight of them reside within our community, and it is that very fact that presents some challenges with respect to governance issues. Certainly it has an impact when we talk about customary care and the responsibility and the right to protect children and, again, for a notion within customary care.

Within those nine titles, we're part of a larger confederacy called the Iroquois Confederacy, which has 50 titles. Those are all family lines. It's important to know when we start talking about extended family clans that within that confederacy there are also responsibilities to help other nations.

I want to start the presentation with something the last speaker talked about, a little bit of background as to why we're here in the first place, and that is the first amendments that happened in 2000. I think they set the background and the context for what we're dealing with here today, and I don't think they were done in a good way.

One of the first things that was mentioned was that we weren't involved in any consultative process with regard to any of those amendments. One of the fundamental changes that occurred at the 2000 review was the change in terms of the paramountcy of the act. What they had done was to take a provision that allowed for native children to be placed primarily within their culture and change that to considering the child at risk. It was a fundamental change. What it did was put the child into a different context, and that's what we're dealing with here today.

The other thing that is important to recognize is that the children are always going to be part of that culture. I believe you've heard presentations made here that, simply because our children get adopted out, that doesn't mean they don't come back to our communities in terms of seeking their family lines. They do come back. They will always come back. So there is no dissociation here; there's just a period of disruption in terms of their lives.

The other thing that happened in 2000 was that they changed this notion of thresholds, which unfortunately for impoverished communities like mine had a dramatic effect, because once you've lowered the thresholds to see whether or not these places are safe or can accommodate children, they're lost. We don't reach that threshold. Unfortunately, that occurred in too many of the households there. An idea that each child had to have a separate bedroom—I don't know the familiarity of the committee members, but within a native community we're subjected to standards with regard to housing. They're all built on the same sort of building block. This notion that you're only supposed to have one or two children and that's it, and if you go over three, then of course your house doesn't accommodate that any more, creates difficulties. The other thing that was mentioned was the introduction of new clinical assessments in schools that I think are very culturally inappropriate. All of these changes that I mentioned are just the highlights, but they lead to the context in terms of where we are today.

I'm going to be very short on this next part because you've heard it. I've heard it nine times today and Mrs. Jeffrey, I'm sure, has heard it a thousand times because she's been involved with us in terms of other meetings. It's this notion of consultation. Quite simply, it is a legal requirement. Quite simply, we're looking at it from a different process than maybe other people would with respect to consultation. You've come to me and said, "What's your opinion?" and we've consulted. That's certainly not our view and not our definition of "consultation." Again, we take a look at that in a different context.

There is a reason why there are legal requirements when you're dealing with First Nations. Once again, I don't know the history or the experience of these committee members, but it's certainly something it would behoove you to look into.

1720

I certainly support, and Oneida supports, the idea of a separate process to deal with these issues. In 1985, when we did the native provisions, there was a glowing example in terms of why we need a separate process to deal with First Nations communities specifically. I think this again deals with that. So with the notion of consultation, I would be looking specifically at some kind of specific process to deal with the Oneida nation.

One of the things I want to talk about quickly here is, what are the impacts on this community? We've talked about legislation. What's the impact in terms of the community? I want to go over a list of a few things in terms of what the changes I've outlined have done, and what these potential changes you're talking about will do.

First of all, there has been increased involvement by the CAS in our community as a result of the legislative changes. Our people haven't become any different; our situation hasn't changed one iota. Something else changed to spark this increase. It creates an increase of hardship in terms of our financials from a band administrative point of view to deal with these issues, to deal with this increase. You heard the lady before you say that her band rep worker isn't here because he has to be someplace else. It's a direct result of that increase in

terms of the CAS involvement that we've got people all over the country—not necessarily within our own little ridings, but all over the country and certainly all over the province.

We haven't received any real increase in terms of resources from the ministry to provide this kind of function over the last many years. There may have been small notional gains, but certainly not enough to address the concerns we had outlined.

It creates an increased strain on the family and community supports. The more people we have involved in the system now requires more and more involvement from other agencies, other services to ensure we provide the right kind of protection and the right kind of environment for those children. It certainly has increased the caseload for our workers. Certainly, on reserve it has. One of the things we haven't talked about or I haven't heard today is the notion of the citizens who don't live on a reserve or on our territory. Within Oneida we call it a settlement. There are some significant cases that were mentioned here: the Musqutis case, which talks about employment access, and Corbiere, which talks about election. Those things were granted by the federal government to extend to all First Nations people. So by definition we can't limit ourselves to only concern ourselves with what goes on within our communities. We have to look at all our children, regardless of where they reside.

At Oneida we've expended an awful lot of resources in terms of cultural and linguistic programs—millions of dollars over the last couple of years. What's going to be the impact here, and why we are doing this, is for the children. Now we have a system we're fighting that is directly opposed to that by trying to remove our children from that. Once they're gone, they don't come back until after they're 18 or 19 years old, and of course you realize that at that point in time the acquisition of a new language becomes much more difficult. There's a time frame when you're supposed to learn your language and your culture, and that is when you are young. Removing them from that environment doesn't help that at all.

There is a recognition that we can take care of our own that needs to be accepted. We've been working at this and we tease about it. Unfortunately, we tease about it that, as chiefs, we administer our own poverty. We're given such scant resources to try to cover a variety of social issues, economic issues, that it makes it very difficult and the challenges to balance those types of budgets are very difficult. But we've survived and we continue to do so. What we're looking for is support.

One of the areas I want to talk about with respect to the bill is this notion of accountability. Currently, the way I read it, there are no accountability mechanisms for the CAS regarding any program initiatives. Who do they respond to? Who do they answer to, the board of directors? I was on a board of directors for our local CAS. Certainly they don't answer there; that's for sure.

We talk about a change in the complaint process or a recommendation to limit or put the complaint process right back on CAS officials, and that's something I don't agree with. Who do we complain to then? I mean no offence by this, but new, young overzealous employees who kind of fill the gap of a new CAS because they've got an increase in load—why aren't they questioning why they've got an increase in load rather than just bringing in more human resources to deal with that? I find that surprising: why the committee hasn't tried to address that or why nobody has tried to address that. I think it's reflective of my accountability issue that CASs don't have to deal with that.

As First Nations communities we've dealt primarily with the Department of Indian and Northern Affairs—judge, jury and executioner all in one. I see that very same thing, the same vein, the same theme happening here with the CAS. They're judge, jury and executioner.

There's no accountability in regard to the existing native provisions in there, and I think that would be helpful. Let's have a report card in terms of how CASs do this. It is separate. There's a separate part X with specific native provisions. Let's have them accountable for that.

Regarding notifications, sometimes we get them, sometimes we don't. Sometimes we get them a day before the court hearing and can't get up there. Somebody needs to be called on that.

Information-sharing: When we ask for this—the legislation calls for the band rep to be privy to this stuff—we get hurdles and roadblocks put up. I think the notion of representation has been addressed with regard to the band rep and the problems and struggles they have there.

With respect to crown wards, I also don't agree with this notion of termination of access simply by becoming a crown ward. Again, going back to 2000, they changed the time limit to one year. So if there were any problems, then certainly within that one year they may not be addressed and this will unilaterally terminate that.

It's the same concern with adoptions. This whole idea of permanency, I think is a rush. I think Bill 210 just kind of fills the gaps in terms of what Bill 6 didn't do, and so there's a problem with that.

Mr. Chair, I appreciate the fact that I'm running out of time. I'm going to be real fast here.

Similarly with regard to customary care, going back to our nation, we have family lines. They have responsibilities. That needs to be recognized and we need to be supportive so that can happen. That's our customary care. It's not going to be a best practices model that happens on Manitoulin Island. It's not going to be a best practices model that happens in Kenora. It's going to be a best practices model that is culturally relevant to the Oneida Nation of the Thames.

Finances: We've talked about finances here. Who's going to pay for these things? How are we going to do this? I think this is important, and I'll end on this statement right here. With respect to this, there's a 91% return from the federal government to take care of this particular issue. So what we're talking about now is an added burden on the province of Ontario. Rather, what

we should be doing is that the province of Ontario should be supporting First Nations and directing those monies directly to us.

The legislation allows for the recognition of agencies, societies and First Nations authorities. Let's talk about that. Let's leave that there. Certainly that provides us with an avenue for resources.

In closing, I want to say two things: First of all, I certainly appreciate the time you've taken to listen to my rants and raves, but I also want to say that 15 minutes is not adequate to discuss these kinds of issues. Fifteen minutes is not adequate for anybody to outline these types of things. I've heard committee members today acknowledge the fact that they've got questions on their minds, but can't ask them because of the time restraints. If questions don't get asked, then they won't get answered. So there's a gap there.

I just want to tell you that not everything seems to be as bad as it is. Certainly as First Nations we want to be involved directly in the new relationship with government processes that deal with our family and our people.

1730

At Oneida, we have a program that's called Project HUGS. Every month, we try to contact all the crown wards and bring them back to our community; every month, we try to do that. We just had a little Christmas party and, unfortunately, I met three new ones.

I'm a representative of the Chiefs of Ontario committee on child welfare. I'm the president of Mnaasged child and family services, which is pre-mandated. I'm chief of my community. I've been on the board of directors of a CAS. I think what we need to do is to start to change that—start to change our involvement so that it does not have a negative impact on our children for years to come.

The Chair: Thank you, Chief, from the Oneida Nation. You went over by four minutes, but that's understandable; we have no problem with that. We have made exceptions for other people too, but we try to stay within the 15 minutes. Your comments have been heard by all. I'm sure we will keep that in mind for next time.

ASSOCIATION OF NATIVE CHILD AND FAMILY SERVICES AGENCIES OF ONTARIO

The Chair: The next presentation is from the Association of Native Child and Family Services Agencies of Ontario. You can start any time. There's a maximum of 15 minutes, please, as there are other people waiting.

Mr. Ernest Beck: Thank you, Mr. Chair, and members of the standing committee. By way of introduction, my name is Ernest Beck. I'm the current president of the Association of Native Child and Family Services Agencies of Ontario. I'm accompanied today by Ms. Betty Kennedy, who is the current executive director. Given the time restraints, I'll try to go right to the guts of this submission, which will be available to the committee upon completion. Hopefully, at the end of these proceedings, we'll have a positive outcome.

Firstly, in terms of process, we acknowledge that our First Nations leaders have rejected Bill 210 in its entirety until such time that there has been proper consultation. We stand behind and support the position of our leadership. The disproportionate number of aboriginal children in the care of the child welfare system is a widely known fact. This situation warrants serious consideration, and immediate short- and long-term planning and consultation with First Nations needs to occur. First Nations have never relinquished the right to care for our own children. The agencies stand in solidarity with their First Nations in this resolve.

As stated in a report released by the association in 2001, "The responsibility for the safety and security of the next generations was bestowed upon First Nations by the Creator—it is an inalienable and inherent right that has not, and could never be, extinguished by any agreement, treaty or otherwise. Thus, when speaking of native child welfare issues in Ontario, it is important to understand that regardless of the federal and provincial legislative environments, First Nations are first and foremost governed by tribal authority."

The focus of our submission to the standing committee on social policy corresponds to the purpose of our organization, and thereby centers on practice and service delivery implications of Bill 210 as an interim measure toward reclaiming full aboriginal authority on child welfare. The primary objective of the Association of Native Child and Family Services Agencies of Ontario is to ensure that any changes to the child welfare system result in improved service delivery for the aboriginal children, families and communities we serve. Our feedback is intended as technical in nature, and should not be construed as consultation with First Nations.

Our membership is diverse, consisting of mandated aboriginal children's aid societies and pre-mandated aboriginal child and family service agencies. Our agencies range in the services they offer from on-reserve, off-reserve, and urban to remote and across different aboriginal cultural groups. It may also be said that our agencies serve along a cultural continuum, making mainstream services available within the context of more traditional cultural services. We may adapt a service to meet the needs of the children, families and communities we service. Nonetheless, all of our agencies will face various changes in their child welfare programs and practices with the passage and implementation of Bill 210.

Overall, feedback from our membership has been indicating that the majority of changes expected with the proposed amendments would be welcome, in that they would be flexible and adaptable to the cultural environment of the agencies and may help produce or enable improved service delivery and outcomes. However, the bill also proposes changes that may have negative consequences for our children, families and agencies. The following are some comments, concerns and recommendations of the association in regard to Bill 210.

To begin, we would like to acknowledge the change in direction from a protection to a strengths-based family and community approach in caring for our children as a move in the right direction. This positive new approach will require adequate resources in northern and remote areas of the province and especially in First Nations communities.

As the reader is undoubtedly aware, many aboriginal communities are struggling with poverty, violence, addictions and multi-generational issues. The enormity and weight of these issues on our children and our communities make it very difficult to respond to any reform, let alone the long-term effects of the issues. The responsibility rests in large part with only 10 native child and family services agencies. Presently, only five of these agencies are mandated to provide child protection services. In this regard, we believe the major capacity-building initiatives proposed by the Minister of Children and Youth Services' child welfare transformation agenda should be focused on First Nations. The ministry's current funding arrangement is flawed and does not reflect adequately the realities faced by our communities. It should instead be redesigned to provide equitable access to service to meet the needs of our mandated and pre-mandated agencies.

While we perceive alternative dispute resolution, differential response and some elements of permanency planning as a step in the right direction, concerns are also raised as to the insufficient resources and number of First Nations agencies mandated to implement these approaches. This is especially critical as it relates to the lack of designated First Nations agencies in southern, central and northeastern Ontario. This situation could produce the unintended consequence of further placements of aboriginal children in environments that are not First Nation-based, culturally appropriate and/or that do little to strengthen the partnership with First Nation communities.

We also have concerns with the proposed amendments in Bill 210 relating to status reviews and custody orders. These amendments, if passed, would have the effect of foster parents' rights superseding the rights of parents, extended family and community. There is no acknowledgement that the First Nation must approve of custody orders. Any custody orders of a First Nation child must be sanctioned by the First Nation.

Reform efforts to increase accountability can only be viewed as positive. However, despite First Nation-specific provisions in the Child and Family Services Act, there are still inadequate checks and balances in the system concerning aboriginal children. Although the native agencies have been regularly subject to reviews, the non-native agencies have yet to be reviewed in regard to their adherence to the aboriginal provisions of the act. Our pre-mandated agencies continue to work with non-native CASs that may or may not be adhering to these provisions. Overall, our pre-mandated agencies experience a lack of meaningful consultation and involvement in all levels of service planning.

We are encouraged to see the ministry acknowledging the use of customary care. Of primary concern for the association, however, is the provision in section 44 of Bill 210, section 223 of the act, which would allow the Lieutenant Governor to regulate customary care. We are fundamentally opposed to the province making regulations "governing procedures, practices and standards for customary care." Regulating and/or defining the procedures, practices and standards for customary care falls under the authority of the First Nations. Customary care is a traditional aboriginal custom. It is not a practice in the realm of expertise of mainstream governments and decision-makers.

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Furthermore, customary care is defined and practised differently throughout the province, as developed according to the traditional custom of each First Nation to meet community needs. Customary care practices also vary across cultural groups. Should the provincial government take on this task, which is ultimately outside their area of authority and expertise, there is a high likelihood that the resulting regulations, even if well-meaning, could place undue restrictions on the use of customary care and have extremely negative effects on First Nations' ability to continue to practise customary care effectively within our communities.

The Child and Family Services Act, as it reads today, without any changes, contains provisions that enable the use of customary care by First Nation authority, as facilitated through existing legislative arrangements. These provisions have been in effect and productively utilized for over two and a half decades. While the association would agree that changes to the child welfare system are required to better support and strengthen the use of customary care, it is not necessary to change the act, as proposed by Bill 210, to do so.

The association understands that the ministry and a number of mainstream child welfare agencies may be unclear on the actual procedures, practices and standards for customary care. We also understand that the provincial government may be concerned about liability issues. We agree these types of concerns and questions are important to address and resolve, and we are prepared to work in partnership with the provincial ministry to do so.

We are, however, categorically opposing the amending of the act to regulate customary care. There are alternatives for clarifying the practice and addressing concerns outside of amending the act, as is currently proposed. In fact, the association is currently conducting a project jointly with the Ontario child welfare secretariat to resolve these outstanding concerns.

We do have some recommendations with regard to some of the concerns raised in this presentation.

Recommendation 1: The association recommends strongly that the Ministry of Children and Youth Services pursue an appropriate and thorough consultation process with aboriginal leadership in respect to Bill 210.

We make the following recommendation as well, regarding reviews facilitated through the Child and Family Services Act.

Recommendation 2: In order to ensure that the rights of First Nation children, families and communities are upheld, the Association of Native Child and Family Services Agencies of Ontario recommends that all child welfare review processes utilized by the provincial government include aboriginal representation on the review committee, as sanctioned by the First Nation.

Specific to the contents of the bill itself, the association puts forth these additional recommendations regarding section 4. We note that there's no obligation in the new subsection for communication with the child's First Nation, and make the following recommendation.

Recommendation 3: The association recommends an additional subsection be added to section 59 of the act to recognize that if a crown ward is an Indian or native child, contact must be maintained between the child and his or her First Nation.

Regarding section 27, we note that there does not appear to be any provision for extended care and maintenance to apply to customary care arrangements, and make the following recommendation.

Recommendation 4: The association recommends that an additional subsection be added as follows:

"(3) Where a band or native community has declared that an Indian or native child is being cared for under customary care, the society may continue to provide care and maintenance in accordance with the regulations."

Regarding section 24, the association makes the following recommendation.

Recommendation 5: The association recommends that this proposed amendment be removed from Bill 210 so as not to have the effect of foster parents' rights superseding the rights of parents, extended family or the First Nation community.

Regarding section 44, the association again makes the following recommendation.

Recommendation 6: The association recommends that this proposed amendment be removed from Bill 210. Further, we recommend that the Ministry of Children and Youth Services work with the Association of Native Child and Family Services Agencies of Ontario and First Nation leaderships—for example, the Chiefs of Ontario office—to resolve any outstanding concerns related to the practice of customary care.

In summary and conclusion, our legal and constitutional rights were ignored in this whole reform process and, as such, we recommend a full judicial review.

Second, we are adamantly opposed to any amendments that restrict, exclude or impinge in any way on the operations of part X. Accordingly, all amendments should be redrafted to ensure that there is absolutely no negative application to the native provisions.

Third and finally, furthermore, there are significant costs associated with effective implementation of any amendments or other aspects of transformation, let alone part X. We strongly recommend that any and all funds being provided to mainstream agencies be evenly matched and directed to First Nation agencies to facilitate the necessary growth and development of part X.

The Chair: Thank you, Mr. Beck and Ms. Kennedy. The 15 minutes have been used up. Thanks very much for your presentation.

CHIPPEWAS OF NAWASH

The Chair: The next presentation is from the Chippewas of Nawash. There are 15 minutes for your presentation. You can start any time.

Mr. Anthony Chegahno: I would like to thank the chairperson, as well as the members, for this opportunity to share briefly—I don't want to rehash a lot of information that you've had, so I'll try to restrict my comments to about 10 minutes. Somebody else—maybe Mr. Hampton—can use my five minutes.

I would like to thank Andrea Horwath, as well as Mrs. Chambers. As I was reading the government remarks, they mentioned that it was important to get comments from the stakeholders, and that meant a lot to me as I read these comments. It is very important that you talk to stakeholders in anything that deals with legislation that's going to be passed.

I work with native child welfare on Cape Croker. It has different names. The English name is Cape Croker. The Anishnawbe name is Neyaashiinigmiing, and I guess the government name is Chippewas of Nawash. I've worked with this, and I want to come from the perspective of a social worker, I guess.

I'm very concerned about this bill and how it presents to many First Nations. The Chippewas of Nawash First Nation has a special responsibility and interest to provide for care of the children of members of the community of the Chippewas of Nawash in a manner that is First Nation specific, First Nation determined and community-based. That's important to us—to any community.

As you look overall at how Toronto is broken up, it's broken up into areas where certain ethnic groups live. I look at this and I want to see fairness when you're dealing with First Nation people. As First Nation people, we have a special status, which is recognized in treaties as well as provisions in the Indian Act, the Constitution of 1982 and the Ontario Child and Family Services Act of 1984.

The key thing I want you to remember is that First Nation children are the natural resource of the future of our nation, not only the Anishnawbe nation but Canada as a whole. Our livelihood depends on this concept. Our children are very, very important to us. The best interests of First Nation children should be recognized and protected. That's the Chippewas of Nawash intent.

I was reading also that the standard refrain we commonly hear all over Ontario about child protection is, "It's in the best interests of the child." As First Nation people across Canada, we strongly believe this. We hold this dear to our hearts. Every First Nation child should be encouraged and assisted to develop to his or her fullest potential. That's what drives us: that we can leave a legacy for our children. The family, including the extended family, is the first resource for care, affection, nurturing and protection of our children.

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Preservation of native cultural identity is important in terms of language and customs for all First Nation children, and Bill 210 does not say how to meet the needs of our language and customs that are very important for our First Nation children.

The decision-making process regarding the provision of service and delivery of any service specifically to First Nation children must involve First Nation people, with proper consultation. I guess you've heard that all day: proper consultation.

Our First Nation is responsible for the planning, design and delivery of prevention programs appropriate to First Nation custom, culture and way of life. We ensure that a range of family and child protection services are delivered to First Nation residents.

We provide a range of approved placement resources for children within the community pertaining to customary care. Many of the speakers before me have said that each First Nation, because of the uniqueness of the First Nation, has a different interpretation of what customary care is.

My friend from Manitoulin Island said that because customary care is not recognized, many times a band has to foot the bill to provide customary care. I don't think that's fair. There should be a level playing field. That's what the Constitution of Canada pertains to. It says there is fairness for everybody. But when a community has to foot the bill to keep its own children within the community while the act provides that CAS can provide better money for home care, it's not fair.

The placement of native children in a foster home on the First Nation shall be a responsibility as a team. It's not only the responsibility of the First Nation. Through customary care, which this bill fails to recognize, I believe we can come to an understanding. You can't omit something that is very dear to our hearts and customs. You can't do it with the stroke of a pen. I urge you to reconsider and make some proper amendments that would meet First Nation needs right across the board.

What else can I say? As a former worker at a CAS, when you see your family being apprehended, that's one of the hardest things you can see; seeing them leave your community and saying, "When am I coming back?" We need our children within our community.

Along with other First Nations in Ontario, we are fundamentally opposed to certain provisions in Bill 210 that undermine First Nation children's practices in our jurisdictions. In particular—and many have quoted it—section 44 of the bill gives the government open-ended regulatory power to redefine First Nation customary care.

This bill affects First Nation rights and interests. The government of Ontario is under a legal obligation to consult First Nations and attempt to accommodate those rights and our interests. We strongly believe in the importance of our children.

The provincial government has not lived up to its legal duty to work with First Nations on key provisions of Bill 210. The consultation record of this bill is practically non-existent. As a result, we oppose the bill as it is written and ask for consultation for First Nations input before you attempt to bring it to another vote.

We have quality staff who can take care of our children. Many of them have gone through the courses that are required by the children's aid society.

One of the chiefs said, "A child is a gift from our Creator." I strongly believe in that, and how we train that child so that when he or she is old, they will not depart from those teachings that are very, very dear to our hearts.

You can't fix a flaw, like a cracked windshield in your car. You can't fix it; it will always be a flaw. As the winter comes and you turn the heat on, that crack starts to grow more. Pretty soon you're making amendments here, you're making amendments there. Throw that windshield away and put a new one in. What many First Nations are asking the government to do is come for full consultations. That's what we need. Honourable member Hampton has asked that question. It's very important to us that you come.

If you want to come to the communities, you're more than welcome, just to see how the process has worked. If you want to come and see many of the homes that we have in the communities that are below the poverty line, come and see. Many times when the elections are coming around, that's the only time we see some of our elected officials. Come and see us each and every day, or when you're in a community, drop in and see where your dollars are being spent and how wisely we are spending them on the limited income that is brought forward.

If you don't have questions, feel free to come to my community. We'll welcome you with open arms. We'll show you what we have, but most of all we'll show you our children, who are our future. They're your future. They could be the future members of Parliament. One of the greatest things that we have is those teachings that we give to them through customary care, through whatever aspects are adapted by our culture. I can't help but reiterate that a child is a gift. Each and every one of the mothers say that is important; when your children are growing up and they begin to leave the nest, how that hurts. That hurts even more when our children get apprehended and taken out of our community. That's their community; that's their home; that's my home. That's part of the home that I'm willing to share with you if you want to come and see how the Chippewas of Nawash operate. Meegwetch.

The Chair: Thank you for the invitation and for your comments. We have a minute each. I'll start with Mrs. Jeffrey.

Mrs. Jeffrey: Thank you for your thoughtful presentation and thank you for the invitation. We appreciate your patience today; I'm sorry we're running late. Thank you for being here today.

Mrs. Munro: I appreciate the comments you've made today. Members of the committee, obviously, have heard many of the issues that have been raised, but I think that your way of presenting them has allowed us to remember

exactly why we're all here, and recognize that it is all of us, as parents and grandparents—that's really what the whole initiative is about. The parliamentary assistant has made comments about looking at amendments, and certainly that's what we will be looking at as we go forward.

Mr. Hampton: My fear is I think the government believes that by a few strokes of the pen over here and a few strokes of the pen over there, they can fix what is wrong with this bill. What I think I heard you say is that while amendments might be appreciated, there is something much deeper and of much greater concern here that cannot be fixed by amendments. The government has to sit down with First Nations and work in partnership with First Nations to fully understand how important these issues are to aboriginal people, to aboriginal children and to aboriginal governments. Fair assessment?

Mr. Chegahno: That's a fair assessment.

The Chair: Thanks very much for your presentation.

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NISHNAWBE-ASKI NATION

The Chair: The next presentation is from the Nishnawbe-Aski Nation, and it's Stan Beardy, Chief. You can start any time, sir.

Grand Chief Stan Beardy: *Remarks in Oji-Cree.*

I won't speak too much, Mr. Chair and members of the committee. I'm from Muskrat—300 people. It's about 1,000 miles from here and I spent $3,000 to be here for 15 minutes. I don't want to speak too much in terms of the legislation itself, about the suggested changes, but I want to try to share with you our history with the Confederation and also with the province of Ontario.

The point I'll put across here is that until such time as we are allowed to run our own lives, until such time as our inherent right is recognized that we are capable of looking after ourselves, nothing will change. I want to start off a little bit with the residential school experience.

I want to mention too that I'm from Muskrat and we're not on a power grid. We depend on generator sets to operate our lights and our computers. Last night, the power was out, so I was not able to produce a written handout at this time. However, I'd like permission to send a summarized written presentation, perhaps tomorrow. By the same token, I was not able to reproduce any copies and I only have one copy of everything which I managed to gather as well.

I should mention as well that I am Grand Chief of the Nishnawbe-Aski Nation. Our territory covers two thirds of Ontario. Our borders are from Manitoba, Hudson Bay, James Bay, Quebec and roughly the 50th parallel, and roughly two thirds of the landmass of Ontario—210,000 square miles. As I mentioned earlier, we have 50 First Nations in there and roughly 45,000 people. Roughly 70% of the total population is under the age of 29; unemployment within that group is roughly 85%.

Suicide among my young people—as young as nine years old—is roughly eight to 10 times the national average. At the present time, we have three child care agencies within Nishnawbe-Aski: Tikinagan, Payukotayno and Kunuwanimano—it's a Cree word. The reason I mention those statistics is the fact that outside legislation has been imposed on us many times without any consultation, without any accommodation. I mentioned the result of the statistics I just outlined as a direct result of that outside legislation being imposed on us without any meaningful input or consultation or dialogue with the people. So we produced a document that outlines the legacy of residential schools. When you grow up in an institution, for example—which 90% of my people were exposed to or impacted by—you lose parenting skills, you cannot pass your teachings down because the culture, the languages are lost. The statistics I outlined are the result of that outside legislation being imposed on us.

The other thing I want to share with you is what we call the sixties scoop. That was only 40 years ago. The province of Ontario had this policy where they went around Indian reservations, kidnapped our children and shipped them all over Ontario, all over Canada and the United States, Europe—the world. That's called the sixties scoop. In some cases, the province of Ontario 40 years ago issued death certificates for children so that we cannot trace them. I have documentation here of some of those cases.

I'm trying to point out to the committee members that we are real people. We have families too that we care about. I talk about the suicides that are 10 times the national average. I'm talking about somebody's children here. I'm talking about somebody's grandchild. I'm talking about somebody's sibling. We too have feelings when we lose our children. This is the work of the Ontario government 40 years ago and that's why I appear, that's why I travelled from so far away, to try to convince you that we are people too. We have families, we have dreams like everybody else. We live in Ontario and there has to be consideration given to us as people.

I have here as well an article that appeared in the Citizen and the Globe and Mail, I think it is. We just located one of our people from Cat Lake who was locked away in a mental hospital for 46 years because this person went out as a child, five years old, and he was not diagnosed properly. He was blind, but because he couldn't speak English he was locked away in a mental hospital and we just found him 46 years later. This is the effect that those outside legislations impose on us. That's why it's so important that you work with us to make sure things like this don't happen. We're talking about the year 2005. We just found this person 46 years later, who has been locked away somewhere.

Here as well I have a brief outline of some of the devastating impacts of residential schools and what it does to individual people, a race of people, under those institutionalized situations. So I want to leave this with you, Mr. Chair. As I said, unfortunately, I was not able to make any copies.

I'll also speak very briefly to some of the challenges as the reality exists in my territory.

I understand there's a gentleman who is five minutes late; maybe I can borrow his time.

Interjections.

Grand Chief Beardy: I understand the act we're talking about was proclaimed in 1984 and that it gave special, unique status to native children and families to recognize our uniqueness as native people, native culture within Ontario. The act made special provision for the apprehension of native children and it gave the band status as a party in legal proceedings concerning a child. The act also provided that before a native child could go to a mainstream foster home, the extended family and other native families had to be considered. Bands do not get funding for the band reps any more. I'm sure you've heard this over and over again. Bands in that situation—I mentioned that it cost me $3,000 just to be here. Of the communities I represent, 34 of them are remote, and air travel is very costly. So the bands cannot afford lawyers and cannot afford to send band reps to court. Courts are often held hundreds of miles or kilometres from where the child and family and the band are located.

The five-day rule—a hearing within five days—is a major problem for us as well, because First Nation courts are held every three months at best. In most cases, the hearings take place in urban centres. As a result, the child doesn't have any legal representation, the band cannot afford travel and we cannot afford a lawyer to represent the family. So the only person who is there is the children's aid lawyer to make a case, and because nobody could defend our situation, we're left at the total mercy of the courts.

Some of the recommendations—I mentioned earlier the bigger picture, where unless the jurisdiction of First Nations people is recognized and worked toward, I don't see any major change in terms of improvement in quality of life for children in my communities. However, just looking at the act itself, we need to preserve and protect the special status given to native children and families under the 1984 Child and Family Services Act.

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Number two is to provide proper funding for children to permit bands to hire lawyers and band reps to advocate for their rights, as promised in the Child and Family Services Act, and to provide proper legal aid funding so that native families can hire lawyers and travel to court.

Number four is to keep the promises made in 1984, when the Child and Family Services Act was proclaimed.

I think number five is important: that there has to be meaningful dialogue and input allowed from us to make sure that what I outlined is not repeated again. I mentioned Ontario's practices. That was only 40 years ago. I know that was before most of the ladies were born, but 40 years ago is not a long time.

That's all I have. Mr. Chair, I'd like to send in my summarized written presentation, if I may, tomorrow.

The Chair: If you please, and if you send it to the clerk's office, she will provide a copy to all of us and it will be part of the record. We'll accept whatever we're going to receive tomorrow.

There are 30 seconds each if you want to ask questions. Could I start with you, Mrs. Munro, please?

Mrs. Munro: I just want to thank you for coming here. We appreciate the distance that you have come and obviously the unique circumstances of the area you represent. I certainly appreciate your coming here to make a submission today.

The Chair: Mr. Hampton.

Mr. Hampton: I just want to know, Stan, how bad are the highways?

Grand Chief Beardy: We don't have highways. We travel by air. I mentioned that 34 of my communities are fly-in. We even get delayed sometimes up there, because when the clouds are really thick, the plane gets slowed down.

The Chair: Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): Stan, thank you so much for coming. I just wanted to clarify, because the other groups have talked about section 44 in particular: Is that the section that you're most concerned about, the customary care provisions?

Grand Chief Beardy: No. I think the bigger picture is what I am most concerned about. The message I'm trying to get across here is that we are people too. Prior to Columbus getting lost, we used to look after ourselves and look after our own families. I think the message I'm trying to get across is that we need to work with the province of Ontario to make sure the legislation works for us as well.

The Chair: Thanks very much for your comments and answers.

LONDON DISTRICT CHIEFS COUNCIL

The Chair: The last presentation for the day is the London District Chiefs Council—15 minutes, my friend, this time. You can start any time you're ready. We start minus four minutes, I hear.

Chief Randall Phillips: Yes. Good afternoon again, Chair. Good afternoon, committee members. Hopefully, you'll see the difference between an off-the-cuff speech and a typewritten speech. If I do this, it's not any offence; I just can't see.

My name is Chief Randall Phillips. I'm the elected chief of the Oneida Nation of the Thames. I'm here today representing the London District Chiefs Council, which is comprised of eight First Nations communities in southwestern Ontario. We'd like to thank you for adding the extra two days so that we could make this presentation.

We are in the early stages of developing a First Nations child welfare authority. It's called the Mnaasged Child and Family Services. We recently passed our milestone in that organization, as we recently had our first general assembly.

Before I speak on the specific issues raised by the proposed amendments, I'd like to discuss the difficulties we had with that process. In June 2005, the Ontario chiefs in assembly rejected Bill 210 due to lack of consultation with First Nations. This position was formalized in two resolutions that were forwarded to the government. The London District Chiefs Council supports these

resolutions forwarded by the chiefs. We are demanding meaningful consultation on the amendments in a separate, distinct process specifically designed for First Nations.

We take the position that the government of Ontario has a legal obligation to consult with First Nations and take all reasonable efforts to accommodate those rights and interests. This legal duty flows in part from section 35 of the Constitution Act, 1982. Further, it flows from section 2.2 of the 1965 Indian welfare agreement, to which Ontario is a signatory, and this requires First Nations consent before any significant alteration to a welfare program, including a child welfare program, occurs. The provincial government has not lived up to its legal duty to work with First Nations on these key provisions of the bill.

In order for consultations to be meaningful, adequate financial resources must be made available for First Nations to fully participate in the process. This includes resources for professional fees, travel and meeting space. Each First Nation must have the flexibility to decide how they wish to be consulted, whether it be individually, as a member of a tribal council or within their PTO. The costs related to consultations of this magnitude might seem significant at first glance, but the actual cost pales when compared to the human and social costs associated with implementing flawed legislative regimes in our communities.

Notwithstanding our complete and total opposition to Bill 210 itself, we are cautiously optimistic that the perceived shift in the philosophy for child welfare that seems to be outlined in the amendments would make a difference to our children in our communities. The movement in the system toward investing in families and communities contains a strong, positive message. I think you've heard before that our communities have been actively engaged in customary care and this differential response for many years.

We concur with our brothers and sisters who have spoken before us: Customary care is an aboriginal custom, something unique to each nation, and it cannot and must not be treated as a regulatory function controlled by the government of the day. Section 44 of the bill—section 223 of the act—would in effect give the government open-ended regulatory power to define First Nations customary care. This is inconsistent with the spirit of part X of the Child and Family Services Act, and it also affects First Nations rights and interests as it intrudes on First Nations' authority. We strongly recommend that this section be stricken from the amendments contained in the bill.

We are also encouraged by references in the amendments to alternative methods of dispute resolution. While the bill itself leaves the details of the system to be specified through a regulatory regime, we view this philosophical shift in a positive light.

As I noted in my opening remarks, we are at the initial stages of setting up our own child welfare authority in our region. The children from our communities are still receiving services from non-native societies.

In closing, I'd like to address the third component of the ministry's child welfare transformation agenda—accountability—and discuss the issue of non-native societies who provide services to First Nations children and communities.

As in our region, the majority of First Nations of Ontario receive their child welfare services from non-native agencies, and First Nation children are over-represented in that system. We are not aware of any accountability mechanism by which the ministry ensures that mainstream societies are utilizing the native-specific provisions in the act appropriately.

The research that we have conducted in our region indicates a high degree of use of formal legal intervention in terms of care type and status as opposed to the voluntary care agreements which utilize First Nations extended family placements. This is somewhat confusing, as one of the stated purposes of the act is to ensure that the native children have the opportunity to receive culturally congruent care whenever and wherever possible.

The ministry should take immediate actions to ensure that non-native agencies providing services to aboriginal children, families and communities are being accountable to the native provisions of the act.

On behalf of the 15,000 members of the First Nations of the London District Chiefs Council, I thank you for this opportunity to address the standing committee on this most important issue.

The Chair: There is a minute each for questioning. Ms. Wynne, will you start, please.

1820

Ms. Wynne: Thank you, Randall. Written and unwritten, you're very good. Can you just clarify for me—I understand where you said your position is that there needs to be a meaningful, separate consultation, and I have heard that. But I also wanted to ask you what the ongoing discussion is right now, either internally among the First Nations groups or with the ministry. Can you just clarify for me what the ongoing discussion is?

Chief Phillips: We have established a chiefs committee on child welfare at the Ontario level, through a resolution. Currently, there are representatives from the major PTOs in Ontario—NAN Treaty 3, AIAI, Independent and Union of Ontario Indians—along with representation from the Association of Native Child and Family Services and those unaffiliated communities that don't fall within that process or are stand-alone, like—

Ms. Wynne: And they're having an internal conversation about these issues?

Chief Phillips: We have met with the minister, the parliamentary assistant and her staff to start to discuss the wider issues with respect to child welfare issues, not just 210. Bill 210 precipitated this, but we're trying to use that body and that forum to address all the other issues you've heard today that were raised.

Mrs. Munro: I just wanted to thank you again for providing us with this information. From my perspective,

I think it's a question of waiting to see how the government is going to respond in terms of the kinds of issues that have been raised here, and certainly look at ways by which we could encourage government to move in the directions that are suggested. Thank you.

Chief Phillips: I certainly agree with you, Ms. Munro, that we're all anticipating in which direction the government will move and whether or not they've heard any of the submissions made on this issue.

Mr. Hampton: Just to follow up on the questions that Ms. Wynne asked earlier, it seems to me you've reflected on the issue of Bill 210 and you've pointed out that some things need to be struck from the bill and some amendments might be welcome. But what you're really concerned about is the broader and deeper issue, which the government so far has seemed to miss the boat on, and that trying to patch up 210 is not going to fix or address or deal with the broader and deeper issues that First Nations want the government to start paying attention to.

Chief Phillips: I think my previous presentation, in conjunction with comments made by Chief Stan Beardy, outline that exactly. But this is a wider issue other than a couple of amendments here. What we're talking about is a systematic approach that has had a negative impact on our children, our families and our communities, and that's the issue that needs to be addressed. Although we're taking the opportunity to voice those through this process to deal with one specific piece of legislation, it's a wider picture that we're certainly looking at.

The Chair: Thanks very much for your presentation. We have finished this evening's presentations. I would ask the members of the committee to wait, because we have to decide our next meeting and when we are going to clause-by-clause. Thank you again for coming and making your presentation.

Are there any suggestions from anybody?

Ms. Wynne: Mr. Chair, I just wanted to follow up on my question with the committee. It seems to me that it's really important that we know, as a committee, what the result of those internal conversations is before we move forward with amendments—the conversations that Mr. Phillips was just talking about, those internal discussions among the First Nations. I don't know whether staff or somebody can answer that, but I think we need to know what the result of those conversations is before we accept amendments. Maybe we can just send that comment back to the ministry so that they're aware, or at least—

The Chair: That's fair. I guess what I'm trying to understand is if we wish to move on with clause-by-clause, or do we need more time because we're going to be waiting to get some answers?

Ms. Wynne: My understanding is that the minister has said there will be some sort of dovetailing of those conversations with our amendment process, but I just wanted it to be on the record that that should happen.

Chief Phillips: Mr. Chair, if I could, Grand Chief Denise Stonefish is the chair of our meetings and perhaps would be—

The Chair: OK. Go ahead. I'm sure the members want to hear, so go ahead, please.

Grand Chief Denise Stonefish: Basically, our meetings have been to talk about some of the amendments that Bill 210 is proposing. We've indicated the same information that we've been presenting here. We are looking at a long-term goal in establishing our own native child welfare act, which will be specific to us, because as you heard throughout the hearings here, we're wanting to maintain care and control of our children, which is something we never voluntarily gave up.

Right now, those particular meetings that we're having with the chiefs committee on child welfare and the ministry have been twofold: They've been fact-finding sessions, and it's to inform the minister as to where we're coming from and those types of discussions.

Ms. Wynne: The committee probably won't meet for clause-by-clause until after we come back in January or February. Is there a possibility that we can have some information about your deliberations before we—is that time frame reasonable?

Grand Chief Stonefish: I'm sure we can provide you with some information, with a synopsis of those two particular meetings. The other thing we are looking at too is clause-by-clause of Bill 210, and I'm pretty sure we can also forward that information to you.

Ms. Wynne: OK. I think that timing's very important. Thank you.

The Chair: Thanks very much again for your assistance.

Are there any suggestions when we should meet at this point? Anyone?

Mrs. Munro: I think it would be appropriate to be looking at it from a subcommittee perspective and then present to the committee. It would seem to me that would be when we come back.

The Chair: So we are looking at February.

Ms. Wynne: Does that mean January 16 or does that mean February? Sorry, Julia, I wasn't sure.

Mrs. Munro: Well, the House doesn't come back, I understand, until February.

The Chair: There will be a subcommittee meeting some time in February when we come back and we will decide the date for the clause-by-clause. I think that's what I hear. Any disagreement with that?

Mrs. Munro: And that would fit—obviously from these discussions it would be appropriate, I think.

Grand Chief Stonefish: How's that for speed?

Ms. Wynne: Awesome.

The Chair: Thanks very much. That is all. The meeting is over.

The committee adjourned at 1828.

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