



REPRESENTATIVE FOR  
CHILDREN AND YOUTH

***Out of Sight:***  
*How One Aboriginal Child's Best Interests  
Were Lost Between Two Provinces*

**A Special Report**

September 2013



September 17, 2013

The Honourable Linda Reid  
Speaker of the Legislative Assembly  
Suite 207, Parliament Buildings  
Victoria, B.C. V8V 1X4

Dear Ms. Speaker,

I have the honour of submitting this report, *Out of Sight: How One Aboriginal Child's Best Interests Were Lost Between Two Provinces*, to the Legislative Assembly of British Columbia. This report is prepared in accordance with Section 20 of the *Representative for Children and Youth Act*, which states that the Representative may make a special report to the Legislative Assembly if she considers it necessary to do so.

Sincerely,

A handwritten signature in black ink, reading "mecturpellafond". The signature is written in a cursive, lowercase style.

Mary Ellen Turpel-Lafond  
Representative for Children and Youth

pc: Ms. Jane Thornthwaite  
Chair, Select Standing Committee on Children and Youth

Mr. Craig James  
Clerk of the Legislative Assembly





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# Executive Summary

One underlying principle applies to all child welfare practice in Canada regardless of the circumstances or jurisdiction. Everything that is done by those entrusted with protecting a vulnerable child should be done with the best interests of that child at heart.

When the best interests of children are not the focus, we cannot be sure that children are safe. This report documents what happened to one child when no less than three child welfare bodies failed on some level to ensure her safety and well-being. Most importantly, the report points to improvements that must be made to ensure that this child's tragic experience is not repeated.

In July 2008, the 3½-year-old Aboriginal girl was removed from the home of her grandfather in a small Saskatchewan First Nations community after concerned citizens reported suspicions of physical and emotional abuse and neglect of the child. The girl had been confined to a dark furnace room in the basement of the home, separated from the other children living there. She was severely emaciated, suffering from malnutrition as well as a number of injuries including an untreated fracture of the clavicle, bruising and scars on her head.

The grandfather and his spouse, who had been responsible for the care of the child for the 18-month period before she was removed, were subsequently convicted of failing to provide the necessities of life. In February 2012, they were each sentenced to three years in prison. Although they appealed their sentences, the appeals were abandoned in the fall of 2012.

As the Saskatchewan justice who presided over their trial stated, what happened to this child would make the average person feel “a sense of horror.” But what exacerbates this sense is that the abuse and neglect of the girl at the hands of her grandfather and his spouse could have been prevented had those entities responsible for her well-being before and after she was turned over to her grandfather's care exhibited basic due diligence – in short, had they acted in the child's best interests and followed child welfare legislation and policy.

This child – and her mother before her – grew up extremely vulnerable, due to a litany of chaotic life circumstances. For example, the child who is the subject of this report was moved 10 times between birth and 17 months, living in her mother's various residences, safe houses and with family friends.

British Columbia's Ministry of Children and Family Development (MCFD) became involved with the mother in 2002, not long after she moved from Saskatchewan to B.C. The child who is the subject of this report was placed under court-ordered MCFD supervision shortly after her birth in 2004. This supervision continued for the first 17 months of her life, after which she was removed from the mother's care by MCFD and placed in a foster home.

MCFD attempted to make contact with the child's extended family in Saskatchewan as it searched for a long-term placement. The ministry was initially told by the First Nations Child and Family Service (FNCFS) agency that served the Saskatchewan band

where the family originated that there were no suitable placement prospects within her extended family.

However, just days later, the FNCFS agency contacted MCFD to recommend the child's grandfather as a long-term care provider, despite the fact that the grandfather had been unable to parent his own daughter, and had a significant history of criminal offences and chronic addictions.

The six months following that contact were a critical juncture in the child's life. After a series of communications with the FNCFS agency in Saskatchewan and a trip by the grandfather to B.C., MCFD eventually reached the conclusion that it would withdraw its own application for a Continuing Custody Order (CCO)<sup>1</sup> and instead support the grandfather in his application for custody of the child under B.C.'s *Family Relations Act (FRA)*.

MCFD made this decision based on an inadequate home study and an incomplete criminal record check it received from the FNCFS agency and without doing proper follow-up. MCFD also failed to do due diligence regarding the grandfather's drug addiction. In addition, MCFD did not conduct any transition planning to address the child's post-placement safety or special needs, including her well-documented need for speech therapy.

The FNCFS agency recommended the grandfather's home, saying it had "no concerns" with a placement there and stating, incorrectly, that the grandfather's criminal record checks were "clear" when, in fact, his record included some 70 offences. The agency's home study was both dated and grossly inaccurate and failed to document critical information about the grandfather and his spouse that was well-known in the small community in which they lived.

Furthermore, the FNCFS agency failed to take any action to address the child's developmental needs after her move to Saskatchewan. Despite the FNCFS agency noting in July 2007 that the grandfather was abusing prescription drugs and despite receiving a protection report about the child in December 2007, the agency did not remove the child from the home until July 2008. In fact, the record-keeping and level of professionalism demonstrated by the FNCFS agency with regard to this case causes the Representative great concern about its work with other children in that province and whether B.C. child welfare authorities can safely rely on this work when children are moved beyond provincial boundaries.

Meanwhile, the Saskatchewan Ministry of Social Services (MSS) – known at the time as the Department of Social Services (DSS) – failed to ensure that the FNCFS agency

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<sup>1</sup> Continuing Custody Order: is a court order under s. 41 (1)(d), 42 (3)(b), 49(4) or (5) or 60 of the *Child, Family and Community Service Act (CFCS Act)*, placing a child in the continuing custody of a director. Custody includes the care and guardianship of a child. The court grants a CCO when it is satisfied that the child cannot return to the family. The social worker responsible for the child must address the long-term need for permanency and consistency when planning for the child. In some cases, the court may approve continued contact between the child and the parents or guardians, despite the fact that the child will not be returning to his or her home. This provision recognizes the significance of the child's natural family, regardless of their ability to live together.



was in compliance with provincial standards of child welfare practice, which resulted in the child's safety being compromised. While the FNCFS agency was delegated by the Saskatchewan ministry to provide child welfare services in this community, the ultimate responsibility for these services rested with the ministry.

The overall result was that this child was placed in an unsafe environment and then endured 18 months of abuse and neglect.

How can such a situation be avoided for children in the future? The Representative has determined that changes are required, both in B.C. and in the protocol that applies between provinces and territories in such cases. The Representative has the jurisdiction to make recommendations to the B.C. government but believes there is also work to be done in Saskatchewan. This report has been shared with the Saskatchewan ministry and the Saskatchewan Advocate for Children and Youth. The Representative realizes that it is up to these public bodies to take appropriate steps to demonstrate the accountability and effectiveness of Saskatchewan's child welfare services. In the meantime, the Representative urges B.C. child welfare offices to use great caution and care in relying on home assessments, criminal record checks and post-placement courtesy services from Saskatchewan child welfare offices.

Recent changes to family law in B.C. have mandated that current information – including criminal records and pending charges – be placed before any court hearing an application for guardianship. This might help to protect children in B.C. or those being moved out of province after 2013. However, gaps remain that place children at risk if inaccurate or incomplete information is shared by another province with B.C.

The Representative recommends that B.C.'s Provincial Director of Child Welfare conduct a thorough review of MCFD's current policies and standards for out-of-province placements for all children under the guardianship of the province to ensure that there are clear guidelines for assessing and recommending such placements that take into account the safety, health, educational, cultural and developmental needs of the child.

This review should be followed by the Director issuing a practice directive detailing the guidelines for out-of-province placements which should include a visit by a delegated B.C. social worker to any proposed placement and an assessment of the placement that meets MCFD standards. Upon approval of any placement, a detailed transition plan should be developed to ensure a seamless provision of services to the child. In cases in which there may be some risk to the child in the proposed placement, arrangements should be made through the courts or by agreement with the receiving jurisdiction to enable the MCFD-delegated social worker to maintain ongoing monitoring of the placement to ensure the transition is successful.

The Representative also recommends that a review be undertaken of the current Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories to ensure there is a commitment by all provincial/territorial child welfare authorities that placement decisions fully support the needs of children and families.

The Representative believes that these changes – based on lessons learned from the experiences of the child who is the subject of this report – will help ensure that the best interests of children are the focus in future cases of this nature.

# Introduction

In July 2008, a concerned citizen living in a small Saskatchewan community called both police and the FNCFS agency delegated to serve the community with concerns about the welfare of a 3½-year-old child.

The caller reported that the child was being emotionally and physically abused and neglected, separated from other children in the home and confined to a basement furnace room. When the FNCFS social worker and police went to the home, they found the child to be severely emaciated. The child and the other two children in the home were immediately removed from the care of the child's grandfather and his spouse.

The grandfather and his spouse were subsequently charged with failing to provide the necessities of life. In February 2012, they were convicted and sentenced to three years imprisonment.

The preliminary file review conducted by B.C.'s Representative for Children and Youth raised more questions than it answered. The child had been under a supervision order by MCFD beginning less than a month after her birth. Fifteen months later, MCFD removed the child from the care of her mother, who continued to struggle with addictions and was unable to provide a safe home. Approximately 10 months after that, custody and guardianship of the child were awarded, with the agreement of MCFD, to the child's grandfather, who lived in Saskatchewan.

Were the best interests of this child the paramount consideration when her custody was transferred? Were proper checks and assessments completed in her case? If not, why did MCFD support transfer of the child to this relative? Was this child's experience preventable and, if so, what can be learned to spare others in the future? Those are the questions that drive this Special Report.

The Representative would like to thank the Saskatchewan government, the FNCFS agency and the Saskatchewan Advocate for Children and Youth for their cooperation and the forthright manner in which they provided information to support this review.

# Methodology

The *Representative for Children and Youth Act (RCY Act)* provides the authority for the Representative to make a Special Report should she consider it necessary. Given the gravity of this case, the Representative sought to understand how such a grievous outcome occurred, and what could be learned to keep children safer in the future.

This Special Report is unusual in that it required a detailed examination of child welfare practice in two provinces in order to understand how custody of this child was transferred. The Representative's statutory authority does not extend outside of B.C. Yet sometimes in child welfare, decisions in one province depend on assessments and assurances from another province. The interprovincial mobility of families and children is frequent and a part of practice, especially for certain very vulnerable groups of children, such as Aboriginal children. The Saskatchewan MSS and the delegated FNCFS agency in Saskatchewan cooperated with the Representative by providing file information and interviews with investigators.

B.C. child welfare practice was reviewed from the time MCFD intervened with the child and her family shortly after her birth in October 2004, through February 2007, when the child moved to Saskatchewan in the custody of her grandfather. Saskatchewan child welfare practice was reviewed from when discussions about the transfer began until July 2008, when the child was removed from her grandfather's custody. Historical details of the life circumstances of the child's mother and grandfather have been included to provide context and perspective.

Interviews were conducted with the child's mother, grandfather, his spouse, and a care giver in B.C. who had provided a foster home for the child. MCFD staff in B.C., MSS staff in Saskatchewan, and staff from the Saskatchewan FNCFS agency also assisted in providing information. Documentation from MCFD, MSS and the FNCFS agency was also fully reviewed. The combination of these sources informed the Chronology section of this report.

B.C. and Saskatchewan child and family development policies and standards, child welfare legislation and family law were reviewed to inform the Analysis. Staff from the Representative's office also visited the child near her home in Saskatchewan just prior to the release of this report.

Organizations and individuals who provided evidence to this Special Report were given an opportunity to review and provide comments on the facts in the report for the purpose of administrative fairness.



# Chronology

## History of the Child's Mother

The mother of the child who is the subject of this report was born to parents who were residential school survivors struggling with chronic addictions. Her parents' substance abuse and marital discord led to their separation, and her mother – the maternal grandmother of the child who is the subject of this report – moved to B.C. from Saskatchewan when her daughter was approximately three-years-old.

The father made sporadic efforts to care for his daughter but was mostly absent from her life because of his chronic addictions and time spent in jail, leaving her with a series of different care givers. These friend and familial placements, and a later foster home placement, tragically betrayed the trust of this child. Instead of providing her with safety, she was emotionally, physically and sexually abused.

She made her first suicide attempt at age nine. She made two more attempts by age 13, with additional instances of self-harm including self-mutilation. She was chronically abusing alcohol and injecting drugs by her early teen years and, although she received counselling and residential treatment for alcohol and substance abuse, she also became involved with the youth justice system and continued to struggle to maintain stability.

All through her childhood, she hoped that her parents, and particularly her father, would save her from this unstable and desperate situation. At one point, plans were made for her to move in with him and a home study was commenced. But despite the father's desire to provide care for her, his addictions remained unresolved. He was taken into custody following further alcohol-related criminal offences, and his plans to parent his daughter disintegrated. He was never able to successfully provide for her. She remained in the formal care of the Saskatchewan DSS until age 16.

With such a chaotic life, her school attendance was irregular. Although she was well liked by her teachers and considered to have much potential, she did not complete school beyond Grade 9. Due to her learning difficulties, she was at times placed in special classes. She disclosed to one of her counsellors that she was diagnosed at school as possibly suffering from fetal alcohol spectrum disorder.

She gave birth to her first child at age 15 and tried to care for the child for the first two years. However, she was frequently victimized in relationships that contributed to her being unable to remain drug- and alcohol-free and unable to safely care for her child. As a result, her child was sexually abused.

After another suicide attempt, her child was removed from her care and placed in foster care, and she was never able to regain custody. This child was briefly placed with her maternal grandfather and his spouse but they were unable to cope and the child subsequently entered government care in Saskatchewan.

In 1999, at age 21, she gave birth to her second child. A few weeks after the birth, this child was taken from the mother by the maternal grandfather after he learned that the mother was involved in the sex trade. He had remarried and appeared to be in a relatively stable relationship of eight years. Both he and his spouse had completed Practitioner Level Foster Care Training with their FNCFS agency in 1995 as well as Foster Parent Pre-Service Training with DSS in 1997.

As a result of being denied access to her new baby by the maternal grandfather, and not believing that this situation would change, the young mother felt that she had no reason to remain in Saskatchewan. She moved to B.C., where her own mother was still living.

She first came to the attention of MCFD in 2002, when she was 24-years-old. She was again pregnant and still struggling with drug addictions, although she was attending prenatal support services. However, her third baby was born prematurely and survived for only a few hours.

In the meantime, MCFD contacted the FNCFS agency in Saskatchewan and obtained information about this young mother and a brief history of the agency's child welfare involvement with her.

In 2003, her mother – the grandmother of the child who is the subject of this report – died in B.C. as a result of cirrhosis of the liver.

In 2004, when she was 26-years-old, she again became pregnant and sought community support to assist her in abstaining from substance use and maintaining a healthy pregnancy. MCFD was contacted by the hospital and community support program in which the young woman was

### Neonatal Abstinence Syndrome

The impact of substance abuse and addiction on a pregnant woman is often significant, both for her and the fetus. Drugs taken by the mother are often passed from her bloodstream to the fetus. As a result, the fetus can become intoxicated by, and dependent on, these substances – particularly drugs such as alcohol, cocaine, heroin, morphine and amphetamines. After birth, the drug is no longer available and some infants will display symptoms of withdrawal from the drug, typically referred to as neonatal abstinence syndrome (NAS).

Babies born with NAS may appear unaffected and normal at birth. However, anywhere from 24 hours to 10 days after birth, symptoms may emerge, including:

- excessive, high-pitched crying
- tremors and seizures
- sleep difficulties
- tight muscle tone
- fever and sweating
- increased startle reflex
- poor feeding
- increase in respiratory rate
- vomiting and diarrhea

Specific drugs cause specific problems for newborn infants. Cocaine, for example, stimulates the central nervous system and causes babies to be easily startled, jittery, and increases the risk of sudden unexpected deaths.

According to the Ontario Provincial Council for Child and Maternal Health, *"substance use in pregnancy is a marker for social and environmental risks that contribute to mental, physical and developmental challenges for infants and children that may last a lifetime."*

Neonatal Abstinence Syndrome (NAS) Clinical Practice Guidelines, Provincial Council for Maternal and Child Health (Ontario, Canada) revised: March 30, 2012

participating, advising that she was committed to delivering a healthy baby and looking forward to being able to safely care for her new child.

### The Child is Born

The child who is the subject of this report was born in the autumn of 2004. The baby appeared healthy and showed no signs of neonatal abstinence syndrome (see text box on previous page) even though her mother had been chronically using drugs until she learned that she was pregnant. Despite this, the child was still considered at risk according to MCFD's own training materials, which state: *"If a child has any history of prenatal exposure to drugs or alcohol, the child needs medical follow-up regardless of the absence of observable symptoms."*<sup>2</sup>

The ministry was informed of the pregnancy via a high-risk pregnancy support program and met with the child's mother and her boyfriend after the birth to assess risk to the newborn, formulate an immediate safety plan and ensure that the various elements of the plan were discussed, agreed to and in place before the mother and baby were discharged from hospital. It was agreed that the mother and child would remain in sheltered housing that offered family support services and on-site parenting programs.

The child who is the subject of this report was cared for by her mother for the first 17 months of her life, subject to court-ordered MCFD supervision. The initial supervision order required that the mother reside in sheltered housing, attend drug and alcohol treatment, undergo drug testing and receive family support and counselling.

The mother's boyfriend at the time indicated a desire to help parent the child, despite the fact that he was not the biological father. In the risk-reduction meeting with MCFD, he committed to abstain from drug use and to refrain from violent behaviour. He also agreed to enrol in alcohol and drug treatment but did not agree to submit to drug testing.

The boyfriend had an extensive criminal history that included illegal drug involvement and serious acts of violence for which he had served significant jail time. At the time of the baby's birth, the boyfriend was not permitted access to the mother's home due to concerns that he had stolen while on the premises.

In April 2005, when the child was six-months-old, the mother and child were assisted in leaving sheltered housing after her boyfriend managed to gain entry. The mother and child went to a safe house in another community with a plan to obtain a restraining order against the boyfriend. The mother later changed her mind and did not follow through with this. However, after her boyfriend discovered where she was living, she returned to the supported women's shelter where she had previously lived.

MCFD successfully applied to extend the supervision order by adding a clause requiring that the mother make all reasonable efforts to ensure that there would be no incidents of physical violence in the presence of the child.

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<sup>2</sup> MCFD Adoption Resources, Chapter 8, page 99.

Approximately one month later, the mother and child relocated to a new apartment to avoid having any further contact with the boyfriend, from whom the mother had now separated. However, shortly after this move, he again discovered her whereabouts, obtained access to her apartment and moved in.

The boyfriend was chronically abusing crack cocaine during this period and he was told by the mother to leave. He refused to comply, which resulted in the mother and child moving again and seeking safety in community women's shelters. A few days later, a fire in the apartment destroyed their belongings and badly burned the boyfriend, who was suspected of accidentally causing the fire while preparing street drugs. The child was now nine-months-old. The boyfriend was subsequently hospitalized and, while not fully recovered from the burns, died several weeks later from an unrelated health issue.

Saddened by the boyfriend's death, the mother gradually slid back into increasing drug use over the following few months. MCFD initiated a series of ongoing safety plans involving mother and child residing in staffed women's shelters, early evening curfews, drug testing and checking in with the Provincial After Hours program at night. The child stayed with a family friend for a few days while the mother attended a detox program.

Recognizing that she could no longer safely care for her child, the mother arranged with MCFD for her daughter to be temporarily placed in the home of a different family friend under a Kith and Kin agreement.<sup>3</sup> This woman had befriended the mother and child after a chance encounter in 2005, and provided support to the mother and unofficial respite care for the child in 2005 and 2006. This Kith and Kin arrangement was meant to provide safety for the child and give the mother an opportunity to seek treatment for her addictions.

Unfortunately, the mother was unable to successfully address her addictions. The 30-day limit specified in the agreement for her daughter's placement expired and the family friend was unable to extend it due to other commitments. The child, now 17-months-old, was removed by MCFD and placed in a foster home. The family friend continued to have weekly contact and overnight visits with the child.

The family friend who had cared for the child described her this way: *"Bright, energetic, animated, and engaging. If she, at times, seems withdrawn, quiet or confused, it is clearly a reflection of the upheavals and constant change of homes that she has had to experience in her short life. Given how well adjusted she is in spite of everything, I think she has shown incredible psychological resilience."*

Initial medical examination of the child upon entering ministry care showed her to have a speech delay, and subsequent examinations at BC Children's Hospital revealed additional health concerns (see text box on following page).

<sup>3</sup> Under the *CFCS Act*, the ministry may make an agreement with a person who has established a relationship with a child or has a cultural or traditional responsibility toward a child, and is given care of the child by the child's parent.

### Identified Medical Issues

In **2005**, the child was diagnosed with bronchiolitis related to respiratory syncytial virus (RSV), an infection quite common in early childhood.

On **March 9, 2006**, an initial medical examination identified a speech delay. Further testing was recommended if her speech was still delayed in two to three months.

On **March 16, 2006**, a further examination at BC Children's Hospital concluded that the child's speech was quite delayed. MCFD was advised to refer her to an Infant Development Program.

On **March 21, 2006**, MCFD learned from the Kith and Kin placement that the child had experienced two episodes of unexplained "shuddering" for five to 10 minutes – once when being changed and on one occasion when her eyes went "blank" when she was less than one-year-old.

On **March 28, 2006**, a doctor at BC Children's Hospital examined the child and stated that the episodes were not consistent with epilepsy. An electroencephalogram (EEG) was scheduled for April 28, 2006.

On **April 28, 2006**, an EEG was conducted, and no abnormality was found.

On **June 15, 2006**, the child's vision was tested and she was assessed as needing to wear an eye patch to treat a wandering eye.

On **July 20, 2006**, the child's hearing was assessed to see if it was a factor in her speech and language delays. The results were normal.

On **Dec. 29, 2006**, the child again had her hearing assessed. The results were normal.

In **January 2007**, the child was assessed by a pediatric ophthalmologist and diagnosed with intermittent exotropia, a condition where one or two of the eyes are deviated outward. The physician in question wrote, *"I understand there is a chance she may be moving to Saskatchewan and she should be closely followed there."*

On **Jan. 31, 2007**, the child's MCFD discharge from care examination was performed by a pediatrician at BC Children's Hospital. The records of that examination show that she was at the 75th percentile for both height (89.2 cm) and weight (13.6 kg). Her physical examination was entirely normal except for the pre-existing mild eczema. The records also show that she had an expressive speech delay, but no hearing deficit.

This was the last recorded medical visit for the child until she was removed from her grandfather's home in July 2008. There was no record of any medical appointments or services received by the child in Saskatchewan. There was no record of MCFD formally providing any of the child's medical history to the grandfather or the FNCFS agency.

MCFD hoped that the mother would be able to rehabilitate by completing a residential drug and alcohol treatment program. However, when the mother didn't remain in contact with her social worker, follow up with treatment or make herself available for supervised visits with her daughter, it appeared likely that an alternative long-term placement plan for the child would be required.



## The Search for a Placement

After an initial three-month custody order, MCFD applied for a CCO in August 2006, when the child was 22-months-old. MCFD had made contact with the mother's First Nations band in Saskatchewan through the band's FNCFS agency and was initially advised that no one in the child's extended family had been identified as substance-free or as an appropriate potential placement.

However, just over one week later, the agency advised MCFD that the child's grandfather had expressed interest in caring for her and could be considered as he was an approved foster parent. No explanation was provided as to why the grandfather had not been initially identified as a possible care provider.

The Representative's investigators would learn while conducting this review that the FNCFS agency recommended the grandfather despite the fact that he had been unable to parent his own daughter – the mother of the child who is the subject of this report – and had a significant history of criminal offences and chronic addictions.

A few days later, MCFD staff had a further discussion with the FNCFS social worker in Saskatchewan. The ministry was advised that the grandfather was currently caring for four children – two of his nephews, the middle sibling of the child who is the subject of this report and another child who was a DSS placement. MCFD was advised that the nephews would be leaving the grandfather's home shortly.

MCFD social workers called the grandfather the following day. He said that both he and his spouse were former addicts who were currently alcohol and drug counsellors. He said he had not had contact with his daughter for six years, but that he was caring for her middle child and would love to also care for her youngest, the child who is the subject of this report. He indicated that his First Nations band would help with transportation for a visit. The grandfather then approached the band chief requesting funding assistance. This request was later denied, and funding for the trip was ultimately provided by MCFD.

The band chief also had a conversation with the FNCFS agency social worker, during which the band chief advised that MCFD required the grandfather's home study and a new Canadian Police Information Centre (CPIC – see sidebar next page) check because the one in possession of FNCFS was no longer current.

The grandfather arrived in B.C. for a visit with the child in July 2006, bringing the child's middle sibling with him. The grandfather stayed with the family friend who had cared for the child earlier the same year.

That friend told RCY investigators that when the grandfather met the child for the first time, he sat down quietly behind her and waited. She stated that the child eventually turned to look at him and put her hand on his face as if she knew him, and he just smiled; they sat like that for a long time. The family friend thought it was *“fantastic ... It just looked like everything was going to be OK.”*

The child's mother told the family friend that she wanted her child to go with the grandfather, that he was a good dad, and that it would be nice for her to grow up with her sibling. The Representative notes that this was an unexpected sentiment for the mother to have expressed, given that she grew up in foster homes and lived with family and friends while her father was actively alcoholic, abusing drugs and in and out of jail and that records indicate that, as a child, she had made a disclosure of being sexually abused by her father. (In speaking with the Representative's investigators, she denied that this abuse occurred.)

The MCFD social worker recalled many phone conversations with the grandfather before he came to visit the child in B.C. Following his arrival in B.C., however, there was a noticeable tension between the grandfather and ministry staff. It seemed he was hoping to receive the equivalent cost of two return plane tickets from MCFD, although he appeared to have hitchhiked to B.C. The social worker's sense was that the trip seemed to focus on money – as if the grandfather was expecting to be paid a substantial amount for visiting.

The visit appeared to have gone well between the child, her middle sibling and the grandfather, and the social worker had devoted significant time to showing the family around the community and taking them out for a meal.

The social worker also recalled that, as the visit came to a close, the grandfather appeared to be extremely angry. He was reported to have complained loudly while at the check-in counter at the airport that B.C. was an unfriendly place and he would never return. It was unclear to the social worker, who had driven him to the airport, why he was so upset.

The grandfather later disclosed to the Representative's investigator that he was addicted to and actively using codeine throughout this period of time and that he had bought 200 codeine tablets in B.C. to take back with him to Saskatchewan. He also stated that he

### CPIC and Criminal Record Checks

In Canada, criminal records are recorded on a nationwide database maintained by the Canadian Police Information Centre (CPIC). When an individual is queried on this database, the response will include any convictions, charges, bail conditions and outstanding warrants.

Because the CPIC requires the fingerprints of convicted persons prior to entering a conviction on their database, many convictions will not appear if, as commonly occurs, the charged person has not been fingerprinted by police. This occurs more commonly when charged persons are released at the scene of an incident rather than being transported to a police facility where fingerprinting can be completed prior to their release.

Criminal information not captured by CPIC, including police contacts that do not result in charges, may be captured on provincial police databases, such as PRIME (Police Record Information Management Environment) in B.C.

Although CPIC uses names and dates of birth to locate potential records, absolute confirmation of the existence of a criminal record requires that the individual's fingerprints be submitted for comparison to the fingerprints taken by police at the time of the offence.

was heavily under the influence of codeine during the entire visit to B.C., including for the court proceeding.

Following his return to Saskatchewan, the grandfather had a number of phone conversations with the MCFD social worker. The social worker later told the RCY investigator that she was surprised that he never asked about the child nor expressed any concerns for her well-being during these conversations. Rather, his main area of concern seemed to be when he would be approved by the ministry as a care giver, and the funding and timing for his return trip to B.C.

The social worker also said that the girl's mother had been asked whether she felt any concern about having her other child in the grandfather's care. The mother said that she had no concerns and that it was "a good home." The mother also reiterated this sentiment in a later discussion with the Representative's investigators – this despite her own experience with her father being unable to parent her.

Although the grandfather's behaviours during and after the visit to B.C. should have triggered a higher level of scrutiny, the process of his gaining custody of the child continued uninterrupted.

The grandfather's court application for custody was filed in August 2006, shortly after he returned home to Saskatchewan. His lawyer also applied to have the application heard in conjunction with MCFD's application to court for continuing custody – a common practice that allows custody decisions to be rendered in a single hearing.

Meanwhile, the child appeared to be thriving in foster care in B.C. She was perceived by her social worker and care givers to be a happy, friendly and trusting little girl.

### Other Placement Options

When CCO status is being considered for a child, MCFD has a number of options.

The first option is to explore both immediate and extended family. A familial placement in an Aboriginal community is always considered to be the most preferable plan for an Aboriginal child.

However, if a family placement is not appropriate – which should have been the determination with respect to the grandfather's home in this case – there are other options.

In this case, the First Nations band could have been canvassed for its input. Concurrently, the ministry could have explored other long-term planning for this child outside of her extended family. These possibilities could have included her previous Kith and Kin placement with the family friend, the foster placement she was in at the time of the transfer, or a referral for adoption.

Given that this child had an attachment with her former Kith and Kin provider, further exploration of this as a placement option would have been in her best interests. Transfer of custody to a person other than the child's parent could have been applied for under s. 54.1 of the *Child, Family and Community Service Act*. This would have been the mechanism for transferring custody, as an alternative to an adoption placement.

Prior to the custody hearing, a B.C. Provincial Court judge presided over a case conference on Dec. 5, 2006. Counsel for MCFD, for the child's mother, and for the child's grandfather attended, in addition to the child's social worker and supervisor. The grandfather participated via telephone.

During this case conference, the grandfather said that he would speak to his Saskatchewan lawyer to obtain CPIC checks on himself and his spouse, which he said would be sent to MCFD through his B.C. lawyer. However, he did not follow through on this commitment and, as far as the Representative's investigators could determine, MCFD did not proceed any further in seeking to obtain an up-to-date check.

Leading up to the case conference, MCFD had been waiting to receive the grandfather's home study and CPIC check, despite making a number of requests to the FNCFS agency. The FNCFS agency later responded that this information had been sent to MCFD during the summer of 2006, but no documentation to support this claim could be located by the Representative's investigators.

Shortly after the case conference, MCFD received a copy of the home study from the FNCFS agency, dated July 31, 2005. This was a key document used by MCFD in deciding whether to support the grandfather's application or to proceed with its own application for a CCO.

The cover letter that arrived with the home study stated that the grandfather's home was an inactive home with the agency at that time. It further stated that the agency would not accept any responsibility for monitoring or paying for the child's "placement" in the home. Additionally, the covering letter said: *"The responsibility of [sic] the child placed in this home will be the sole responsibility of your Department [MCFD]."*

In actual fact, the agency had sole jurisdiction and responsibility for the provision of child welfare services to the child. RCY investigators later learned from the agency that its funding from the federal Indian and Northern Affairs Canada (INAC) was fixed, based upon the previous year's caseload; therefore, adding a child or family to the agency's caseload would not result in a corresponding increase in funding.

There was reference in the home study to a CPIC check and an Automated Client Index (ACI) check<sup>4</sup> having been completed on the grandfather and his spouse and that they were "clear." This was interpreted by MCFD as meaning that neither the grandfather nor his spouse had a criminal record or history of child welfare involvement. MCFD was never provided with copies of the checks.

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<sup>4</sup> A provincial child welfare database run by the Saskatchewan MSS that contains the history of individuals who have had contact with child welfare agencies

The home study concluded in its Recommendation section that the grandfather and his spouse: “... are very capable of providing a home that is loving and safe for children that come into their care. They have a lot of knowledge and the ability to care for children, because they have already raised their own children and have provided care for children in care of the FNCFS agency. CPIC and ACI have returned clear and there is [sic] no child protection concerns with the ... family.”<sup>5</sup>

The home study was signed by the grandfather, his spouse, the supervisor and the executive director of the FNCFS agency. Remarkably, the author of the home study was not identified and the FNCFS was unable to provide the author’s identity when asked by the Representative’s investigators.

Meanwhile, the grandfather was anxious for the final arrangements to be solidified and for the child to be placed in his care. The child’s regular MCFD social worker was away from late December 2006 until February 2007, during which time it appears that the remaining members of her team covered her duties. The social worker’s immediate supervisor maintained overall supervision of this case.

There was a flurry of activity in January 2007. The court hearing was scheduled for Jan. 10, 2007 and was subsequently adjourned to Jan. 31, 2007. A final decision had still not been made by MCFD on whether to support the grandfather’s application or to proceed with the application for a CCO.

On both Jan. 9 and Jan. 10, 2007, the FNCFS agency contacted MCFD and advised that the grandfather’s home was still approved as a foster home but deemed inactive because, at the time, it was being utilized by the DSS. The FNCFS added that there were no concerns with the grandfather.

On Jan. 18, 2007, the FNCFS agency spoke to MCFD to obtain an update on the court process. During this conversation, the agency contact again indicated support for the grandfather obtaining custody of the child. Although the agency had previously been served court documents respecting MCFD’s application for a CCO, the agency asked for the documentation to be served again, stating that it had never been received.

In a subsequent conversation with the FNCFS agency, MCFD staff learned of a sexual exploitation report dating from 1988-89 that possibly involved the grandfather, and a child apprehension that was likely related to that report. Following a review of the file information, the DSS assured MCFD that neither the sexual exploitation report nor the child apprehension – which both concerned the mother of the child who is the subject of this report when she was an adolescent – directly involved the grandfather.

MCFD staff also learned that the child placed in the grandfather’s care had been placed there by the DSS in Regina. This placement would have required a CPIC and ACI check, further reinforcing the impression that the grandfather had no related criminal history.

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<sup>5</sup> Cover letter dated Dec. 13, 2006 with attached Family Support Home Study from the FNCFS agency dated July 31, 2005

MCFD contacted the FNCFS agency again after an MCFD team leader determined that the home study was “*not very in-depth*.” The agency advised MCFD that it had also received a report of prescription drug misuse by the grandfather, but that it had not investigated the report since the agency had no children placed in the home at that time. However, the Representative notes that the agency would have been aware that there were other children in the home who were potentially at risk.

This issue, which threatened to derail the child’s prospective placement with her grandfather, was discussed by the MCFD team leader with ministry regional managers, who advised her to call the grandfather’s family physician and indicated that, in the absence of clear concerns about prescription drug use or other safety concerns, the ministry could support the custody and guardianship transfer plan.

The team leader contacted the grandfather’s family physician, who stated that the grandfather had abused prescription drugs during the previous year but had been in treatment and that there were no current concerns. The grandfather confirmed this in a subsequent conversation with MCFD staff, although he did not provide an explanation as to why he did not initially volunteer this information.

Nevertheless, with the issue of the grandfather’s addictions apparently put to rest, MCFD made the decision to support the grandfather’s application.

During the custody hearing, the following exchange occurred between the Court and counsel for the Director of Child Welfare:

**The Court:** “*All right, so the Director, then, is satisfied, presumably, that this is the proper and best course for [the child]?*”

**Counsel for the Director:** “*Yes, that’s correct.*”

**The Court:** “*And you’ll be withdrawing [the Director’s application for continuing custody].*”

**Counsel for the Director:** “*We’ve made the usual investigations, and we support [the grandfather’s] application.*”

The Representative notes that these investigations by MCFD did not include obtaining an adequate or timely home study, nor a criminal record check printout which could be reviewed.

The grandfather was awarded custody of the child on Jan. 31, 2007. The child, her mother and her grandfather departed B.C. for Saskatchewan on Feb. 1, 2007. It is not clear why the mother joined them

The child was now just over two-years-old.

## Living in Saskatchewan

Living in the grandfather's home were his spouse, a seven-year-old sibling of the child who is the subject of this report, and another 18-month-old who had been placed there by DSS in February 2006. DSS had placed this child under the auspices of the Person of Sufficient Interest (PSI) program and was financially supporting this placement (see text box).

### Person of Sufficient Interest

In Saskatchewan, a person may be designated a PSI through s. 23 of the *Child and Family Services Act* for a child who is in need of protection.

This person can be:

- a member of the child's extended family,
- the chief of a child's band or the chief's designate, or
- any other person who has a close connection to the child.

Based on this designation, the individual has a right to be a party to the child protection court hearing. The court may also order that a child be placed in the legal custody and home of a PSI care giver as per s. 37 of the *CFS Act*. Based on this, the child:

- is not in the care or custody of MSS,
- has no legal status with MSS,
- is not considered adopted by the PSI care giver and the parental rights of the birth parents have not been severed.

A child may be placed with a PSI care giver via court order for a definite (short-term) or indefinite (long-term) period of time, during which the PSI care giver has legal custody of the child. The PSI care giver is entitled to monthly maintenance payments and other supports.

Criminal record and child protection record checks and a home study are required of the PSI applicant in addition to the PSI care giver learning about the proposed child's developmental needs and any special needs the child may have.

When the child who is the subject of this report, her mother and her grandfather arrived in Saskatchewan in February 2007, the mother and daughter shared an upstairs bedroom in the grandfather's home. One week later, the mother moved out of the grandfather's home, leaving her daughter behind. One informant told the Representative's investigators that the mother had been abusing morphine in the grandfather's home at this time.

The home of the grandfather and his spouse was located in their First Nations community. According to Statistics Canada 2006 census data, this community had a total population of less than 500 people that year. The total number of census families was fewer than 125. The total number of private dwellings occupied by usual residents was less than 130.

This is best described as a small community in which familial and kin relationships play an important role. The grandfather advised the Representative's investigators that, from time to time, he had been employed as a drug and alcohol counsellor for the band and had organized "sweats" both in his home and elsewhere in the community. It therefore appears inconceivable to the Representative that the grandfather's poor functioning within his community was not known and understood by band members both on-reserve and employed by the FNCFS agency.

### Delegated Agencies and File Documentation

There are currently 17 First Nations child welfare agencies serving on-reserve children and families in Saskatchewan, with another four First Nations being served directly by MSS. These agencies are referred to as "delegated," as they have the delegated legal authority to enforce the *Saskatchewan Child and Family Services Act*, with ultimate responsibility resting with MSS. These delegated First Nations child welfare agencies, therefore, operate under the same legislative and policy framework as MSS.

In Saskatchewan, First Nations children who are removed by MSS (or its predecessor, DSS) from a parent residing off-reserve can be placed either in a foster home, or with relatives on their reserve – potentially a home in which children are also being placed by a delegated FNCFS agency.

This flexibility of placement for First Nations children and families can lead to file documentation being held by the MSS, an FNCFS agency or both. As a result, important information can sometimes be documented on a child's file, a foster home file or a parent's file, but not always copied to or reflected in all files. This was the case for the grandfather, who lived on-reserve at times but also in a number of different communities.

This inherent systemic issue was compounded in the case of the child who is the subject of this report by the poor and, at times, non-existent documentation on the FNCFS agency files to which RCY investigators had access.

In this case, the Representative has determined that it is likely that some FNCFS staff didn't have an accurate picture of the extent of the child protection issues in the grandfather's home, due to the lack of file information. Other staff serving this small and close-knit community, particularly those in supervisory roles, should have been well aware of these issues.

The FNCFS agency told the Representative's investigators it was unaware that the child had moved from B.C. and was residing in the community. However, the agency's own files showed that the grandfather approached the agency supervisor for financial assistance for his granddaughter shortly after her arrival in Saskatchewan and was turned down. He was advised to approach his band for funds and to obtain further financial support through the Child Tax Benefit program.

The Representative's investigators also found documentation of a phone call made by the First Nations band to the B.C. Ministry of Housing and Social Development (since renamed the Ministry of Social Development and Social Innovation) within three weeks of the mother and child arriving with the grandfather in Saskatchewan. In the call, the band requested confirmation of the mother's financial status, as she had just applied for social assistance at its office in Saskatchewan. It was clearly no secret that the child and mother were residing in the First Nations community.

The grandfather told the Representative's investigators that he could not obtain medical coverage for the child as he did not have her health card or any other documentation. He said that he had attempted to have her examined by his family doctor but that the doctor refused because the grandfather had not obtained the requisite medical coverage.



However, a letter written on MCFD letterhead was given to the grandfather just before he left B.C. with his granddaughter, stating that the grandfather had obtained legal custody of the child.

The FNCFS agency provided no monitoring, support or other services, as it had signalled in previous letters. There was no further documentation in its files until May 2007, three months after the child's arrival in Saskatchewan, when DSS requested a copy of the grandfather's 2005 home study because the grandfather had applied to have another relative's child placed with him. The agency responded to DSS that the grandfather "... *was used in the past for alternate care, but I think there may be concerns re. this home.*" DSS did not proceed further with the grandfather's application, nor did it take any action in relation to the possible "concerns."

In June 2007, the FNCFS agency received a report that another child who had previously been placed with the grandfather was not being taken for required immunizations. The grandfather had been contacted numerous times without responding. This situation was considered resolved when the grandfather provided assurances that he would follow up on the immunizations.

The FNCFS agency closed the grandfather's foster home file on July 9, 2007, with the following notation made by the program director: "*Home closed. Reported by community members that [the grandfather] continues to abuse prescription drugs.*" The Representative's investigators were unable to determine what information the FNCFS agency had received and whether it had taken any action to protect the other children in the grandfather's home or notified the DSS.

In December 2007, a protection report was made to the FNCFS agency regarding possible abuse and neglect of the child who is the subject of this report.

The agency was notified that the child who is the subject of this report had been left at the home of a neighbour with a request that she be babysat. The neighbour learned that the child was being confined to her room in the grandfather's house. Her head had been shaved due to head lice. She appeared extremely timid. The grandfather and his spouse later returned to the neighbour's home with clothing for the child and told the neighbour to keep her.

The FNCFS agency tried to conduct a home visit the day after the report was made but no one was at home. It conducted a joint visit a few days later with the DSS, during which the social workers spoke to the grandparents but did not enter the home. The child who is the subject of this report was never seen despite her being the subject of the protection report.

A few days later, in late December 2007, the grandfather advised a DSS social worker that, due to the extremely challenging behaviours of the child who is the subject of this report, they might have to "*give her up.*"

During an interview with the Representative's investigators, the grandfather said that he had requested financial and other assistance from the FNCFS agency and from the DSS. He said that he advised these bodies that the girl's behaviour was extremely

difficult to manage and that he required support. He also said that he was told by the DSS social worker that if he got help for this child, all the children in his home would be apprehended. While DSS files show that a meeting did occur, there was no record of this particular assertion.

The grandfather further stated to the Representative's investigators that the child who is the subject of this report was up at all hours, getting into the fridge and taking food. He said that she suffered from diarrhea in addition to exhibiting behavioural issues, including smearing feces, and also suggested that this child was sexually inappropriate in the manner in which she would sit on the laps of visiting adult males in the home. It was clear to the Representative's investigators that no support for the child to address these behaviours was offered.

The caseworker from DSS spoke to the grandfather's spouse on April 15, 2008. According to the caseworker's notes, the spouse advised that: *"things were going well and the child's behaviour had moderated."* At the same time, however, she stated that caring for the child was overwhelming.

One week later, the DSS social worker spoke to the grandfather. The grandfather also said that the child's behaviour was improving. The social worker asked the grandfather to request a referral for a developmental assessment of the child from their family physician, and the grandfather's spouse agreed to follow up.

On July 7, 2008, the FNCFS received a child protection report that the child who is the subject of this report was being physically and emotionally abused, neglected, separated from the other children in the home and confined in a basement furnace room. She was reported to be very thin and suffering from malnutrition.

The report also stated that the grandfather had been observed cursing the child and throwing her across the room onto her mattress on the floor of the dark furnace room in which she was being locked. A report of the same incident had been made the previous day to the police. The police had attended but had not been able to locate the child.

This report was accepted by the FNCFS agency for investigation. Police and FNCFS staff attended the residence on July 7, 2008 and the agency apprehended all three children in the home. The grandparents were subsequently charged with failing to provide the necessities of life, and convicted in February 2012.

During their trial, the presiding judge described the physical condition of the child when she was found:

*"The child, as to weight and height, was below the third percentile. [The doctor] found it even lower, i.e. off the chart. The stomach was distended. The arms and legs were very thin. There was excessive hair about the torso. [The doctor] conducted a battery of tests and thereby ruled out any organic deficiency. The diagnosis was unanimous. The child suffered from malnutrition. She was not getting enough calories."*

In fact, the child weighed less at this point than she had 18 months earlier when she left B.C. – dropping from what had been a healthy weight of 28½ pounds to 27 pounds during that 1½-year span. Had the child’s growth continued on a normal developmental trajectory, she would have *gained* nine pounds during that period.

Physicians who examined the child also noted a number of additional injuries, including an untreated fracture of the clavicle, bruising and multiple scars on her head.

One witness at the grandparents’ trial recounted that they locked the child in the windowless dark basement room for days with just a small blanket. The witness also described how the grandparents denied her the use of a toilet and rarely bathed or fed her. Another witness commented that the grandfather’s spouse labelled this small child as “*evil*” when she was asked why the child was locked up in the basement.

The presiding judge summarized his findings in this way:

*“The victim, a two-year-old child, must have gone through hell. She was incapable of physical resistance. She could not fend for herself. She could not flee. She could not turn to someone for help. She was a prisoner of the accused and totally at their mercy, which was totally lacking towards her. A person looking at the event is bound to feel a sense of horror.”*

### Child's Current Circumstances

The child who is the subject of this report remains in Saskatchewan. She was placed in a First Nations foster home away from the community in which she had resided with her grandfather and his spouse. She continues to live in the same foster home today. Case management of the child has been transferred to a different FNCFS agency, which was also assigned permanent care of the child by the courts on April 20, 2009.

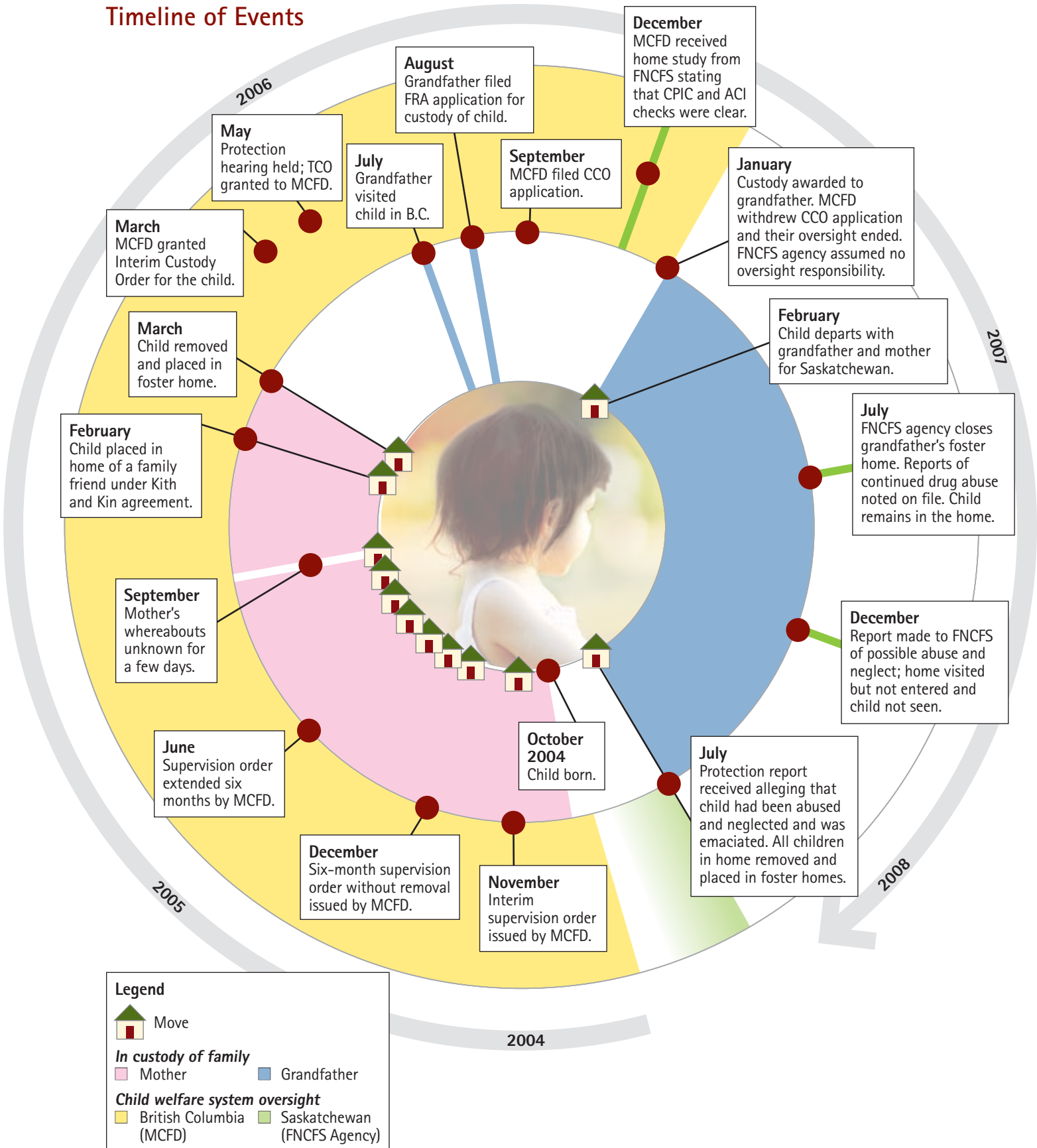
The Representative’s investigators recently met with the child. She is a friendly and engaging, nearly nine-year-old girl who appears happy. She was recently assessed by a pediatrician as being physically healthy.

When she was first removed from the grandfather’s home and hospitalized five years ago, her ribs were visible and her eyes and stomach were swollen and enlarged as a result of malnutrition. The Representative’s investigators noted that, although she has a small frame, she now appears well nourished and cared for. Her speech delay has improved significantly and she is at grade level academically.

The child previously suffered from nightmares, but these have now ceased. After her removal from the grandfather’s home, she received counselling, but the therapist has now concluded her involvement. It is likely that further counselling will be required in the future.

The child appeared to the Representative’s investigators to be well bonded with her current care provider, who spoke about her with pride. The child is clearly showing resilience despite all that she has been through.

## Timeline of Events



# Analysis

## Overall Finding

*The severe abuse and trauma suffered by this child was preventable. If social work practice in both provinces had met basic standards, and had the child's best interests remained the focus, as should have been the case, it is inconceivable that custody would have been awarded to a man with an extensive criminal record, a history of failed parenting and a long-standing pattern of drug addiction. The standards of practice in preparing a home study and meeting the needs of the child fell far below what is expected and necessary.*

*This child's developmental needs were ignored following her move to Saskatchewan. As a child who was born to an addicted mother and exposed to a relentlessly chaotic life, her specialized needs for medical attention and developmental support were not met and she was isolated and abused by those entrusted with her care by child welfare authorities.*

## Actions by MCFD

**Finding:** *The uncritical reliance of MCFD on the FNCFS agency home study and support of the grandfather's application for custody left the child unprotected from the subsequent abuse she suffered.*

MCFD informants to this report who were directly involved in the decision-making process said they expect a level of professionalism and commitment to the safety and well-being of children equal to their own from staff of other child welfare agencies. They indicated that they had no reason to disbelieve either the information provided in the FNCFS agency home study or the included recommendation that the foster parents: "... are very capable of providing a home that is loving and safe for children."<sup>6</sup>

## Best Interests of the Child

B.C.'s CFCS Act requires that when determining the "best interests of the child" the following factors be considered: the child's safety; the child's physical and emotional needs and level of development; continuity of care; the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship; the child's cultural, racial, linguistic, and religious heritage; the child's views; the effect on the child if there is a delay in decision-making; and preservation of Aboriginal cultural identity."

When a child in care is the subject of court proceedings, his or her best interests are supposed to be outlined in a court plan of care. This document is attached to any custody application and outlines the commitment of MCFD to meet service goals for the child, including: preservation of Aboriginal identity; continuity of relationships with parents and extended family; education; and health care (including provision for any special needs).

<sup>6</sup> From the Recommendation section in the FNCFS agency's home study of the grandfather, dated July 2005.

However, MCFD had been made aware of a number of major risk factors regarding the grandfather's application for custody:

- He and his spouse both had a history of addictions.
- He was unable to parent his own daughter (the mother of the child who is the subject of this report), who grew up in alternative placements and foster care.
- He behaved erratically during his visit to B.C. and subsequent interactions with MCFD staff.

Given these risks, MCFD should have made further inquiries before supporting the grandfather's application for custody to ensure the child's best interests would be upheld. However, its actions also fell short in other ways:

- Current criminal record and child welfare checks were neither insisted upon nor received by MCFD prior to the ministry supporting the child's placement with her grandfather.
- While MCFD did speak with the grandfather's physician, the information obtained from the physician was not comprehensive and left out critical information on the grandfather's health and addictions issues. MCFD should have conducted a more thorough examination of the grandfather's medical records, including his drug addictions.
- A current or new home study was neither requested nor insisted upon prior to supporting the child's placement with her grandfather.
- MCFD staff never visited the Saskatchewan home in which the child would live.

### ***Better Practice Would Have Been:***

#### **Risk Assessment**

The risk assessment model for child protection in B.C. was the available tool at the time of this child's involvement with MCFD, and routinely used when assessing risk of harm by the parent who caused the child to need protection. This model was designed to produce a risk reduction plan to document a child's needs, outline how MCFD would be accountable for meeting those needs, and give direction to the parent on how to address risks they pose to the child. Embedded in this model are categories which measure child vulnerability, behaviour, mental and physical health, and development.

The risk assessment model could have been used by MCFD at the time the Director decided to withdraw the ministry's CCO application, and support the grandfather's custody application.

According to this model, information gathered by social workers must include interviewing collaterals and identifying areas where information is insufficient. In the case of the grandfather, a collateral interview was completed with his family doctor. The family doctor reported that the grandfather had been abusing prescription drugs during the previous year but had been in treatment.

A basic assessment of risk in this case should have included drug testing, verification that the grandfather had attended and completed treatment, and an analysis of his level of insight and engagement in drug and alcohol counselling. This assessment should also

have examined what supports had been put in place to support the grandfather's sobriety following his return to the community. Given the level of vulnerability of this child, a minimal assessment of the grandfather's addictions issues should have included these basic elements of child welfare assessment.

MCFD's own assessment tools and practice standards at the time required a higher level of analysis of cases in which substance abuse was identified as a risk factor. The risk assessment model states that *"a parental history of abuse, substance misuse, family violence, or a sustained pattern of child abuse or neglect – are more highly correlated with threats to a child's safety than any other factors."*

In order for an accurate assessment of risk to be made, a social worker must have enough information to determine which of the following ratings meets the criteria for the individual being assessed:

1. **Occasional substance use** – occasional use of illegal drugs or alcohol to the point of impairment, resulting in a mild effect on everyday functioning,
2. **Occasional substance use with negative effects on behaviour** – episodic or intermittent use of substances with negative effects on child care and on social behaviour (e.g., job absenteeism, constant arguments at home, dangerous driving),
3. **Substance use with serious social/behavioural consequences** – regular and heavy abuse of one or more substances placing the parent at high risk for not meeting social and child care responsibilities (e.g., danger of losing job, financial problems, spouse threatens to leave), or
4. **Substance use with severe social/behavioural consequences** – chronic and/or prolonged use, loss of control over use, and continued use of drugs or alcohol despite the adverse consequences. Drug dependence may be indicated by: suspected sales and/or manufacture of drugs; abandoning social responsibilities (e.g., unemployed, spouse has left, child is abandoned); or severe behavioural problems (extreme aggression or passivity, no concern for the future, or confusion much of the time).

The team leader who contacted the grandfather's family physician in this case gathered minimal collateral information, well below basic child protection standards for assessing risk. A hasty decision was then made by MCFD to place the child with her grandfather – a decision that had a long-term and damaging impact on this child's life.

**Finding:** *The lack of transition planning by MCFD failed to consider the child's post-placement safety and well-being.*

MCFD policy regarding a child leaving the ministry's care can be found in its *Child and Family Development Service Standards*.<sup>7</sup> These standards require that, when there is a change in a child's living arrangements, all efforts should be made to prevent and mitigate the trauma associated with that change.

<sup>7</sup> *Child and Family Development Service Standards*, revised June 2004.

For example, Child in Care Standard 15: Planning for a Child Leaving Care emphasizes the need for support for both the transitioning child and the care giver to ensure a successful transition from being in care to an ongoing living arrangement that is stable, secure, and enduring. This standard for MCFD social workers details the importance of community and both formal and informal supports. It stresses the need to supply all relevant documents that might be required with the objective to strengthen the capacity of the family, extended family or care giver to safely care for the child.

Also applicable at that time was Child and Family Service Standard 22: Returning a Child to a Family. While the child was not being returned to her biological parent, she was being returned to the parent now legally entitled to custody – the grandfather. Standard 22 emphasizes the importance of the planning process to ensure that an adequate and comprehensive plan is in place, again with the emphasis on transition supports for the child and family.

However, the Representative's investigators found no documentation of a transitioning support plan for the child. There was also no record of information being provided to the grandfather, outside of court documentation, to assist him in obtaining medical coverage or other supports for the child once she was released from MCFD custody and had left B.C. This was of particular importance because the child had been assessed as having very delayed speech while she was living in B.C. and addressing this condition required specific strategies. For example, the court plan of care attached to the application for a three-month Temporary Custody Order (TCO), dated April 13, 2006, stated that the ministry would be completing a referral for the child to an Infant Development Program to "*assess [the child's] speech and development.*"

Further, the court plan of care attached to the application for a CCO, dated Aug. 9, 2006, states that the ministry would be providing the child with infant development speech therapy. This was only four months prior to the child leaving ministry care, and there is no indication on file that this need was communicated to the grandfather.

The ministry also had a risk reduction plan, dated April 22, 2005, that required the mother and child to work with an infant development consultant.

Both the court plan of care and the risk reduction plan ceased to be in effect once the grandfather was awarded custody.

It is unclear if this lack of transition planning was because MCFD anticipated that no supports would be required – contrary to the assessments that had been done – or whether the letter that the FNCFS agency sent to MCFD was interpreted to mean that the agency could not be called upon to provide any services to the child and her family.<sup>8</sup> Either way, the end result was that the child left the province without a plan to ensure that she received the services required for a child with this level of fragility and vulnerability.

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<sup>8</sup> Letter dated Dec. 13, 2006 from the FNCFS agency to the ministry stated: "*... it is by no means that [the agency] will be responsible for monitoring or payment for this placement. The responsibility of the child placed in this home will be the sole responsibility of [MCFD].*"



### ***Better Practice Would Have Been:***

#### **Home Study**

During the time the child's grandfather was assessed as a care giver, Care Giver Support Standard (CSS) 3: (Assessment and Approval of Restricted and Specialized Care Givers) was MCFD's applicable tool for evaluating a prospective relative placement. In the absence of another standard that would have applied to this specific situation (out-of-province FRA placement), the worker made some attempt to follow the requirements of CSS 3.

**Home study** requirements for a relative placement have lower criteria than for a regular MCFD foster home. The Director must conduct a preliminary assessment to evaluate the care giver's capacity to provide for the safety and well-being of the child, by:

- visiting the care giver's home and interviewing the prospective care giver and all others living in the home,
- completing checks of references for the home, either by phone or a personal visit,
- completing prior contact checks (check of any previous ministry involvement),
- requesting voluntary disclosure of any criminal offences that may relate to the person's ability and suitability to care for a child, and
- calling local police to determine whether they would have concerns about a child's safety when residing with the prospective care giver.

If the above information is satisfactory, the Director may recommend interim 60-day approval pending completion of:

- criminal record checks for everyone in the home 18 years of age and older. If at any time the Director becomes aware that a person who was previously approved has an outstanding charge for, or has been convicted of, a crime that might affect the person's ability or suitability to care for children, the Director must conduct a new criminal record check,
- prior contact checks for everyone in the home 18 years of age and older,
- medical assessment of the prospective care giver(s), and
- three reference checks via letter, questionnaire or interviews – at least one from a relative or member of the extended family and one from a neutral party (someone who does not have a significant personal relationship with the applicant).

Based on the information acquired through this assessment, the Director must assess the prospective care giver's ability to care for the child. Criteria include the prospective care giver's ability to:

- provide an environment free from harm and physical discipline,
- respond to a child's health and behavioural needs by providing a safe, nurturing, respectful and healthy environment for the child,
- promote a child's physical, intellectual cultural and spiritual development, and
- respect and promote the rights of a child in care as outlined in s.70 of the *CFCS Act*.

Because the grandfather did not reside in B.C., MCFD relied upon the home study provided by the FNCFS agency rather than following its own basic practice guidelines.

In reality, the home study appears to the Representative's investigators to be little more than a whitewash bearing little resemblance to reality. It appears to be solely founded upon the self-reporting of the grandparents and not upon background checks and references, not upon in-depth discussions of their relationships with each other, their children and their community, not upon their substance abuse issues, not upon their criminal and child welfare records, not upon their current health and not upon their demonstrated placing of children in their care in jeopardy.

## Social Work Practice in Saskatchewan

### Saskatchewan FNCFS Agency

The Representative does not have the authority to make findings or recommendations about child welfare practice in Saskatchewan. However, the Representative observes that the FNCFS home study that the B.C. Director relied upon was both dated and grossly inaccurate. It failed to document and misrepresented information about the grandfather and his spouse – including criminal behaviour and addictions – that was well-known in the small community.

In reviewing available material from the FNCFS agency and DSS files in Saskatchewan, the Representative's investigators were able to formulate a more accurate and disturbing picture of the family history and functioning of the grandfather. This assessment directly contradicted what the FNCFS agency had reported to MCFD.

The grandfather and his spouse were described in the FNCFS agency's 2005 home study as having a lot of knowledge and ability to care for children because they raised their own children. In fact, as previously documented in this report, the grandfather's daughter grew up with relatives and family friends and in foster homes while her father was actively alcoholic, abusing drugs and in and out of jail. His efforts to parent her as a child appear not to have lasted beyond her second year. As an adolescent, she spent no more than a few months in his care. Outside of his marriage to the subject child's grandmother, the grandfather had also fathered two other children who were almost exclusively cared for by their mother.

The FNCFS agency also had documentation on file of two returned applications for a CPIC for each of the grandfather and spouse. The first, dated April 1996, compiled a list of 22 convictions for the grandfather including 10 charges of theft for which he received fines and incarceration and seven convictions for driving while impaired for which he received fines and incarceration.

There were also convictions for assault, possession of stolen property, possession of a narcotic, failure to comply, failure to appear, dangerous driving and fraud. The grandfather's spouse had a record of three convictions – two for driving while impaired and one for driving while disqualified. These checks were attached to home studies which recommended the grandfather and his spouse for placement of two children.

MSS has informed the Representative that the grandfather cared for a total of nine children between the years 1996 and 2008. Of these nine children, three were placed by MSS and four were placed by the FNCFS agency. The grandfather obtained custody of two of the children, including the child who is the subject of this report. MSS provided this information after reviewing MSS and FNCFS documentation.

The second set of applications for criminal record checks was dated May 2005. These were returned to the FNCFS agency by the RCMP with the following notifications on the requests for both the grandfather and his spouse: *“Please be advised that our records indicate there MAY OR MAY NOT be a Criminal Record on the above named person. However, positive identification can only be confirmed through the submission of fingerprints.”*

There was no documentation on the FNCFS files to indicate that the applicants had ever submitted their fingerprints. Had the criminal record check been completed, it would have revealed that the grandfather's criminal history was both extensive and significant. The sentencing report completed after his conviction included the following:

*“There is a criminal record of some 70 offences. There are 20 property offences; 25 driving offences; 3 assault offences; 1 possession of a narcotic offence; and 5 obstruction charges. The rest of the offences are a failure to attend court and failure to comply with a court order or probation order.”*

In reviewing the agency's documentation of the criminal record checks, it is clear to the Representative that agency staff had neither the capacity nor the understanding required to successfully access and review the results. However, the Representative notes this extensive criminal history suggests that the grandfather's behaviour would have been well-known in his small community, making the FNCFS agency's failure to warn MCFD inexplicable.

The FNCFS agency's documentation on the grandfather's foster home file was also incomplete. The agency had contacted the DSS and specifically requested information on the grandfather due to an ACI listing indicating a sexual abuse or exploitation concern. The information was reviewed and it was determined by the DSS that the matter had been reported to and investigated by police and that the grandfather was not identified as the perpetrator. The mother also subsequently disclosed to a grief counsellor that she had been victimized by her father. But there is no indication that this disclosure led to any subsequent investigation. There did not appear to be any information respecting what subsequent action, if any, was taken by law enforcement.

### Oversight of FNCFS programs in Canada

The Office of the Auditor General of Canada issued a report on March 31, 2009, respecting the audit of FNCFS programs.

This report documented an action plan for INAC to ensure that compliance reviews are conducted on a regular basis, and as needed.

The report recommended that when negotiating agreements with each province, INAC should, in consultation with First Nations, seek assurance that provincial legislation is being met. INAC is to work with provinces to ensure that agencies meet provincial legislation.

The Saskatchewan MSS Child and Family Services-First Nations and Métis Services (FNMS), manages the FNCFS agency delegation and contracts, and follows up with the reporting requirements. The FNCFS agencies conduct audits through privately contracted consultants to meet INAC (now known as Aboriginal Affairs and Northern Development Canada) financial reporting requirements.

FNMS consultants assist the FNCFS agencies to address the recommendations that arise from the audits or individual case reviews.

MSS's centralized quality assurance unit conducts its own audits of all FNCFS agencies triennially to test compliance with numerous policy and procedural standards.

Overall, a critical breakdown occurred in the sharing and co-locating of documentation among various files in Saskatchewan. These include child service files pertaining to the childhood of the mother of the child who is the subject of this report, the grandfather's foster home resource file and his family service file. In fact, the Representative's investigators found documentation in the mother's own child service file of her disclosure to the grief counsellor. This information was not included on the grandfather's family or foster home files.

Despite the FNCFS agency's assertion to MCFD that the grandfather's ACI check was "*clear*," he had had significant child welfare agency involvement in Saskatchewan. Documented in his family service file is a home study that the DSS undertook when he wanted to parent his own daughter. This home study mentions the grandfather's alcohol dependency issues and incarcerations as a result of convictions on 11 charges of operating a motor vehicle with a blood alcohol content exceeding the legal limit. It also mentions the grandfather's use of cannabis derivatives.

Furthermore, the middle sibling of the child who is the subject of this report was removed from the grandfather's custody twice between the years 2000 and 2007, due to the grandfather's drug and alcohol abuse and driving while intoxicated with the child in his vehicle. In addition, a supervision order had been put in place to monitor the grandfather's sobriety and to ensure that he was accessing outside support and treatment for his addictions and relationship issues with his spouse.

The Representative finds it impossible to understand how the FNCFS agency could determine that this was a safe home for children. The Representative also finds it difficult to understand why none of the protection investigations and interventions, closings of foster home status and removals of children were included in the 2005 home study. In fact, the Representative notes a consistent pattern of incompetence by the FNCFS agency in this case with regard to record-keeping.

The Representative also observes that the FNCFS agency's unresponsiveness to the needs of this child and failure to document its own limited actions left the child in continuing jeopardy.

The court plan of care, which court records show the agency received, indicated that the child had specific developmental needs. Despite this, there is no indication that the FNCFS agency ever took any action to support the grandfather in meeting the child's needs. Without this continuity, any of her developmental gains achieved as a result of previous interventions would likely have been either halted or lost.

Furthermore, the FNCFS agency's documentation reviewed by the Representative's investigators was often missing crucial information. For example, while the December 2007 child protection report was followed up on with two home visits, the subject child was not seen by agency workers, the home was not entered, and the matter appears to have been dropped. Had the child been seen, she could well have been removed from this neglectful and abusive home before her situation became so dire.

The agency could not provide any documentation and did not appear to have made a risk assessment, let alone any connection between the abuse/neglect report and the grandfather's statement that same month that the child was extremely challenging and he may have to *"give her up."*

The FNCFS agency examined in this report no longer has responsibility for child and family services to this child's First Nations band. The contract to provide child and family services was awarded to a different FNCFS agency prior to the Representative's involvement. However, the FNCFS agency continues to provide child and family services to other bands in Saskatchewan. The Representative has raised these issues with the Minister for MSS and the ministry's senior executive team, as well as with the Saskatchewan Advocate for Children and Youth and his senior staff, as follow-up on these concerns may be considered pressing.

### Saskatchewan MSS

The Representative observes that MSS failed to ensure that the FNCFS agency was in compliance with provincial standards of child welfare practice, thereby permitting the safety of this child to be seriously compromised.

The legislative context for child welfare services in Saskatchewan provides authority and responsibility for the safety of children to MSS. MSS has delegated authority for child welfare to FNCFS agencies, which provide services on a day-to-day basis according to established standards. However, responsibility ultimately rests with MSS, which must therefore conduct a meaningful program of oversight to ensure that the required services are being provided in the prescribed fashion.

While MSS did have an audit program of sorts to assess the FNCFS agency's compliance, this program was ineffective as it fell short of exposing deficiencies that could have led to increased oversight and earlier correction.

The Representative also observes that there was a lack of clarity between MSS and FNCFS in determining who, if anyone, would respond to child protection reports, leading to children being left at risk in this home.

DSS and FNCFS both failed to respond or ensure a response to several serious protection reports regarding children at risk in the grandfather's care. In this child's case, DSS had also placed children in the grandfather's home and relied upon the FNCFS home studies.

## Changes to Family Law in B.C.

**Finding:** *Despite changes to family law in B.C., there remains the possibility of gaps in information, placing children at risk if inaccurate or incomplete information is shared by another province.*

The legislation under which the grandfather applied for custody and guardianship was the *Family Relations Act (FRA)*. It has since been repealed and replaced by the *Family Law Act (FLA)*, which came into full force on March 18, 2013.

While legislative changes in B.C. have mandated that current information – including criminal records and pending charges – be placed before any court hearing an application for guardianship, the ministry must still rely on the work of agencies in the applicant's home jurisdiction for out-of-province applicants.

The *FLA* places the burden on an applicant for guardianship of a child to include documentation designed to fully inform the court on the applicant's background. This documentation must be no more than 60-days-old.

This documentation must include a police criminal record check, an MCFD protection record check and a protection order registry check. Disclosure of any incidents of family violence and any current criminal charges before the courts is also required.

The disclosure requirements of the *FLA* have remediated gaps in the previous *FRA*, ensuring that an order of custody and guardianship will not be made without current and full disclosure of the most telling records in assessing the potential risk to a child as a result of a guardianship transfer. However, MCFD will still be relying on the work of child welfare agencies in other provinces and territories for out-of-province home studies, domestic violence reports and child welfare involvement.

The ministry instituted a new set of child and youth safety and family support policies in April 2012.<sup>9</sup> At that time, the *FRA* had not yet been repealed in favour of the new *FLA*. The new policies significantly raised the standards for reviewing the suitability of the guardianship applicant. Consolidated Criminal Record Checks (CCRC) are required for the applicant and anyone over 18 years of age who resides in the applicant's home. Records of any previous involvement the applicant had with any individual delegated to provide services under the *Child, Family and Community Service Act (CFCS Act)* must be reviewed. Three written references are required and should include one from a member of the applicant's family and one from an unbiased individual who has known the applicant for at least three years. The home environment of the applicant must be seen and assessed for safety. Sleeping arrangements, space and privacy for the child must also be assessed.

<sup>9</sup> Chapter 3, *Child and Youth Safety and Family Support*, Child Protection Response 3.4 and 3.5.

## Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories

**Finding:** *The current protocol does not capture situations such as the one described in this report. It does not ensure sufficient monitoring and oversight of children in care who move between provinces and territories regardless of whether they are children in care or being transferred to private guardianship.*

Canadian provinces and territories, with the exception of Quebec, are signatories to a protocol agreement that came into effect on March 1, 2001, with the objective of facilitating the provision of services to children and families moving between jurisdictions.

*“This protocol provides a framework for consistent, quality services to children and families moving between provinces. The intent is that children and families should experience smooth transitions and receive emergency responses with minimal service disruption. The protocol exemplifies the desire of provinces and territories to cooperate and share responsibility for mutual clients. It is based on the principle that the protection and best interests of children are the primary consideration in all decisions and services.”<sup>10</sup>*

The protocol was amended in December 2006. This version of the protocol was in place at the time the child who is the subject of this report moved from B.C. to Saskatchewan.

The protocol focused on child protection services, specifically interprovincial/territorial safety alerts about children, requests and referrals for services for children for whom there was an open child protection file, and repatriation of children from another province in cases where there were ongoing child protection issues.

The protocol was also intended to provide a framework for originating and receiving provinces to negotiate protection and other support services for families with open child protection files moving between provinces with their children. However, there were limited mechanisms in place to monitor the adherence of this policy.

The protocol did not address voluntary services or situations in which private guardianship was already transferred, as occurred in the case of the child who is the subject of this report. The grandfather, acting as a parent, would have been expected to seek supports from his home community or province on his own initiative, the same as any other parent.

The protocol was amended in June 2011, when changes were made to reflect the newer provincial and territorial emphasis on kinship placements for children. Although these amendments extend to children in planned out-of-care kinship placements, they do not apply to those children whose guardianship in an originating province had been transferred to a private individual.

The protocol is currently under review again by the Provincial/Territorial Directors of Child Welfare.

<sup>10</sup> Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories.

Provincial/territorial transfers are not uncommon. As of June 30, 2013, the Saskatchewan MSS had 117 active interprovincial transfer agreements with other provinces or territories. However, MSS was unable to provide aggregate data on interprovincial transfers over time.

B.C. was unable to provide any reliable data on this subject and there is no national data available.

Anecdotal information suggests that Aboriginal children comprise a significant proportion of the children who are moved between provinces and territories. This means that gaps that threaten the safety and security of such children may disproportionately affect Aboriginal children

With the growing emphasis on out-of-care, kinship and extended family placements, changes and improvements to the protocol are necessary to ensure that the needs and best interests of children who move between jurisdictions are met, regardless of whether they are transferred to the custody of another province/territory, or to the custody of a private individual as was the case with the child who is the subject of this report.

### The Unique Challenges of First Nations Child Welfare

While child welfare systems share many of the same characteristics across provinces and territories, the specific legislative framework and accountability structure for First Nations children in Canada remains complex and lacks clear national, and even provincial, guidance when children move between provinces and territories.

Provincial governments have constitutional authority for child welfare, with the exception of status Indian or First Nations children, for whom the assignment of jurisdiction is clouded by federal responsibility, competing First Nations self-government claims, and a myriad of agreements to delegate services to contracted agencies that operate as non-profit service corporations. As a result, the context of service and accountability becomes a matter of continual dispute, with a focus more on shortfalls in contracted funding and disagreements over whether funding, services and policies are equivalent to those provided to non-Aboriginal children.

The federal *Indian Act* allows for the application of provincial child welfare statutes on reserve and is supported by funding agreements in which the federal government reimburses either the province or an agency delegated by the province (such as an Aboriginal child welfare agency) for services that are required for children in care. The federal government takes the position that it is a funder of services and bears no fiduciary or other duty to ensure that services are effective or responsive to the needs of children. As a result, there is no reliable data or understanding of the conditions for First Nations children across Canada, and no coherent policy or evaluation of best interests of the child. Children such as the child who is the subject of this report fall into a vacuum of policy and accountability with limited protections for their rights and best interests.



In the two jurisdictions involved in the case that is the subject of this report – B.C. and Saskatchewan – the number of children of First Nations ancestry who live outside of the parental home at some point during their childhood is staggering.

In B.C., the Aboriginal child population comprises only eight per cent of the total child population but more than 55 per cent of children living out of the parental home in the province are Aboriginal. One in five B.C. Aboriginal children will be involved with child welfare at some point during his or her childhood.

In Saskatchewan, Aboriginal children comprise 25 per cent of the province's child population, yet they account for 80 per cent of the children living out of the parental home. It is not known how many Saskatchewan Aboriginal children will be involved with child welfare across their infancy and childhood, as no reliable data or study is available.

The over-representation of Aboriginal children in the child welfare system of both these provinces is rooted in intergenerational impacts of failed policies regarding Indian children and families – such as residential schools, segregation on reserves, and discriminatory status rules. The interprovincial movement of Aboriginal children is, in the experience of the Representative, frequent and transfers out of province are more common to “preserve” Aboriginal identity. While this is important and laudable for a child's best interest, there may be wide variances in practice, oversight and attention to children's needs when child welfare agencies are struggling. The federal government – the level of government that was responsible for these failed policies – has not taken a position on this matter. As a result, there is no way of knowing whether the service-delivery models in each province and territory are effective for children and families, whether their key outcomes for a healthy childhood and development are positively supported or negatively impacted by these arrangements, or if service is offered.

Could the federal government take a more active role to support First Nations children by ensuring a strong lens on their rights and outcomes is maintained? It appears there is an opportunity in cases of interprovincial transfers to support appropriate national coordination, notification to bands and family members, and an opportunity for the child to be properly represented in court proceedings and protected from potential harm. There is some room for work here in order to protect the rights of a vulnerable group of children.

In contrast with the experience in Canada of an interprovincial policy and practice vacuum, the importance of protecting Indigenous children's rights and their connection to their communities has been supported in the United States with the federal *Indian Child Welfare Act* of 1978. This legislation was developed to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. It coordinates policy, provides a framework for representation and work between state governments, tribal governments and other entities.

The *Indian Child Welfare Act* recognizes the role of tribal governments but also supports strong child welfare practice, and seeks to provide accurate and reliable information and data regarding evaluation, the status of children and their outcomes. While such federal legislation may not be suited to the Canadian context, there is no doubt that

the focus, funding and leadership provided through this act have permitted a degree of collaboration and clarity that is not present in Canada.

With regard to this particular case, the standing of the child's First Nations band, and representation for the child herself in determining the best interests for her future, would have been handled very differently had the case proceeded in the U.S., where notification and systemic issues around vulnerable children may be better understood, monitored and reported on at the highest political levels.

The situation in Canada leaves accountability for practice with sometimes-reluctant provincial governments that delegate First Nations agencies to conduct child welfare work. This has not led to significant investment or focus on systemic issues such as those exemplified by the circumstances of this family – responding to intergenerational addictions and trauma through finding safe kinship placements. The federal government is the primary funder and the services offered to provide additional supports to kinship placements or families are limited and inconsistent. Research and evaluation on what works to support children in this context is also very thin and ill-coordinated considering the gravity of the concerns.

The federal government may need to explore, without encroaching inappropriately on the jurisdiction of provinces and territories, special measures to ensure that there is appropriate coordination of jurisdiction and authority and a prominent position given to the human rights of First Nations children, through a legislative instrument that can prevent children being passed from one entity to another without proper consideration for their best interests. International obligations under the *United Nations Convention on the Rights of the Child* require more diligent attention here. Special rights of Indigenous children to remain connected to communities, families and their culture of origin also call for a more active response and ongoing follow-up on health and development now appears to fall into a vacuum of leadership and accountability.

These observations are being offered because this child was failed and we will not prevent other children in her situation from being failed in exactly the same manner unless there is better child welfare practice. That might occur if we can build a coordinated national position and approach to these transfers and a more unwavering focus on the human rights of Aboriginal children and their best interests. Agencies that are floundering and cannot do child welfare work effectively – either due to poor funding, a lack of meaningful quality assurance, or disconnection from an overall system – result in children who are vulnerable being left more vulnerable than their non-Aboriginal peers. This cannot be ignored.

Being able to keep a strong and steady focus on child well-being, and making sure the most vulnerable children receive the support they require to grow, thrive, and have a strong cultural connection, should be possible with good assessment, strong support for kinship placements, and regular monitoring of the well-being of children. Evaluation

and assessment of what works to improve the life chances of children as they grow and develop should be a core mandate of all social programs, especially those that are targeted at the most vulnerable children. There is good reason to question whether practice, such as the very poor standard of home study, file management, and capacity to stay focussed on the child, will ever improve unless greater attention and resources are given to these important issues with rigour and public accountability.

This begs the larger prevention issue. The child in this case was a First Nations child born to a mother who was struggling with addictions, survival sex work, and attempting to overcome significant trauma. She lost her own mother – the grandmother of the child who is the subject of this report – at a young age to addictions-related disease, and her father has struggled with addictions to pain medications and alcohol. The child's mother moved to find a better life in another province, and her life did not immediately improve – and the child she had was returned to the home environment she herself fled. Breaking these intergenerational cycles requires that those entrusted to do child welfare work have the support and insight to face the issues before them and take positive steps to intervene and identify risks to children and the requirements of safety. Why the FNCFS agency essentially vouched for the capacity of the grandfather to be a prudent care giver and parent raises troubling issues about its credibility, capacity and training to do child welfare work. It also speaks to how invisible the child was in this case, and that, even in the presence of many who should be watching closely, a child can be abused and neglected. Why the Saskatchewan ministry placed other children in that same home over many years is further cause for concern.

First Nations child welfare issues require broad discussion and engagement by governments, agencies and First Nations leadership. Bringing these issues out into the open, supported by a strong focus on child well-being and the best interests of First Nations children, seems seriously overdue. Yet in Canada, there has been no coordinated federal government initiative on this front, other than through the piecemeal funding of child welfare agencies. Provincial child welfare authorities are struggling to respond to these issues and a broader national initiative to improve outcomes for children by improving social work practice, strengthening agencies in terms of the prevention work they can do and their accountability for their work, might assist. Many different positions are frequently taken in this area, but no one supports passing off children to unsafe environments, so lessons can be learned from this case. Unlike what happened to this child, everyone in child welfare, and all people in every community, must strive to put the children at the centre and begin to work on improvements in practice with some uniform or consensus standards for child well-being including safety, education and health.

# Recommendations

## Recommendation 1

- 1(a) That the B.C. Provincial Director of Child Welfare review the ministry's current policies and standards for out-of-province placements for all children under the guardianship of the province to ensure there are clear guidelines for assessing and recommending such placements.
- 1(b) That upon completion of the ministry's review of its policies and standards, the B.C. Provincial Director of Child Welfare issue a practice directive detailing the guidelines for out-of-province placements, including any training required to adhere to the directive.
- 1(c) That B.C.'s Provincial Director of Child Welfare ensure that MCFD reports annually on all transfers in and out of B.C. of children under the guardianship of the province.

### Details

The practice directive must consider the following:

- The use of case conferencing to:
  - Notify the receiving jurisdiction of the proposed placement
  - Discuss the child and family's circumstance, including any special considerations for the child, such as special needs, mental health, cultural considerations, specialized support needs, etc.
  - Request all relevant information required by MCFD standards to conduct a thorough assessment of the proposed placement and ensure that the information collected is accurate and up-to-date
  - Discuss the roles and responsibilities of the B.C. government and the receiving jurisdiction for management and assessment of the proposed out-of-province placement
- The assessment must:
  - Meet MCFD's own standards and legislative and policy requirements around placements
  - Demonstrate that the proposed placement ensures the child's safety and well-being and supports the child's needs and plan of care
  - Include a visit to the proposed placement by a delegated social worker and interviews with the proposed care giver and any other individuals in the home
- Upon approval of the proposed placement, a transition plan must be developed to ensure seamless transition of services, prepare the child for transition and minimize disruptions where possible.
- In cases in which there may be some risk to the child in the proposed placement, arrangements must be made through the courts or by agreement with the receiving jurisdiction as possible to enable the MCFD-delegated social worker to maintain ongoing monitoring of the child's new out-of-province placement until it can be demonstrated that the transition has been successful.

**A practice directive to be developed and provided to the Representative for review by Dec.1, 2013.**

## Recommendation 2

That the Provincial Director of Child Welfare strongly recommend to the Provincial and Territorial Directors of Child Welfare that a review be undertaken of the current Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories to ensure that there is a commitment by all provincial/territorial child welfare authorities that placement decisions fully support the needs of children and families for a seamless transition of services.

### Details

The revised protocol should include:

- Clarification of Provincial and Territorial Directors of Child Welfare roles and responsibilities to ensure that all decisions serve the best interests of the child and the child's safety and well-being
- Inclusion of all children in their guardianship, including formal child welfare, kinship and preventative family support
- National standards for the provision of out-of-province/territory placements for children in their guardianship, and compliance with these standards
- A national strategy to monitor, track and report on the well-being of children in their guardianship province/territory placements, where possible
- Assurance that FNCFS agencies and delegated Aboriginal Agencies understand the protocol and follow its requirements
- Special consideration of the placement needs and support for Aboriginal children in their guardianship

The B.C. Provincial Director of Child Welfare should ensure that:

- Leads are appointed in B.C. to comply with the protocol

**A draft recommendation to be prepared and presented to the Representative by Dec. 1, 2013.**

### Further Observations

The Representative notes that Saskatchewan's Ministry of Social Services also supports a review of the current Interprovincial Protocol and related practices *"to ensure that children and families receive seamless and consistent services when moving to other provinces and territories."*<sup>11</sup> MSS has also indicated to the Representative that the following improvements are required:

- That MSS and FNCFS agencies in Saskatchewan, and MCFD in B.C., examine the current interprovincial information request process and educate all staff on that process
- That MSS and FNCFS agencies strengthen their policies on extended family care home assessments
- That MSS and FNCFS agencies ensure that when a request for information on an approved care giver is made by another office, agency or jurisdiction, all current and past home studies, annual reviews, formal reviews, home safety checks, criminal record checks and self declarations completed on the care givers are provided.

<sup>11</sup> Aug. 23, 2013 correspondence from Ken Acton, Saskatchewan Deputy Minister of Child and Family Services, to Bill Naughton, Chief Investigator and Associate Deputy Representative for Children and Youth.

### Further Action by the Representative

The Representative will share this report with the Minister of Aboriginal Affairs and Northern Development Canada and the National Chief of the Assembly of First Nations and encourage them to consider more effective strategies for stronger child welfare practice across Canada – especially in cases when First Nations children are transferred between jurisdictions – to ensure that the lens of best interests of the child is the paramount consideration, and to require accountability and transparency for child welfare decisions, and special measures to protect and support the identity of First Nations children. The Representative encourages the National Chief and the Minister to evaluate whether a national First Nations Child Welfare Act might support more consistent improvement in outcomes for children and prevent the safety gaps that now place children at risk of harm.

# Conclusion

Although nothing in this report excuses the grandfather and his spouse from their abusive and inhumane treatment of this child, basic due diligence by the various government bodies responsible for the child's welfare – MCFD, MSS and the FNCFS agency – might well have prevented this tragedy.

The Representative has determined through this review that the fundamental role of each of these bodies – ensuring that the best interests of children are protected – was at various times neglected to the child's great detriment.

More stringent MCFD screening policies and practices with regard to guardianship applications would almost surely have led to the grandfather being rejected as a potential guardian.

Within B.C., there has since been a major improvement in the process of screening applicants due to new MCFD standards and new family law legislation. However, gaps remain that would allow this type of situation to happen again. Unquestioning reliance on information coming from other child welfare agencies across the country contains the inherent risk of a decision that places a child in jeopardy.

The systemic issues revealed through the Representative's review of the FNCFS agency's role in these tragic circumstances run much deeper.

Policies were in place to assess and evaluate care giver applicants and to ensure that those entrusted by the agency with the care of their vulnerable children had the capacity to safely do so. But this report shows a failure by the FNCFS agency to adhere to the basic principles of child welfare, and the absence of any effective governance or oversight by the agency's board. This raises questions for the Representative respecting the well-being of all the children and families for whom this FNCFS agency has had responsibility. For children in B.C. to be transferred to this agency, the B.C. Director must probe very carefully when any assurances are given regarding criminal or child welfare history.

The Representative notes that the most vulnerable of children, including this child, often receive the most superficial consideration of their best interests – despite law, policy and practice directives. It raises the serious question about whether Aboriginal children receive the due consideration necessary to ensure their health, safety and well-being.

This child is no longer a resident of B.C. and is being raised in another province. As a result, her civil rights may be at issue. The Representative has recommended to the Saskatchewan Director that appropriate steps be made to appoint independent legal counsel for her in Saskatchewan to consider whether remedies should be explored to respect her civil rights. This is especially important when the guardian of a child (in this case MSS) maybe be responsible for some of the harm inflicted on the child. The Representative has sent a copy of this report to the Public Guardian and Trustee for Saskatchewan, who may take an interest in these issues. The Representative has also sent a copy of this report to B.C.'s Public Guardian and Trustee.

# Appendix A: Documents Reviewed

## British Columbia

### MCFD Records

- Child's child service file
- Mother's family service file

### MCFD Policy and Standards

- Child and Family Development Service Standards, November 2003
- Child and Youth Safety and Family Support Policies, Chapter 3: Child Protection Response, April 2012
- Child and Family Development Service Standards – Care Giver Support Service Standards, Effective Date: Dec. 4, 2006

### MCFD, Other Documents

- A Guide to the Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories, Vancouver Island Region, September 2007
- Vancouver Island Regional Practice Advisory #22, *Family Relations Act* Applications and Child Protection Concerns, March 2009
- Protection, Parenting and Permanency Cheat Sheet, September 2004
- Assessment of Proposed Guardians under a s. 54.01 Order, CF2194 (13/01)

### Provincial Court of British Columbia Records

- *Family Relations Act*, Proceedings at Application, transcript

### Legislation

- British Columbia *Family Relations Act*. (1996). Victoria, B.C.: Queens Printer.
- British Columbia *Child, Family and Community Service Act*. (1996). Victoria, B.C.: Queen's Printer.
- British Columbia *Representative for Children and Youth Act*. (2006). Victoria, B.C.: Queen's Printer.
- British Columbia *Family Law Act*. (2011). Victoria, B.C.: Queen's Printer
- British Columbia *Court Rules Act. Provincial Court (Family) Rules*. (1998). Victoria, B.C.: Queen's Printer.
- British Columbia *Court Rules Act. Supreme Court Family Rules*. (2009). Victoria, B.C.: Queen's Printer.



## Saskatchewan

### Saskatchewan MSS Policies and Standards

- Children's Services Manual, Chapter 4 Family Centred Services Policy and Procedures Manual, Chapter 12, s. 1

### Saskatchewan MSS Child and Family Services Records

- Mother's child service file
- Grandfather's family service file
- Grandfather's resource file
- PSI placement files

### First Nations Child and Family Services files

- Grandfather's resource file

### Legislation

- *Child and Family Service Act* Chapter c-7.2 of The Statutes of Saskatchewan

### Other

- Saskatchewan Court of Queen's Bench, Judgment transcript and Sentencing transcript for the accused
- Saskatchewan MSS Critical Injury Review of the child who is the subject of this report (Draft), Review date: June 6, 2013
- Auditor General of Canada – Chapter 4 Action Plan Implementation Status Update Report as of March 31, 2009 – First Nations Child and Family Services Program
- Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories – June 21, 2011
- Provincial/Territorial Protocol on Children and Families Moving Between Provinces and Territories – Consolidation as of Dec. 15, 2006

## Canada

### Legislation

- *Indian Act* R.S.C. 1985, c1-5

## United States

### Legislation

- *Indian Child Welfare Act* 25 U.S.C. 1901-1963 (1978)

# Appendix B: Interviews Conducted to Inform the Representative's Special Report

## British Columbia

### Family

- Mother, grandfather, grandfather's spouse

### MCFD staff

- Social worker
- Team leader
- Manager, Provincial After Hours Program
- Acting Aboriginal Community Services manager
- Regional Deputy Director of Child Welfare

### Other

- B.C. care provider for child

## Saskatchewan

### First Nations Child and Family Service Agency, Saskatchewan

- Social workers
- Supervisor
- Administrator
- Executive director

### Consultations with:

- Saskatchewan Advocate for Children and Youth
- MSS, Child and Family Services staff



# Contacts

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