



INDIGENOUS RESILIENCE, CONNECTEDNESS AND REUNIFICATION – FROM ROOT CAUSES TO ROOT SOLUTIONS

A Report on Indigenous Child Welfare in British Columbia

Final Report of Special Advisor Grand Chief Ed John



COVER ARTIST: CHIEF RANDE COOK (K'ALAPA)

Chief Rande Cook (K'alapa) was born in May 1977 in culture-rich Alert Bay, a small village on the northern tip of Vancouver Island. Surrounded by the beauty of land and art, Rande found the passion of creativity at an early age. From the strong teachings of his grandparents, Gus and Florence Matilpi, Rande learned the strong values of life and culture. In 2008, Rande inherited his grandfather's chieftainship and now carries the name Makwala, which means "moon". Rande is very involved in his culture and has hosted a Potlatch and two feasts for his family and community. Rande is also known for his traditional dancing and singing in Potlatches.

Rande has worked with many great mentors, such as John Livingston for his mastery in wood sculpting, Robert Davidson in metal work, Calvin Hunt for his amazing craftsmanship in wood, and most recently, Repousee and Chasing master Valentin Yotkov.

Rande pushes himself in all his mediums, looking for perfection of each technique. Rande's works can be seen in many galleries in the United States and Canada, and are now in collections around the world.

ABOUT THE DESIGN:

In the top of the piece is an eagle, representing flight and the strength of all First Nations across Canada. The green and blue represent our land and ocean. The grey represents our mountains and the foundation of our lands. The eye in the centre is red as a focal point, representing the vision of a better future for our First Nations people as our reconciliation journey with Canada continues. A traditional weaving pattern is captured in red and grey at the bottom of the image.

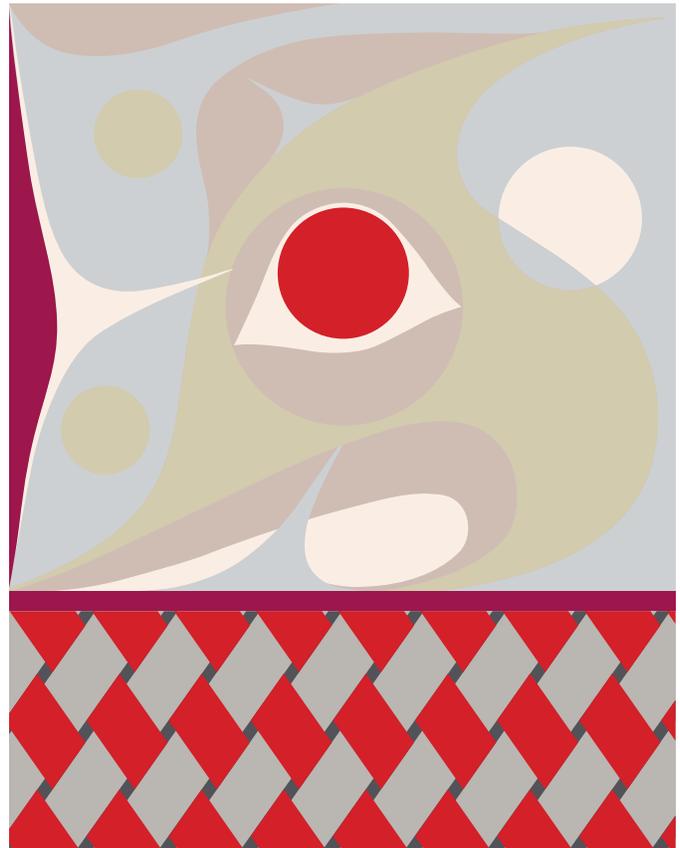
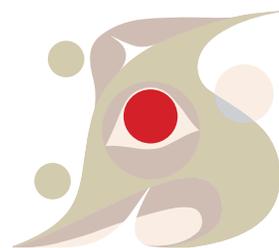


TABLE OF CONTENTS



CONTEXT	8
Appointment as Special Advisor	8
Indigenous Children in Care in British Columbia	11
Indigenous Child Welfare Service Delivery	12
Ministry of Children and Family Development	15
Delegated Aboriginal Agencies	22
Indigenous and Northern Affairs Canada	31
Intergenerational Trauma and “Neglect”	32
A Time for Action – The Changing Legal and Political Landscape	38
United Nations Declaration on the Rights of Indigenous Peoples	39
Section 35 Rights	40
The January 2016 Canadian Human Rights Tribunal’s Decision in <i>First Nations Child and Family Caring Society of Canada</i>	41
Final Report of the Truth and Reconciliation Commission	42
The Federal Government – Commitments and Actions	44
The Provincial Government – Commitments and Action	45
I. INTRODUCTION	50
Grounding the Work – A Commitment to Focus on Resilience, Connectedness and Reunification	50
Meeting with Gwa’sala-’Nakwaxda’xw Nations, Kwakiutl Nation and Quatsino First Nation	53
Scope of the Report	58
II. AREAS FOR FOCUSED ACTION	60
Area 1. Direct Support for Indigenous Children, Parents and Families in all Indigenous Communities	62
Area 2. Access to Justice and Child and Family Services	86
Area 3. A New Fiscal Relationship – Investing in Patterns of Connectedness	104
Area 4. Prevention Services – Keeping Families Connected	121
Area 5. Reunification and Permanency Planning	128
Area 6. Nurturing a Sense of Belonging and Prioritizing Culture and Language – Care Plans as a Tool for Building Connectedness	146

Area 7. Early Years – Early Investment in Establishing Patterns of Connectedness	158
Area 8. Indigenous Peoples and Jurisdiction Over Child Welfare	166
Area 9. The Existing Policy Framework – Shifting Towards Patterns of Connectedness	180
Area 10. A National Strategy for Indigenous Child Welfare	192
III. FINAL REFLECTIONS	197
ACKNOWLEDGEMENTS	198
APPENDIX A: CONSOLIDATED LIST OF RECOMMENDATIONS	199
APPENDIX B: TERMS OF APPOINTMENT FOR SPECIAL ADVISOR	216

LETTER TO THE MINISTER OF CHILDREN AND FAMILY DEVELOPMENT

21 November 2016

Dear Premier Clark, Minister Cadieux, BC Cabinet Ministers, Chiefs and Leaders:

RE: FINAL REPORT OF THE SPECIAL ADVISOR ON INDIGENOUS CHILDREN IN CARE

In September 2015, I was appointed as Special Advisor on Indigenous Children in Care. Since that time, I have travelled to many Indigenous communities to hear directly from the families and communities about their children who are in care. In every community where I was invited, I was acknowledged and treated with kindness and respect. I heard voices of concern, frustration and, at times, anger. Always, however, there was strong optimism and hope expressed for a better future for our children and grandchildren.

The late Tl'azt'en warrior Chief, Harry Pierre, of the Carrier Sekani Tribal Council put in words a sentiment I heard reflected back to me often during my time in Indigenous communities when parents, families, and communities talked about their deepest hope and responsibility to our children. Chief Pierre stated, "In our time, the helpers would come to help the mother and father...they would remind the parents of their responsibility. Raising a child is very sacred and very powerful..."

I was honoured, many times, when Chiefs, leaders, parents, extended families, children, and youth shared intimate details of their difficult and often wrenching experiences with the existing child welfare system. While the recommendations in this report are often supported through existing statistical data, studies, and other documented research findings, it has been my goal to ensure that these stories I heard and the issues identified by the children and youth, parents, and communities themselves – those with whom I met and those who reached out to me – were told in a strong way.

Your government asked for advice on Indigenous child welfare. "There are too many Indigenous children in care and something needs to be done," I was told in the lead up to my appointment last year. While I was not sure I was the best person to give this advice, my immediate reaction then was to say, "Keep the children at home. Do not remove them; and see those in care returned back home." I had a sense then that the best advice would come from those who were directly impacted by the existing laws, regulations, policies and practices of the state. My time as Special Advisor has served to reinforce this belief.

I respectfully submit my final report, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions*. As emphasized in my report, the opportunity for BC, Canada and Indigenous governments, communities, and families to work in partnership to recognize, constructively address, and reconcile our respective interests to better support the needs of all Indigenous children has never been greater than it is today.

While it is the recommendations within any report that are most likely to become the focal point for scrutiny and discussion, it is my sincere hope that the stories shared with me and that are recounted herein, will inspire and motivate those who read the report, challenge us all to do better, and remind us, as Chief Pierre did me, of the sacred and powerful role of parents and extended families to a child. These stories speak deep truths about the ills of the current system of Indigenous child welfare in BC, but I am convinced they are also the key to establishing pathways and patterns of connectedness that will lead to a better future for Indigenous children, parents, and communities. As we have seen, Indigenous resilience runs deep.

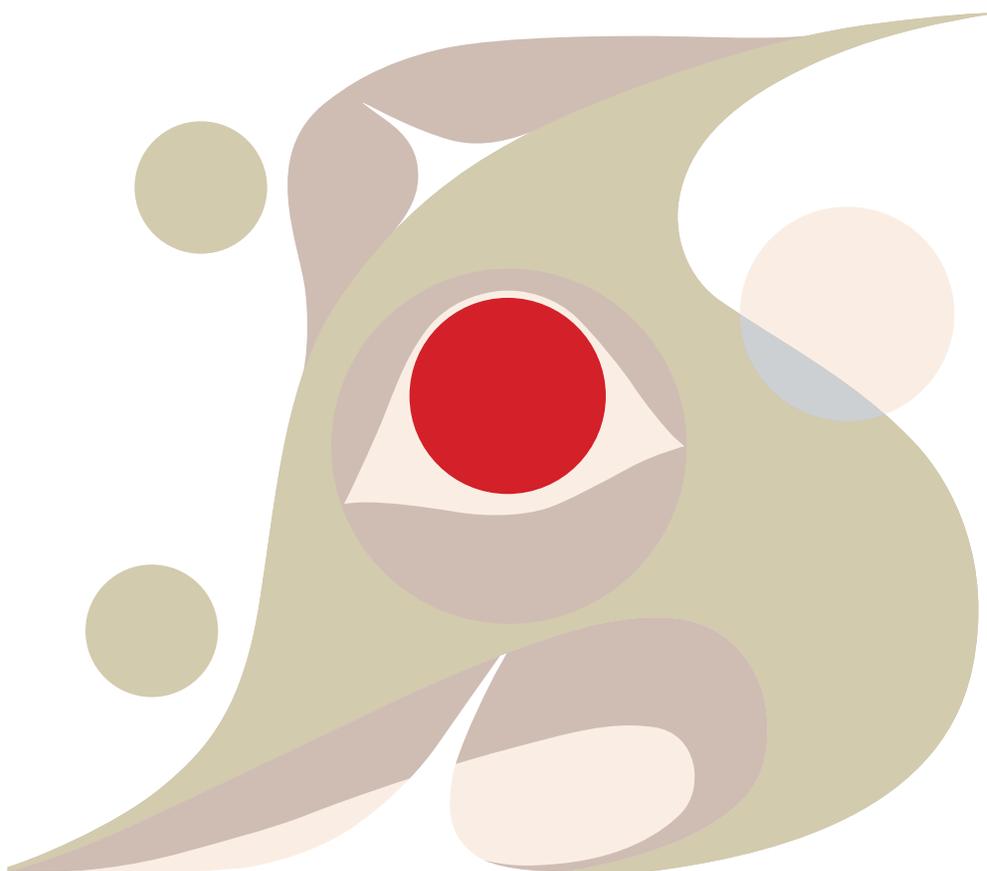
We will not see the desired change without strong and sustained leadership and action by Canada, BC, and Indigenous parents and communities. I trust this report will be useful in your own consideration of what leadership, commitment and action in the area of Indigenous child welfare for BC should look like.

A wet za

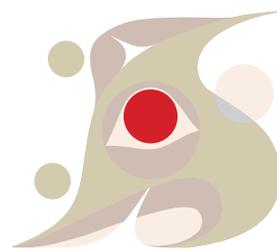
Sincerely,



Grand Chief Ed John



CONTEXT



APPOINTMENT AS SPECIAL ADVISOR

In June 2015, I was approached by the BC Premier's Office to discuss a potential appointment to advise and report to the BC government on the following three topics related to Indigenous child welfare:

- "Permanency" for then approximately 2,800 Indigenous children in permanent care under Continuing Custody Orders (CCOs);
- The Council of the Federation's July 2015 report, *Aboriginal Children in Care – Report to Canada's Premiers*, with the expressed interest in focusing on reducing the number of Indigenous children in care and enhancing prevention and intervention work; and
- Early years initiatives for Indigenous children.

Over the summer of 2015, I met with BC's Representative for Children and Youth. She offered guidance and supportive advice, as well as her reflections on the recommendations contained within her own reports on child welfare. I talked to my colleagues, friends, and acquaintances about the potential appointment. My decision to accept the appointment, however, came following a members general meeting in late August in my own village. At that meeting, highly charged and emotional, parents, elders, and leaders spoke about the too many Tl'azt'en children in care. Elders spoke of the many abuses suffered in residential school, expressing how this affected them, their children, grandchildren, and the communities. Too many of their friends and relatives had died

early from misunderstood, undiagnosed and untreated trauma, and its impacts. Those from the "60's Scoop" were impacted in similar ways. Taken by social workers, they had been farmed out to foster care where all connections to parents, siblings, extended family, community, culture, and land were gone. They expressed their bitterness, sadness, shame and anger at the enduring impacts from physical, sexual, and psychological abuses while in foster care. Overwhelmingly, parents and grandparents who now had children in care wanted them home.

Accepting the appointment meant first reinforcing with the Minister and with Ministry of Children and Family Development (MCFD) officials that I had specific prior commitments as an elected member of the First Nations Summit (FNS) Executive and as an Expert Member to the UN Permanent Forum on Indigenous Issues (UNPFII). Given these commitments, I advised that I would necessarily need to limit my engagement over the course of the appointment. The Minister agreed to these conditions, and on September 8, 2015 I was officially appointed as Special Advisor on Indigenous Child Welfare with a three-part mandate to do the following:

- Focus on improving permanency options and rates for Indigenous children in care, particularly those in care through continuing custody orders (in care until reaching the age of majority);
- Work to identify next steps for BC following the release of the Council of the Federation's July 2015 report, *Aboriginal Children in Care – Report to Canada's Premiers*; and

- Assist the Minister of Children and Family Development in developing advice to Cabinet on these matters as necessary. (see Appendix B - Terms of Appointment for Special Advisor)

I want to be clear that the advice that I provide in this report is not put forward as a legal opinion. Rather, the findings, analysis and recommendations are based on my legal and political background in a wide range of issues specific to Indigenous peoples, including children and family issues. Based on my own personal experience and knowledge, I have a deep and direct understanding of the circumstances of our peoples in our communities, which is reflected in the report.

Given that my mandate included the 2,800 Indigenous children under continuing custody orders, it was important for me to understand who these children were and where they were from. I was provided a letter of delegation by an MCFD official designated with this authority to receive certain restricted information and documents, such as the names of the children under CCOs.

I felt it was important for the communities and First Nations leaders in particular to have access to the names of children from their own communities who were under CCOs. It was my view that this was consistent with the notice and disclosure provisions in the *Child, Family and Community Service Act (CFCSA)*, which provide that First Nations leaders have access to up to date information about the children from their communities under CCOs. I asked for clarification to ensure that I was able to provide this information in a manner that was consistent with the discretionary authority of the Director. I was assured I could share this information, which I did.

Given the time frame of my appointment, my focus has been almost entirely on the approximately

2,800 Indigenous children under CCOs. I made it a priority to meet with Indigenous leaders, elders, and youth, as well as those who are involved or make decisions about these children. This meant traveling to all regions of the province to hear what they had to say about the “child welfare system.” As I met with First Nations leaders, elders, hereditary Chiefs, and matriarchs, I provided them with a list of those children from their communities who were under CCOs. No one had seen these lists and all were surprised they could have access to this information.

KEY TERMS

In this report, the term **INDIGENOUS** includes individuals who identify as being First Nations, Inuit or Métis.

The term **FIRST NATIONS** is used to refer to individuals who identify as having a specific First Nations ancestry.

The term **MÉTIS** is used to describe individuals who identify as having Métis ancestry.

Note – while preference is given to the term Indigenous in place of Aboriginal throughout this report, the term Aboriginal is also used when appropriate. For example, Aboriginal is used when necessary to accurately reference or discuss existing legislation, policy, practices or programs.



PERMANENCY

“Permanency” is determined by the province to be the solution to reduce the number of Indigenous children who are under continuing custody orders (CCOs). When the Special Advisor was appointed in September 2015, approximately 2,800 Indigenous children were under CCOs.

At present, the permanency options available for children in BC include the following:

- Family reunification;
- Transfer of custody;
- Adoption

ABORIGINAL CHILDREN IN CARE – A REPORT TO CANADA’S PREMIERS

In August 2014, in response to the overrepresentation of Indigenous children in child welfare systems across Canada, Canada’s Premiers directed provinces and territories to work with Indigenous communities in their respective jurisdictions to share information on local solutions. In July 2015, *Aboriginal Children in Care – A Report to Canada’s Premiers* was presented to Premiers across Canada, providing examples of existing programs and services that have been shown to reduce the number of Indigenous children in child welfare systems and/or improve outcomes for Indigenous children in care.

EARLY YEARS

The term “early years initiative” is used to describe an initiative aimed at supporting young children, their parents, and families between birth and age six. While a specific section of this report directly addresses early years initiatives, a key focus for the entire report has been strengthening and improving support for Indigenous children during early years throughout the child welfare system.



INDIGENOUS CHILDREN IN CARE IN BRITISH COLUMBIA

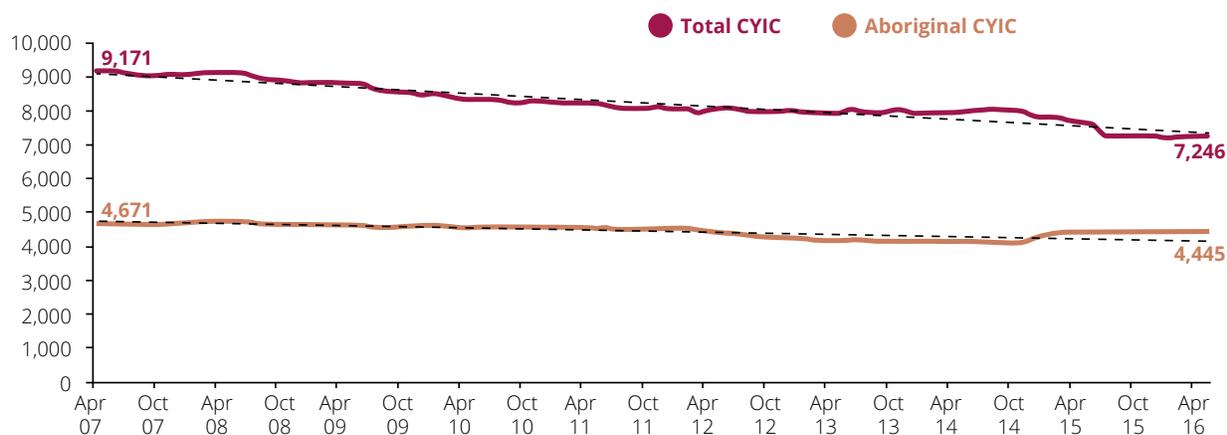
Indigenous children and youth represent the fastest growing demographic in the province, and as such, they are a powerful force in determining our social and economic future. Despite the tremendous potential for Indigenous youth to contribute to economic success, in BC many are unfairly held back as they struggle to overcome myriad challenges within their families, communities, and the child welfare system that is meant to support them.

According to current MCFD data, less than 10% of the child population in BC is Indigenous. And yet, as of May 2016, 60.1% (4,445) of the total (7,246) children and youth in care in BC were Indigenous. This proportion has increased over time, as the downward trend in total children and youth in care in the province has been stronger than the slight downward trend for Indigenous children and youth in care.

Based on a key indicator, MCFD does report a downward trend in the rate of Indigenous children and youth in care per 1,000 population. In May 2016, approximately 55 Indigenous children and youth were in care per 1,000 population (55/1 000). This is down from approximately 64 per 1,000 in April 2002. However, the corresponding rate for non-Indigenous children and youth in care was approximately 4 per 1000. What this means in plain terms is that **INDIGENOUS CHILDREN AND YOUTH IN BC ARE OVER 15 TIMES MORE LIKELY TO BE IN CARE THAN NON-INDIGENOUS CHILDREN AND YOUTH.**

According to MCFD, in May 2016, of the 3,858 children and youth in care who were permanent wards, 2,609 (68%) were Indigenous. Of particular concern when considering these numbers is that Indigenous children are significantly more likely to enter the child welfare system due to “neglect.” As summarized in the January 2016 Canadian Human Rights Tribunal decision in *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)*, (2016 CHRT 2), the child welfare system is typically called into

FIGURE 1: TOTAL AND INDIGENOUS CHILDREN AND YOUTH IN CARE (CYIC) - APRIL 2007 TO MAY 2016



As of April 2007, 50.9% of CYIC were Aboriginal

As of May 2016, 61.3% of CYIC were Aboriginal; 10.4 percentage points increase since April 2007

action when someone has concerns about the safety or well-being of a child and in turn reports these concerns to a social worker. The major categories of maltreatment of a child are sexual, physical, or emotional abuse, or exposure to abuse, and neglect. The connection between the high incidence of neglect leading to Indigenous children coming into care and intergenerational trauma is outlined further on in this section of the report, and is picked up on throughout this report where recommendations aimed at building solutions to root causes are explored.

Based on MCFD data, approximately 17% of Indigenous children and youth in care in March, 2015 found “permanency” – meaning they returned to parents, were adopted or saw a permanent transfer of guardianship – in the year following (in 2015/16). For non-Indigenous children and youth in care, approximately 28% found permanency in the year following. Relatedly, less than 60% of Indigenous children and youth in care will find permanency within five years of entering into care. For non-Indigenous children, approximately 75% of children and youth in care will find permanency within five years.

Those at MCFD who have studied the troubling statistics related to Indigenous child welfare and permanency in BC have concluded that even if one accounts for relevant factors such as age and siblings, Indigenous children and youth in care have a significantly lesser chance of finding permanency over time than their non-Indigenous counterparts. In fact, close to 60% of Indigenous children in care will age out without ever finding permanency.

INDIGENOUS CHILD WELFARE SERVICE DELIVERY

Indigenous child welfare services in BC are delivered and funded based on a complex combination of factors, such as the status of a child as being “Indian” under the *Indian Act*, where the child or youth resides, whether a Delegated Aboriginal Agency (DAA) is in or serving that community, and when a DAA does exist, by that particular DAA’s level of delegated authority. Figure 2 illustrates the complex system of delivering child welfare services to Indigenous children and youth, and their families. In my meetings, it became clear that this system is not understood by most.

TABLE 1: PERCENTAGE OF CYIC BY REASON FOR CARE, MAY 31, 2016

	All	Indigenous	Non-Indigenous
Neglect	70.2%	73.9%	64.4%
Physical harm by parent	9.1%	8.5%	10.1%
Emotional harm by parent	4.8%	4.1%	5.9%
Sexual abuse/exploitation by parent	0.8%	0.7%	1.1%
Other abuse/neglect concerns	3.8%	3.9%	3.5%
By Agreement with Parents	11.3%	8.9%	15.0%

Throughout the report, various components of the existing Indigenous child welfare service delivery structure and its funding in BC are examined in detail. This particular section of the report is not an exhaustive review and is only intended to provide

a high level overview of the current service delivery structure through a brief review of the roles of MCFD, DAAs, and Indigenous and Northern Affairs Canada (INAC).

DEFINITION OF NEGLECT

The *BC Child, Family and Community Service Act* (CFCSA) does not include a statutory definition of neglect. However, the *CFCSA* does specify that “A child needs protection...if the child has been, or is likely to be, physically harmed because of neglect by the child’s parent...” (Section 13(1)(d) *CFCSA*)

In other Canadian jurisdictions, such as Alberta, Nova Scotia, Prince Edward Island, and Quebec, a statutory definition of neglect is provided. Nova Scotia has not yet implemented its definition of neglect.

Alberta’s *Child Youth and Family Enhancement Act*, as an example, provides the following language around neglect:

(2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:

...

(c) the child is neglected by the guardian;

(2.1) For the purposes of subsection (2)(c), a child is neglected if the guardian

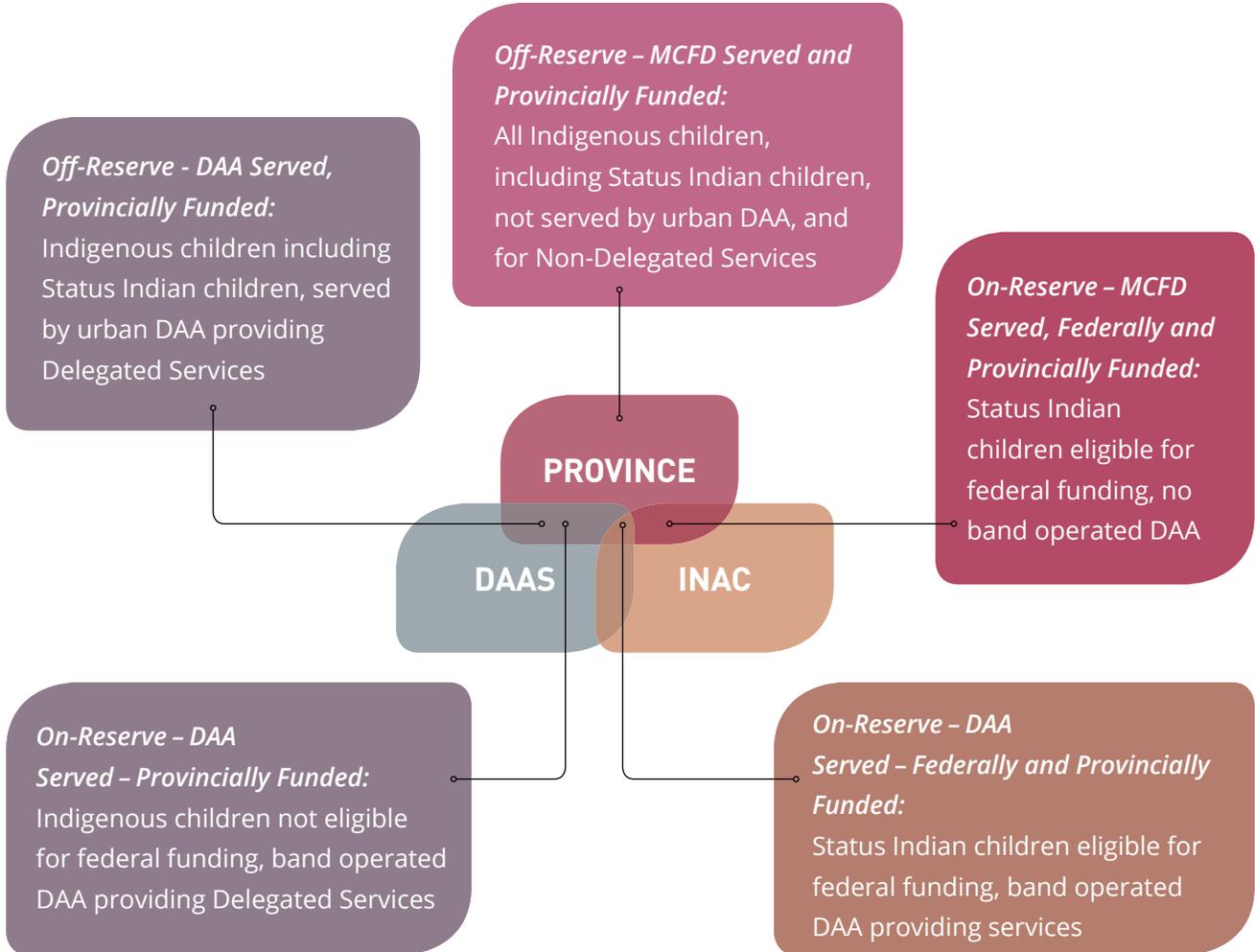
(a) is unable or unwilling to provide the child with the necessities of life,

(b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well being of the child, or

(c) is unable or unwilling to provide the child with adequate care or supervision.

FIGURE 2: INDIGENOUS CHILD WELFARE SERVICE DELIVERY STRUCTURE

(ADAPTED FROM *WHEN TALK TRUMPED SERVICE: A DECADE OF LOST OPPORTUNITY FOR ABORIGINAL CHILDREN AND YOUTH IN B.C.*, REPORT OF THE BC REPRESENTATIVE FOR CHILDREN AND YOUTH)



MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

In BC, MCFD is responsible for both the administration and delivery of child welfare services. The *CFCSA* is the legislation defining the child welfare service delivery structure, providing the authority for the Minister of MCFD to designate a Director(s), as well as the authority for a Director to delegate power, duties or functions under the *CFCSA*, such as the power of social workers to intervene to protect children. While the Minister is responsible for the *CFCSA*, the Director(s) designated by the Minister are able to act only within the parameters of the *CFCSA*. While this distinction is important from a legal perspective, the reality with

Indigenous leaders, families and communities is that they deal with MCFD and make no distinctions between MCFD and the Director.

The *CFCSA* also provides the guiding and service delivery principles of the child welfare system in BC. These principles and various sections of the *CFCSA* are further discussed in later sections of this report.

In addition to the *CFCSA*, guidelines and practice standards exist in regulation and policy and provide social workers with more specific instructions on how to deliver child welfare services to children, youth and families.

DESIGNATION AND DELEGATION

DESIGNATION is the process established under section 91 of the *CFCSA* by which the Minister for MCFD may designate one or more persons as “Directors” for the purposes of any or all of the provisions of the *CFCSA*.

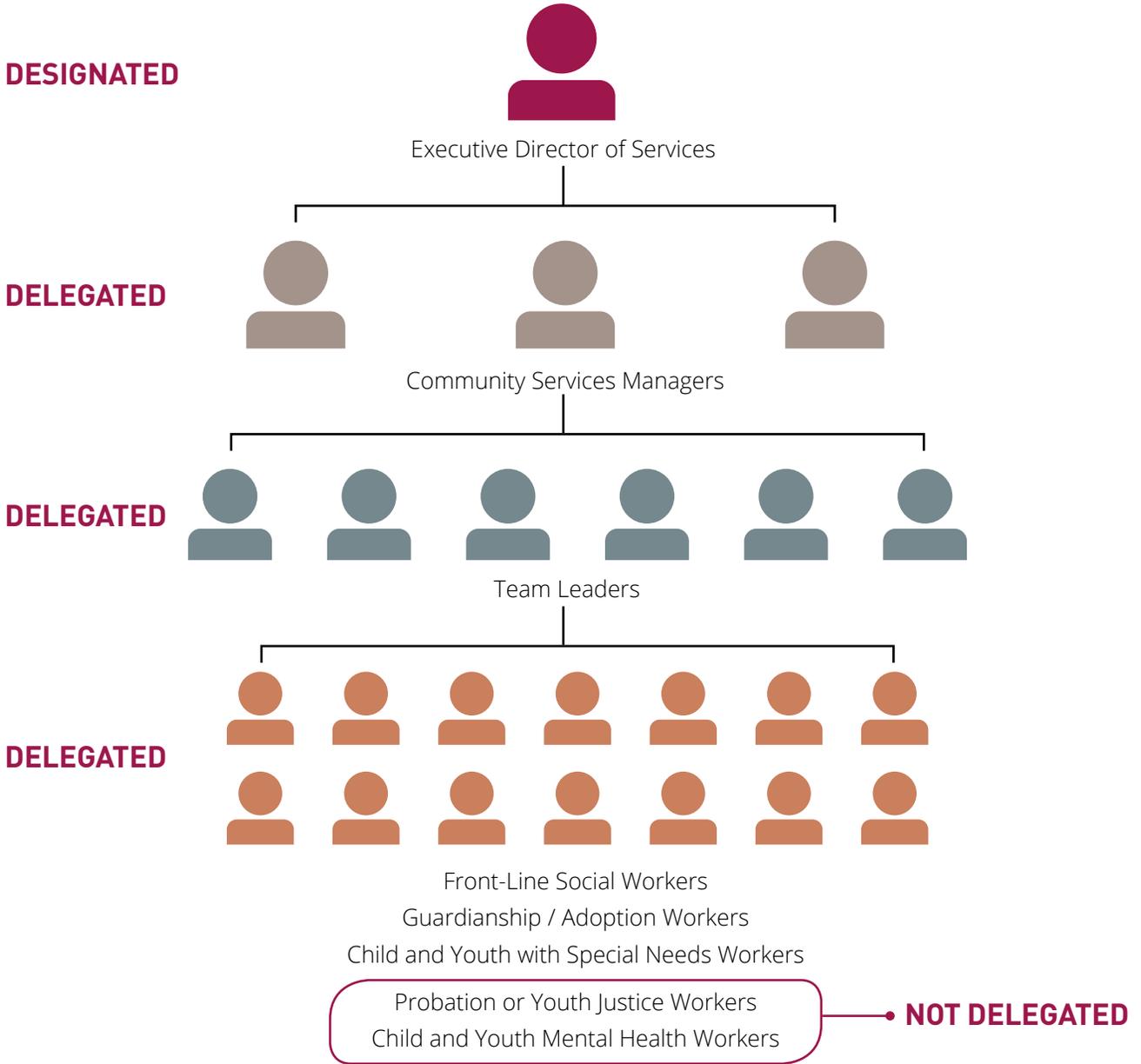
Once designated under section 91, a Director has the power to **DELEGATE** duties or functions under the *CFCSA*. A Director’s power to delegate is established under section 92 of the *CFCSA*.

DELEGATION is the process by which a Director can delegate any person or class of person (social workers, for example) any or all of the Director’s powers, duties or functions under the *CFCSA*. Those who are delegated by a Director in accordance with the *CFCSA* receive legal authority to carry out specific duties identified in the *CFCSA*, such as the provision of child protection, family support and guardianship services. This statutory authorization allows delegated front-line social workers to exercise broad decision making powers each and every day. In front of a provincial court judge, they are seen as officers of the court.

Information sharing, when it involves the Director, is governed differently than if it involves MCFD employees who are not delegates of the Director.



FIGURE 4: MCFD REGIONAL ORG CHART



NOTE: NUMBER OF  NOT REFLECTIVE OF ACTUAL NUMBER OF MANAGERS, LEADERS, OR WORKERS IN EACH MCFD REGION. THE NUMBER OF MANAGERS, LEADERS, AND WORKERS VARIES BY REGION.

BC'S CFCSA – PRINCIPLES

GUIDING PRINCIPLES

SECTION 2 *This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:*

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;*
- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;*
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;*
- (d) the child's views should be taken into account when decisions relating to a child are made;*
- (e) kinship ties and a child's attachment to the extended family should be preserved if possible;***
- (f) the cultural identity of aboriginal children should be preserved;***
- (g) decisions relating to children should be made and implemented in a timely manner.*

SERVICE DELIVERY PRINCIPLES

SECTION 3 *The following principles apply to the provision of services under this Act:*

- (a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;***
- (b) aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children;***
- (c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;*
- (d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and Community Living British Columbia established under the Community Living Authority Act;*
- (e) the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children.***



CHILD, FAMILY AND COMMUNITY SERVICE REGULATION

CONTENTS OF OTHER PLANS OF CARE

8(1) In this section, “plan of care” means a plan of care prepared for a court hearing to consider an application for an order,

- (a) other than an interim order, that a child be returned to or remain in the custody of the parent apparently entitled to custody and be under a director’s supervision for a specified period, or
- (b) that a child be placed in the custody of a director under
 - (i) a temporary custody order, or
 - (ii) a continuing custody order.

(2) A plan of care must include the following information:

...

(g) in the case of an aboriginal child other than a treaty first nation child or a Nisga’a child, the name of the child’s Indian band or aboriginal community, in the case of a treaty first nation child, the name of the child’s treaty first nation and, in the case of a Nisga’a child, the Nisga’a Lisims Government;

(h) the parents’ involvement in the development of the plan of care, including their views, if any, on the plan;

(i) in the case of an aboriginal child other than a treaty first nation child or a Nisga’a child, the involvement of the child’s Indian band or aboriginal community, in the case of a treaty first nation child, the involvement of the child’s treaty first nation and, in the case of a Nisga’a child, the involvement of the Nisga’a Lisims Government, in the development of the plan of care, including its views, if any, on the plan;

...

(m) a description of how the director proposes to meet the child’s need for

- (i) continuity of relationships, including ongoing contact with parents, relatives and friends,
- (ii) continuity of education and of health care, including care for any special health care needs the child may have, and
- (iii) continuity of cultural heritage, religion, language, and social and recreational activities.**

MCFD has 13 service delivery areas (SDAs). The day-to-day practice, human resource and operational management of these SDAs are the responsibility of 13 executive directors of service (EDS), supported by community service managers (CSMs) who manage local service areas and who supervise team leaders. The team leaders in each of the SDAs provide direct supervision of MCFD's front-line staff.

MCFD has six core service lines. These are 1) Child Safety, Family Support and Children in Care Services; 2) Early Childhood Development and Child Care Services; 3) Services for Children and Youth with Special Needs; 4) Child and Youth Mental Health Services; 5) Adoption Services; and 6) Youth Justice Services.

FIGURE 3: 13 MCFD "REGIONS" OR SDAS - ADAPTATION OF MCFD MAP

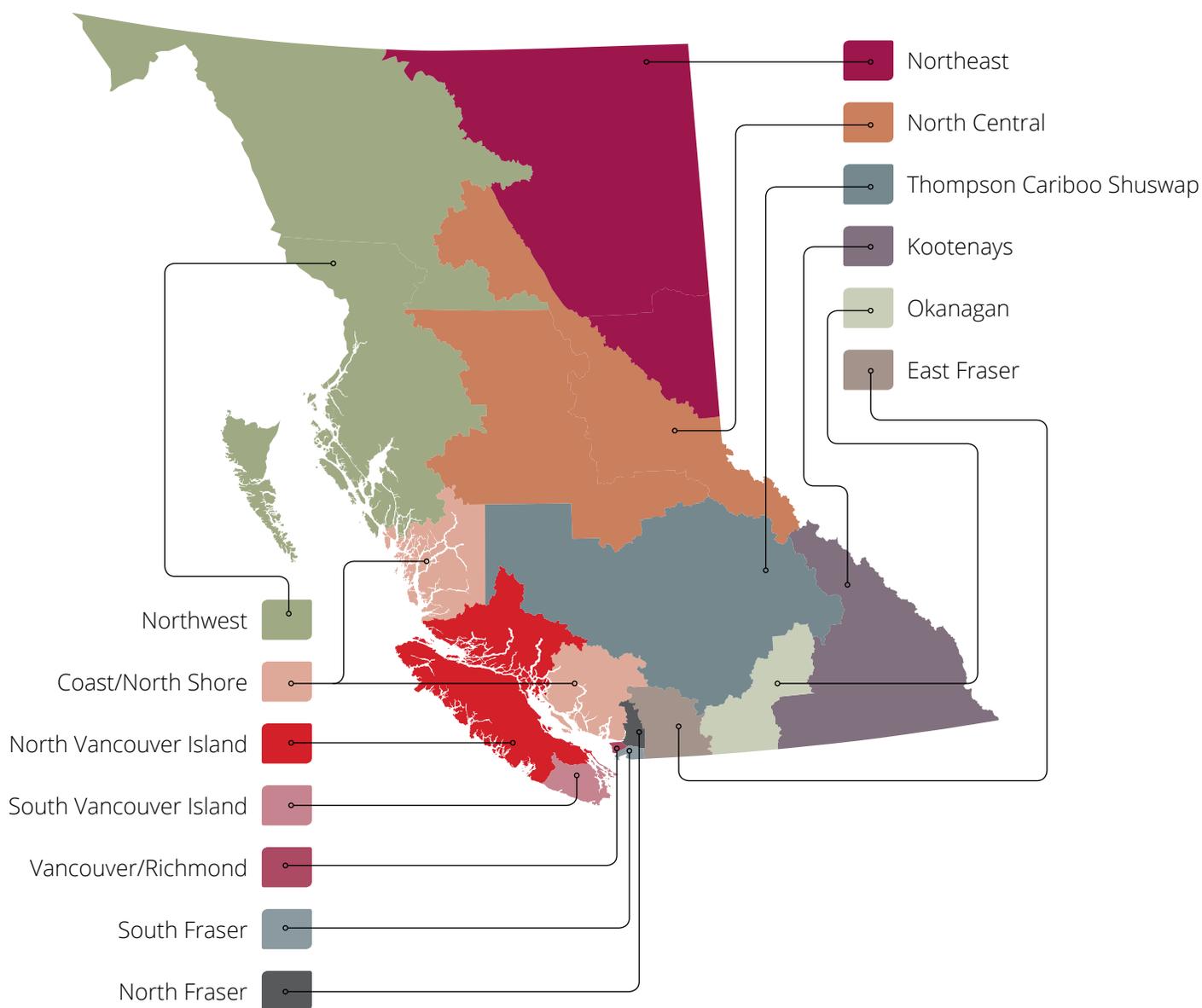


TABLE 2: SERVICE DELIVERY DIVISION (EXCLUDING FACILITIES) BUDGET ALLOCATION – AS OF JULY 31, 2016

ECD – Early Childhood Development

CYMH – Child and Youth Mental Health

CYSN – Children and Youth with Special Needs

DESCRIPTION			TOTAL ECD	TOTAL CYSN	TOTAL CYMH
			TOTAL \$\$ BUDGET (M)		
SDA11	Kootenays		0.80	7.29	2.85
SDA12	Okanagan		1.18	16.48	5.03
SDA13	Thompson Cariboo Shuswap		1.92	12.06	5.38
SDA21	East Fraser		0.90	15.61	4.41
SDA22	North Fraser		1.20	27.94	6.53
SDA23	South Fraser		1.44	28.92	8.83
SDA24	Vancouver/Richmond	NOTE 2	1.44	29.20	9.81
SDA25	Coast/North Shore		0.76	14.58	4.19
SDA31	South Vancouver Island		1.43	18.22	7.14
SDA32	North Vancouver Island		2.21	19.76	6.27
SDA41	Northwest		1.99	6.28	2.83
SDA42	North Central		1.30	10.21	4.66
SDA43	Northeast		1.27	5.33	1.93
SUB-TOTAL - SDAs			17.84	211.88	69.86
Centralized Screening		NOTE 2			
TOTAL - EDS Allocations			\$17.84	\$211.88	\$69.86

NOTE (1) -SUPPORT SERVICES

- include administrative staff and operating costs that support line staff across the six lines of service

NOTE (2) - CENTRALIZED SCREENING

- managed by EDS for Vancouver/Richmond

SDA24	Vancouver/Richmond		1.44	29.20	9.81
Centralized Screening			-	-	-
TOTAL - EDS Allocations			\$1.44	\$29.20	\$9.81

TOTAL CHILD SAFETY	TOTAL ADOPTION	TOTAL YOUTH JUSTICE	TOTAL SUPPORT SERVICES (NOTE 1)	TOTAL ALL STOBS	% OF TOTAL BUDGET
TOTAL \$\$ BUDGET (M)					
18.15	1.00	0.64	1.90	32.63	3.4%
38.80	2.89	1.86	3.52	69.76	7.3%
46.10	1.86	1.55	3.76	72.64	7.7%
51.23	3.77	1.64	2.72	80.28	8.5%
39.01	1.51	2.10	4.47	82.76	8.7%
75.74	2.96	4.13	4.78	126.79	13.4%
80.85	1.67	2.95	3.56	129.47	13.6%
20.48	0.82	0.50	2.11	43.43	4.6%
55.55	3.46	2.16	4.03	91.99	9.7%
47.03	3.38	1.95	4.31	84.90	8.9%
21.14	0.94	0.65	2.33	36.16	3.8%
45.88	1.64	1.14	3.21	68.05	7.2%
11.48	0.81	0.43	1.03	22.29	2.3%
551.44	26.71	21.70	41.73	941.15	99.1%
6.76			1.35	8.12	0.9%
\$558.20	\$26.71	\$21.70	\$43.08	\$949.27	100.0%

80.85	1.67	2.95	3.56	129.47	13.6%
6.76	-	-	1.35	8.12	0.9%
\$87.61	\$1.67	\$126.62	\$99.09	\$188.36	14.5%

DELEGATED ABORIGINAL AGENCIES

In BC, DAAs also have responsibility for the delivery of child welfare services. DAAs operate through a delegation enabling agreement with the Provincial Director (the “Director”). As described above, the Director may delegate authority to employees of

DAAs to undertake administration of all or specific parts of the *CFCSA*. Although the DAAs are referred to as “Delegated” Aboriginal Agencies, legally they do not have delegation status. This creates confusion and should be rectified. There are 3 levels of delegation possible and each of the levels of delegation provide an increasing and cumulative range of responsibility for child welfare services.

THREE LEVELS OF DELEGATION FOR DAAS UNDER THE *CFCSA**

**Language adapted from 2016 MCFD Factsheet on the Delegation Process*

LEVEL C3 DELEGATION: RESOURCE DEVELOPMENT AND VOLUNTARY SERVICE DELIVERY

The areas of service covered under C3 delegation include:

- support services for families;
- voluntary care agreements for children, including temporary in-home care; and
- special needs agreements, including those for children in care on no fixed term.

Operational and Practice standards under C3 delegation address the following:

- case management;
- family assessment;
- service planning and agreements;
- children in voluntary care;
- standards for care in regular, restricted, and specialized family care homes;
- monitoring and evaluation; and
- closure and transfer of cases.

LEVEL C4 DELEGATION: GUARDIANSHIP SERVICES

The areas of service covered under C4 delegation include those found in C3, as well as guardianship of children in the continuing care of the Director. While practice standards for C4 are similar to those for voluntary care in C3, they also include:

- develop, monitor and review comprehensive plans of care for children in care;
- legal documentation;
- permanency planning for children in care;
- prepare youth to transition for independence;
- reportable circumstances;
- ongoing monitoring of child's well-being while in care; and
- quality care reviews.

LEVEL C6 DELEGATION: FULL CHILD PROTECTION SERVICES

The areas of service covered under C6 delegation include those found in C3 and C4, as well as full child protection, which include:

- receiving, assessing and, as required, investigating reports of child abuse and neglect;
- deciding the most appropriate course of action if a child is deemed in need of protection;
- where necessary, removing the child and placing the child in care; and
- obtaining court orders or taking other measures to ensure the ongoing safety and well-being of the child.

Practice standards under C6 delegation address the following:

- intake;
- investigation;
- taking charge of children;
- risk assessment;
- risk reduction;
- ongoing protective family service; and
- investigation of allegations of abuse in foster homes.



The degree of responsibility assumed by each DAA through delegation agreements is the result of negotiations between MCFD and the Indigenous community or communities served by the DAA, a phased and often lengthy planning process, and ultimately the official level of delegation provided by the Director.

Currently, there are 23 DAAs with varying levels of delegation in BC (Table 3). Two of these DAAs are delegated to do adoptions, Lalum'utul'Smun'eem Child and Family Services (Cowichan Tribes), and the Métis Child and Family Services. Four are level C3 delegation and can provide voluntary services and recruit and approve foster homes; eight are level C4 delegation and therefore have the additional delegation required to provide guardianship

services for children in continuing care; and 11 have level C6 delegation and can therefore additionally provide full child protection, including the authority to investigate reports and remove children. All of the DAAs are audited periodically by MCFD to determine level of compliance with Aboriginal Operational and Practice Standards and Indicators (AOPSI), and when applicable, Chapter 3 Child Protection Policies.

MCFD has not approved a new DAA since 2012. Over the course of my appointment as Special Advisor, a number of Indigenous communities interested in pursuing a DAA expressed their frustration with this decision by the Province.

THE ABORIGINAL OPERATIONAL AND PRACTICE STANDARDS AND INDICATORS (AOPSI)

The Aboriginal Operational and Practice Standards and Indicators (AOPSI) emphasize the importance placed upon family and community within Aboriginal cultures. Though the emphasis of some of these standards differ from those of the Ministry, the safety and protection of children are always paramount. The AOPSI standards either meet or exceed those established by the Ministry (AOPSI, p.4).

FIGURE 5: ALL DAAS IN PROVINCE - ADAPTED MCFD MAP

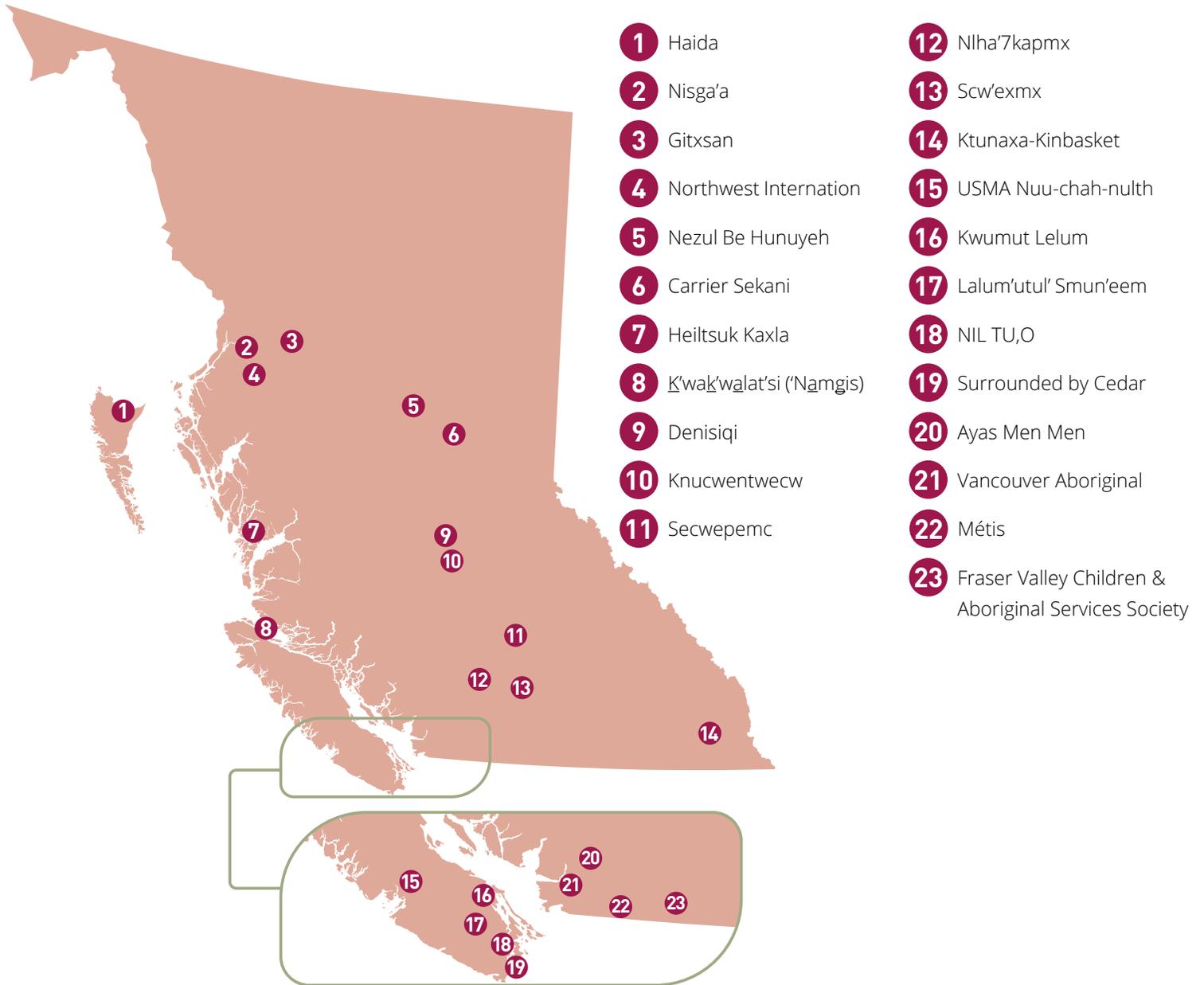


TABLE 3: DELEGATED ABORIGINAL AGENCIES AND COMMUNITIES SERVED (AS OF JUNE 2016)

NAME OF AGENCY	AFFILIATED COMMUNITIES
C3 DELEGATION: VOLUNTARY SERVICE DELIVERY	
Denisiqi Services Society	<ul style="list-style-type: none"> • Alexandria • Alexis Creek (Tsi Del Del) • Anaham (Tl'etinqox) • Nemiah (Xeni Gwet'in)
Haida Child & Family Services Society	<ul style="list-style-type: none"> • Old Massett Village Council • Skidegate Band
Heiltsuk Kaxla Child & Family Service Program	<ul style="list-style-type: none"> • Heiltsuk
K'wak'walat'si ('Namgis) Child & Family Services	<ul style="list-style-type: none"> • 'Namgis • Tlowitsis-Mumtagila
C4 DELEGATION: VOLUNTARY SERVICE DELIVERY AND GUARDIANSHIP SERVICES FOR CHILDREN IN CONTINUING CARE	
Ayas Men Men Child & Family Services (Squamish Nation)	<ul style="list-style-type: none"> • Squamish
Carrier Sekani Family Services	<ul style="list-style-type: none"> • Burns Lake • Cheslatta • Lake Babine • Nadleh Whut'en • Nee Tahi Buhn • Skin Tyee
Gitx̱san Child & Family Services Society	<ul style="list-style-type: none"> • Kispiox • Glen Vowell • Gitsegukla • Gitwangak
Kw'umut Lelum Child & Family Services	<ul style="list-style-type: none"> • Halalt • Lake Cowichan • Lyackson • Malahat • Nanoose
Nezul Be Hunuyeh Child & Family Services	<ul style="list-style-type: none"> • Nak'azdli • Tl'azt'en
NIL TU,O Child and Family Services Society	<ul style="list-style-type: none"> • Beecher Bay • Pauquachin • Songhees • Tsartlip
Nisga'a Child & Family Services	Citizens of the Nisga'a Lisims Government including villages of: <ul style="list-style-type: none"> • Gingolx (Kincolith) • Gitlakdamix
Northwest Internation Family & Community Services Society	<ul style="list-style-type: none"> • Gitga'at (Hartley Bay) • Gitxaala (Kitkatla) • Haisla (Kitamaat) • Kitselas

MCFD DATA AS OF JUNE 2016. THE DATA RELIES ON SELF-IDENTIFICATION TO DETERMINE WHETHER A CHILD IS INDIGENOUS



--

# OPEN FILES					
IN CARE		YOUTH AGREEMENTS		OUT OF CARE	
ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES

<ul style="list-style-type: none"> • Stone (Yunesit'in) • Toosey (Tl'esqotin) 	<ul style="list-style-type: none"> • Ulkatcho 	0	0	0	0	1	1
		0	0	0	0	0	0
		0	0	0	0	0	0
		0	0	0	0	0	0

		67	67	0	0	0	0
<ul style="list-style-type: none"> • Stelat'en • Saik'uz • Takla Lake • Gitanyow 	<ul style="list-style-type: none"> • Wet'suwet'en • Yekooche 	91	92	0	0	0	0
<ul style="list-style-type: none"> • Penelakut • Qualicum 	<ul style="list-style-type: none"> • Snuneymuxw • Stz'uminus First Nations 	59	59	1	1	4	4
<ul style="list-style-type: none"> • Tsawout • T'sou-ke 	<ul style="list-style-type: none"> • Tseycum 	31	31	6	6	3	3
<ul style="list-style-type: none"> • Gitwinksihlkw • Kitsumkalum • Lax Kw'alaams 	<ul style="list-style-type: none"> • Laxgalts'ap • Metlakatla 	19	19	1	1	0	0
		28	28	2	2	0	0

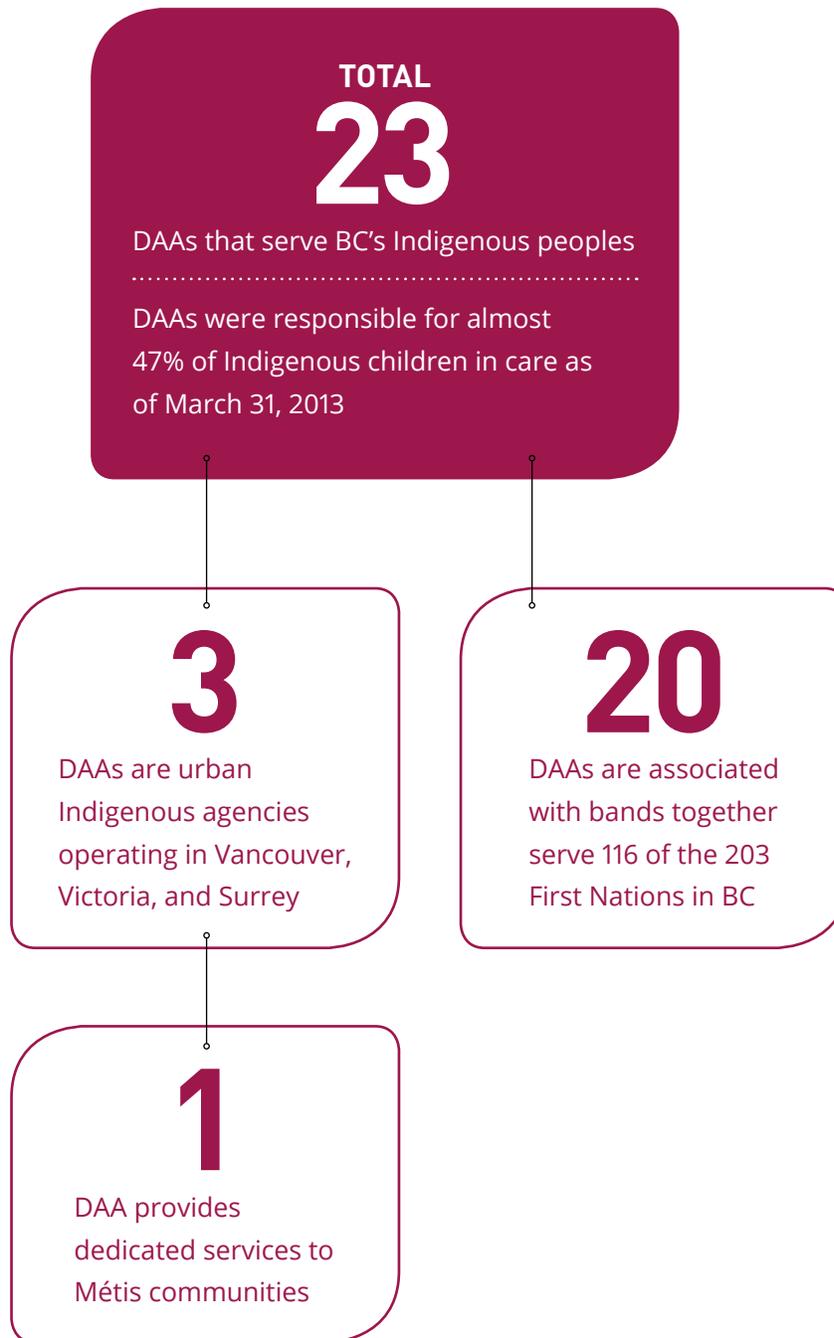
NAME OF AGENCY	AFFILIATED COMMUNITIES
Surrounded By Cedar Child & Family Services	• Victoria Urban

C6 DELEGATION: VOLUNTARY SERVICES, GUARDIANSHIP SERVICES AND FULL CHILD PROTECTION SERVICES

Lalum'utul' Smun'eem Child & Family Service	• Cowichan
Knucwentwecw Society	• Canim Lake • Canoe Creek
Ktunaxa-Kinbasket Child & Family Services	• Columbia Lake/?Akisq'nuk • Shuswap • Lower Kootenay • St. Mary's
Nlha'7Kapmx Child & Family Services Society	• Cook's Ferry • Lytton • Kanaka Bar • Nicomen
Scw'exmx Child & Family Services Society	• Coldwater • Nooaitch • Lower Nicola • Shackan
Secwepemc Child & Family Services Agency	• Adams Lake • Kamloops • Bonaparte • Neskonlith
Nuu-chah-nulth Tribal Council USMA Family & Child Services	• Ahousaht • Hupacasath • Ditidaht • Nuchatlaht • Ehattesaht • Tla-o-qui-aht • Hesquiaht • Tseshaht • Mowachaht/Muchalaht
Fraser Valley Aboriginal Children & Family Services Society	• Aitchelitz • Leq'a:mel • Chawathil • Popkum
FORMERLY	• Cheam • Shx'owhamel
Xyolhemeylh Child & Family Services	• Kwantlen • Shx'wha:y Village
Métis Family Services (La Societe De Les Enfants Michif)	• Métis (Simon Fraser/ South Fraser)
Vancouver Aboriginal Child And Family Services Society (VACFSS)	• Vancouver Urban (Vancouver/Richmond)

--

	# OPEN FILES					
	IN CARE		YOUTH AGREEMENTS		OUT OF CARE	
	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES
	89	89	0	0	0	0
	64	64	0	0	0	0
• Soda Creek • Williams Lake	25	25	5	5	9	9
• Tobacco Plains • Métis E. Kootenay Region	47	47	14	15	12	12
• Siska • Skuppah	10	10	0	0	1	1
• Upper Nicola	29	29	0	0	1	1
• North Thompson • Whispering Pines • Skeetchestn	141	141	6	6	13	13
Maa-nulth Treaty: • Huu-ay-aht • Ka:'yu:k't'h'/Che:k'tles7et'h' • Toquaht • Uchucklesaht • Ucluelet	133	133	2	2	8	8
• Skawahlook • Squiala • Skowkale • Sumas • Skwah • Tzeachten • Soowahlie • Yakwekwioose	423	441	30	31	78	81
	109	112	7	7	12	12
	415	418	0	0	25	25
TOTAL OPEN FILES	4414	7204	293	776	717	1165

FIGURE 6: DAAS IN BRITISH COLUMBIA

INDIGENOUS AND NORTHERN AFFAIRS CANADA

The federal government, through Indigenous and Northern Affairs Canada (INAC), is constitutionally responsible for “Indians and lands reserved for Indians” but limits its responsibility in child welfare to funding of services for status First Nations children ordinarily resident on reserve. INAC is not involved in the delivery of these services.

INAC provides funding to First Nations child and family services (FNCFS) agencies or DAAs, which are established, managed and controlled by First Nations, and delegated by provincial authorities to provide culturally-appropriate prevention and protection services to First Nations children and families ordinarily resident on reserve. Directive 20-1 is the INAC policy for administering funds for child welfare services to First Nations child and family service providers. Put simply, Canada’s role is limited to funding a provincial system for Indigenous children who are “ordinarily resident on reserve” and who are in care. If a child is not “ordinarily resident on reserve” there is no federal funding.

Directive 20-1 is examined at length later in this report. The policy directive has been condemned in multiple reports and notably in the recent CHRT decision (2016 CHRT 2) for providing financial incentive to bring more Indigenous children into care. In BC, the Director’s decision to remove an Indigenous child and a subsequent court order for that child’s placement in care, triggers federal funding payments. Alternative placements, where there is no court order, with extended family or the community for example, are not funded. In practice this has seen more children removed, and more court orders issued.

In areas where these DAAs do not exist to serve the on-reserve First Nation population, INAC reimburses

BC for the delivery of child and family services to these First Nations communities (INAC, 2016). The *BC Service Agreement* is the funding mechanism that provides for reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between the

DIRECTIVE 20-1 AND THE BC SERVICE AGREEMENT

DIRECTIVE 20-1 is the INAC policy for administering funds for child welfare services to First Nations child and family service providers. The *2016 CHRT 2* decision considers at length how Directive 20-1 has contributed to greater rates of First Nations children in care, and the systemic bias created through the Directive against alternative care options or early intervention and prevention models, due to Directive 20-1 providing more funding for in-care options.

In BC, the *Service Agreement Regarding the Funding of Child Protection Services of First Nations Children Ordinarily Resident on Reserve* (the “**BC SERVICE AGREEMENT**”) is the funding mechanism that provides for reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between the province and INAC. In 2012, the *BC Service Agreement* replaced a previous memorandum of understanding between the INAC and MCFD.



Province and INAC. As of July 2016, 84 First Nation communities in BC receive services under the *BC Service Agreement*.

INAC funding both through Directive 20-1 and through the *BC Service Agreement* is discussed throughout this report.

INTERGENERATIONAL TRAUMA AND “NEGLECT”

As noted above, the majority of Indigenous children and youth who are removed from their family homes and placed in care are victims of neglect (Table 1). What does this mean when we contemplate the current child welfare system and chart a path forward? While abuse poses an immediate risk to one’s well-being, the risks posed by neglect are built up over time and are linked to broader family and community issues such as poverty and isolation; issues which unaddressed can go on to perpetuate a cycle of further neglect.

“60’S SCOOP”

At the height of the residential school system, an amendment was made to the *Indian Act*, which allowed provinces to exercise power where federal legislation did not exist, including in child protection policy. During the 1950’s and 1960’s, the number of Indigenous children in care rose dramatically. This period is known as the “60’s Scoop,” and is today considered a key contributor to high incidence of intergenerational trauma among Indigenous individuals and families.

A cycle of neglect can often be directly attributed to intergenerational trauma. Throughout BC, intergenerational trauma and its effects can be seen and felt in many Indigenous communities to varying degrees. The causes of intergenerational trauma include; the experience of Indian residential schools, the 60’s Scoop, the child welfare system, the residual effects on those left in a community when children were taken, and the specific abuse – mental, emotional, spiritual, physical, and sexual.

The Truth and Reconciliation Commission (TRC) identifies the residential school period as the beginning of an intergenerational cycle of trauma and neglect. The burdens carried by survivors, including a lack of parenting skills and scars from having witnessed or directly experienced abuse, have had a profound effect on the ability of many Indigenous peoples to care for families.

“Cultural genocide” is the term the TRC used when it concluded its examination of Canada’s laws, policies and practices aimed at Indigenous peoples. As documented in the *TRC Final Report*, the impacts, including trauma arising from removal, isolation and abuses are intergenerational and entrenched in significant ways. Indeed, the TRC reports “many former residential school students who spoke to the Commission acknowledged the mistakes they made as parents and feel guilt for passing their trauma on to their own children” (*TRC Final Report*, Volume 5 p.33). Over time, this intergenerational trauma has been compounded by hardships imposed by the *Indian Act* administration, decades of racism, assimilation and discrimination embedded in laws, policies, practices, attitudes and actions of the state.

The emotional and mental health issues that stem from Canada’s legacy of institutionalized

INDIAN RESIDENTIAL SCHOOLS AND THE TRUTH AND RECONCILIATION COMMISSION

In the 1970s, young Indigenous activists, survivors of residential schools wanting answers, began to call for a federal “inquiry” into residential schools to examine the abuses in these schools. Many, if not all, were victims of these abuses. They wanted to know what happened, how widespread the abuses were and what was still going on in those schools which were still open. They wanted their parents and grandparents, many of whom held the church clergy in high regard, to know the abuses and the impacts. Their initial call for an inquiry fell on deaf ears.

For those early advocates it seemed no one listened or wanted to know. Unfortunately, this did not change until survivors began to seek redress through the courts. Individuals, bringing their cases to the courts were forced by lawyers for the federal government and churches to recount and re-live the horrors of their abuse, in all its sordid forms.

In the case called *Blackwater et al v Plint*, the late Chief Justice Brenner listened intently to their stories with a degree of compassion rarely seen in the courts. He decided the survivors were telling the truth and determined that both the federal government and the church operating the residential school had legal responsibilities to the children in their care and were subject to liabilities for abuses perpetrated by Plint, a former supervisor at the school. Both the BCCA and SCC confirmed the decision of Justice Brenner.

Blackwater et al v Plint ultimately paved the way for the 2006 Indian Residential Schools Settlement Agreement, including a solemn commitment to hold a national inquiry to be referred to as the Truth and Reconciliation Commission (TRC).

The 2015 *TRC Final Report*, referenced throughout this report, is remarkable both in depth and scope and is now contributing to an important, expansive, necessary and respectful dialogue on Canada’s relationships with and treatment of Indigenous peoples.

discrimination and the social determinants of health in First Nations communities continue to worsen. According to the Office of the Auditor General’s 2011 report, “the education gap between First Nations living on reserves and the Canadian population has widened, the shortage of adequate housing on reserves has increased, and comparability of child and family services is not ensured” (p.8).

Add insufficient infrastructure, including a lack of community facilities, food insecurity, a lack of potable water, unemployment and high incidence of suicide, and you begin to understand the realities that find many Indigenous families and children in a self-perpetuating cycle of neglect; a cycle which has seen many children and youth removed from their homes and placed in care.

What can intergenerational trauma look like in Indigenous communities?

A great-grandparent was taken away and placed in residential school at 5 years old, abused and degraded in varying ways, kept from his or her relatives of the opposite sex, deprived of adequate nutrition, received little to no nurturing from those in places of authority, and disallowed from speaking their language or practicing their culture. This great-grandparent is raised in this environment for upwards of 12 years.

This great-grandparent had a child. Their son or daughter, today a grandparent, was raised in a home with very little emotion or affection, addiction was rampant among those trying to overcome their own abuse and mistreatment. Relationships are abusive – ranging from emotional to physical. Traditional teachings may remain, but are fractured due to lack of understanding.

This grandparent has a child. Their son or daughter is raised in a similar disconnected and abusive environment. Showing emotion is punishable. Poverty is normal. There is no sense of worth or attachment. Addictions are fed before food is put on the table. The Ministry is called and the young child is removed from

the community and placed in a foster home. Abuses and degradation similar to that suffered by family that attended residential school take place. The connection to healthy community and family members is weakened or severed.

The child, now grown, has a child. The child is born in a town outside of their home community. Generations of family are no longer connected. While a young parent works to do things differently, they are closely monitored by authorities due to their family history. A call from the Ministry seems imminent. A tired single parent, frustrated with all that has happened, lashes out at social workers and without adequate skills and support to cope, turns to drugs and alcohol.

The child of today remains in care, bounced from home to home. The cycle continues.

Based on the stories shared by those with whom I met.



Once placed in care, whether Indigenous or non-Indigenous, studies repeatedly conclude that children can expect poorer outcomes in education, health and general well-being than those of the general youth population. In other words, the vulnerabilities of Indigenous children are compounded the moment they enter the child welfare system.

Without action to reduce the number of Aboriginal children taken from their families, the child welfare system itself will take the place of residential schools in doing damage to them. As adults, the children taken into care in the years to come will place high demands on social assistance and the health and justice systems. They will struggle economically and socially. They may pass damage on to their own children (TRC Final Report, Volume 5, p.35).

The *TRC Final Report* summarizes what will happen if the underlying causes of neglect are not addressed to reduce the number of Indigenous children in care.

As Special Advisor, meeting with Indigenous leaders, parents, and families reinforced the troubling reality that many Indigenous parents and families remain trapped in a vicious cycle of trauma leading to neglect. However, meeting with others in Indigenous communities across BC who are finding their way out, building supports, and re-establishing connectedness within their families and communities served to reinforce that Indigenous families and communities are also key to the solutions.

I met with grandparents who, realizing that something had to change for their own family to heal, turned to their culture, language, and traditional ways for answers. These remarkable individuals,

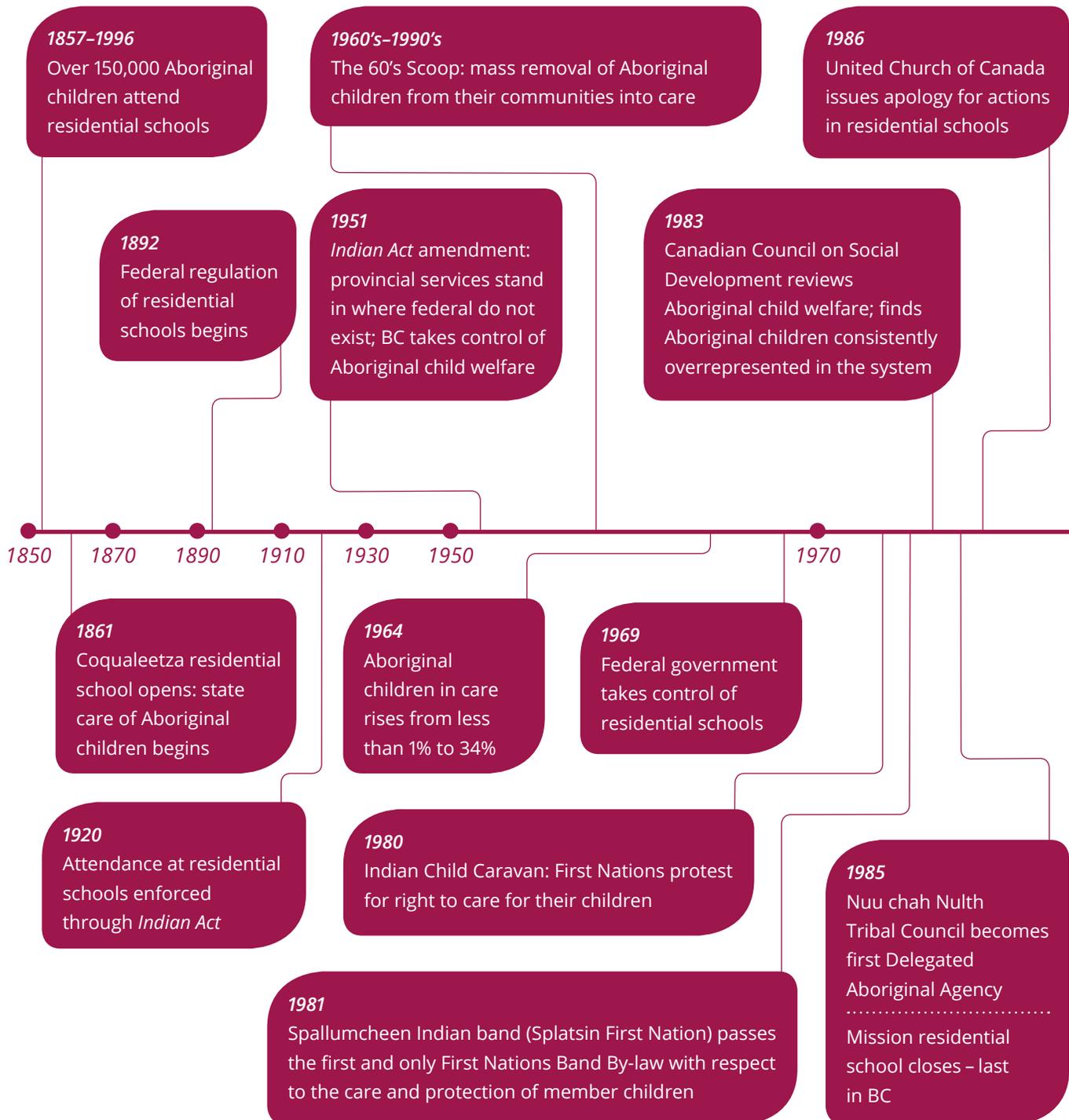
having taken healing steps for themselves and their families, spoke openly and freely with me about their journey and the lessons learned.

I met with children who, while they remained in care for longer than they should have, returned to their parents or family members to find not only a family but an entire community was there to embrace them.

I met with young parents who have taken and who continue to take brave steps forward in confronting their own trauma. Often with few to no outside supports, these parents are learning ways to cope and to parent. They acknowledge that they are motivated in large part by their deep desire that their own children will not be trapped in a cycle of trauma or neglect. These parents speak about their journey and are an example to those who continue to struggle that there is a way out by walking through it.

51. Indigenous peoples continue to experience intergenerational trauma secondary to removal of children from families, and residential schooling. The health impacts of these practices are profound, including mental illness, physical and sexual abuse, self-harm and suicide, and drug or alcohol addiction. A correlation has been demonstrated between intergenerational effects of these events and suicide, and sexual abuse during childhood (Draft Study on the Right to Health and Indigenous Peoples, with a Focus on Children and Youth, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples - A/HRC/EMRIP/2016/CP8-1.).

FIGURE 7: INDIGENOUS CHILDREN IN CARE: A HISTORICAL TIMELINE



1996
Adoption Act is passed
.....
Child and Family
Community Service Act
is passed

2007
First Nations Child and Family Caring
Society of Canada and Assembly of First
Nations files complaint with Canadian
Human Rights Commission: claims racial
discrimination against Aboriginal children

2000
Nisga'a final agreement: CFCSA
collaborative work between
MCFD and Nisga'a Lisims

2009
AOPSI undergoes re-design
.....
Tsawwassen First Nation Treaty

2015
Truth and Reconciliation
Commission Final Report

January 2016
First Nations Child and Family
Caring Society of Canada
et al. v. Attorney General of
Canada (for the Minister of
Indian and Northern Affairs
Canada) - Canadian Human
Rights Tribunal Decision

1990

1998
Aboriginal Operational
and Practice
Standards and
Indicators developed

1990
INAC creates First Nations
Child and Family Services

2002
Tsawwassen Accord: increased
collaboration between MCFD and
First Nations on child welfare

2010

2013
Aboriginal Equity
and Inclusion Policy
Lens is released

2011
Maa-Nulth First Nations Treaty

2008
BC endorses Jordan's Principle

2006
Representative for Children and Youth established
.....
23 Delegated Aboriginal Agencies registered with MCFD

April 2016
Tla'amin Nation Treaty

May 2016
Canada Endorsed the United
Nations Declaration on the
Rights of Indigenous Peoples
at the United Nations
.....
BC First Nations Children and
Family Gathering

2030

In BC, for the child welfare system to respond adequately in policy and practice to the reality that the majority of Indigenous children and youth removed from their family homes and placed in care are victims of neglect will not be easy. Socio-economic indicators, reflecting the impacts of existing and past state policy and practice, point to a chronic state of marginalization and underdevelopment for Indigenous communities and peoples leading to a reliance for many individuals, families and communities on ongoing state level support for many everyday services.

Significantly reducing the number of Indigenous children in care will require Indigenous parents, families, and communities, DAAs, and the federal and provincial governments, to each work together to address underlying root causes and position themselves as part of the root solutions.

A TIME FOR ACTION - THE CHANGING LEGAL AND POLITICAL LANDSCAPE

Inaction on the underlying issues will lead to significant long-term health and justice-related economic costs for BC and Canada, but will also constitute a violation of Canada's international commitments to human rights, Indigenous rights, and the rights of a child. Now is the time for significant steps to be taken to examine and reform the child welfare system in BC and Canada. The imperative to do so has been expressed through international law, multiple declarations on rights, and through domestic law. The legal, moral and socio-economic argument for acting now is further reinforced in the findings of recent commissions, in court and tribunal rulings and within enumerable reports.

Canada's recent endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration"), Section 35 of the *Constitution Act, 1982*, the 2016 Canadian Human Rights Tribunal decision (2016 CHRT 2), the 2015 *TRC Final Report*, recent reports of the Conference of the Federation, and the BC Representative for Children and Youth are key references used throughout this report. Each point to the duty of Canada and BC to take immediate steps to revise and reform the existing child welfare system as it relates to Indigenous peoples.

We are committed to implementing all 94 of the TRC's calls to action. The calls to action started with children because good public policy is based on the best interests of the child. That is why this fall, we will hold summit of all the social services and child welfare ministers to address the urgent need for reform of care for kids on reserve.

Friends, we all know that together, we have to confront and address the legacy of racist and segregationist policies put forward by successive governments in our past.

These were designed to do nothing less than eliminate your languages and cultures, break apart families, do away with your systems of government and knowledge, and ignore your rights.

– Minister Bennett at the Assembly of First Nations Annual General Assembly, July 2016.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In May 2016, Canada took an important step towards reconciliation when Minister Bennett (INAC) announced at the United Nations Permanent Forum on Indigenous Issues (UNPFII), Canada's unqualified endorsement of the Declaration. The endorsement is a significant development in state-Indigenous relations in Canada, as the Declaration provides an important framework for human rights, standards and norms for reconciliation and redress. In endorsing the Declaration, Canada agreed, among other things, that Indigenous children shall not be forcibly removed from their communities or culture. As well, Canada agreed to the "Outcome Document" from the 2014 United Nations World Conference on Indigenous Peoples committing to take steps, including a "national action plan", to achieve the ends of the Declaration.

"...the way the UNDRIP will get implemented in Canada will be through a mixture of legislation, policy and action initiated and taken by Indigenous Nations themselves. Ultimately, the UNDRIP will be articulated through the constitutional framework of Section 35."

– Justice Minister and Attorney General of Canada, Jody Wilson-Raybould (Puglaas) at the Assembly of First Nations Annual General Assembly, July 2016

The rights of Indigenous children are also addressed in the *United Nations Convention on the Rights of the Child*, in the *Universal Declaration of Human Rights*, and in a number of other international instruments. Article 19 of the United Nations Convention on the Rights of the Child, for instance, provides the right of protection from neglect or negligent treatment, while Article 30 provides Indigenous children the right, "in community with other members of his or her groups, to enjoy his or her own culture."

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP) – WHAT IS IT?

The Declaration is an international human rights instrument adopted by the United Nations General Assembly on September 13, 2007. The Declaration enshrines the rights that "constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world" (Article 43). Collective rights of Indigenous peoples that may not be addressed in other human rights charters emphasizing individual rights are also protected in the Declaration. Negotiating and adopting the Declaration took almost 25 years of work and deliberation by United Nations member states and Indigenous peoples and NGOs.



THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND CHILD WELFARE ISSUES

Preambular paragraph 13 and a number of articles within the Declaration are notable in that they provide guidance relevant to child welfare issues.

PREAMBULAR PARAGRAPH 13: *Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well being of their children, consistent with the rights of the child.*

ARTICLE 9: *Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.*

ARTICLE 19: *States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

ARTICLE 21(2): *States shall take effective measures and, where appropriate, special measures to ensure continuing improvements of their economic and social conditions. Particular attention shall be paid to the rights of indigenous elders, women, youth, children and persons with disabilities.*

ARTICLE 38: *States, in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration.*

ARTICLE 40: *Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. What is included in Aboriginal rights has been the customs, traditions, rules and legal systems of the Indigenous peoples concerned and international human rights.*

SECTION 35 RIGHTS

In Canada, Section 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal rights. While what “Aboriginal rights” include has been the subject of much debate and discussion in Canada, over time, Aboriginal rights have been defined

through the courts, including Supreme Court cases such as *Calder*, *Sparrow*, *Delgamuukw* and *Tsilhqot’in*.

There are two threads of reasoning indicating that child and family matters are Aboriginal rights recognized and affirmed in Section 35. First, in the case of *Casimel*, the BC Court of Appeal decided that custom adoption was a right recognized and

affirmed in Section 35. Custom adoption is included in the general category of child and family law and as such, child and family law is therefore included as an Aboriginal right under Section 35. Secondly, Canada's Minister of Justice and Attorney General has recently indicated, in remarks to the UNPFII and to the Assembly of First Nations, that "UNDRIP will be articulated through the constitutional framework of section 35." Preambular paragraph 13, and articles 9, 19, 21, 38, and 40 of the Declaration relate to children and families or child welfare. Accordingly, Section 35 through this argument includes child welfare and as such is recognized and affirmed as an Aboriginal right under Section 35.

CONSTITUTION ACT, 1982, SECTION 35

Section 35 of the *Constitution Act* states:

35. (1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*

(2) *In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.*

(3) *For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.*

(4) *Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

THE JANUARY 2016 CANADIAN HUMAN RIGHTS TRIBUNAL'S DECISION IN *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA*

The Canadian Human Rights Tribunal's decision in January 2016 in *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)* made it clear that the human rights of Indigenous peoples, as set out in the Canadian *Human Rights Act*, were violated because the federal government had consistently and deliberately underfunded First Nations child and family services on reserve.

By focusing on bringing children into care, the First Nations Child and Family Services (FNCFS) Program, corresponding funding formulas and other related provincial/territorial agreements, perpetuate the damage done by Residential Schools rather than addressing past harms (2016 CHRT 2, para. 422).

For too long, the CHRT ruled, Canada has been discriminating against First Nations children and their families by providing inequitable child welfare services ("FNCFS Program") and failing to provide equitable access to government services available to other children.

The CHRT further found that:

- While the FNCFS Program is intended to ensure the safety and well-being of First Nations children on reserve and to provide culturally appropriate services in accordance with provincial/territorial standards, these goals are not met by INAC and

First Nations are being impacted adversely or denied adequate child welfare services by the application of the existing FNCFS Program (2016 CHRT 2, para. 383);

- Under the FNCFS Program, Directive 20-1 creates incentives to remove children from their homes and communities, largely as a result of funding shortfalls created by inaccurate and outdated assumptions in funding formulas (2016 CHRT 2, para. 384);
- The FNCFS Program's funding structure makes it difficult, if not impossible, for many FNCFS Agencies to comply with provincial/territorial legislation and standards (2016 CHRT 2, para. 389);
- INAC and Health Canada have narrowly interpreted Jordan's Principle, which in turn has required governments of first contact to provide child services first and resolve jurisdictional questions later, resulting in service gaps, delays, or denials, and ultimately adverse impacts to First Nations children and families on reserves (2016 CHRT 2, para. 391);
- It is due to their race alone that First Nations people living on reserve suffer adverse impacts from INAC's provision of child and family services. These adverse impacts perpetuate the historical disadvantage and trauma Indigenous people have suffered, in particular as a result of the residential school system (2016 CHRT 2, para. 459); and
- Despite being aware of the adverse impacts of the FNCFS Program for many years, INAC has not significantly modified the program since its inception in 1990, and the efforts that have been made to improve the FNCFS Program, including through additional funding, fall short of addressing service gaps, denials, and adverse

impacts and, ultimately, fail to meet the goal of providing culturally appropriate child and family services to First Nations children and families living on-reserve that are reasonably comparable to those provided off-reserve (2016 CHRT 2, para. 461).

The First Nations Child and Family Caring Society of Canada has recommended a three step strategy for reforming child and welfare services:

- a) reconvene the National Advisory Committee to identify the discriminatory elements in funding and provide recommendations;
- b) fund tripartite regional tables to negotiate equitable and culturally based funding mechanisms and policies; and
- c) develop an independent oversight mechanism to ensure Indigenous and Northern Affairs maintains "nondiscriminatory and culturally appropriate First Nations child and family services." (2016 CHRT 2, para. 461).

For every First Nation in BC it will be important to work to ensure full, effective, and direct engagement in pursuing strategies and plans going forward in jointly developing solutions pursuant to the federal government's extensive commitments in this area. The findings of the CHRT and the federal government's response thus far are explored more fully throughout this report.

FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION

In 2015, the Truth and Reconciliation Commission released its Final Report, *Honouring the Truth, Reconciling for the Future*. The "Legacy" section of the TRC Final Report identifies five critical areas where action is required in order to redress the legacy

TRUTH AND RECONCILIATION COMMISSION FINAL REPORT – FIRST FIVE “CALLS TO ACTION”

TRC FINAL REPORT – CALLS TO ACTION (1-5):

1. *We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:*
 - i. *Monitoring and assessing neglect investigations.*
 - ii. *Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.*
 - iii. *Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.*
 - iv. *Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.*
 - v. *Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.*
2. *We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.*
3. *We call upon all levels of government to fully implement Jordan’s Principle.*
4. *We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:*
 - i. *Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.*
 - ii. *Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.*
 - iii. *Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.*
5. *We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.*



of residential schools and advance the process of reconciliation. The first five Calls to Action in the *TRC Final Report* deal directly with child welfare, including a call for the federal government to enact Indigenous child welfare legislation, affirming the right of Indigenous governments to establish and maintain their own child welfare agencies, and to establish a requirement that all placements of Indigenous children into temporary and permanent care be culturally appropriate. When taken together, the Calls to Action become an important foundation, supported by governments, for community based “root solutions” to deal with the “root causes” discussed earlier in this report of the inordinate number of Indigenous children in care. As discussed later in this section, the federal government has committed to implement all of the 94 Calls to Action in the *TRC Final Report*, starting with the implementation of the UNDRIP, as was noted above.

THE FEDERAL GOVERNMENT – COMMITMENTS AND ACTIONS

In lead up to the 2015 federal election, the federal Liberal Party, in response to a series of questions put forward by the First Nations Leadership Council regarding their official platform, committed that a Liberal government would work to ensure the following if elected:

- Acknowledge and address specific “root causes” of the overrepresentation of Indigenous children in care, such as high poverty levels and the disproportionate lack of educational and economic opportunities (commitment to include an investment of \$2.6B in education over four years);
- Prioritize creation of a new fiscal relationship with Indigenous peoples, providing sufficient,

predictable and sustained funding reflecting “actual costs of program delivery;”

- » To include removal of the two percent funding cap on First Nations in order to aid in ensuring that all First Nations receive equitable funding for child and family services on reserves;
- Engage with First Nations communities and leaders on decisions of investment;
- Extend to BC the Enhanced Prevention Focused Approach (EPFA), if First Nations in BC agree that is the preferred approach; and
- Re-engage with First Nations to specifically address progress in “housing, infrastructure, health and mental health care, community safety and policing, child welfare, and education,” as a part of the “root solutions.”

Following the 2015 federal election, the new government expressed their continued commitment to many of these campaign commitments. Included in the Prime Minister’s 2015 mandate letters to each of the cabinet ministers was the commitment to implement all 94 Calls to Action in the *TRC Final Report*. These commitments form an important foundation for a collaborative approach with First Nations to constructively address the significant social economic gaps.

The federal government, as noted above, has also made the decision not to appeal the 2016 *CHRT 2* decision. In a letter dated June 3, 2016 to the First Nations Summit Task Group, Minister Carolyn Bennett, INAC, confirmed that the federal government welcomes the 2016 *CHRT 2* decision and is eager to build on the work to reform the First Nations Child and Family Services Program, including engaging with organizations to identify appropriate steps that will “lead to concrete actions on program improvements, promoting

culturally appropriate services on reserve, and supporting positive outcomes for First Nations children and families.” The CHRT is now overseeing the implementation of remedies by INAC to rectify the abovementioned discrimination against First Nations children and families.

THE PROVINCIAL GOVERNMENT – COMMITMENTS AND ACTION

In BC, a number of accords and agreements between Indigenous representatives and provincial leadership have included specific commitments to improve Indigenous child welfare: the *Tsawwassen Accord*, the *New Relationship*, the *Transformative Change Accord* are just three examples from the last 15 years where positive change was promised.

On May 30-31, 2016, the province together with the First Nations Summit, BC Assembly of First Nations, and Union of BC Indian Chiefs held a BC First Nations Children and Family Gathering in Vancouver. The two-day session was based on a September 2015 commitment made by Premier Clark to the First Nations leadership attending the BC Cabinet-First Nations Leaders Gathering. At the May 2016 gathering, issues important to the future of Indigenous children, families and communities were carefully considered. A background document prepared by the First Nations Leadership Council (FNLC) organizations for First Nations leadership in advance of the gathering noted the following potential options or strategies to be pursued as Indigenous communities work to find a path forward:

- Options for the recognition and protection of Indigenous jurisdiction over child welfare

as a self-government right protected by Section 35(1);

- Options for the recognition of Indigenous customary laws over child welfare;
- Exploration of the Spallumcheen (Splats’in) bylaw approach;
- Explicit mutual agreement that any delegated model is “administrative” in nature only and is an interim measure to support a First Nation to move toward fully exercising its right of self-determination as an aspect of self-government; and
- A challenge to Section 88 of the *Indian Act* and the way that it incorporates provincial child welfare legislation (e.g. that it infringes Aboriginal rights in this area).

Although final decisions on the way forward were not made by First Nations leadership at the May 2016 gathering, Minister of Aboriginal Relations and Reconciliation John Rustad made three commitments on behalf of the Province.

First, Minister Rustad acknowledged the priority to take action at the local level. Immediate support is needed in Indigenous communities working for and with the children. Communities want to know which of their children are in care. The Minister promised to work with Indigenous communities at the local level to let them know where their children are. The Minister committed also that the Province would work to ensure social workers collaborate with Indigenous communities in this effort. MCFD’s local supervisors would soon be informed through a series of conferences, that their focus needs to be on reconciliation and working with Indigenous communities to support their work, and to keep their children safe and families together.

Second, the Minister confirmed that the Province would work with Indigenous leaders and the federal government to address a number of funding issues raised during the Gathering. The Province had undertaken this work independently in the past, the Minister offered and would now look to undertake this work collaboratively.

Finally, the Minister reinforced that the Province was committed to tasking a working group to address issues surrounding governance, with the involvement of the federal government and Indigenous representatives. Working together, efforts could be made to change programs, policies, and legislative frameworks. The TRC's Calls to Action and the concerns and calls for action voiced at the Gathering have been heard clearly, with Minister Rustad promising that the work that began at the Gathering, would not end with the close of the Gathering and rather was only the beginning.

Through my term as Special Advisor, consistent with the calls by Indigenous leaders for action, I have come to the conclusion that there is high level political commitment within the provincial government, including Premier Christy Clark, Minister of Children and Family Development Stephanie Cadieux, Attorney General and Minister of Justice Suzanne Anton, and Minister Rustad, as well as across Cabinet, to deal with the underlying root causes to reduce the number of Indigenous children in care. The issue is "how" the Province, Canada, and Indigenous communities will work together to achieve this.

As this report will illustrate, I do not believe it is sufficient to simply refine the existing child welfare structure and authority base with an internally accountable quality assurance framework premised on greater centralization and improved lines of communication. Nor do I believe it will suffice to

simply deploy more university-educated social workers, who – though often well intentioned – are without the knowledge and understanding of the Indigenous peoples with whom they work. A bigger and brighter version of the existing children welfare system will not address the concerns or meet the expectations of those Indigenous peoples with whom I met over the course of my engagements as Special Advisor.

The UNDRIP, Section 35 of the *Constitution Act, 1982*, the 2016 Canadian Human Rights Tribunal decision (2016 CHRT 2), the 2015 *TRC Final Report* – together with other legal instruments, including the *United Nations Convention on the Rights of the Child* – should guide reform of existing Indigenous child welfare services in BC. Therein, the minimum standards for respecting and protecting Indigenous human rights, the rights of a child, and the common law Aboriginal rights of Indigenous peoples inside Canada are well established.

Canada and BC have demonstrated willingness and some understanding of the steps required to both address the root causes of the existing ills of the child welfare system and practices, and to work with Indigenous peoples to support root solutions. Going forward, Canada and BC should anticipate that Indigenous peoples in BC will accept nothing less than measures that fully align with, respect and implement the rights of Indigenous children and families.

PRIME MINISTER TRUDEAU'S MANDATE LETTERS TO CABINET MINISTERS

ALL MANDATE LETTERS ADDRESSED TO CABINET MINISTERS INCLUDED THE FOLLOWING HIGH-LEVEL CLAUSE:

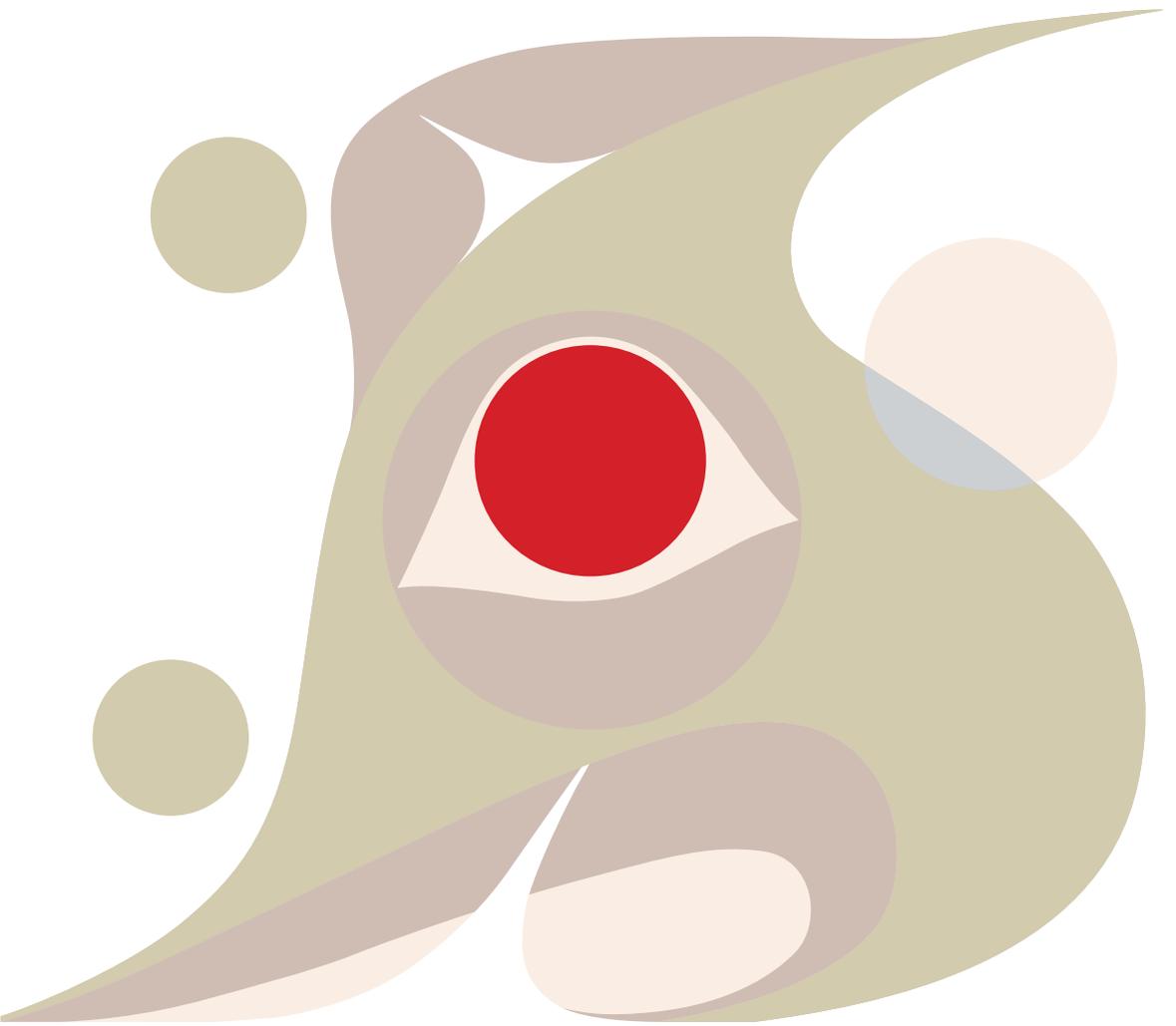
"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."

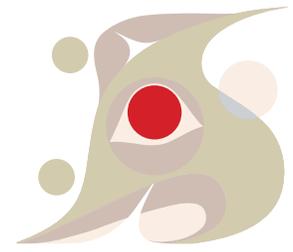
EXCERPT FROM THE MINISTER BENNETT'S (INAC) MANDATE LETTER:

"In particular, I expect you to work with your colleagues and through established legislative, regulatory, and Cabinet processes to deliver on your top priorities:

- *To support the work of reconciliation, and continue the necessary process of truth telling and healing, work with provinces and territories, and with First Nations, the Métis Nation, and Inuit, to implement recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.*
- *Develop, in collaboration with the Minister of Justice, and supported by the Minister of Status of Women, an approach to, and a mandate for, an inquiry into murdered and missing Indigenous women and girls in Canada, including the identification of a lead minister.*
- *Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights.*
- *Work with the Minister of Finance to establish a new fiscal relationship that lifts the 2% cap on annual funding increases and moves towards sufficient, predictable and sustained funding for First Nations communities.*
- *Make significant new investments in First Nations education to ensure that First Nations children on reserve receive a quality education while respecting the principle of First Nations control of First Nations education.*

- *Work with residential school survivors, First Nations, Métis Nation, Inuit communities, provinces, territories, and educators to incorporate Aboriginal and treaty rights, residential schools, and Indigenous contributions into school curricula.*
- *Work, on a nation-to-nation basis, with the Métis Nation to advance reconciliation and renew the relationship, based on cooperation, respect for rights, our international obligations, and a commitment to end the status quo.*
- *Collaborate with the Ministers of Natural Resources, Environment and Climate Change and Fisheries, Oceans and the Canadian Coast Guard to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects.*
- *Work with the Minister of Health to update and expand the Nutrition North program, in consultation with Northern communities.*
- *Work with the Minister of Families, Children and Social Development to launch consultations with provinces and territories and Indigenous Peoples on a National Early Learning and Childcare Framework as a first step towards delivering affordable, high-quality, flexible and fully inclusive child care.*
- *Work, in collaboration with the Minister of Infrastructure and Communities, and in consultation with First Nations, Inuit, and other stakeholders, to improve essential physical infrastructure for Indigenous communities including improving housing outcomes for Indigenous Peoples.*
- *Work with the Minister of Status of Women to support the Minister of Infrastructure and Communities in ensuring that no one fleeing domestic violence is left without a place to turn by growing and maintaining Canada's network of shelters and transition houses.*
- *Work with the Minister of Employment, Workforce Development and Labour and the Minister of Innovation, Science and Economic Development to promote economic development and create jobs for Indigenous Peoples."*





I. INTRODUCTION

GROUNDING THE WORK – A COMMITMENT TO FOCUS ON RESILIENCE, CONNECTEDNESS AND REUNIFICATION

In preparing this report, I have been especially conscious of the history and continuing experience of Indigenous peoples, including the fallout from the 60's Scoop and the legacy of Indian residential schools. I have met many individuals over the years looking to be reunited with their siblings, family, community, cultures, and languages. These individuals often expressed feelings of abandonment, but also of hope for some form of reunification. While their individual stories matter, they also share a “disconnection” that is deep and lasting. As a survivor of an Indian residential school, I understand intimately feelings of disconnection. These feelings never go away. Therefore, in approaching this work, I have made an effort to examine the issues from a place that recognizes the serious disconnection that exists and seeks out opportunities, based on the power of resilience, for reunification, to regain connectedness.

As a young university student in Victoria, a Kwakwaka'wakw friend gave me a copy of Alan Fry's controversial book, *How A People Die*. Upon reading, I was completely dismayed and infuriated. My friend explained how inaccurate the book was in its portrayal of the Kwakwaka'wakw people.

As Special Advisor, one of my earliest meetings was in Port Hardy in December 2015. When I recounted my experience reading *How a People Die* in that

meeting, attended by Kwakwaka'wakw political, cultural and hereditary leaders, elders, and parents and officials from Gwa'sala-Nakwaxda'xw Nations, Kwakiutl Nation and Quatsino First Nation, they provided me with a copy of their documentary, *How a People Live*.

The history of the Kwakwaka'wakw people and their suffering on the lands where they were re-located is well documented by anthropologists, archaeologists, and historians, all outsiders who described the Kwakwaka'wakw world through their own conceptual lenses. But today, the people tell their own stories, through their own worldview, using their own language. Through their traditional legal and political authority structures, they have revitalized and continue to practice their powerful teachings and culture. Their stories, songs, and ceremonies connect the Kwakwaka'wakw people to their ancient home place, underlying and celebrating who they are and where they come from. My heart lifted.

The federal government's solution to the “Indian problem,” enshrined in official policy and practice, was to “kill the Indian in the child.” A “solution” that is now condemned in innumerable provincial, federal, and international reports, commissions and studies, and understood instead as the root cause of so many contemporary issues, contributing significantly to the intergenerational trauma described earlier in this report. Witnessing the deep resilience and continued survival of the Kwakwaka'wakw people, despite the historical government imposed challenges struck me then and has stayed with me through this work as Special Advisor.

The concern that I hold and that I heard at that meeting in Kwakwaka'wakw territory, and indeed throughout my engagements in BC with Indigenous leaders, communities and families in their traditional territories, is that the current approach of BC and the federal government to child welfare policies and practices, and the resultant reality for many Indigenous children in BC is reminiscent and as dangerous as previous conduct on behalf of the Crown.

I purposefully recount now the stories and specific comments I heard at this meeting with the representatives from Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation, and Quatsino First Nation. As I come to the end of my work as Special Advisor, my mind returns to these individuals, their stories, and their comments. The meeting was illustrative of what I have heard from Indigenous peoples in other community sessions. Indeed, to varying degrees, all of my engagements have been consistent in tone, in focus, and in their emphasis on the need to address root causes. However, my purpose in singling out this meeting and sharing these stories is that it has been my experience that once these stories are unpacked they cannot, in good conscience, be packed neatly away.

My sincere hope is that the stories shared with me, and that I recount herein, are not packed away, but can instead inspire and motivate all who read the report, challenging each of us to do better and reminding us that parents, families and communities exist behind every child in care and that there is a real opportunity to work together in every instance to ensure each child remains connected and can be reunified. While it is true that the stories and comments shared point to the ills of the current system of Indigenous child welfare in BC, they are also instructive in terms of how we can establish pathways and patterns of connectedness that will lead to better futures for children, parents, and communities.

The Kwakwaka'wakw people – A Story of “Cultural Genocide”

The Kwakwaka'wakw people were forcibly relocated from their mainland homes and villages by federal government officials who, whilst burning their houses and furnishings to ensure they did not return, ostensibly offered assurance to the Kwakwaka'wakw people that it was for their own good. Kwakwaka'wakw children were taken to church-run Indian residential schools, where they were to be “civilized” and “christianized.”

For the Kwakwaka'wakw people, the practice of the “potlatch,” central to their political authorities and systems, cultural practices, identity and existence as Indigenous peoples, was criminalized when the federal government outlawed it in the 1880s. For the Kwakwaka'wakw people, outlawing the potlatch resulted in the significant undermining of their traditional political and legal structures, authorities, and practices; the confiscation and destruction of their priceless traditional regalia and cultural treasures used to recount their ancient stories and histories about who they are and about their ancient places and ties to their homelands, and the wrongful incarceration of their Hemas/Chiefs and cultural leaders.

The lands and resources within their traditional territories were unilaterally taken by Crown governments to make way for settlement and the considerable natural resources within their traditional lands were tenured to outside economic interests. In many instances, highly valued resources were pillaged and the lands devastated, leaving a peoples without their traditional subsistence base and economic and wealth generating territories. Indeed, in its final report, Canada's Truth and Reconciliation Commission concluded this could be described as nothing short of “cultural genocide.”



MEETING WITH GWA'SALA- 'NAKWAXDA'XW NATIONS, KWAKIUTL NATION AND QUATSINO FIRST NATION

At the time of my meeting in Port Hardy, the Kwakwaka'wakw communities I met with had between them 62 children and youth from their communities who were in permanent care of the provincial government under continuing custody orders (CCO), either with MCFD or with a DAA outside of the area. To the Hereditary Chiefs, matriarchs, and elected Chief and council of each of these communities, I provided three separate lists of the children and youth in care from their small communities. For these First Nations, there is no DAA in the area to deal with Indigenous child welfare; however, there are three such agencies in Victoria.

Those attending the meeting advised me that they have never had access to this information and that they were not aware that they were entitled to have the specific information on each and every child from their communities who were in permanent care of the government under CCOs. In the past, they shared with me, they were told "privacy" issues existed which prevented their access to this information.

Several individuals in attendance conveyed to me their understanding that MCFD officials routinely use "privacy" as a shield to withhold information. Clearly, those in attendance at this meeting were astounded to know they were entitled to this information and, specifically, to have a detailed list of all of their children who were under CCOs. I had to assure them that, in accordance with existing laws, they were entitled to have access to the lists containing the names of their children. I could

confidently offer this assurance given that at the outset of my appointment, I asked for clarification from MCFD officials on the issue of "privacy".

Throughout this meeting, the clarity of their words embodied deep and committed passion for the future of their children and for their collective well being as Kwakwaka'wakw people. Where partners working towards a common cause should have existed, the stories shared with me, unbridled and unrepentant, pointed to what I can only conclude to be a massively ruptured relationship between the communities, and MCFD locally and in the region. Those present admitted their hesitation in meeting with me, fearing repercussions from certain local and regional MCFD officials for doing so.

The stories recounted were heartbreaking. The leadership recommended specifically that I advise senior MCFD officials in Victoria to undertake a review of the practices, which I have done.

The irony of all this is that MCFD receives funding from INAC for services provided to these communities. For those First Nations who are not affiliated with DAAs, INAC pays MCFD \$29.5 million a year under a service agreement.

The underlying question is in what way, and to whom, is MCFD accountable. Section 3 of *CFCSA* establishes principles for MCFD relationships and accountabilities to First Nations. Notwithstanding this, it is clear to me that MCFD, in practice, is not accountable to the local First Nations and their elected and hereditary leaders. A written protocol between Indigenous communities and MCFD, respectfully implemented, can assist in rectifying this issue.

What I heard – Meeting with Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation and Quatsino First Nation

I was advised that a young girl, in line for an important traditional name she was to receive at an upcoming potlatch, was denied access to the potlatch by MCFD officials. Seeing this as an act of “insensitivity” by MCFD social officials, representatives at the meeting described the act as one of “cultural alienation” and continued “cultural genocide.”

I was told by the uncle of a young father whose children were apprehended and taken into care by MCFD that, despite the best efforts of the father to comply with the MCFD conditions required for his children to be returned to him, including his attendance at a treatment centre on three occasions, this young father was routinely denied access to his children by MCFD officials. MCFD officials, I was advised, had no intention of returning the children. Nowhere to turn, the young father gave up and in the ultimate act of despair, committed suicide.

I spoke with a couple who, struggling with substance abuse, had six of their children removed. The couple explained how they went through mediation and followed up on their commitments to MCFD to have their children returned, but to no avail. The mother emotionally recounted how she had a new baby born in early November 2015 and was invited by MCFD officials to a meeting at the local MCFD office. When she arrived at the office, her newborn with her, the baby was apprehended by a social worker. Desperation in her voice, she pleaded with me, “I want to have hope. I have waited a long time.”

Frustrated community members and administrators expressed anger that young parents from their communities are routinely coerced, in their words, by MCFD officials into signing documents, such as voluntary care agreements, which these young parents either do not understand or the implications of which they do not fully realize.

REVERBERATING COMMENTS FROM THE KWAKWAKA'WAKW MEETING

"Our children in (MCFD) care are an industry."

"We develop protocols with MCFD, which they ignore."

"The MCFD protocols are not worth the paper they are written on."

"We meet with MCFD to develop permanency plans and to make recommendations, but these are never followed."

"Social workers constantly change goal posts on their own."

"We do not meet at MCFD offices, it is intimidating."

"Instead of fostering a supportive practice, MCFD officials are punitive."

"Social workers routinely act on rumors, and do not contact us to clarify issues."

"Cultural plans may be required, but they are always seen by MCFD as the least important."

"Foster parents have more authority than the parents, the Council and community."

"Foster parents do not bring the children to our potlatches."

"Our kids are placed all over the region."

"We do not know where our kids are."

"Almost 90% of children in care in our region are Indigenous."

"Eligible homes on reserve are routinely shut down by MCFD."

"MCFD says our homes are unfit."

"There are high rates of social worker turnover in the region, this should be examined by reference to exit interviews."

"We need to be involved in the hiring of new social workers."

"My grandson and his wife had a baby and MCFD took the baby at the hospital, the most inhumane thing to do."

"What accountability do social workers have to our community?"

"Legislation provides support (cultural), but it is not carried out in practice".

Dean Wilson, Director of Child and Family Services at Gwa'sala-'Nakwaxda'xw Nations, himself an advocate for children and families, with over 25 years experience, provided his analysis of the MCFD "structured decision making" model and process. Mr. Wilson concluded that if he applied MCFD's standards, his own home and family would be labelled "high risk," adding "it is almost impossible to get our kids back."

The stories shared in this meeting with Kwakwaka'wakw communities are clearly about people struggling to survive intergenerational trauma. They are stories of dislocation and relocation, of marginalization, and of victims of indifference at best and systemic racism at worst. There is heartbreak behind every one of the 62 children from their communities who are under CCO and whose names are on the lists I provided. I heard it in their tone and in the stories they told.

These Kwakwaka'wakw communities and their children are not lost, however. Enterprising and with many successes of which to be proud, they turn increasingly to their deep cultural roots, guiding traditions, and teachings to provide hope and to nurture lasting solutions for their families and children. They are teaching and training their children and youth their cultural ways and practices, and they are doing so in their languages. As well, they are working to ensure Kwakwaka'wakw children are supported to succeed in the public education system. They are immensely proud of who they are, where they come from and of their accomplishments. This is how a people survive and I left this meeting understanding clearly that they are seeking that those who work with their peoples and communities see this, understand and respect it and support, not frustrate, their efforts to survive. I have the highest regard for the very difficult work MCFD staff, including social workers, do each

and every day, often in very trying circumstances. However, I cannot ignore the peoples' stories which were told to me with some apprehension, but with courage and passion.

At this meeting with the Kwakwaka'wakw communities and throughout my appointment, anger and hostility towards MCFD was evident at times. "We have told other people before and nothing has changed," I was often warned. At nearly all of the community sessions I have attended, the feelings of powerlessness have been as evident as the outright expressions of anger. A deep frustration exists that those closest to the impacted Indigenous children and youth,

"Our number one priority is our responsibilities for our children; we will make decisions and we will look after our children. We now provide services in health, education and in other areas."

- Chief Councillor Leslie Dickie, Kwakiutl First Nation

"What power do we have? We need to uplift our matriarchs and Hereditary Chiefs, who carry our traditional knowledge and expertise."

- Chief Paddy Walkus, Gwa'sala-'Nakwaxda'xw Nations

families, and communities remain largely unheard. It is my opinion, given the above situation of the Kwakwaka'wakw peoples and the similar stories and concerns expressed to me throughout BC, continued independent oversight by the BC Representative for Children and Youth (RCY) of the child welfare system is critical.

KWAKWAKA'WAKW MEETING – SUMMARY OF RECOMMENDATIONS

With strong commitment, and exemplifying a spirit of hope and optimism, the Kwakwaka'wakw leaders, officials, elders and community members who attended the December 2015 meeting on child welfare outlined a strong basis for their desired approach going forward, including some specific recommendations.

The following is a short summary of the recommendations brought forward at the Kwakwaka'wakw meeting:

1. A formal community-based protocol is necessary between each First Nation and the regional MCFD office, to confirm commitments regarding building and maintaining constructive and positive working relationships and communications in all aspects of child welfare practice in their communities and in the region;
2. A child and family advocate is needed for each community as support service to families who need it as well as for the leaders and community, for MCFD and for the police;
3. Support and resources are urgently required for community developed services for children and families, which respect who we are as Kwakwaka'wakw and include support to uplift our elders, matriarchs and hereditary leadership;
4. The matter of setting up a DAA for the region was also raised as an option.*

**Note: I am not certain as to the status of this option among all of the First Nations in the region.*

Throughout the struggles and heartache that have been experienced by the Nations in Port Hardy they have worked hard to create solutions. Gwa'sala-'Nakwaxda'xw has reached out to Kw'umut Lelum Child and Family Services to explore the idea of receiving services through the Delegated Aboriginal Agency. Gwa'sala-'Nakwaxda'xw is actively seeking solutions to better support their children and families.

If political will exists, and there is administrative commitment for transformative change, Indigenous people and communities are ready. They understand the root causes best and need to be fully and effectively involved in developing root solutions. They need to be respected partners in the decision-making processes, able to exercise the authorities and responsibilities they have always had for their children.

There is broad acknowledgment that the intergenerational trauma as a result of state policy and practice has to stop. The question is how to effectively act on this acknowledgement. What is required is that citizens and governments recognize the considerable cumulative damages of past and present policy and practice and take immediate steps to support Indigenous children, parents, families, and communities to develop and nurture their own solutions – this is the only road to re-establish patterns of connectedness.

SCOPE OF THE REPORT

Given the limited timeframe of my appointment, and in order to rationalize and prioritize the work, my focus as Special Advisor has been on meeting with Indigenous communities and their leaders (both elected and traditional), families, and children and youth throughout the province to better understand their concerns, the impacts of existing intergovernmental (BC/Canada) relations, as well as the impacts of government legislation, policies, and practice.

Over the term of my appointment, I have met with First Nations communities, representatives of DAAs, elected politicians from the government and opposition parties in BC, judges, lawyers representing MCFD and Indigenous children and families, MCFD officials from the 13 MCFD regions and Victoria. I met with members of the First Nations Leadership Council, with representatives of many of the First Nations provincial councils and agencies, and with Métis leadership and organizations. In short, I sought out meetings with those who have a direct role in matters relating to Indigenous children in care in BC. In addition, I have had a number of discussions with senior federal

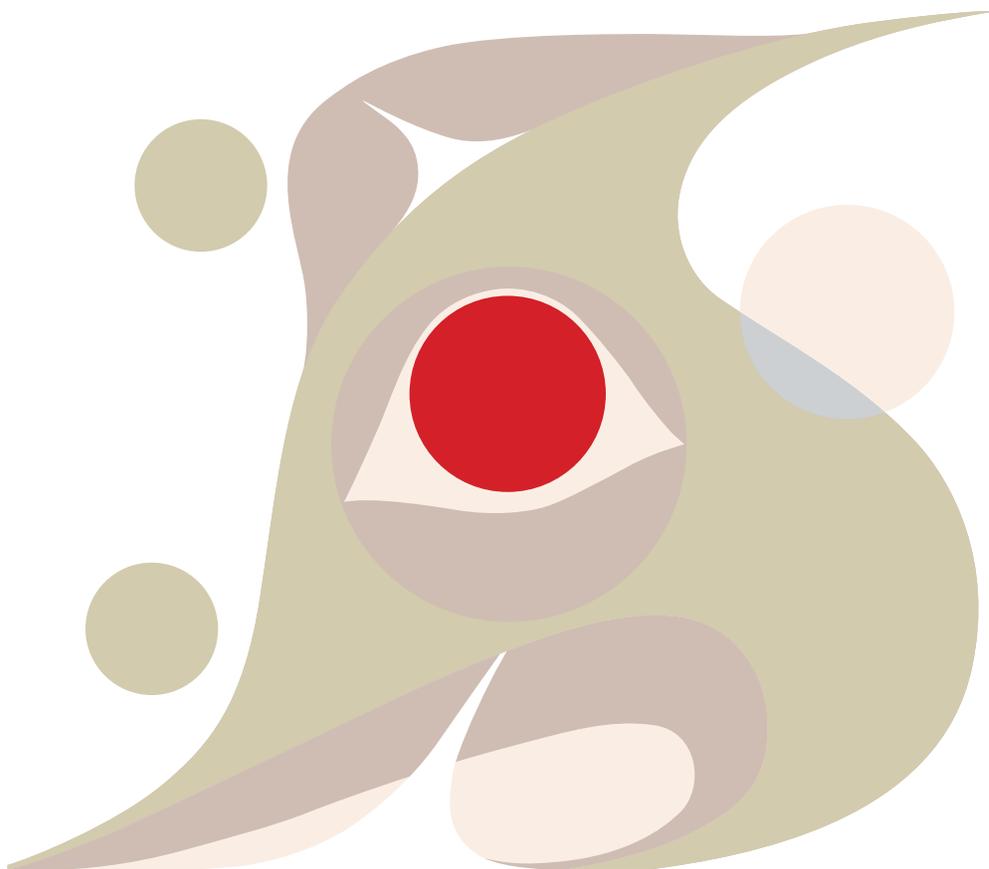
officials, including Indigenous and Northern Affairs Minister Carolyn Bennett.

I thank all those with whom I met, and who generously gave of their expertise and time to help inform this report. This report is focused on my observations and information shared with me both at these meetings and in later submissions from those with whom I met. The recommendations herein are derived from listening to and reflecting on the voices of those children, families, elders, leaders, and communities directly engaged in or affected by the existing child welfare system in BC.

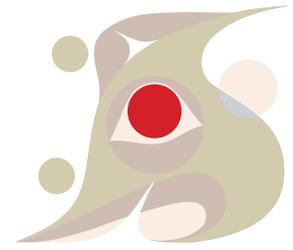
Since the day of my appointment, several guidelines have grounded my work and as a result these also inform the structure and direction of this report and its recommendations. These guidelines have been as follows:

- While the overarching goal is to see the numbers of Indigenous children under CCOs reduced, this should not be an exercise in reducing overall provincial government financial commitments to Indigenous CCO and their parents and families;
- Intergenerational trauma and the associated challenges (poverty, unemployment, education completion, limited and/or inequitable funding to Indigenous communities to provide comparable services, etc.) are faced by parents and families in Indigenous communities and so solutions should focus on addressing the intergenerational trauma and these associated challenges;
- The way forward must be child, parent, family, and Indigenous community based, even where children under CCOs live in towns or cities across the province, Canada or abroad. The underlying principle is to recognize the reality that no matter where a child under CCO resides he/she is still a member of their Indigenous community;

- Necessary financial support must be directed to parents, families, and individual Indigenous communities, or where an Indigenous community decides, to an organization (i.e. DAA) which they have they established to provide the necessary services;
- The autonomy of each Indigenous community is crucial and to be respected and as such the Province needs to have full and effective engagement with Indigenous communities and leadership to develop and agree to joint permanency plans for each child under a CCO; and
- Where specific issues arise, these will be dealt with on an urgent and priority basis.



II. AREAS FOR FOCUSED ACTION



As noted earlier, in September 2015 I was retained by the Minister of Children and Family Development to provide advice on how to address the inordinate number of Indigenous children in care of government. Shortly after my appointment, I was provided with a document presented to the Council of the Federation where the Premiers considered Indigenous child welfare. The document referred to the many and prevalent “root causes” inside Indigenous communities contributing to the high numbers of Indigenous children in care, and inferred that Indigenous peoples were largely, if not solely, responsible for their own situation. Over the term of my appointment, I have come to the conclusion that both federal and provincial legislation, regulations, policies and practices continue to also contribute in significant ways to the root causes identified not only in this document, but indeed in so many of the studies, decisions, and reports that have considered the current state of Indigenous child welfare.

This report is organized under 10 areas for focused action. It identifies the challenges and opportunities present in each of these areas, as well as the root causes linked to many of these existing challenges, which overlap substantively. The reader should therefore be attentive to the linkages and the relationships between all of the recommended actions.

Forging a way ahead in Indigenous child welfare by pursuing the root solutions is the highest objective of this report, and many of the recommended

actions speak to addressing the root causes directly, in support of this objective. Often presented as long-term recommendations, root solutions support a vision where Indigenous, federal, and provincial issues of jurisdiction over children, families and communities are considered and resolved; and, where the debilitating socio-economic circumstances that exist today have been met or are currently being addressed with proactive action plans developed jointly by Crown governments, Indigenous governments and Indigenous peoples.

The report, however, also recognizes and speaks to the period of transition currently underway as Indigenous peoples and communities transition away from governance under the *Indian Act*, and work to rebuild our governance capacity, core governance institutions, and assert our jurisdiction based on the needs and priorities determined by our own communities. In recognition of this important period of transition, and motivated by the desire that no child, parent, family, or community be left behind, the report also recommends specific shorter-term actions that should be taken to improve legislative and administrative measures relating to the welfare of Indigenous children, families, and communities. Without important short-term actions, many of the existing standards and practices, including the Director’s current exercise of large discretionary authorities and powers within BC, will further exacerbate many of the challenges that exist and contribute to making some of the root solutions further from reach. DAAs, for example, have inherent limitations but

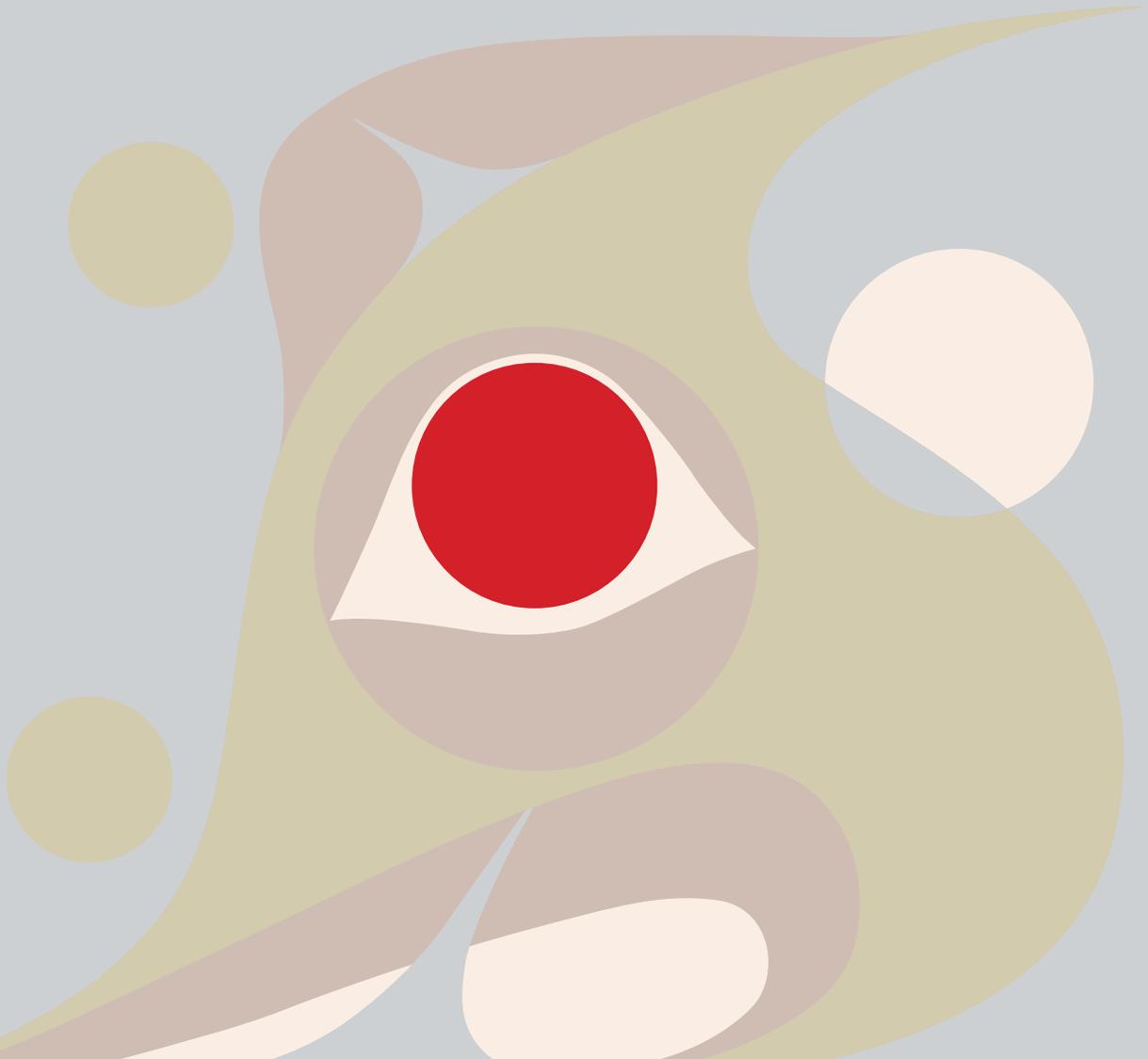
they have experience and expertise that Indigenous communities can build on and use as a spring board to increase Indigenous jurisdiction over child welfare. Well-planned support to a DAA in the short term can therefore be one effective way to support an Indigenous community's longer-term goal of full jurisdiction over child welfare.

All of the recommended actions in this report, whether they are long-term recommendations or shorter-term interim solutions, are based on recognition of and implementation of the rights of Indigenous children, families, and communities.



AREAS FOR FOCUSED ACTION

AREA 1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES



AREA 1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES

During my many meetings, individuals described their hopes for Indigenous children.

They described safe and secure environments inside communities, where our children and parents have access to an education that honours Indigenous languages and culture, and leads to opportunities previous generations have not enjoyed. They expressed optimism that Indigenous children and youth would be able to live out their childhood and grow into adulthood with dignity and well-being as Indigenous people.

Those Indigenous people at the meetings I attended also consistently shared their overwhelming concern for the well-being of our children. They acknowledged intergenerational trauma and the resultant and very serious challenges facing many parents, families, and communities. They emphasized their belief that parents and families are at the heart of community healing that is required to address the challenges of the current child welfare system.

“We want our children back, but we have to be careful about what they are returning to...”

– Chief Dora Wilson, Hagwilget Village Council

In virtually every meeting with the hereditary and elected Chiefs, councillors and elders that I attended, what I heard was, “we are fighting for our children; they were taken away.” Indeed, it is well-documented, Indigenous parents and families have been engaged in a struggle between state

governments and colonial policies throughout Canada’s history. On one side, the state and its policies – which we now universally understand as having sought to eradicate Indigenous culture, languages, and peoples – and on the other side, Indigenous parents fighting themselves to survive and to see their children and families survive and thrive as Indigenous people. This report speaks to that continuing struggle, and this section of the report provides specific recommendations to ensure the following:

- A commitment to direct investment on the front-line in Indigenous communities;
- A commitment to invest in Nation-to-Nation partnerships between the state governments and Indigenous communities; and
- A significant commitment to invest in and honour the important role of Indigenous parents and families in the lives of Indigenous children.

Reshaping Indigenous child welfare in BC so that Indigenous children and families have the direct support within their communities is the first area for focused action addressed in this report, and it is also a central theme in each of the subsequent sections of the report.

“...they are stealing our children.”

– Coast Salish elder from Chemainus

“The MCFD social workers take our children and place them in foster homes all over the region; meanwhile, our homes which are open are routinely shut down...”

– Kwakiutl elder

The position that focus and investment is required in Indigenous children, parents, and families within their own communities to address root concerns is not new. In 1996, the Royal Commission on Aboriginal Peoples (RCAP) Final Report, reflecting on the child welfare system and Indigenous children in care, made the following observation:

Many experts in the child welfare field are coming to believe that the removal of any child from his/her parents is inherently damaging, in and of itself....The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. The Native child is placed in a position of triple jeopardy. (RCAP, Final Report, Volume 3, p.23-24)

The RCAP Final Report concluded definitively that there was a need to invest in Indigenous communities in order to address the “inherent damage” done in removing Indigenous children from parents and their communities. Recommendations 3.2.1 and 3.2.4 of the RCAP Final Report, V.3, directly addressed the need to support families and communities.

In addition, the *TRC Final Report* calls upon all governments to provide adequate resources to enable Indigenous communities to keep Indigenous families together when possible and to keep Indigenous children in culturally appropriate environments. Resoundingly, the *TRC Final Report* points to the powerful potential for Indigenous people and communities to lead the work of

reconciliation and to direct the change required in areas such as Indigenous child welfare.

THE RCAP FINAL REPORT RECOMMENDED THAT

3.2.1 The government of Canada acknowledge a fiduciary responsibility to support Aboriginal nations and their communities in restoring Aboriginal families to a state of health and wholeness.

3.2.4 Block funding be provided to child welfare agencies mandated by Aboriginal governments or communities to facilitate a shift in focus from alternative child care to family support.

ON THE FRONT-LINE IN INDIGENOUS COMMUNITIES

The work of Indigenous communities each day – managing intergenerational trauma and the deep and crushing poverty that often manifests as a result – is difficult. Many Indigenous parents and families rely on what the land, waters and seas provide: hunting, fishing, and gathering. In the past, these activities were criminalized. However, many of the rights to access food such as deer, salmon, moose, freshwater fish, and coastal seafoods, have now been won in adversarial, costly, and time-consuming court cases. At the same time, state governments have propped up and provided significant financial and administrative support to a child welfare system that the CHRT confirms works in ways to incentivize removing Indigenous children from their parents or families over the alternatives.

A 2011 REPORT TO THE MÉTIS COMMISSION FOR CHILDREN AND FAMILIES OF BRITISH COLUMBIA ON MÉTIS CHILD WELFARE – KEY RECOMMENDATIONS

1. *Métis child and family wellness in British Columbia requires a strong foundation of extended family care and renewed traditional child caring responsibilities such as customary adoption and grandparent teachings.*
2. *Métis services must focus on prevention and support to families to prevent further child welfare intrusion into their lives.*
3. *Métis organizations and leadership need to collaborate to examine some of the broader issues impacting Métis families such as poverty, housing, addictions, family violence and health concerns, including access to mental health services.*
4. *Inter-agency collaboration, secondments and integrated community services will benefit Métis services and build a strong foundation for improved services to Métis children and families in British Columbia.*
11. *Resources are required to ensure that the focus remains on maintaining family ties and community services.*

TRUTH AND RECONCILIATION COMMISSION AND CHILD WELFARE – FOCUS ON INDIGENOUS COMMUNITIES

1. *We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:*
 - ii. *Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside. (Call to Action 1.ii)*



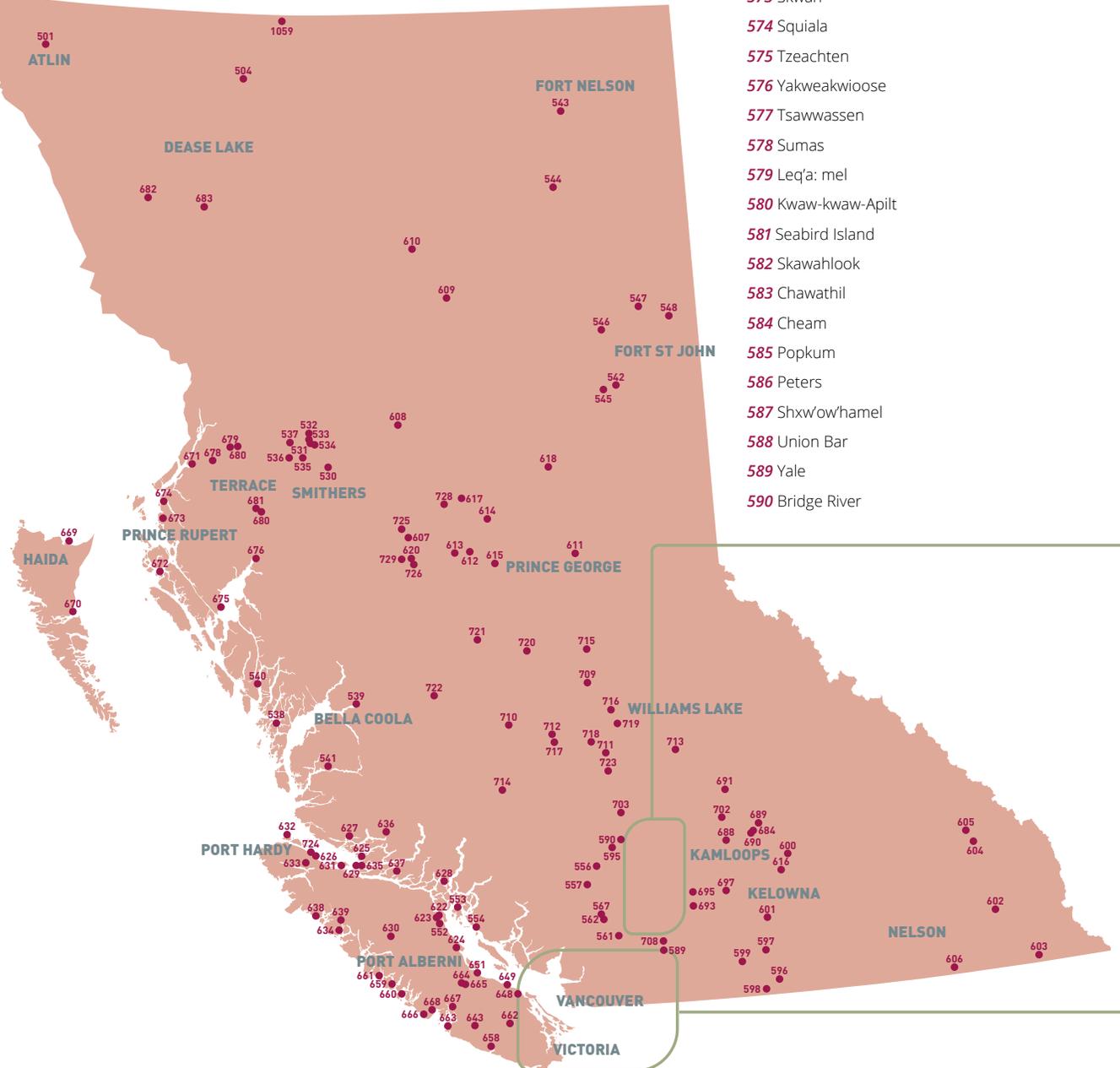
FIGURE 8: FIRST NATIONS COMMUNITIES IN BC

501 Taku River Tlingit
 504 Dease River
 530 Moricetown
 531 Gitanmaax
 532 Kispiox
 533 Glen Vowell
 534 Hagwilget
 535 Gitsegukla
 536 Gitwangak
 537 Gitanyow
 538 Heiltsuk

539 Nuxalk
 540 Kitasoo
 541 Wuikinuxv
 542 Saulteau
 543 Fort Nelson
 544 Prophet River
 545 West Moberly
 546 Halfway River
 547 Blueberry River
 548 Doig River
 549 Tseil-Waututh

550 Musqueam
 551 Sechelt
 552 Homalco
 553 Klahoose
 554 Tla'amin
 555 Squamish
 556 N'Quatqua
 557 Lil'wat
 558 Aitchelitz
 559 Sts'ailes
 560 Kwikwetlem

561 Douglas
 562 Skatin
 563 Katzie
 564 Kwantlen
 565 Matsqui
 566 New Westminster
 567 Samahquam
 568 Sq'ewlets
 569 Semiahmoo
 570 Shxwhá:y Village
 571 Skowkale
 572 Soowahlie
 573 Skwah
 574 Squiala
 575 Tzeachten
 576 Yakwekwioose
 577 Tsawwassen
 578 Sumas
 579 Leq'a: mel
 580 Kwaw-kwaw-Apilt
 581 Seabird Island
 582 Skawahlook
 583 Chawathil
 584 Cheam
 585 Popkum
 586 Peters
 587 Shxw'owhamel
 588 Union Bar
 589 Yale
 590 Bridge River



591 Cayoose Creek
 592 Xaxli'p
 593 T'it'q'et
 594 Ts'kw'aylaxw
 595 Tsal'alh
 596 Osoyoos
 597 Penticton
 598 Lower Similkameen
 599 Upper Similkameen
 600 Splatshin
 601 Westbank
 602 ?aqam
 603 Tobacco Plains

604 ?Akisq'nuk
 605 Shuswap
 606 Lower Kootenay
 607 Lake Babine
 608 Takla Lake
 609 Tsay Keh Dene
 610 Kwadacha
 611 Lheidli T'enneh
 612 Nadleh Whut'en
 613 Stelat'en
 614 Nak'azdli Whut'en
 615 Saikuz
 616 Okanagan

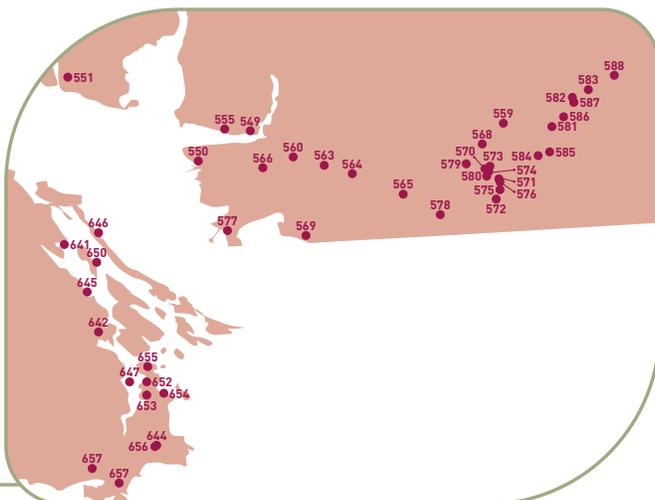
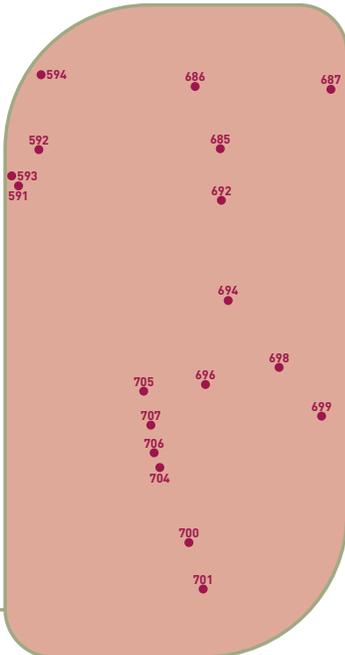
637 Tlowitsis
 638 Ka:'yu:'kt'h'/Che:k'tles7et'h'
 639 Nuchatlaht
 640 Beecher Bay
 641 Stz'uminus
 642 Cowichan
 643 Lake Cowichan
 644 Esquimalt
 645 Halalt
 646 Lyackson
 647 Malahat
 648 Snuneymuxw
 649 Nanoose

683 Iskut
 684 Adams Lake
 685 Ashcroft
 686 Bonaparte
 687 Skeetchestn
 688 Tk'emlúps te Secwépemc
 689 Little Shuswap Lake
 690 Neskonlith
 691 Simpcw
 692 Oregon Jack Creek
 693 Coldwater
 694 Cook's Ferry
 695 Lower Nicola
 696 Nicomen
 697 Upper Nicola
 698 Shackan
 699 Nooaitch
 700 Boothroyd
 701 Boston Bar
 702 Whispering Pines/Clinton
 703 High Bar
 704 Kanaka Bar
 705 Lytton
 706 Siska
 707 Skuppah
 708 Spuzzum
 709 ?Esdilagh
 710 Alexis Creek
 711 Esk'etemc
 712 Tl'etinqox
 713 Canim lake
 714 Xení Gwet'in
 715 Lhtako Dene
 716 Soda Creek
 717 Yunesit'in
 718 Toosey
 719 Williams Lake
 720 Nazko
 721 Lhoosk'uz Dene
 722 Ulkatcho
 723 Stswecem'c Xgat'tem
 724 Gwa'sala-'Nakwaxda'xw
 725 Wet'suwet'en
 726 Nee-Tahi-Buhn
 728 Yekooche
 729 Skin Tyee
 1059 Daylu Dena

617 Tl'azt'en
 618 McLeod Lake
 619 Burns Lake
 620 Cheslatta Carrier
 622 Campbell River
 623 Cape Mudge
 624 K'omoks
 625 Kwikwasut'inuxw
 Haxwa'mis
 626 Kwakiutl
 627 Gwawaenuk
 628 Kwiakah
 629 Mamalilikulla
 630 Mowachaht/Muchalaht
 631 'Namgis
 632 Tlatlasikwala
 633 Quatsino
 634 Ehattesaht
 635 Da'naxda'xw
 636 Dzawada'enuxw

650 Penelakut
 651 Qualicum
 652 Pauquachin
 653 Tsartlip
 654 Tsawout
 655 Tseycum
 656 Songhees
 657 T'sou-ke
 658 Pacheedaht
 659 Ahousaht
 660 Tla-o-qui-aht
 661 Hesquiaht
 662 Ditidaht
 663 Huu-ay-aht
 664 Hupacasath
 665 Tseshaht
 666 Toquaht
 667 Uchucklesaht
 668 Ucluelet
 669 Old Massett

670 Skidegate
 671 Nisga'a Village of Gingolx
 672 Gitxaala
 673 Metlakatla
 674 Lax Kw'alaams
 675 Gitga'at
 676 Haisla
 677 Nisga'a Village of
 New Aiyansh
 678 Nisga'a Village of
 Laxgalt'sap
 679 Nisga'a Village of
 Gitwinksihlkw
 680 Kitselas
 681 Kitsumkalum
 682 Tahltan



Currently, a child is removed, without a court order, when the Director investigates an expression of “concern.” Section 13 of the *CFCSA* outlines the circumstances in which a child needs protection. Under the current legislation, once a child is removed, parents and Indigenous communities fall under the discretionary authority and power of the Director and in practice this means an extremely large burden is placed on parents, families, and communities. If they wish their children returned, parents must comply with a maze of conditions set out by the Director. Then, at the discretion of the Director, if the conditions are not met, the child remains in care.

I spoke with many Indigenous parents, families, and child welfare practitioners inside communities about the experience of Indigenous parents. I was instructed that in some instances, even where parents meet conditions, the Director has demonstrated a lack of willingness to return the child or has gone further and imposed new conditions on the parents. The need to address

the real and perceived power imbalance that exists today within this system was a theme of many of the comments, concerns, and recommendations that were raised with me. Indigenous parents, from the perspective of many I spoke with, have little or no recourse and feel powerless.

At the front-line service level, those I met with spoke about challenges that exist and strained relations in part due to the fact that significant investments in the child welfare system are not currently being made directly inside Indigenous communities. Those on the front-line are most often not located within Indigenous communities, limiting their understanding and their ability to work cooperatively or effectively with Indigenous communities to deliver child welfare services to Indigenous children and youth.

At the time of writing, MCFD has committed to hire 200 new social workers. This commitment came following the BC Government and Service Employees’ Union (BCGEU) report in 2014 titled,

WHEN PROTECTION IS NEEDED ACCORDING TO SECTION 13 OF THE *CFCSA*

13 (1) *A child needs protection in the following circumstances:*

- (a) if the child has been, or is likely to be, physically harmed by the child’s parent;*
- (b) if the child has been, or is likely to be, sexually abused or exploited by the child’s parent;*
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child’s parent is unwilling or unable to protect the child;*
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child’s parent;*
- (e) if the child is emotionally harmed by*
 - (i) the parent’s conduct, or*

(ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;

(f) if the child is deprived of necessary health care;

(g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;

(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;

(i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care;

(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be:

(a) encouraged or helped to engage in prostitution; or

(b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

(a) anxiety;

(b) depression;

(c) withdrawal; or

(d) self-destructive or aggressive behaviour.



An indigenous principal at the school district explained that “young moms and parents are living in poverty” creating challenges for their children attending local schools, but communities are working hard to re-vitalize their cultures and language.

“I said to a social worker a few weeks ago, it takes you less than five minutes to come into my community and take one of my children. But for us - if we do not get that child back within 18 months, they are not coming back until they are adults.”

– Chief Susan Miller, Katzie First Nation (First Nations Summit, June 2016)

Choose Children: A case for reinvesting in child, youth, and family services in British Columbia, and the subsequent 2015 BCGEU report titled, *Closing the Circle – A case for reinvesting in Aboriginal child, youth and family services in British Columbia*. In *Choose Children*, five significant areas for concern and corresponding recommendations are presented. The report paints an alarming picture of the child welfare system in BC, describing how front-line child welfare professionals are being tasked to do more with decreasing resources and highlighting that this is further exacerbated in remote and non-urban regions. *Choose Children* recommended, among other things, that the Province take immediate steps to address chronic problems of understaffing and poor staff management, both for front-line workers directly delivering services and the workers that support them. In 2015, the Province responded by committing to hire 200 new social workers.

MCFD's significant commitment to hire new social workers should be accompanied by a commitment to proactively develop plans to recruit, retain and

promote the success of Indigenous individuals in these positions. Additionally, many of the new social workers should be placed not in downtown urban centres, but within the 203 First Nations communities across the province and where there is significant need for their professional skills and services.

In BC, the Sts'ailes project in the Fraser Region is an example of front-line child welfare workers being successfully located inside an Indigenous community. The Sts'ailes project is a model centered around a co-located office in Sts'ailes. In this example, three MCFD social workers, together with advocates and other workers from the community, provide child welfare services to the Sts'ailes community.

The regional MCFD office and the Sts'ailes Nation worked together to develop this model with the stated intention to embed MCFD clinicians/social workers/child protection workers on site with the Sts'ailes Nation in order to increase meaningful engagement and to focus on proactive and preventative child welfare services. Initiating the project required leadership from both the Sts'ailes Nation and the MCFD Regional Executive Director of Services for the Fraser region.

Today, MCFD workers work with the Sts'ailes Nation out of this community office every day on everything from prevention, to apprehension, to permanency. The Sts'ailes Nation works together with MCFD to identify child welfare workers and elder advisors to this office. Those involved with the model describe the strong cultural presence of the elders and the use of the teachings from the Sts'ailes Nation longhouse as central to this model. As well, Sts'ailes Nation has established their own policies and practice standards, appropriate to their needs and culture.

I am advised that for the time being this model is working well for the Sts'ailes Nation and is viewed as a positive step toward assuming more and eventually all of the responsibilities in the area of child welfare for their children and youth. The Sts'ailes peoples have extensive family and cultural relations with Indian Tribes in Washington State who already exercise full authority under the US federal *Indian Child Welfare Act*, and the Sts'ailes Nation have expressed a desire to go further, motivated by what they see is possible. The Sts'ailes model is, nonetheless, a promising practice and offers useful insights on the collaboration possible between governments during this period of reconciliation and transition.

The intention in raising the Sts'ailes model in this report is not to suggest that it can or should be applied universally or that it is the only model worth pursuing. Rather, the model is referenced as a promising practice that other MCFD regions and Indigenous communities can learn from, and is celebrated herein for the investment that one MCFD region has made through this project directly in the Sts'ailes community. Based in part on what

has been learned to date through the Sts'ailes pilot, several recommendations are made later in this section of the report that speak to the need for MCFD and INAC to commit jointly to invest core funding directly in Indigenous communities on a sustained basis (Recommendations 1, 2, and 3).

Throughout BC, and in partnership with individual First Nation communities and Métis, DAAs have effectively worked to build capacity within Indigenous communities and effectively advocated for increased services and supports to Indigenous parents and families directly within communities. Many DAAs provide services to multiple First Nations communities and I heard many positive examples of how communities and DAAs have been able to work together to address root causes associated with intergenerational trauma and to ensure Indigenous children remain connected to parents, families, community, and culture wherever possible.

As noted earlier, there are inherent limitations on DAAs as a delegated model of providing child welfare services. At the same time, the expertise and experience of DAAs across BC is clearly valued

BUILDING COMMUNITY CAPACITY – THE STS'AILES PROJECT – EXPANDING THE MODEL ACROSS ALL 203 FIRST NATIONS IN BC

During my appointment, I worked together with MCFD to determine the estimated annual cost to expand the Sts'ailes model. The ideal caseload to social worker ratio was identified by MCFD as 25:1 and that ratio has been used as the baseline for estimating the required number of social workers to expand the Sts'ailes model to all of the 203 First Nations in BC. If MCFD were to commit to implementation of the Sts'ailes model across all First Nations, it is estimated that MCFD would need to fund 92 new employees to work directly within First Nations communities.

by many Indigenous communities with whom I met and many promising community-based practices have developed directly through DAAs or in partnership with DAAs.

Shortly after my appointment I was invited to a “partnership” meeting between the executive directors of the DAAs and senior MCFD officials. The meeting was acrimonious, pointing to a serious breakdown of relationships between those who have legal responsibilities to care for Indigenous children in care. The problem according to the directors was that they were not involved nor consulted by senior MCFD officials on new policy and practice issues. The strained relations between MCFD and DAAs impacts directly on the ability of DAAs to effectively partner with Indigenous communities and to deliver community-based services on the front lines in Indigenous communities.

In this section of the report and throughout, many of the DAAs in BC are profiled. I have highlighted both the challenges they have themselves identified but also some of the achievements of individual DAAs and the promising practices developed in partnerships between DAAs and Indigenous communities.

“We are holding up our children, but our agency is a direct replica of MCFD, (which) is dealing with reports rather than supporting our children and families. We continue to fight with MCFD for our children; we need support at two levels including in our communities and at the agency.”

– Chief Harvey Mcleod, Upper Nicola

Whether I was meeting with those representing DAAs, individual communities, or with families and

parents directly, individuals reinforced the position that resources are desperately needed within Indigenous communities for new or improved infrastructure, and for development of the technical and professional capacity to deliver community-based solutions.

The high level commitment by the Province to hire workers and to further implement accountable service delivery frameworks is important. However, it is critical that resources employed by the Province towards these ends support Indigenous parents, families, and communities directly. For example, new social workers hired, and up to 50 percent of existing MCFD social workers and other support workers within the MCFD regions should be re-profiled and directed to work in and with Indigenous communities to practice social work, to partner with people in need, and to support parents, families, and community based efforts (Recommendation 4).

In the case of on-reserve First Nations communities, if the Province is not willing to commit resources on-reserve then MCFD should step out of the way and allow the federal government and First Nations to do this work given the federal government, in accordance with the constitution, has the legal responsibility and fiduciary obligation for “Indians and Lands reserved for Indians.”

“So right now, as a Chief, I am reaching out as much as I can in the time that I am given, to let these kids know that they belong. Because in the end, we are only looking for a place to belong and in First Nations we are so lucky because we are all family, we are all community...”

– Chief Susan Miller, Katzie First Nation (First Nations Summit, June 2016)

Gitxsan Child and Family Services Society (GCFSS)

The Gitxsan Child and Family Services Society (GCFSS) is a community-based DAA that first began operations in June 2000. It provides services to five of the six Gitxsan communities, including Glen Vowell, Kispiox, Gitwangak, Gitsegukla, and Gitanyow. It also works with Gitxsan people living off-reserve in BC, as well as members living outside of the province. The GCFSS has a protocol agreement with each of the five Nations that it serves and its Board of Directors is comprised of one representative from each community.

The GCFSS hired its first social worker in 2005 and immediately began bringing children home to the Gitxsan community. I heard from those that I met with that continuous turnover at MCFD has made it difficult for the GCFSS to establish a consistent relationship with the Province.

An agreement signed in 2007 between the GCFSS, MCFD and the federal government transferred responsibility of guardianship services from MCFD to GCFSS. This afforded GCFSS the opportunity to develop tailored and culturally sensitive programs and services in the areas of preventative programs, social work services, and cultural research.

There are a few current challenges with the GCFSS model. There is an early child development service in Hazelton but none in the villages and there are no “in community” services for young moms and dads. According to GCFSS representatives, a process needs to be developed to re-connect youth aging out of care with their families and communities. GCFSS currently does not have a plan in place for this. The Gitxsan communities have 62 Hereditary Chiefs and matriarchs, as well as 5 elected Chiefs. The respective mandates of each base of authority can create some difficulties at times in providing the GCFSS with required direction. These communities also face an acute shortage of housing and high levels of unemployment.



Scw'exmx Child and Family Services Society (SCFSS)

The Scw'exmx Child and Family Services Society (SCFSS) is a fully delegated child protection agency that serves the Coldwater Indian Band, Lower Nicola Indian Band, Nooaitch Band, Shackan Band and Upper Nicola Indian Band. Its board of directors is comprised of appointed representatives from each of the five Nations. SCFSS also holds quarterly meetings with the Chiefs of the five Nations.

SCFSS offers a broad range of unique programs and services for its communities. This includes family group conferencing (FGC) and kinship care, which create opportunities to involve extended family in the care of children. SCFSS champions child and family services programs that are focused on the incorporation of cultural teachings.

When I met with SCFSS representatives and those from the five communities, many aspirations were identified for each of their

respective communities. However, the leadership and administration brought forward collective concerns in a number of key areas:

- Adequate funding requirement for the five communities;
- The critical need for, and their interest in, a First Nations Court;
- MCFD's proposed permanency policy; and
- The ongoing efforts of First Nations leadership and organization to organize at the provincial level to discuss Indigenous jurisdiction and child welfare going forward.

NATION-TO-NATION – PARTNERSHIP BUILDING

Given the significant and disproportionate numbers of Indigenous children in care, there is an urgent need to build effective and ongoing relationships and to open lines of communications between the senior MCFD officials in each of the 13 regions and the Métis and First Nations communities the regions are serving. Where they exist, DAAs can also play an integral part in supporting Nation-to-Nation partnerships. Those I met with noted that many times the only MCFD officials known to Indigenous leaders and communities are the social workers tasked with removing children, creating acrimonious and tense circumstances.

A serious lack of knowledge about Indigenous communities and leaders exists, due in part to the minimal or nonexistent communication between senior MCFD officials and Indigenous communities and their leaders about the children from these communities who are in care.

Those I met with acknowledged, however, that relationship building and improved communications between Indigenous leadership and senior MCFD officials would, over time, help to build the necessary understandings and collaborative approaches to address underlying community concerns and needs.

There are several regions where I heard testimony of important and respectful relationships that have developed largely due to the efforts and priorities of individual MCFD officials and the local Indigenous leadership. However, these positive relationships appear to be the exception rather than the rule.

Early in my appointment, I urged the Minister and senior officials at MCFD that improving the relationships between the MCFD regions

and Indigenous communities be an important administrative priority for the Ministry in support of the broader goal of strengthening Nation-to-Nation relations. Three early recommendations were made to MCFD in support of this.

First, the recommendation that **MCFD REGIONAL MANAGERS BE REQUIRED TO MEET REGULARLY WITH FIRST NATIONS LEADERS/ELDERS FROM COMMUNITIES WITHIN THEIR REGION**. I am pleased to report that MCFD has taken a first step in addressing this early recommendation by building the requirement into the job description and into performance measures for all regional managers.

Secondly, the recommendation that **A LIST OF ALL THEIR CHILDREN UNDER CCO BE PROVIDED TO FIRST NATION CHIEFS, COUNCILS, HEREDITARY CHIEFS, AND MATRIARCHS**. Previously, “privacy” concerns were cited as the impediment for Indigenous leaders to have access to a list of their children under CCO. The Province conducted a review of existing legal opinions and the opinion supported sharing with First Nations leaders the access to this information. I was then able to provide a list of children under CCO to each First Nation in BC, and I have received assurances that this information will be made available to First Nations going forward.

Finally, the recommendation that **THE MCFD REGIONAL EXECUTIVE DIRECTORS OF SERVICES FOR EACH REGION HAVE SPECIFIC JOB REQUIREMENTS AND PERFORMANCE MEASURES THAT REFLECT THE PROVINCE’S HIGH LEVEL COMMITMENT TO RECONCILIATION AND THE SPECIFIC COMMITMENT TO STRENGTHEN MCFD’S RELATIONSHIP WITH INDIGENOUS LEADERSHIP, FAMILIES, AND COMMUNITIES**. MCFD has taken an early step and developed a new reporting template which identifies a number of principles that all MCFD Regional Executive Directors of Services are

accountable to through their regular performance reviews. I am informed that this new reporting template is now in effect.

Memoranda of understanding, protocols, and other similar arrangements are generally statements of intention to work together. These usually non-binding arrangements have proven to be useful in navigating the day to day and ongoing working relationships between Indigenous communities, DAAs, and MCFD.

As one example, the Niha'kapmx Nation have used their agreement with MCFD to establish constructive administrative and working relationships with the local MCFD office. Over the course of my sessions with First Nations, this was a rare example where regional MCFD staff and management were singled out by the First Nations involved and praised for their efforts to build a constructive relationship.

MCFD NEW REPORTING TEMPLATE FOR ABORIGINAL RECONCILIATION

PRINCIPLES:

- *Interaction must be consistent with the approach and principles espoused in the Aboriginal Practice and Policy Framework (APPF)*
- *The historical and cultural context captured by the Truth and Reconciliation Commission (TRC) should be considered in the development of the plan*
- *Plans and reports will be made available to all First Nations, Tribal councils and Aboriginal organizations within the Service Delivery Area (SDA)*
- *Executive Directors of Service (EDSs) and Managers will be held accountable to plans*
- *Plans should be developed collaboratively with affected First Nations, Tribal councils and Aboriginal organizations*
- *Reporting on plans will be completed quarterly at the SDD quarterly reporting meetings*
- *First Nations and Aboriginal communities should be involved in the planning for their children in care and the delivery of services to First Nations and Aboriginal families and children*
- *Services should be planned and provided in ways that are sensitive to the needs and the culture of those receiving services*

– MCFD internal administrative document, August 2016

The Nation-to-Nation Protocol was one of the tools consistently identified by those I met as having potential to improve relationships. There is no one model for these protocols, but most include many of the same components since they address the same or similar child welfare issues (See below – Sample framework of Nation-to-Nation

Protocol). Financial matters are generally not included in these protocols. If funds are available to support activities or objectives of the protocol agreements, they are negotiated separately.

Those I met with shared specific recommendations as to the components that each Nation-to-Nation Partnership Protocol should at minimum include.

SAMPLE FRAMEWORK – NATION TO NATION PROTOCOL

The following is a sample framework for a Nation-to-Nation Protocol, highlighting some of the key components that protocols have included to date.

PROTOCOL AGREEMENT BETWEEN [INDIGENOUS COMMUNITY/NATION] AND THE MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

PREAMBLE: Including reference to the inherent right of Indigenous peoples to care for their children, regardless of where they reside, the preamble has usually included references to Canadian and provincial law and the responsibilities of all Parties under the law. Going forward, these protocols could include other valuable references such as that of International law, the Truth and Reconciliation Commission findings, and relevant Canadian Human Rights Tribunal decisions.

THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS: Including all defined terms in the agreement.

GUIDING PRINCIPLES: Jointly agreed to by the Parties to the agreement, these principles often speak to high level commitments, such as the joint commitment to ensure the safety and well-being of children. But these principles can and should also include commitments to ensure Indigenous children remain connected to their culture, community, and family, and to work in a matter that prioritizes prevention, and permanency planning.

PURPOSE OF THE AGREEMENT: A high level articulation of the responsibilities of both the Ministry and the Indigenous Community/Nation in carrying out the work of the protocol.

PROCEDURES: Speaks to the desired relationship when certain circumstances arise. For example, outlining the procedure for when the Ministry receives a call that a child who is living on-reserve or off-reserve may be in need of protection.

INFORMATION SHARING: Addresses the requirements for information sharing under the law (*CFCSA*), but also outlines commitments of both Parties to share information. For example, while delegated decisions over children in care may presently rest with the Ministry, committing that such decisions will not be made without engaging and discussing with Indigenous representatives under the protocol.

RESOURCE DEVELOPMENT: Including details about any joint planning processes, and training, etc.

CONFLICT RESOLUTION PROCESS: In the event of any disagreements regarding the application or interpretation of the protocol, a conflict resolution process is often laid out identifying specific steps and a timeline.

DURATION OF THE PROTOCOL: Identifying the period of time the agreement is effective. This component also speaks to a process that can be undertaken jointly by the parties to amend the protocol or to review its implementation and effectiveness.

DATED SIGNATURES: At present, these protocols have most often been signed by Indigenous leaders and senior staff in the relevant MCFD region on behalf of the Ministry. It is encouraged that in future these protocols are signed by the MCFD Minister or Deputy Minister.

The components emphasized most often were the following:

- A reciprocal commitment to baseline principles and objectives for a results based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UN World Conference on Indigenous Peoples (UNWCIP) Outcome Document commitments, and statutory commitments in *CFCSA*);
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;
- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child care plans with a focus on permanency;
- The identification of jointly agreed to obligations and responsibilities, including the commitment to communications and accountability standards;

- An agreed-to approach to implementation of the protocol, including but not limited to joint planning, monitoring and a review process;
- The term of the protocol (i.e. Year to year; or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

Those I met with stressed the need to see MCFD and DAAs work with all Indigenous communities to take immediate action to ensure a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) and, that these protocols are meaningfully implemented. In some instances, these protocols do not exist at all and would need to be developed. In other instances, the existing protocol will need to be reviewed in order to ensure it is both current and well understood by all parties.

Unfortunately, many Indigenous communities who have existing protocols with DAAs and MCFD complain that these protocols are routinely ignored or violated. One Chief described their existing protocol as “not worth the paper it is written on.” This statement captures the frustration of many I spoke with who wanted to see existing and new protocols truly become the powerful relationship building tools they are intended to be. Recommendations 8-9 directly address these protocols.

PARENTS AND FAMILIES

Many I met with view social workers and foster parents as complicit in their relationship and often working together to oppose Indigenous parents,

families and communities who are working to get their children back. I heard repeated accounts of instances where parents, families, or communities complained about this real or perceived behavior and then faced MCFD officials acting quietly through reprisals.

“MCFD has no respect for our parents or grandparents. Parents are belittled and intimidated by MCFD social workers...there is a question of suitability of the social workers who work with our people, such that my priority has become to be with our parents when they meet with MCFD social workers.”

– Chief Lee Spahan, Coldwater Indian Band

Over time, an adversarial dynamic has developed and it is not benefiting anyone involved, least of all Indigenous children within the child welfare system. As is emphasized repeatedly throughout this report, a prevention based system that provides necessary supports to struggling parents and families within communities should instead be our collective goal. The child welfare system should support and enable parents to become the best educators and support for their child or children. To this end, many I met with expressed their specific desire to see MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each Indigenous community as a necessary support service to families who need it as well as for the leaders and members within a community (Recommendation 1).

The limited funding to support Indigenous parents and families has not prevented Indigenous communities or DAAs from taking action to honour the role of parents in children’s lives and to support parents in many of the struggles they

may encounter in caring for their children. At Musqueam, for example, I was invited to attend a feast held in honour of seven Musqueam fathers in the community. These fathers were nominated by their immediate or extended family, or friends for having taken extraordinary steps to support their children and/or grandchildren. They were stood up and celebrated in a ceremony and blanketed in accordance with traditional Musqueam ways. In this way, the community recognized and offered thanks to the men for their strength and for the positive contributions they had made to their families and to the Musqueam community.

“We need to implement our way to care for our children by working with our parents and extended family members.”

– Grand Chief Percy Joe, Shackan Indian Band

In Indigenous communities across the province, in urban areas like Vancouver or in the rural and often remote villages on the coast or in the north, I heard from Indigenous grandmothers and grandfathers, elders, and cultural leaders who are playing a significant intergenerational role, teaching their children, grandchildren, and many other young members within Indigenous communities. Many, if not most, are survivors of the Indian residential schools system or the 60's Scoop.

Over the term of my appointment I was struck by the pivotal role that grandmothers in particular play in the lives of many of our children – their teachings serving to guide families and communities through intergenerational trauma and the challenging realities of life today for many Indigenous people. When their grandchildren are “removed,” these grandmothers often do not sleep, they worry and wonder about their small loved ones. Often,

what these grandmothers can offer materially is a modest pension from government and, as I heard from so many I met with, they work to stretch this as far as they can each month. The individual stories these women shared impacted me greatly. I revisit the topic of grandmothers and their stories later in the report in relation to current funding inequities that exist and that have, in practice, discriminated against extended family members such as these grandmothers who take on the care of grandchildren.

Elders are the knowledge keepers of the traditional teachings, stories, legends, songs, genealogies, territories, and Indigenous place names. They remind us of who we are and where we come from as Indigenous peoples. The United Nations places a high value on traditional knowledge, such that it is recognized in international United Nations instruments such as the *2030 Sustainable Development Agenda*, the *Paris Climate Change Agreement*, the *Convention on Biological Diversity*, and the *Declaration on the Rights of Indigenous Peoples*.

Within Canada, the Supreme Court of Canada Justices, in deciding the landmark case of *Delgamuukw/Gisdayway* confirmed that they recognize the traditional knowledge, handed down as part of the oral history of Indigenous peoples, as a valuable independent source for proving the existence of Indigenous legal rights to their territories.

While traditional knowledge holders may not have the qualifications that the provincial or federal government looks for when considering hiring workers to look after the most vulnerable in communities, these individuals do hold something of great value to Indigenous peoples, communities, families, children, and youth

that cannot be gained through post secondary institutions. Traditional knowledge is essential in educating Indigenous children on their cultural identity and connectedness.

Protecting a child's cultural identity should be an important consideration and deserves focused attention in both the design and delivery of child welfare services to Indigenous children and youth. Current provincial legislation, namely the *CFCSA*, supports this already, but the question is how to ensure cultural identity and connectedness are valued and prioritized in practice. Later in this report the importance of language, culture and traditional knowledge to care plans for all Indigenous children in care is examined at length.

One critical component of Indigenous community development and empowerment is a continuing effort aimed at strengthening education, knowledge, and training on the province's child welfare system. Those I met with expressed strong support for community-based training and curriculum which is further discussed later in this report (Recommendation 10). They identified an urgent need to ensure that child welfare training, curriculum, and services respect who Indigenous people are, and thus involve and uplift the traditional knowledge holders – our Indigenous elders, matriarchs, and hereditary leadership – in both the design, development and delivery.

The *Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA – Guidebook* ("the Guidebook") is a tool that has been designed to identify practical strategies for involving Indigenous communities in child welfare issues. It was championed to completion by the ShchEma-mee. tkt ("Our Children") Project, a culturally-based and prevention-focused Nlaka'pamux child and family wellness initiative. During the sessions I attended

CHILD, FAMILY AND COMMUNITY SERVICE ACT ON CULTURAL IDENTITY

GUIDING PRINCIPLES

2(f) the cultural identity of aboriginal children should be preserved.

SERVICE DELIVERY PRINCIPLES

3(c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services.

with Indigenous communities, this Guidebook was referenced as a critical tool for communities to better navigate the child welfare system. An accompanying workshop has also been designed to assist participants in understanding the key topics outlined in the Guidebook. Some workshops have been held across BC to date, and later in this report, the recommendation is made that the Province support further development of and training based on the Guidebook.

Another model that has been employed to increase community level capacity and to support connectedness and the reunification of Indigenous children to their parents, families, and communities has been the Care Committee Model. Care Committees or Groups were re-established through the Aboriginal Children and Families Chiefs Coalition with a focus on community care prevention in support of families.

Individuals involved in the Care Committee Model are trained through curriculum that is both community-based in focus and developed by the community. Those involved report the positive impact the committees have had on capacity building in communities. Unfortunately, the model is not consistently or adequately funded by the Province or the federal government and so in order to continue, these committees rely heavily on community members within individual First Nations communities volunteering of their time.

Despite these challenges, the model is highly regarded by many I spoke with for its promise in aiding in the development of re-unification and permanency plans for Indigenous children and for its ability to incorporate cultural components effectively into this planning and is highlighted in this report as a promising practice deserving of INAC and MCFD support (Recommendations 3 and 10).

WRAPPING OUR WAYS AROUND THEM: ABORIGINAL COMMUNITIES AND THE *CFCSA* – GUIDEBOOK

The *Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA – Guidebook* is based on the understanding that Aboriginal peoples need to understand how to work within the systems that are currently impacting the welfare of children and families such as the:

- *Child, Family and Community Services Act (CFCSA)*;
- Provincial court System;
- Ministry of Children and Family Development (MCFD);
- Delegated Aboriginal Agencies (DAAs)

The Guidebook puts forward practical tools for Indigenous communities to navigate these systems to help improve outcomes for Indigenous children and families. It also identifies opportunities to restore Indigenous ways of doing things within the existing systems of child welfare. The Guidebook makes a series of strong suggestions for the integration of traditional practices to support the well-being of children and families. Topics explored through the series of 'best-practices' identified in the Guidebook include:

- The critical role of an Indigenous community in decision-making related to a child's welfare;
- The necessity of a broader distribution of responsibility of care beyond just the parents (i.e. extended families, Indigenous community, etc.); and
- The need for attention to be paid to the vital social and cultural connections of Indigenous children.

THE CARE COMMITTEE MODEL IN THE STO:LO AND NLAKA’PAMUX AREAS OF THE EASTERN FRASER REGION

A key initiative within the Sto:lo and Nlaka’pamux areas of the Eastern Fraser region for child welfare has been the development of “Care Committees” with the focus on preventive supports for Indigenous children and families.

Those individuals involved in the Care Committee Model are trained in curriculum that is developed through community involvement and is community based. To date, the training has followed an intensive curriculum and has included cultural teachings, information about the historical impacts of residential schools and the 60’s scoop, trauma and attachment theories, as well as existing child welfare legislation (sec. 13 *CFCSA*).

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are focused on ensuring direct support for Indigenous children and youth, as well as parents and families within Indigenous communities. They are based on the underlying assumption that the child welfare system and services in BC need to be substantively transformed in order to realize existing legislated requirements, as well as the recent commitments made by the federal and provincial governments in support of the full involvement of Indigenous communities in child welfare matters impacting Indigenous children and youth.

Recommendation 1:

MCFD and INAC invest in the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- MCFD and INAC commit to invest an additional \$8 million annually to increase the social workers, support workers, and others serving First Nations communities in BC by at least 92 FTEs over the next two years;
- MCFD take immediate action to ensure that the additional front-line staff identified above are placed directly within First Nations communities in BC; and
- MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each First Nation community as a support service to parents, families, leaders, and members who require support within the community or navigating the child welfare system.

- MCFD, with the objective of maximizing its child safety recruitment, review the entry level qualifications for front-line workers. The review to consider educational and experiential requirements for child safety positions.

Recommendation 2:

MCFD and INAC invest in the development and delivery of child and family services directly with the Métis in BC, by increasing the number of front-line staff working directly with Métis in BC.

Recommendation 3:

MCFD support existing promising practices that are focused on the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- In conjunction with Recommendation 1, MCFD and INAC provide support for the expansion of the Sts'ailes pilot project as a model for other interested First Nations communities within BC; and
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model to support prevention based on active interventions in support of children and families.

Recommendation 4:

Each MCFD region undertake a review of planned and existing front-line staff with a view to re-profile and direct, according to need, full time employees to work directly within Indigenous communities to directly support parents and families, and enhance community-based services.

EARLY RECOMMENDATIONS AIMED AT STRENGTHENING NATION-TO-NATION PARTNERSHIPS

As outlined earlier in this section, MCFD has taken some initial steps to action the following three early recommendations:

Recommendation 5:

MCFD require their Regional Executive Directors of Services for each region to meet regularly with Métis leaders, and First Nations leaders/elders from communities within their region.

Recommendation 6:

MCFD regularly provide to each First Nation (First Nation Chiefs, councils, Hereditary Chiefs, and matriarchs) a list of all their children under a custody of care order.

Recommendation 7:

MCFD require that Regional Executive Directors of Services for each region have specific job requirements and performance measures that reflect the Province's high level commitment to reconciliation and the specific commitment to strengthen MCFD's relationship with Indigenous leadership, families, and communities.

Recommendation 8:

MCFD take the following immediate actions to ensure Nation-to-Nation Partnership Protocols are implemented between each Indigenous community (First Nation or Métis) and the regional MCFD office and DAA (as appropriate):

- Each MCFD regional director arrange to meet before January 2017 with all Indigenous communities and DAAs with the purpose of
 - 1) ensuring a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) or, in the instances where a protocol already exists,
 - 2) ensuring that the existing protocol is current, understood, and agreed to by all parties to the protocol;
- MCFD commit to an annual review of all Nation-to-Nation Partnership Protocols with all of the parties to each protocol.

Recommendation 9:

MCFD commit, at minimum, to the inclusion of the following core components of each Nation-to-Nation Partnership Protocol:

- A reciprocal commitment to baseline principles and objectives for a results-based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UNWCIP Outcome Document commitments and statutory commitments in *CFCSA*);
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;

- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child-care plans with a focus on permanency;
- The identification of jointly agreed to obligations and responsibilities, including the commitment to communications and accountability standards;
- An agreed-to approach to implementation of the protocol, including but not limited to joint planning, monitoring, and a review process;
- The term of the protocol (i.e. Year to year; or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

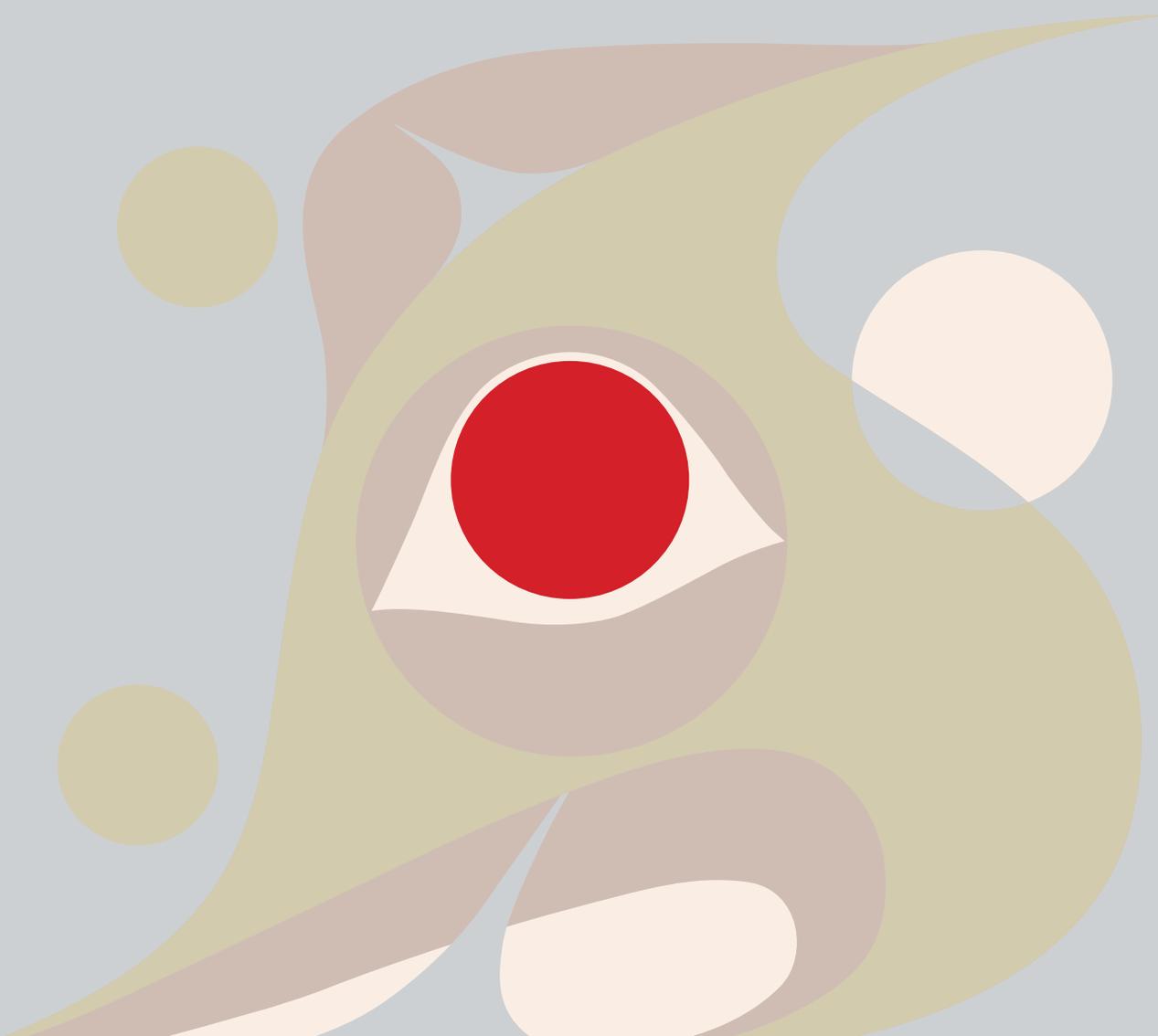
Recommendation 10:

MCFD and INAC provide the specific support for community-based curriculum and community developed services for Indigenous children and families involving and uplifting Indigenous elders, matriarchs and hereditary leadership:

- MCFD and INAC commit to support training so Indigenous individuals and communities understand their rights regarding child welfare and capacity within communities grows;
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model (identified in Recommendation 3) by providing funding for training of Care Committee/Group workers similar in scope to the training provided for those involved in the community Care Committee Model that was created through the Aboriginal Children and Families Chiefs Coalition.

AREAS FOR FOCUSED ACTION

AREA 2. ACCESS TO JUSTICE AND CHILD AND FAMILY SERVICES



AREA 2. ACCESS TO JUSTICE AND CHILD AND FAMILY SERVICES

The justice system and the “rule of law” are an integral part of the effective functioning of Canada as a federal state. Understanding how the current justice system impacts on Indigenous peoples is important in order to address systemic roots of marginalization, denial of fundamental human rights, intolerance, indifference, racism, and discriminatory standards and practices impacting on Indigenous peoples.

What I heard resoundingly through my engagement with Indigenous people and communities was that the justice system in Canada, and in particular court proceedings in BC, are not serving the best interests of Indigenous children and youth, and that improving access to justice for Indigenous people must be something we all work together to collectively address in order to see meaningful improvements in the child welfare system.

As noted earlier in this report, many Indigenous parents and families confront a myriad of obstacles in everyday life, relating to housing, adequate nutrition, medical care, and transportation. In BC, the demands placed on any parents facing a child removal order by MCFD create challenging hurdles for family reunification. Where Indigenous parents and families are engaged in the child welfare system and not supported, the incremental effects of these demands by MCFD prove a devastating roadblock for the reunification of Indigenous families. I heard repeatedly that without judicially imposed restraint on MCFD action and without full comprehension of and actions to address the struggles of Indigenous parents, families, and communities, it is likely that Indigenous families will continue to be denied access to justice, and that Indigenous children

will remain disconnected and further traumatized in disproportionate numbers through the child welfare system.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (THE “DECLARATION”) ON ACCESS TO JUSTICE FOR INDIGENOUS PEOPLES

ARTICLE 40: *Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.*

I heard consistently of the frustration Indigenous parents, families, and communities experienced when denied access to justice through the existing child welfare system. Individuals described how social workers, considered “officers of the court,” are afforded a large degree of discretion, authority and power, and they further elaborated on how this was proving problematic, given the lack of a concerted effort to date by BC or MCFD specifically to ensure these front-line workers, and the judges hearing their testimony, are equipped with an understanding of the effects that

intergenerational trauma have had on Indigenous children, parents and families. Individuals shared firsthand accounts of their experience regarding the way that Indigenous parents are treated by the justice system, often not afforded fairness in court proceedings and in many cases not even present in court due to delayed proceedings and other significant obstacles to their attendance. As for the children themselves, Indigenous child welfare advocates and practitioners expressed concern that BC is one of only two provinces in Canada that does not provide systematic provision for legal representation for children. Overall, those I met with described a system where a great deal of room for conflict exists, where confusion or ambiguity in proceedings and orders is commonplace, and where the end result is undue potential for overlapping and inconsistent or unfair orders that lead to more Indigenous children being placed or continuing in care.

In her remarks at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice, Chief Justice Beverley McLachlin stated, “Access to justice, by providing for the just resolution of disputes and sustaining the rule of law, benefits both individuals and society.” Justice McLachlin identified four **BARRIERS TO ACCESS JUSTICE: PROCEDURAL BARRIERS, FINANCIAL BARRIERS, INFORMATIONAL BARRIERS, AND CULTURAL BARRIERS**. Borrowing from Justice McLachlin’s analysis, this section of the report is organized around access to justice barriers as they pertain to Indigenous peoples and the child welfare system. Recognizing that these barriers are inextricably linked, this section contains specific recommendations intended to address one or more of these barriers.

While speaking to the judiciary is not officially part of my mandate, it is impossible to adequately address

certain challenges within the child welfare system without acknowledging the interconnectedness to the overall justice system. My meetings with many across BC reinforced the important roles that judges, lawyers, Indigenous leaders, and all advocates for Indigenous children have to play in ensuring access to justice. The good news is that many have been awakened to the need for changes through the TRC Calls to Action and through the recent CHRT decisions concerning First Nations child welfare.

In BC, for example, members of the Victoria Bar Association recently collaborated in the development of the *Victoria Bar Association Initiative*, aimed at addressing significant challenges and systemic deficiencies encountered in the representation of parents who have had their children apprehended. According to the association, the overarching goals of the initiative were to 1) identify problems, 2) call on the Victoria Bar to fill the void created by legal aid under-funding, and 3) champion reform in the approach in BC to child apprehension. Many of the challenges, systemic deficiencies and associated calls to action identified through the initiative are particularly relevant for Indigenous people in BC, and are thus highlighted throughout this section of the report.

PROCEDURAL BARRIERS

In the context of Canada’s overall justice system, Justice McLachlin describes **PROCEDURAL BARRIERS** as “rules and processes that are more complicated than they should be...”. As described throughout this report, substantive jurisdictional, legislative, policy, and practice-related complexities exist within the child welfare system serving Indigenous children and youth. Indeed, the 2016 CHRT 2 decision necessarily spends nearly 40 pages simply documenting the complexities that exist in terms

of the provision of child and family services to First Nations children.

As a result of the complexity, understanding and navigating the child welfare system in BC can be a daunting challenge for many Indigenous parents, families, and communities, and the struggle to understand and navigate the rules and processes represents a substantial barrier to and subsequent denial of access to justice.

Procedural barriers are rules and processes that are more complicated than they should be. This leads to unnecessary delay and cost. And in some cases, it prevents people from using the justice system or availing themselves of their rights. The complicated structure of the courts and administrative tribunals, the complex rules and procedures and the sheer difficulty of finding one's way in the law, all present formidable challenges to access to justice...

– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice

FINANCIAL BARRIERS

FINANCIAL BARRIERS within the child welfare system were a consistent theme during nearly every engagement as Special Advisor. Justice McLachlin describes financial barriers as continuing to “thwart access to justice”. McLachlin points out that while large business and wealthy individuals are not impacted greatly by cost, nearly everyone else is impacted and that for many Indigenous people the financial barriers are formidable.

Insufficient advocacy funding exists for parents and families. The *Victoria Bar Association Initiative*,

Financial barriers continue to thwart access to justice. Solving legal problems takes time and money, and, sometimes, specialized expertise. For rich people and large businesses, cost may not be an issue, but for everyone else it is...

– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice

discussed earlier in this section, points out that legal advocates are severely constrained by limited legal aid hours, as well as an ethical framework which precludes attention to emotional/ supportive/ economic problems that affect all parents who have lost a child. The initiative highlighted the need for reform to ensure that advocacy is provided for the affected community who are working to navigate the court system.

When a concern about a child's safety is raised, the current system allows designated social workers to remove a child and present the child before the court within ten days. Unfortunately, this approach in the *CFCSA* shifts the onus to parents and community. For parents and communities faced with no or little financial resources, this becomes an inordinate burden. While existing legislation provides for some safeguard for the parents or community in that there must be a presentation hearing before a provincial court judge, the practice generally ends with an order from the court to remove the child.

MCFD retains 40 law firms in the province to carry out its legal work in the courts. Funding for some of these legal costs is provided by INAC to MCFD in the annual service agreements, which are discussed later in this report (Area for Focused Action – 3). Under the annual service agreements, MCFD is to

provide services to Indigenous children, families and communities. On the other hand INAC does not provide any support to Indigenous communities.

Parents whose children are being removed generally have few to no financial resources and Indigenous communities have no finances to retain lawyers. Legal aid becomes the last resort. The Legal Services Society (LSS) advise me that 41% of their child protection cases involve Indigenous peoples. LSS provides an “Aboriginal community service worker” program but it has funds for only one worker who is located in Duncan/Nanaimo. I heard from many that I met with that the existing LSS program should be expanded to more communities.

Within the existing system, often insurmountable financial barriers mean Indigenous parents and families are routinely denied access to justice. Those I met with were adamant that Indigenous parents and families should not be expected to navigate the complex child welfare system alone and require increased supports (Recommendations 15, 16 and 17).

I spoke to a family who told me one of their relatives, a father, had gone to a child protection proceeding in a small Northern BC town, optimistic that his child would be returned. That hope was dashed. A decision was made not to return the child. Shortly afterwards, brokenhearted, he put himself in front of an oncoming freight train, ending his life.

– Engagement meeting with Grand Chief Ed John

INFORMATIONAL BARRIERS

Many acknowledge the **INFORMATIONAL BARRIERS** that exist for Indigenous parents, families and communities who are trying to navigate the complex child welfare system. Justice McLachlin described the “information deficit” that exists, where individuals “lack the understanding and information to fully access the justice system.”

*...the third barrier to justice– the **information deficit**. Many people– including (but not refined to) in-person litigants–lack the understanding and information to fully access the justice system. They may lack information on just about every legal issue, be it the criminal process, the family law process, the ancestral rights to fish and hunt, or residential schools claims.*

– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice

Within the current child welfare system in BC, the court is the venue to determine whether the ‘concerns’ of child protection workers are valid or tainted by bias and misinformation. Unfortunately, as the Victoria Bar Association reported through their recent initiative, in practice **INADEQUATE INQUIRY OCCURS AT AN EARLY STAGE INTO WHETHER INTERVENTION IS JUSTIFIED, WITH AN ETHNO-CENTRIC VIEW OFTEN PERPETUATED THROUGH THE COURT PROCESS**. For Indigenous people in BC, trust in the validity of MCFD ‘concerns’ is highly problematic as these reported ‘concerns’ may involve cultural stereotyping, borne of a reaction to poverty resulting often from intergenerational trauma and suffering, and lack of understanding regarding a particular Indigenous culture. For indigenous communities, the Victoria

Bar Association stressed the importance of ensuring evidence relating to concerns be disclosed in a comprehensible and timely manner, rather than through the provision of impressionistic forms or reports. I heard from many about the frustrations that have grown due to the lack of understanding or information to fully access the justice system. The courts or MCFD routinely frame the cause for removal and the expectations before a child can return in a context foreign to Indigenous communities. In doing so, I heard accounts where parents' abilities to advocate effectively for the return of their child were greatly diminished, causing both delays and in some cases working to make reunification unachievable.

CULTURAL BARRIERS

I heard impassioned testimony from many individuals who believe strongly that the current legal system works in opposition to Indigenous peoples' interests. Those involved in the administration of child welfare laws, including judges, lawyers and social workers, are generally not familiar with the diversity and complexities of Indigenous peoples' traditional and customary institutions and laws. These are not consistently taught in law schools, lawyers are not immersed in these, and judges do not apply it in their courts. The lack of cultural understanding has most certainly created, and continues to contribute to, significant barriers to access to justice.

The **LACK OF CULTURAL UNDERSTANDING WITHIN THE COURTS AND CHILD WELFARE SYSTEM**

was something that I heard emphasized often throughout my appointment. Child protection workers are largely seen as antagonistic to the interests of indigenous children and communities, which impacts the ability to canvass community options. In practice, the system's focus on the 'best

...by cultural barriers, I mean attitudes of mistrust or fear toward the justice system... many First Nations people bear little trust towards the Canadian justice system, as the Canadian Bar Association recognized in its 1988 report on Aboriginal Rights. The Truth and Reconciliation Commission led by Justice Murray Sinclair recently stated that Aboriginal people "often see Canada's legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests." There is a sense that the legal system is not there to protect what Aboriginal people hold dear, but rather to impose non-Aboriginal law on them... indigenous concepts of justice may differ in important ways from those held by most of the population. Indigenous dispute resolution systems may see the goal as finding a practical resolution, restoring co-operative co-existence, and eliminating bad feelings...

– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice

interest of the child' is not easily reconciled with the holistic approach toward family and community in many Indigenous communities. Indeed, I heard disturbing accounts across MCFD regions where the 'best interest of the child' was pitted against or understood as contrary to culturally appropriate approaches that emphasize the involvement of family and community. At its worst, the current model can accurately be described as serving as an instrument of social control, imposing culturally based judgments of the dominant non-Indigenous society.

MÉTIS AND CULTURAL BARRIERS

Métis culture and identity is unique and separate from other Indigenous cultures in BC. Because of this, it is necessary for policy makers as well as front-line social workers to understand and implement knowledge of Métis culture into their work. The need for a unique understanding of a particular Indigenous culture is not specific to Métis – it is included in many sets of recommendations addressing all Indigenous children in care.

Métis leaders I met with expressed their concern that Métis culture, history and identity are perceived as having taken a backseat in BC. For these leaders, the public understanding of Métis culture and history is low and the province has yet to take meaningful action in their response to the *Daniels* (2015) decision.

The common theme for Métis I met with was the lack of public and government recognition or knowledge of Métis culture and identity, high levels of Métis children in care, unbalanced funding, unclear rights and a general perception that Métis issues are not as well recognized as First Nations issues despite similar levels of suffering.

experience will determine how they understand the issue at hand and what potential solutions they see as fit. Equipping select judges with an appreciation of intergenerational trauma and its effects would help ensure that the interests of Indigenous children are truly reflected in court proceedings and orders. Limiting the number of judges who can oversee proceedings that involve Indigenous children to those who have undergone education or training related to intergenerational trauma would also help to reduce the potential for overlapping and inconsistent orders, a problem Bob Plecas describes in part one of his review:

There are too many cases where an order made in one court, informed by evidence of clear concern for the safety of the children, may simply not be brought to the attention of another judge who is hearing a different aspect of the case. That Judge may well then make an inconsistent order that could create conflict, confusion or ambiguity. Plecas p.33

In addition to participating in education or training programs focused on Indigenous history and the effects of intergenerational trauma, the judges selected to oversee Indigenous children's cases should also learn skills and best practices relating to the form of order. Oftentimes the form of order used in access orders of parents / guardians in children in care proceedings results in short access opportunities in a very controlled setting where many issues cannot be raised or discussed by the child or parent.

Immediate actions should be taken to ensure that a culturally appropriate approach within the courts and justice system is possible. As noted earlier in this report, the *Wrapping Our Ways Around them – Aboriginal Communities and the CFCSA Guidebook*, attempts to mitigate the shortcomings

Every child placed in care must come before a provincial court judge. That judge's background and

of the CFCSA, which does not take into account the importance of community in raising an Indigenous child and can place the entire responsibility on the parents. The *Victoria Bar Association Initiative* makes reference to the Guidebook, highlighting that it is unclear whether those in the justice system follow the guidance of this comprehensive work intended to serve as a benchbook. I heard from many who suggested the Guidebook is underutilized and who advocated it be further supported as one existing tool to support a culturally appropriate approach.

ADDRESSING BARRIERS – THE COURTS AND THE ROLE OF PROVINCIAL COURT JUSTICES

THE COURTS

The Supreme Court of Canada ruling, *R v. Ipeelee* reaffirms the critical need to ensure that the courts focus on taking a restorative justice approach in the sentencing of Indigenous offenders. This ruling revisits *R v. Gladue*, which made the recommendation that courts explore alternatives to imprisonment. It argues that sentencing should always consider factors such as cultural oppression, poverty, historical abuses, and systemic discrimination, and seek culturally-relevant solutions (*R v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433).

IN R V. IPEELEE, THE SCC PROVIDES THE FOLLOWING IMPORTANT GUIDANCE WHICH IS RELEVANT AND WORTH CONSIDERATION IN THE CONTEXT OF INDIGENOUS CHILD WELFARE AND THE COURTS:

“The Gladue principles direct sentencing judges to abandon the presumption that all offenders and all communities share the same values when it comes to sentencing...” (para. 74).

“Sentencing judges, as front line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination.” (para. 67).

“Section 718.2(e) is...properly seen as a ‘direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process’...” (para. 68).

“...courts must take judicial notice of... the history of colonialism, displacement and residential schools.” (para. 60).

PROVINCIAL COURT JUDGES

In the administration of CFCSA, provincial court judges play an important role in decision making which impacts Indigenous children, families, and communities. In every instance where a child comes under a CCO in BC, a judge had to make that decision. Without inherent authority, judges must apply CFCSA. However, they have both discretion and latitude in their decision making within the legislative framework..

Those I met with reinforced for me that many Indigenous parents and families, without access to legal counsel or other support, are overwhelmed in court and by the court processes. Though CFCSA requires, for example, that notice be provided to First Nations for child protection proceedings, many First Nations are not able to attend. As highlighted earlier in the discussion around access to justice, this is often because of lack of finances to hire legal counsel, the distance required to travel to a court hearing, or other such factors. In light of this, many I met with expressed their hope that judges

better exercise their discretion, with a presumption in favour of parents and communities. MCFD and DAAs have resources to retain legal counsel, I was reminded often, but most often Indigenous communities and families do not.

A social worker I met with recounted one of her first presentations before the court on a child apprehension. She described how she agonized over the details of her file, preparing to appear in court, and then reflected on how surprised she was when the judge so easily gave the order requested. To her memory, the court proceeding was over in less than 2 minutes and the child's parents did not have a chance.

Conversely, a provincial court judge explained he was not sure why First Nations did not appear in court in the lower mainland when they were given notice. I inquired as to whether the judge knew where the particular First Nation was located. If the child is from a northern or coastal community, the likelihood that a First Nation would appear in a lower mainland court decreases dramatically.

First Nations communities across BC advised me that they spend a considerable amount of money, which they do not have, to retain legal counsel in order to represent their interests in legal proceedings.

Together, what these comments regarding the social worker, the provincial court judge, and First Nations help to illustrate is that at present access to justice is heavily tilted in favour of the state.

In view of the considerable number of access to justice issues, it is advisable that provincial court judges carefully consider the decisions they make. As noted earlier, in BC, every child placed into care must come before a provincial court judge and as such, provincial court judges are uniquely positioned

to both understand the problems that exist and to be a part of the potential solutions including legislative, regulatory, policy and practice reform.

In November 2015, I met with Justice Thomas Crabtree in Vancouver to discuss children in care specifically and the role of provincial court justices in permanency options relating to Indigenous CCOs. The meeting with Justice Crabtree and subsequent meetings with other judges provided opportunity to review many of the reports and recommendations that have already been issued in relation to the role of the courts and of provincial court judges. BC's Representative for Children and Youth (RCY), Mary Ellen Turpel-Lafond has reported extensively on permanency options to the provincial government. Key recommendations in Turpel-Lafond's reports highlight specific options for provincial court judges to consider. My meetings with Indigenous communities and provincial court judges reinforced the need for certain reforms previously highlighted by Turpel-Lafond.

ADDRESSING BARRIERS – ALTERNATIVE DISPUTE RESOLUTION AND OTHER PROMISING PRACTICES

The *CFCSA* provides the legislative authority for the use of a variety of alternative dispute resolution (ADR) processes, referred to inside MCFD as collaborative planning and decision making (CPDM). ADR processes can be requested or used at any point during the management of the case, or during legal proceedings. Under the *CFCSA* there is a presumption in favour of ADR processes and the court is intended to be the alternative. In practice, however, ADR processes are not the default approach.

A variety of ADR processes exist, including traditional decision making, family group conference, family case planning conference,

The CFCSA provides opportunities for Aboriginal community participation within alternative decision-making processes. Options including mediation, family group conferences or case conferences are cooperative planning mechanisms to resolve child protection concerns outside of Court. Participation by Aboriginal communities in alternative dispute resolution processes could be an effective way for Aboriginal communities to participate in planning for their child members (Wrapping Our Ways Around Them", p.113).

integrated case management, family circles, and mediation. Determining which option is optimal should depend on the circumstances of the parents and family, and the issues that the family is encountering.

According to MCFD data, in 2015, Indigenous families participated in over 1100 ADR programs; some families engaging in more than one process. MCFD reports that use of ADR processes are often under-recorded by workers, and it is difficult therefore to provide accurate statistics of how often ADR processes are undertaken.

Currently, the primary ADR processes MCFD and DAAs in BC utilize are the following:

- **TRADITIONAL DECISION MAKING (TDM)** refers to a meeting which includes family members, community, Elders and/or Indigenous leadership. It encourages decisions based on cultural traditions and values. It allows for each First Nations or Indigenous community to practice their own tradition. A family circle is one example. This would be considered family or community centred.
- **FAMILY GROUP CONFERENCE (FGC)** refers to a formal meeting where members of the child's immediate family come together with extended kin and members of the child's community who are, or possibly may become, involved to develop a plan to keep the child safe. The conference is arranged and facilitated by a FGC Co-ordinator. This is a family or client-driven process.
- **FAMILY CASE PLANNING CONFERENCE (FCPC)** is a time limited (usually 90 minutes) and facilitated planning meeting. The participants endeavour to establish consensus on the next steps in a plan to promote the safety of the child. FCPC frequently results in a referral for a FGC where a broader family group is engaged and a more comprehensive plan is developed. This is a professionally driven process.
- **INTEGRATED CASE MANAGEMENT MEETING (ICM)** involves multiple key players already involved in the life of a child or family. It is not time limited and may be facilitated by a neutral party. The primary purpose of an ICM is to achieve a coordinated and comprehensive care plan. This is a professionally driven process.
- **MEDIATION** refers to a meeting of parents, child protection workers, and other collaterals to discuss concerns and ideas. The goal is to reach an agreement that is in the child's best interests and is acceptable to everyone. A mediator leads the meeting and ensures each person has the chance to speak and be heard. Mediation is primarily used for legal decisions. This is a legally and professionally driven process.

The **CONSISTENT MESSAGE I HEARD IN REGARDS TO ADR PROCESSES IS THAT ADR SHOULD BE THE DEFAULT APPROACH AND NOT JUST AN OPTION.**

Courts should be the last resort and, as noted above, *CFCSA* provides many options for ADR processes that do not involve the court. While the Director, in accordance with *CFCSA*, may employ ADR approaches at any point, the criticism I heard consistently is that the Director does not always use ADR processes as early as is possible, if at all. I heard that most often Indigenous parents and communities are not advised or aware of the ADR processes that are possible as an alternative to court. **THE LACK OF CONSIDERATION FOR AND UTILIZATION OF OF ADR PROCESSES BY MCFD CAUSES GREAT HARM TO INDIGENOUS FAMILIES AND COMMUNITIES.**

Those I spoke with highlighted the existence of certain cultural barriers that inhibit more frequent use and sometimes even the success of ADR processes. For example, in nearly all ADR processes, the definition of family in an Indigenous context is much broader than in the “western” framework, and it is essential that child welfare systems recognize and honour this definition; it is often based on deep cultural values and that children’s needs may be taken care of by communities as part of an Indigenous worldview.

Parents and communities I spoke with were often unaware of the options available to them, depending on the quality of the relationship between Indigenous communities and the MCFD office or DAA where they are connected. Most agreed that on-going education about which ADR processes are available, and increased collaboration between MCFD and First Nations or Indigenous communities is needed. A detailed review in Court of the efforts made to notify the affected Indigenous community, assist the community in participating,

as well as the detailing of ADR processes investigated are necessary to ensure meaningful compliance with sections 34 and 35 of the *CFCSA* (Recommendations 14 and 19).

Engaging parents and involving the First Nations or Indigenous community earlier in conversations can lead to a clearer understanding of the child protection concerns, and what parents and/or extended families can do to address these. There are a variety of ways of engaging the parents, families, and communities during ADR processes. Some DAAs have FGC and FCPC Indigenous facilitators and staff focused on ADR processes and it is considered a best practice for FGC, FCPC facilitators, and mediators to involve members of the Indigenous community, elders, and extended family wherever possible. Some DAAs have elders attached to their ADR programs and these elders participate regularly. Efforts to increase the use of ADR processes and to enhance existing ADR processes need to be supported by the province, Canada and Indigenous communities.

...PIVOT interviewed Social Workers leaving the system. Most reported not considering less disruptive measures as required by the legislation. The most marked departure from the standard was when aboriginal children were involved (Victoria Bar Association Initiative - Call to Action, p. 21, in referencing Hands Tied: Child Protection Workers talk about working in, and leaving B.C.’s child protection system, May 2009).

REMOVING BARRIERS AND PROMOTING CONNECTEDNESS – PROMISING PRACTICES

When discussing the justice system and child welfare, a number of promising practices were highlighted during my engagements in addition to the ADR processes discussed above. Four of these were the Parents Legal Centre Pilot, the Extended Family Program (also discussed in subsequent areas of this report), the Native Courtworkers, and the Aboriginal Family Healing Court.

LEGAL SERVICES SOCIETY OF BC AND PARENTS LEGAL CENTRE PILOT

The Legal Services Society of BC (LSS) is a non-profit organization created in 1979 under the *Legal Services Society Act*. The LSS handles 2,500 child protection cases per year and 40% of its child protection clients are Indigenous. LSS provides the following legal aid services to low-income individuals in BC: information services, advisory services, representation, and mediation. The LSS is funded partially by the provincial government with additional support from the Law Foundation of BC and the Notary Foundation of BC.

PARENTS LEGAL CENTRE (PLC) PILOT

The PLC is a pilot project that takes a new approach to child protection by focusing on early intervention and the integration of non-legal social services to support parents. It is located at the Vancouver Provincial Courthouse at Robson Square and currently is only serving clients from Vancouver and Burnaby.

The PLC's holistic approach to working with families has translated into changing approaches in the way that MCFD and the justice system respond to child protection cases. The LSS identify the following successes:

- Better collaboration: Half of the PLC's clients were referred to the centre by MCFD social workers;
- Earlier advice: Half of the PLC's clients contacted the centre before their children were removed;
- More support: The PLC's advocate helps clients resolve non-legal issues that prevent them from keeping their children;
- Cultural competence: An Aboriginal lawyer and an Aboriginal advocate for Aboriginal clients;
- Faster resolution: The PLC's holistic approach to resolving legal and non-legal issues combined with its location at the courthouse leads to faster resolution of cases.



Aboriginal Legal Aid in BC is a division of LSS, which offers specialized services to Indigenous people in BC in all areas, including family and child protection law. A report titled *Building Bridges: Improving Legal Services for Aboriginal Peoples* identified key areas for the LSS to make changes in order to improve legal aid service delivery to Indigenous peoples. The LSS made the decision to recruit staff to assist the organization to reach out more effectively to Indigenous people, including through the formation of the Parents Legal Centre Pilot project at the Vancouver Provincial Courthouse at Robson Square.

The LSS recommends expanding the PLC model across BC. It suggests consideration be made for regional offices in eight high-demand areas (Vancouver, Surrey, Victoria, Nanaimo, Kelowna, Kamloops, Prince George and Terrace) and a phone service for communities that are unable to travel to these locations. The importance of regional offices is emphasized, as Indigenous people have identified a strong preference for in-person intake options, but have also cited barriers such as transportation, restrictive hours and insufficient service points. During my engagement, I heard strong support for expansion of the PLC pilot to better serve Indigenous communities across the province (Recommendation 16).

EXTENDED FAMILY PROGRAM

The Extended Family Program (EFP) is a program operated by MCFD. The EFP allows for children to live with extended family or other individuals to whom they have a significant cultural connection in situations where their parents are unable to provide the necessary level of care.

When children are removed, there is uncertainty around when the child can be returned to his or her parent. Placement with family or friends can make

access to the child much easier for the parents. It also helps to reduce the disconnection and trauma that children can experience when they are removed from their home and community.

There is a critical need to enhance available education on the EFP option. I heard from many parents who were not immediately made aware that their children could be placed with family or friends. This can lead to lengthy delays in the screening and approval process if the parents decide to pursue this option after a child has already been placed.

A number of recommended changes to the EFP have been identified to expedite the placement of children. As an example, changes to allow for parents to leave the family home so that an extended family member can provide care for the children. This could reduce the disruption felt by children through the relocation process. It could also allow for caregivers that may have otherwise not had the means to house the children.

Despite the deficiencies, many I spoke with considered EFP a promising practice deserving of further support from MCFD, DAAs, and Indigenous communities.

ABORIGINAL FAMILY HEALING COURT

In 2006, the first First Nations Court (FNC) started in New Westminster for criminal cases under provincial court Judge Marion Buller. Today, FNCs operate in four communities around the province. The FNC process is different from the criminal court process in the following important ways:

- The FNC process includes community-based elders in the process;
- The FNC process considers the historical, social and cultural context of the offenders'

circumstances – usually as articulated in Gladue Reports; and

- The FNC process works to develop inclusive and respectful healing plans as opposed to determination of consequences.

In 2012, Judge Buller approached MCFD about expanding the FNC model to include *CFCSA* matters for cases involving Indigenous families. In 2013, the Fraser Region took the lead in working with a committee to develop a proposal, budget, and implementation and evaluation plan for a new Aboriginal Family Healing Court. The new model, it is envisioned, would address how *CFCSA* matters could be handled in a manner similar to the FNC.

Elders of the existing FNC in New Westminster have taken a lead in developing this new model, with support from MCFD regional staff and Spirit of the Children Society. The three main goals of the Aboriginal Family Healing Court are identified as follows:

1. To reduce the over-representation of Indigenous children in care that has resulted from the enduring effects of colonization by providing interventions to increase the effectiveness of court processes to address the trauma and other root causes which have led to the parents coming into contact with the child welfare system;
2. To reduce court costs with respect to Indigenous *CFCSA* matters by reducing the number of adjournments relating to administrative delays and reducing court time by avoiding the need for trials; and
3. To improve health, social and justice outcomes for Indigenous children and families by increasing the meaningful engagement of Indigenous families, promoting healing, and

providing Indigenous families with a culturally appropriate court process to have their *CFCSA* matters heard.

The Aboriginal Family Healing Court would serve Indigenous families living in New Westminster, who are receiving services from MCFD Burnaby Aboriginal Services Team, and who voluntarily chose to have their Family Case Conference (FCC) heard at the FNC for *CFCSA* matters in New Westminster. It is envisioned that up to 10 to 15 families a year will be served by this pilot project. This would be approximately 50% of Indigenous families from the New Westminster office who are involved with the MCFD Burnaby Aboriginal Service Team.

While ADR processes have been sensitized with Indigenous approaches to problem solving, FCC, in particular, have not benefitted from the application of an Indigenous-led model of decision making. This pilot is a clear effort to address underlying causes (e.g. intergenerational trauma related to residential schools) that have led to Indigenous children, parents, and families becoming involved with the child welfare system. For this reason, and given the support I heard for the FNC model as well, I strongly advise that MCFD continue support for the Aboriginal Family Healing Court and simultaneously consider further investment in the FNC model across BC (Recommendation 15).

WHAT IS THE ABORIGINAL FAMILY HEALING COURT?

Just as FNCs for criminal matters are limited to sentencing, an Aboriginal Family Healing Court would be limited to hearing Family Case Conferences (FCC) after an initial presentation hearing.

As per *CFCSA Court Rule 2*, at a presentation hearing, the Judge would order an FCC, which would be held in the courtroom used for the existing FNC, involving community-based elders, family members, relevant community-based supports and an MCFD protection social worker. The result of the FCC would be a collaborative healing plan, which would be filed with the court and reviewed regularly.

In conventional court settings, the presiding judge does not always have the cultural competencies to effectively address how the enduring effects of colonization have created the social and economic factors that may have led the parents into contact with the child welfare system. The Aboriginal Family Healing Court would coordinate the participation of Elders, community members and support services at a FCC for those families who consent to participate.

Under the Aboriginal Family Healing Court, the legal steps would not differ from those of the current court system; however, the model would represent a paradigm shift in terms of understanding and approaching an Indigenous child protection matter. A holistic Indigenous approach to conflict resolution with a focus on healing would form the underpinnings of the Aboriginal Family Healing Court processes and include problem-solving principles based on healing inter-generational trauma.

RECOMMENDATIONS AND RELATED ACTIONS

The justice system is not serving the best interests of Indigenous children and youth, parents, and families. Improving access to justice for Indigenous people must be something we all work together on to collectively address in order to see meaningful improvements in the child welfare system. The following recommendations are made in support of improved access to justice for Indigenous

children, parents, and families within the child welfare system.

Recommendation 11:

The Ministers of Justice and Attorney General, and Public Safety and Solicitor General convene a Justice Summit, within the context of the TRC Calls to Action on justice, to deal specially with Indigenous child welfare matters.

Recommendation 12:

MCFD take the following specific actions, including legislative amendments to improve court proceedings relating to child welfare, thus improving access to justice for Indigenous children and youth, families and communities:

- Commit to a more collaborative approach with Indigenous communities at the start of a child protection file and in advance of the court, by defaulting to presumptions that help instead of hinder an Indigenous community wishing to participate in court proceedings or ADR processes;
- The issue of “privacy” has been used by MCFD officials as a reason to deny First Nations and Métis communities access to information, and as such, *CFCSA* should be amended to clarify, confirm and ensure appropriate First Nations and Métis community leadership have access to information on their children who are in care under CCO and other child-care orders;
- Provide a notice for each presentation hearing, as well as clear, comprehensive, and up-to-date information to the First Nation or Indigenous community where each child in care is from; and
- Provide the same information to the First Nation or Indigenous community and/or their designated representative through email, as well as through the existing processes identified in the *CFCSA* regulations.

Recommendation 13:

The provincial court appoint provincial court judges whose work will focus exclusively on Indigenous children, families and communities.

Recommendation 14:

Provincial court judges undertake the following in order to improve access to justice within the child welfare system for Indigenous children and youth, parents, families, and communities:

- Ensure meaningful compliance with s. 34 and s. 35 of *CFCSA* by requiring a review in court of the effort made by MCFD or a DAA to: 1) notify the affected Indigenous community, 2) assist the Indigenous community in participating, and 3) detailing any less disruptive measures investigated in advance of court;
- Review the form of order used in access orders for parents/guardians for children in care proceedings so that relevant issues can be raised by the child or parent and discussed;
- Exercise the authority in s. 39 (4) *CFCSA* where a child at age 12 and older has the legal right to be provided with and represented by an advocate or lawyer;
- Take into consideration how the rules of evidence are used to introduce hearsay evidence by MCFD officials in presentation hearings;
- Balance the highly discretionary, unfettered and powerful authority of the Director under *CFCSA* by exercising a greater degree of scrutiny and discretion in considering presentation application made on the behalf of the Director by MCFD officials;
- Ensure their practice in court supports a trauma-based approach for Indigenous children and youth, parents, families, and communities, acknowledging the existing inter-generational trauma that has its roots in discriminatory laws, policies and practices of the state; and

- Make every possible effort to keep siblings together in their orders.

Recommendation 15:

MCFD take immediate action to support and expand promising practices, programs, and models that have demonstrated success in improving access to justice for Indigenous children and youth, parents, families and communities.

- MCFD support and expand the First Nations Court model across BC so that all Indigenous communities have the opportunity to be served under this model;
- MCFD continue support for the Aboriginal Family Healing Court in New Westminster.

Recommendation 16:

The BC Ministry of Justice support and provide resources to the Legal Services Society (LSS) to continue and expand the “Parents Legal Centre” model to other locations where a high demand exists, including expanding to Prince George, Kamloops, Williams Lake, Campbell River, Terrace/Smithers, Surrey, and Victoria.

- A final determination of the locations for expansion should be made in consultation with LSS and Indigenous communities and organizations.

Recommendation 17:

Native courtworkers be supported to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters.

- The mandate of the Native Courtworker and Counselling Association of BC (NCCABC) be expanded to provide services to Indigenous

families who end up in legal proceedings and in the courts on child welfare matters; and

- Canada and BC provide the necessary financial support to NCCABC to effectively deliver these services.

Recommendation 18:

MCFD take the following immediate actions to support alternative dispute resolution (ADR) processes within the child welfare system:

- Dedicate new MCFD staff, or realign existing staff, to provide facilitation for various ADR processes;
- Reinforce with MCFD staff that ADR processes be the default and not the exception, including the use of new or strengthened performance and evaluation measures regarding the effective use of ADR processes;
- Ensure that ADR processes, appropriate to the circumstances, are the default and are utilized at the earliest instance, including before a removal, or even when there is a threat of removal and that the courts be treated as an option of last resort; and
- When a removal does occur, mandate MCFD officials to offer some form of ADR process.

Recommendation 19:

The BC Attorney General continue and expand the existing mediation program so that it is an available option for all Indigenous parents and families involved in child welfare matters and interested in utilizing an ADR process.

Recommendation 20:

MCFD and INAC collaborate to ensure similar funds are provided to Indigenous communities for their effective participation in child protection hearings, and; that these funds are provided directly to First Nations or an alternate through the INAC-MCFD service agreement.

Recommendation 21:

The Province undertake the following change to *CFCSA*, in the interest of improving access to justice for Métis children and youth, parents, families, and communities:

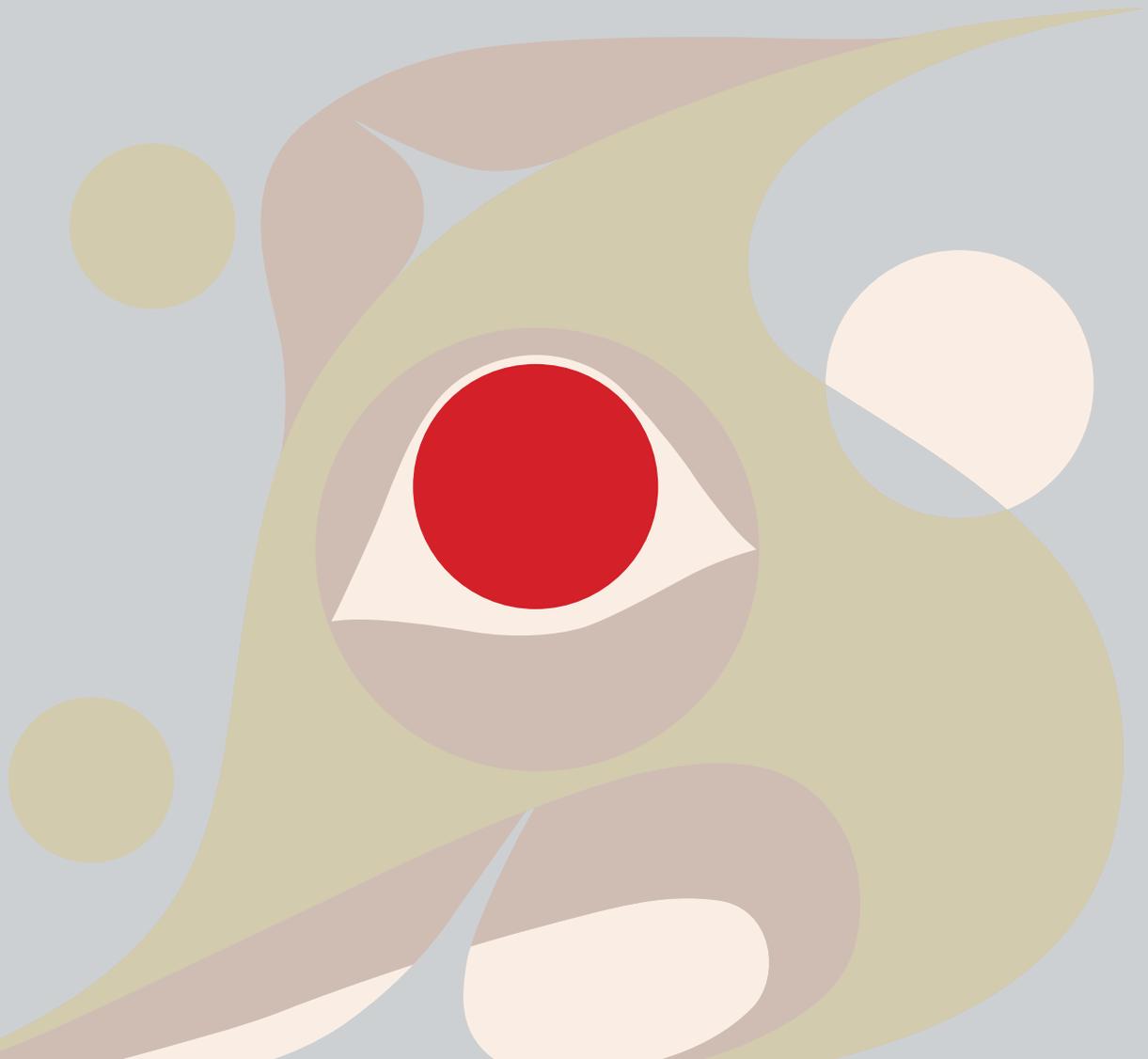
- Consistent with the Supreme Court of Canada decision in *Daniels*, the definition of “Aboriginal child” in *CFCSA* be amended to add “Métis child” with consequential amendments as necessary.

Recommendation 22:

MCFD provide First Nations and the Métis Nation BC with the financial support to create online information and corresponding print materials for First Nations and Métis citizens to inform them about the child welfare system and specifically about how to obtain First Nations or Métis-specific assistance and their related rights.

AREAS FOR FOCUSED ACTION

AREA 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS



AREA 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS

At all the meetings I participated in, the existing fiscal relationships between BC, Canada, DAAs, and Indigenous communities was a key topic. Those I met with highlighted key reforms they believe are necessary to directly address the significant issues with regards to funding of child welfare services for Indigenous children and youth, families and communities in BC. Since the existing fiscal relationships impact on every aspect of the child welfare system, many of the issues discussed in this area for focused action are explored in other areas of the report as well. For example, prevention services and permanency planning are topics that warrant their own fulsome discussion and so they are taken up again in later areas of this report.

To argue that not enough money is being allocated by Canada or BC to child welfare services for Indigenous children and youth is to oversimplify the challenges that exist. I heard consistently that existing funding formulas are broken, and that a new fiscal relationship is required between Canada, BC, DAAs, and Indigenous communities and representative organizations, building on the findings and orders of the *TRC Final Report* and the *2016 CHRT 2* decision. While it is substantiated in the *2016 CHRT 2* decision that more funding is required in many areas, many I met with emphasized that legislation, policies (including funding formulas), and the overall fiscal relationships between INAC, MCFD, DAAs, and Indigenous communities need to be improved.

THE CHRT IMPLEMENTATION PANEL ON THE NEED TO FOCUS ON THE FLAWED FUNDING FORMULAS

*2016 CHRT 16, para [38] Again, the objectives of the FNCFS Program can only be met if INAC's funding methodology is focused on service levels and the **real needs** of First Nations children and families, which may vary from one child, family or Nation to another. A focus on the overall amount of funding, through the continued application of flawed funding formulas, does little, if anything, to correct the discrimination found in the Decision...*

DIRECTIVE 20-1 – A FLAWED FUNDING FORMULA

As I have discussed elsewhere in this report, Directive 20-1 is an INAC program that provides funding for child and family services that are delivered through First Nations Child and Family service (FNCFS) agencies or DAAs. In BC, there are two sets of funding agreements under Directive 20-1, the direct agreements between DAAs and INAC, and the *BC Service Agreement Regarding the Funding of Child Protection Services of First Nations Children Ordinarily Resident on Reserve* (the “*BC Service Agreement*”). In the absence of DAAs in a region, funding is delivered to the province by way of the *BC Service Agreement*.

The Canadian Human Rights Tribunal (CHRT) confirmed in the *2016 CHRT 2* decision that the complaint of inequity in funding child and family services on reserves was substantiated, and it identified significant “adverse impacts,” to First Nations children and youth. Specifically, the CHRT found that the design of **DIRECTIVE 20-1 WAS BASED ON FLAWED ASSUMPTIONS AND THAT IT HAS RESULTED IN “AN INCENTIVE TO BRING CHILDREN INTO CARE.”** INAC’s Enhanced Prevention Focused Approach (EPFA), not currently applied in BC, was also found by the CHRT to perpetuate the incentive to remove children from their homes (*2016 CHRT 2*, para 458).

The impact of Directive 20-1 in BC is clear: in order for MCFD or DAAs to satisfy INAC’s funding requirements for reimbursement, a court order for removal of a

child becomes necessary. The decision in *2016 CHRT 2* identifies this as a concern, but I also heard directly from many within communities who identified this as a significant contributing factor to the number of Indigenous children in care, and consequently, the significant overrepresentation of Indigenous children in care relative to non-Indigenous children. In re-examining the funding formulas, and to address this specific concern, **MCFD AND INAC SHOULD WORK WITH INDIGENOUS COMMUNITIES AND ORGANIZATIONS TO ENSURE THAT NEW OR REVISED FUNDING FORMULAS PROVIDE FOR ADR PROCESSES TO BE FUNDED AS A PREVENTION MEASURE AND, FURTHER, THAT CHILD PLACEMENTS ARRIVED AT THROUGH ADR PROCESSES BE FUNDED IN A MANNER AND TO THE EXTENT THAT CHILDREN WHO ARE REMOVED UNDER A COURT ORDER ARE CURRENTLY FUNDED** (Recommendation 24).

RULING FROM THE PANEL OVERSEEING INAC’S IMPLEMENTATION AND ACTIONS IN RESPONSE TO FINDINGS IN 2016 CHRT 2 – SEPTEMBER 2016

2016 CHRT 16, para.18:

One of the main findings in the [2016 CHRT 2 decision] is that INAC’s FNCFS Program, which flows funding through formulas, Directive 20-1 and the Enhanced Prevention Focused Approach (EPFA), provides funding based on flawed assumptions about the number of children in care, the number of families in need of services, and population levels that do not accurately reflect the real service needs of many on-reserve communities. This results in inadequate fixed funding for operation costs (capital costs, multiple offices, cost of living adjustment, staff salaries and benefits, training, legal, remoteness and travel) and prevention costs (primary, secondary and tertiary services to maintain children safely in their family homes), hindering the ability of FNCFS Agencies to provide provincially/territorially mandated child welfare services, let alone culturally appropriate services. Most importantly, inadequate funding for operation and prevention costs provides an incentive to bring children into care because eligible maintenance expenditures to maintain a child in care are reimbursable at cost.

IS THE ENHANCED PREVENTION FOCUSED APPROACH (EPFA) ANY BETTER THAN DIRECTIVE 20-1?

Select provinces (Alberta, Saskatchewan, Nova Scotia, Quebec, Prince Edward Island, and Manitoba) have transitioned from Directive 20-1 into a funding program called the Enhanced Prevention Focused Approach (EPFA). As noted earlier in this report, EPFA identifies prevention as a third funding stream in addition to operations and maintenance, which in theory should open up funding support for prevention services for Indigenous children who are in care. EPFA does not, however, address the service inequities that are caused by Directive 20-1.

To date, there has been no demonstration that the EPFA program results in service delivery on reserve that is comparable to provincial services (*2016 CHRT 2*, para. 189-190). Similarly to Directive 20-1, EPFA also faces challenges such as INAC having not built into it any provision for adjustments according to inflation (para. 387), and failure to account for the administrative circumstances of agencies operating in remote areas (i.e. the need for multiple office locations) (para. 287).

The panel overseeing INAC's implementation and actions in response to findings in *2016 CHRT 2* has ordered INAC to immediately take specific measures to address the assumptions and flaws in its existing funding formulas and to provide comprehensive reports explaining how the flaws and assumptions are being addressed (*2016 CHRT 10*, para 19). INAC has also been ordered to provide detailed information on budget allocations for each First Nation Child and Family Services (FNCFS) they fund and timelines for when budget allocations will be rolled-out. This work is ongoing and in BC as elsewhere across the country it is critical that the province, Indigenous communities and citizens hold INAC to account in this regard.

Funding administered through Directive 20-1 is limited to Indigenous children who are considered to be "ordinarily resident on reserve" and who are in

care. This means that in cases where a child is not "ordinarily on reserve", there is no federal funding available through Directive 20-1.

The review of Directive 20-1 within *2016 CHRT 2* addresses a series of issues with the funding model, including as I have already mentioned, the inherent bias towards placing Indigenous children in care. However, other critical issues with the program that have been identified in the CHRT decision include the following:

- Limited modifications to the monetary amounts available over time since its introduction in 1990;
- Limitations in the scope of funding; and
- A strong bias against prevention services, such as those that favour and offer supports for family preservation and reunification.

Directive 20-1's strong bias against prevention services was cited as especially troubling by nearly all those I met with. Indigenous communities and DAAs identified consistently the need for additional financial resources to support trauma counselling for Indigenous individuals, with a particular focus on Indigenous parents and extended families.

For those with whom I met, making provisions for trauma services is seen as a necessary investment that will directly contribute to more Indigenous children remaining with their families and communities and at the very least connected to their traditions, cultures, values, languages and their way of life as Indigenous peoples. Ensuring the protection of an Indigenous child's cultural identity is provided for in the *CFCSA*, but to date the fiscal relationship between Indigenous communities and other governments has not adequately supported those working to achieve this. In partnership with Indigenous communities and representative organizations, INAC and MCFD should work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision (Recommendation 26).

The *2016 CHRT 2* decision also identifies significant shortcomings in the budget allocations for Directive 20-1, particularly in the limited modifications that have been made to the program, despite the embedded directive for a 2% annual increase (*2016 CHRT 2*, para. 134). Para. 163 of the decision goes on to review the First Nations Child and Family Caring Society's *Wen:de Report Two* and its discussion of the misalignment of the adjustments to the program as compared to the increasing cost of living:

Although Directive 20-1 contains a cost of living adjustment, it has not been implemented since 1995... To restore the loss of purchasing power

since 1995, it found \$24.8 million would be needed to meet the cost of living requirements for 2005 alone. (2016 CHRT 2, para. 163)

Para. 152-153 of the *2016 CHRT 2* decision goes on to explore how these limited budgets are then administered to FNCFS agencies and DAAs with the expectation that they deliver "a comparable range of services on reserve with the funding they receive through Directive 20-1" (*2016 CHRT 2*, para. 152). There is little regard given to the scope of services that they are delivering, nor is attention paid to the administrative costs associated with operating small agencies or delivering services in remote areas.

The *2016 CHRT 2* decision frequently comments on the inadequacy of Directive 20-1 to provide funding support for prevention services due to the nature of how the formula is written. In particular, the Directive 20-1 provides dollar-for-dollar reimbursement of 'maintenance' expenditures, and prevention services are most often now included in allowable 'maintenance' expenditures (*2016 CHRT 2*, para. 168). Over time, **THE RESULT OF DIRECTIVE 20-1 HAS BEEN THE EMERGENCE OF A CHILD WELFARE SYSTEM THAT PLACES INDIGENOUS CHILDREN IN CARE TO ACCESS SERVICES, RATHER THAN PROVIDING SERVICES TO PROMOTE INDIGENOUS FAMILIES STAYING TOGETHER.**

The structure of the Directive 20-1 funding program has also been criticized for its inability to adjust to changing provincial legislation and standards (*2016 CHRT 2*, para. 334) and the adverse impacts that has on those delivering service on reserve. I heard directly about the ways in which Directive 20-1's inflexibility in this regard places a tremendous burden on DAAs that are required to comply with changes in provincial legislation and administrative requirements without assurance that they will have the funding framework to match, inhibiting their

ability to deliver equitable services to First Nations communities.

Indigenous children who are engaged with the child welfare system deserve a funding program that has kept up with the changes in this country's economy, and one that is able to provide equitable services to Indigenous children, regardless as to where they are located in the province. These children are also deserving of a funding model that supports them to remain with their families, and that is not something that Directive 20-1 is designed to support.

For their part, and in response to *2016 CHRT 2* and later rulings, INAC has openly acknowledged that Directive 20-1 is "broken," contributes to dysfunctional relationships, continues a bias towards 'protection' versus 'prevention' services, and is not keeping up with provincial changes.

In September 2016, the panel overseeing INAC's implementation and actions in response to the *2016 CHRT 2* decision requested from the CHRT an

order that INAC immediately make adjustments to its funding formulas to ensure operations budgets for FNCFS Agencies (DAAs in BC) approximate actual costs. The panel made the argument that the "assumptions about the number of children in care, the number of families in need of services, and population levels are the starting point for addressing the discriminatory impacts of INAC's funding formulas" (*2016 CHRT 16, para 33*) and urged that INAC address these immediately in their consideration of funding. The panel suggested various modifications to INAC's funding formulas, including:

- Increases to the base amounts in the formula, including for the child purchase amount;
- That FNCFS Agencies, serving a population where the percentage of children in care and percentage of families receiving services exceeds 6% and 20% respectively, be provided with an upward adjustment for their operations and

THE CANADIAN HUMAN RIGHTS TRIBUNAL (CHRT) IMPLEMENTATION PANEL ON ADDRESSING THE DISCRIMINATORY IMPACTS OF INAC'S FUNDING FORMULAS

2016 CHRT 16, para [33] ...It is the way in which the FNCFS Program is delivered and funding is determined that results in discriminatory effects for First Nations children and families. The Panel's focus is on whether funding is being determined based on an evaluation of the distinct needs and circumstances of First Nations children and families and their communities. ***While other key factors come into play in determining whether the amount of funding provided to FNCFS Agencies is adequate to address the needs of the communities they serve, such as remoteness and the extent of travel to meet children and families (which will be addressed later in this ruling), the assumptions about the number of children in care, the number of families in need of services and population levels are the starting point for addressing the discriminatory impacts of INAC's funding formulas.***

prevention budgets in proportion to the excess percentages;

- That no downwards adjustments be applied to FNCFS Agencies with fewer than 6% of children in care and/or serving fewer than 20% of families;
- That adjustments to the fixed amount in the funding formula for population levels be increased; and
- That the fixed amount in the funding formula for all FNCFS Agencies serving fewer than 251 Registered Indian children be the same amount provided to agencies serving at least 251 Registered Indian children. (2016 CHRT 16, para 27).

THE BC SERVICE AGREEMENT

In the absence of DAAs in a region, the *BC Service Agreement* is the funding mechanism that provides for MCFD's reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between MCFD and INAC. In 2012, the *BC Service Agreement* replaced a previous memorandum of understanding between the INAC and MCFD. The *BC Service*

Agreement determines the scope of service areas, including limitations such as covering services only to "Status Indians" who are "ordinarily resident on reserve," and the agreed upon funding levels. In the existing agreement, Canada and BC confirm:

- INAC does not deliver child and family services;
- Child and family services are matters of provincial or territorial jurisdiction;
- INAC's role is to fund or reimburse MCFD to deliver child welfare services to First Nations children and families ordinarily resident on reserve; and
- MCFD is responsible for providing direct child and family services in 84 First Nations communities without DAAs as well as for delivering services provided on behalf of 23 fully or partially delegated agencies as needed.

IN THE 2015-2016 FISCAL YEAR, INAC COMMITTED TO REIMBURSE \$29.1M TO THE PROVINCE THROUGH THE BC SERVICE AGREEMENT for eligible MCFD employee costs, MCFD operational and maintenance costs, purchased services, operations, transition funding, and an escalator of 2%. However, MCFD has expressed the concern that not all eligible services paid for by MCFD are being adequately reimbursed

TABLE 4: FUNDING UNDER THE 15/16 BC SERVICE AGREEMENT

INAC FUNDING TO MCFD	Core Budget	\$15,000,000
	Transition Funding	\$4,500,000
	Actual Maintenance	\$9,200,000
	2% escalator that was added to 15/16 BC Service Agreement	\$400,000
TOTAL FUNDING TO MCFD FROM INAC PER 15/16 BC SERVICE AGREEMENT		\$29,100,000

WHAT ARE “OPERATIONAL” FUNDING AND “MAINTENANCE” FUNDING ACCORDING TO DIRECTIVE 20-1?

OPERATIONAL FUNDING is intended to cover operations and administration costs for such items as salaries and benefits for agency staff, travel expenses, staff training, legal services, family support services and agency administration including rent and office expenditures. It is calculated using a formula based on the on-reserve population of children aged 0-18 as reported annually by First Nation bands across Canada (2016 CHRT 2, para 126).

MAINTENANCE FUNDING is intended to cover actual costs of eligible expenditures for maintaining a FN child ordinarily resident on reserve on alternate care out of parental home. Children must be taken into care in accordance with provincially ...approved legislation, standards and rates for foster home, group home and institutional care (2016 CHRT 2, para 131).

by Canada. The Province has conducted its own cost analysis of child and family welfare services that should be eligible for reimbursement but are not currently paid by Canada. Based on a costing exercise completed in 2010/2011 fiscal year, **MCFD PREDICTS THE ACTUAL COSTS FOR SERVICES DELIVERED FOR 2015/2016 WILL BE APPROXIMATELY \$42 MILLION.** These differences highlight the need for all parties to come together to review and develop new funding formulas for Indigenous child welfare.

While the *BC Service Agreement* has been described by some as the most well funded arrangement in Canada when compared with other jurisdictions, at present, federal funding under the *BC Service Agreement* is deficient. This is a message delivered through the 2016 CHRT 2 decision, but is also the message I heard in BC from Indigenous communities, DAAs, and MCFD.

Despite the direct implications for Indigenous communities, there is no consultation with, nor direct involvement of Indigenous communities in negotiation of the *BC Service Agreement*. At many of the meetings I attended, individuals expressed their desire that going forward Indigenous communities could be more involved as a partner in negotiating the *BC Service Agreement*.

DAA FUNDING AGREEMENTS

The provincial government, through MCFD and on behalf of both the provincial and federal governments, delegates to DAAs the legal authority to provide services to both on and off reserve populations in a defined geographic area. As described in the beginning of this report, funding flows to the DAAs from the federal government through INAC in support of the on-reserve child protection services, and from MCFD in support of the off-reserve services. As noted earlier in

the report, federal funding is provided through agreements between DAAs and INAC under Directive 20-1. Table 5 provides a summary of the funding provided to each of the DAAs by INAC (through Directive 20-1) and by MCFD.

INAC provides funds to DAAs, but only to provide services to “status Indians” who are “ordinarily resident on reserve,” and in BC, this means there are DAAs exclusively funded by MCFD. Vancouver Aboriginal Child and Family Services Society (VACFSS) and the Métis Family Services in South Fraser are two such DAAs.

VACFSS is a DAA situated in the downtown eastside (DTES) of Vancouver, serving urban Indigenous children and families living in the greater Vancouver area. Since the DAA is not serving First Nations clients “ordinarily on reserve,” MCFD, not INAC, funds the DAA. VACFSS was founded and continues to operate in the DTES, but many of the children and families served by VACFSS find their origins in different parts of the province, country, and beyond.

The Province estimates that \$1 million per day in government funding is spent on services for people in the DTES. There is no question that there are incredible challenges facing Indigenous peoples who for one reason or another end up in the DTES and VACFSS provides essential services for Indigenous children and families who migrate to this urban environment.

In many ways, however, the story of VACFSS is not unlike those of other DAAs across the province. VACFSS works hard to position itself to ensure that Indigenous children and youth remain connected to their extended families, territories and cultural foundations, but this important agenda is challenged by jurisdictional complexities, failed federal and provincial funding formulas and the

lack of an overall child welfare policy framework in BC that is prevention focused, encouraging connectedness and promoting family preservation.

DAA WAGE PARITY

INAC and MCFD have different funding models to support DAA delegation agreements. INAC’s Directive 20-1 is a standardized funding formula that applies to all on-reserve services. In contrast, MCFD does not have a standardized funding model for off-reserve services. The delegation of child and family services to DAAs in BC occurred over a period of time, and MCFD funding developed based on separate methodologies and calculations by each MCFD Service Delivery Area (SDA) or region. For DAAs across the province, this has created funding inconsistencies that remain today.

MCFD is aware of the inconsistencies, however, to date insufficient steps have been taken to address them. During my many meetings, I heard from DAAs and Indigenous communities about how the different provincial and federal approaches to funding transfer due to jurisdictional complexity have created strained relations with DAAs who, in providing the same service to First Nations children both on and off reserve, are often left to reconcile the impact of cost pressures with two governments.

Senior officials with MCFD have committed and begun work to review and assess existing MCFD funding agreements, and have expressed agreement with an equity-based principle across all budget expenditures lines between the Province and DAAs. A precedent established for a new funding model is the current arrangement with Fraser Valley Child and Family Services Society (FVCFSS). The funding for this DAA was recently renegotiated on the principles of equity with MCFD, inclusive of wage parity.

ADDITIONAL IMMEDIATE MEASURES TO BE TAKEN BY INAC IN RESPONSE TO ORDERS IDENTIFIED IN THE 2016 CHRT 2 DECISION*

The Panel overseeing INAC's response to orders identified in the 2016 CHRT 2 decision ordered the following additional immediate measures to be taken by INAC in order to comply with the 2016 CHRT 2 decision:

1. INAC will not decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle;
2. INAC will determine budgets for each individual FNCFS Agency based on an evaluation of its distinct needs and circumstances, including an appropriate evaluation of how remoteness may affect the FNCFS Agency's ability to provide services;
3. In determining funding for FNCFS Agencies, INAC is to establish the assumptions of 6% of children in care and 20% of families in need of services as minimum standards only. INAC will not reduce funding to FNCFS Agencies because the number of children in care they serve is below 6% or where the number of families in need of services is below 20%;
4. In determining funding for FNCFS Agencies that have more than 6% of children in care and/or that serve more than 20% of families, INAC is ordered to determine funding for those agencies based on an assessment of the actual levels of children in care and families in need of services;
5. In determining funding for FNCFS Agencies, INAC is to cease the practice of formulaically reducing funding for agencies that serve fewer than 251 eligible children. Rather, funding must be determined on an assessment of the actual service level needs of each FNCFS Agency, regardless of population level;
6. INAC is to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and/or operations funding; and
7. INAC is to immediately apply Jordan's Principle to all First Nations children (not only to those resident on reserve).

* Based on the Orders identified in 2016 CHRT 16



TABLE 5: 16/17 BUDGETED FUNDING OF DAAS

		SECTION A: INAC FUNDING OF DAAS (ON-RESERVE)		
		2016/17 Core Budget based on last years actuals	2016/17 Immediate Remedies Allocation*	2015/16 Actual Maintenance used as budget for 2016/17
C3	Namgis	280,001	70,000	-
C3	Denisiqi	660,650	165,163	50,354
C3	Haida	362,553	90,638	-
C3	Heiltsuk	323,832	80,958	15,000
C4	Ayas Men Men	580,830	669,909	3,555,143
C4	Nezul Be Hunuyeh	374,005	425,374	803,453
C4	Carrier Sekani	972,567	695,761	2,268,241
C4	NIL TU,O	950,618	346,909	543,227
C4	Northwest Inter-Nation	812,232	281,138	49,738
C4	Gitxsan	824,131	340,803	145,028
C6	Cowichan/Lalum'utul	1,025,551	742,534	762,724
C6	Usma Nuu-chah-nulth	1,074,065	738,085	729,266
C6	Secwepemc	738,874	772,166	1,415,234
C6	Ktunaxa Kinbasket	253,981	261,922	419,496
C6	Fraser Valley Aboriginal Children and Family Services Society	935,379	680,427	653,121
C6	Kwumut' Lelum	1,137,993	688,499	1,187,360
C6	Nlha'7Kapmx	381,378	385,804	422,763
C6	Knucwentwecw	370,595	408,890	335,530
C6	Scw'exmx	404,075	520,723	619,434
Bylaw	Splatsin Stsmamlt	88,807	383,697	773,248
C6	La Societe De Les Enfants Michif (MFS)	-	-	-
C4	Nisga'a Nation	-	-	-
C4	Surrounded By Cedar Child & Family Services Society	-	-	-
C6	Vancouver Aboriginal Child & Family Services Society	-	-	-
SUB-TOTALS - Funding to DAA		\$12,552,117	\$8,749,400	\$14,748,360

*(INCREASE FOLLOWING 2016 FED BUDGET AND HUMAN RIGHTS TRIBUNAL DECISION. INCLUDES PREVENTION FUNDING)

	SECTION B: MCFD FUNDING OF DAAS (OFF-RESERVE) - 2016/17 BUDGET			TOTAL FUNDING OF DAAS
	Delegated	Non-Delegated (prevention, care team, ADR, etc.)	Total MCFD Funding of DAAs (off-reserve)	
Total INAC Funding of DAAs (on-reserve)				
350,001	-	77,004	77,004	427,005
876,167	-	417,924	417,924	1,294,091
453,191	-	215,634	215,634	668,825
419,790	36,317	90,300	126,617	546,407
4,805,882	1,558,656	247,778	1,806,434	6,612,316
1,602,832	2,354,233	292,763	2,646,996	4,249,828
3,936,569	2,108,421	2,194,657	4,303,078	8,239,647
1,840,754	464,870	381,336	846,206	2,686,960
1,143,108	1,008,314	312,179	1,320,493	2,463,601
1,309,962	313,634	-	313,634	1,623,596
2,530,809	1,051,206	456,984	1,508,190	4,038,999
2,541,416	3,175,476	808,726	3,984,202	6,525,618
2,926,274	5,945,048	510,739	6,455,787	9,382,061
935,399	2,920,976	932,526	3,853,503	4,788,902
2,268,927	21,417,416	2,519,072	23,936,488	26,205,415
3,013,852	2,048,062	680,199	2,728,261	5,742,113
1,189,945	12,861	-	12,861	1,202,806
1,115,015	465,731	27,144	492,875	1,607,890
1,544,232	263,864	238,706	502,570	2,046,802
1,245,752	184,591	144,348	328,939	1,574,691
-	6,965,146	879,034	7,844,180	7,844,180
-	2,005,408	-	2,005,408	2,005,408
-	4,271,546	406,716	4,678,262	4,678,262
-	27,451,433	2,502,304	29,953,737	29,953,737
\$36,049,877	\$86,023,209	\$14,336,073	\$100,359,283	\$136,409,160

The funding for the Fraser Valley Child and Family Services Society (FVCFSS) is now based on parity with current MCFD workload ratios and salaries adjusted to the current BCGEU collective agreement that determines the wage rates paid to MCFD delegated workers. As a result, both MCFD and FVCFSS are now paying delegated workers in the Fraser Valley geographic area the same wages. The current contract contains provisions to provide the DAA with future funding adjustments to reflect any negotiated adjustments to the BCGEU wage structure.

FVCFSS is jointly funded by MCFD (93%) and INAC (7%), and during the negotiation of the new funding agreement, FVCFSS fully disclosed INAC funding information, in the hope that each party contribute its 'fair-share' to the overall agency funding requirements.

Moving to a similar model of wage parity for all DAAs would require the commitment of DAAs, and the provincial and federal governments. Many DAAs receive a larger proportion of their funding from INAC than does FVCFSS, and MCFD have cautioned that it is not clear whether the current federal funding formulas would support a move to full MCFD wage parity. Moving to wage parity for DAAs would require commitment on the part of both funding parties, MCFD and INAC, to parallel and align their funding models.

Historically, provincial funding to DAAs for off-reserve delegated services gave some level of consideration to wage parity by mirroring BCGEU wage grids. Over time, however, funding agreements with DAAs have seen an erosion of this parity and there has been no consistent practice on the part of MCFD to open agreements and flow additional funding to DAAs as BCGEU wages are renegotiated through collective bargaining. Many I met with attested that while they have witnessed

MCFD regions typically receive a budget lift for their own staff when wages are renegotiated, there is no consistent practice or approach to ensure that the DAAs are similarly funded.

For many of the DAAs I met with, staff retention and recruitment were identified as a real issue, as DAA staff who were paid lower than MCFD staff, would migrate to MCFD when opportunities arose. FVCFSS reported that prior to their newly negotiated agreement, staff turnover and inability to fully staff positions were challenges. With wage parity, turnover has reduced and FVCFSS is able to maintain full staffing.

The FVCFSS agreement provides a funding model that could be applied to all DAAs. MCFD adopted the principle of wage parity with BCGEU rates in this FVCFSS agreement. Going forward, MCFD should take steps to ensure that the principle of wage parity is included in all agreements with DAAs in BC (Recommendation 30).

OUT OF CARE OPTIONS AND PARITY

During a meeting with the Wet'suwet'en Wellness Working Group (WWWG), a 15-year-old Indigenous girl spoke about her experience in care for the past seven years and her desire to be in a permanent placement with her aunt and uncle. Upon review, I was troubled to learn that the difference between the caregiver rates and Post-Adoption Assistance (PAA) rates was a barrier to permanency for this girl. The various rates for out of care options are summarized in Figure 9. During my many meetings, individuals stressed how harmonizing the rates could increase permanent placements for many Indigenous children currently in care.

The economic standing of Indigenous families with children placed in foster care continues to be a barrier in long-term permanency placement. Inequity in funding for various out-of-care options for Indigenous children was something that routinely came up during meetings. In particular, the difference of caregiver rates and the rates of the PAA program and other out-of-care options was identified as problematic.

MCFD should take immediate steps to harmonize the financial assistance to families who have permanent care of children in order to promote permanency opportunities for Indigenous children. Further, MCFD should work to ensure that the payments for permanent legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides. Finally, the Province should undertake a legislative review and financial policy review to determine the necessary changes that would allow those families under the “Extended Family Program” to receive the Canada Child Benefit and ensure the Canada Child Benefit amount is not deducted from MCFD payments for permanency placements.

RECOMMENDATIONS AND RELATED ACTIONS

Responding to the *TRC Final Report*, the *2016 CHRT 2* decision, and International doctrine, Canada has agreed to a wholesale reform of the Indigenous child welfare system. BC has also expressed their high level commitment to review and reform the child welfare system to better meet the needs of Indigenous children and youth. Those I met with highlighted that what is required now are commitments from Canada and BC to immediately address failed funding formulas and commit to a new fiscal relationship to match what have, thus far,

been high level political commitments. Collectively, the recommendations within this area call for a new fiscal relationship for Indigenous child welfare services, imploring both Canada and BC invest now in patterns of connectedness and reunification.

Recommendation 23:

Canada demonstrate its commitment to Jordan's Principle by acting immediately to revisit its practice of providing funding only for those First Nations children and families “ordinarily resident on reserve.”

Recommendation 24:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work collaboratively to develop alternative funding formulas that will address the shortcomings of INAC's Directive 20-1 and the EPFA identified specifically by the CHRT in *2016 CHRT 2*, and ensure equitable service delivery to all Indigenous children in BC.

Recommendation 25:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that new or revised funding formulas provide for ADR processes to be funded as a prevention measure and, further, that a child placement arrived at through an ADR process be funded in a manner and to the extent that a child who is removed under a court order is funded.

Recommendation 26:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision.

FIGURE 9: BC OPTIONS: CHILDREN LIVING AWAY FROM HOME

Funding amounts shown are the maximum identified in policy and are at the discretion of MCFD.

KIN CARERS



<p>CIHR* PAYMENTS</p> <div style="background-color: #f5e6d3; padding: 10px; border: 1px solid #ccc; margin: 5px 0;"> <p>\$257.46 to \$454.32</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>CANADA CHILD BENEFIT Up to \$533.33</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>BENEFITS Basic medical coverage; PharmaCare coverage</p> <p><i>* Child in the Home of a Relative</i></p> </div>	<p>EXTENDED FAMILY PROGRAM</p> <div style="background-color: #f5e6d3; padding: 10px; border: 1px solid #ccc; margin: 5px 0;"> <p>\$554.27 to \$625</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>CANADA CHILD BENEFIT Caregiver not eligible</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>BENEFITS Medical; Dental; Optical</p> <p>SUPPLEMENTAL BENEFITS (WHEN NEEDED) Funding for start-up costs, child care expenses/child minding, formal respite, transportation expenses and training</p> </div>	<p>OUT OF CARE ORDERS</p> <div style="background-color: #f5e6d3; padding: 10px; border: 1px solid #ccc; margin: 5px 0;"> <p>\$803.81 to \$909.95</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>CANADA CHILD BENEFIT Caregiver not eligible</p> </div> <div style="background-color: #d9e1f2; padding: 5px; border: 1px solid #ccc; margin: 5px 0;"> <p>BENEFITS* No additional benefits</p> <p>SUPPLEMENTAL BENEFITS* Child care subsidy available</p> <p><i>* Sec. 35(2(d) and Sec. 41(1)(b).</i></p> </div>
--	---	--

INDEPENDENT LIVING OR YOUTH AGREEMENT*



\$700 for basic shelter & support. Up to **\$500** for other living expenses plus additional funds for utilities and housing start-up costs.

CANADA CHILD BENEFIT
Not eligible

BENEFITS
Medical; Dental; Optical

**A Youth Agreement is a legal agreement under the CFCSA between MCFD and the youth. A youth entering into a youth agreement is not "in care" but receives support and services from MCFD.*

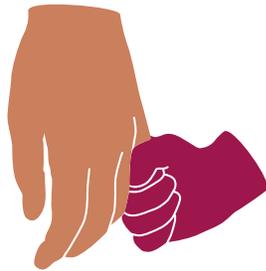
LEVEL OF GOVERNMENT INVOLVEMENT



MCFD DATA - CURRENT AS OF AUGUST 2016



CHILDREN AND YOUTH IN CARE



	RESTRICTED FAMILY (FOSTER) CARE WITH KIN	REGULAR FAMILY (FOSTER) CARE	SPECIALIZED FAMILY (FOSTER) CARE Level 1	SPECIALIZED FAMILY (FOSTER) CARE Level 2	SPECIALIZED FAMILY (FOSTER) CARE Level 3
	\$803.81 to \$909.95	\$803.81 to \$909.95	\$1261.83 to \$1367.97**	\$1944.21 to \$5422.77**	\$2620.47 to \$4933.02**
	CANADA CHILD BENEFIT* Caregiver not eligible				
	BENEFITS Medical; Dental; Optical SUPPLEMENTAL BENEFITS Child care subsidy available	BENEFITS Medical; Dental; Optical SUPPLEMENTAL BENEFITS Funding for supplementary supports and services as needed, including start-up costs, child care expenses/child minding, formal respite/relief, transportation expenses and training.			

*Canada Child Benefit is paid to MCFD by the federal government.

** Payment varies based on the age and number of children in the home.



Recommendation 27:

In advance of the development of alternative funding formulas, INAC ensure that in the short term the additional funding committed to Indigenous child welfare address the most discriminatory aspects of INAC's current funding formulas, such as the incentive created through Directive 20-1 to bring Indigenous children into care.

Recommendation 28:

INAC and MCFD work together to ensure Indigenous communities not represented by DAAs are directly engaged in the negotiation of the annual *BC Service Agreement* between INAC and MCFD.

Recommendation 29:

Where Indigenous communities, through their own decision making processes, decide to give their free, prior, and informed consent to DAAs that they have established, Canada and BC should ensure fair and equitable funding to DAAs based on needs and that are, at minimum, similar to the formula under which Canada transfers funds to the province.

Recommendation 30:

INAC and MCFD take the following immediate actions to address the issue of wage parity for DAAs in BC:

- INAC and MCFD commit in policy to ensure that the principle of wage parity is included in all agreements with DAAs in BC; and
- INAC and MCFD commit the required time and resources to negotiate in good faith and make the required amendments to all DAA agreements to ensure DAA workers are compensated at the same rate as MCFD workers now and in the future.

Recommendation 31:

MCFD take immediate steps to harmonize the financial assistance to families who have permanent care of children in order to promote permanency opportunities for Indigenous children.

Recommendation 32:

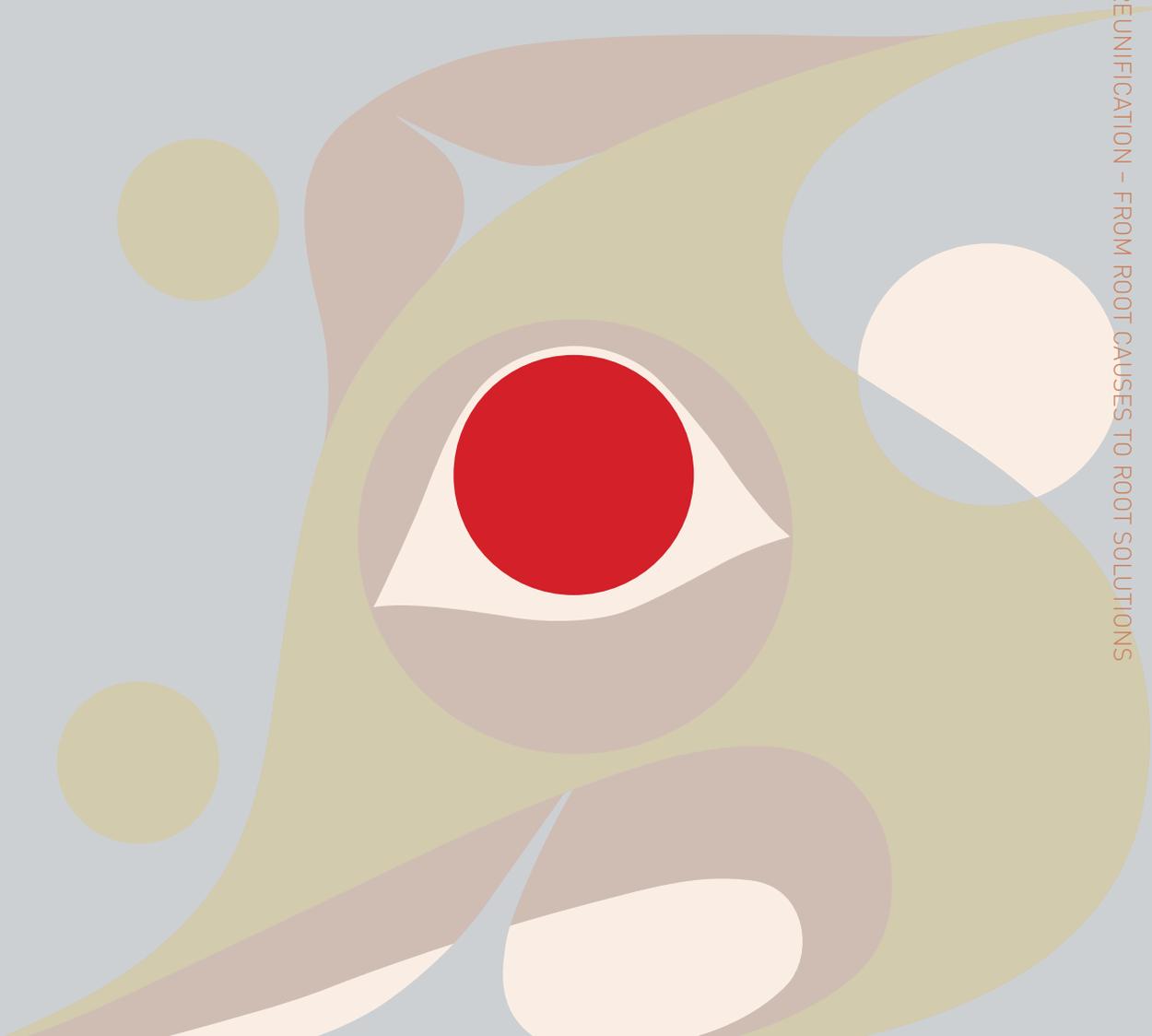
MCFD should ensure that the payments for permanent legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides.

Recommendation 33:

The Province should undertake a legislative review and financial policy review to determine the necessary changes that would see those families under the "Extended Family Program" to receive the Canada Child Benefit and ensure the Canada Child Benefit amount is not deducted from MCFD payments for permanency placements.

AREAS FOR FOCUSED ACTION

AREA 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED



AREA 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED

As discussed throughout this report, children are always best served when we are successful in keeping them together with their families, and if that is not possible, at the very least connected to their own communities. Keeping Indigenous families connected requires that we do everything possible to ensure these families are supported to best provide safe and stable homes to their children. We know that successfully supporting families to stay together helps to break the cycles of intergenerational trauma remnant from the 60's Scoop and the residential school system.

Realizing this vision is twofold. It requires BC, Canada, DAAs and Indigenous communities to: 1) prioritize the establishment of preventative services that can contribute to building the overall capacity in communities to address family health and well-being, and respond to child welfare concerns; and; 2) work together to ensure that Indigenous families have access to a full range of preventative services that will support their own efforts to preserve, and in some cases reunify, their family.

When working to ensure the protection of our children, every effort should be made to prevent the removal of a child from his or her home. The 2016 CHRT 2 decision suggests that the key role of social workers is to, wherever possible, offer supports to keep a child together with their family.

Each family and situation requires the development of a plan with a unique set of prevention services and family preservation programs to target their specific needs.

... child welfare in Canada includes a range of services designed to protect children from abuse and neglect and to support families so that they can stay together. The main objective of social workers is to do all they can to keep children safely within their homes and communities (2016 CHRT 2, para. 115).

PREVENTION AND FAMILY PRESERVATION

Prevention services are intended to provide the necessary supports to strengthen families and communities, and to lead to a reduction in the number of situations that result in children being removed from their families or taken into care.

There are many layers of prevention services. The 2016 CHRT 2 decision identifies, in para. 115, that these can generally be divided into three main categories:

- **PRIMARY:** these are services that are aimed at the community as a whole and promote a public awareness on what makes a healthy family and how to prevent and respond to child maltreatment;
- **SECONDARY:** these services are initiated when concerns come forward and a need for early intervention arises in order to avoid a crisis; and
- **TERTIARY:** these services are targeted to specific families when a crisis or risks to a child have been identified.

Primary prevention programs are not targeted to any individual family, but are intended to instead provide education and promote public awareness as it relates to family development in the community. These prevention methods are

proactive in nature and they work to build the collective knowledge and networks of support in our communities that will help to strengthen families.

‘PREVENTION SERVICES’ VERSUS ‘FAMILY PRESERVATION’

These two terms are often used alongside one another in reference to the services available to support family development. However, in order to facilitate a better understanding through this section, these terms are utilized as follows:

PREVENTION SERVICES

The term applied to a full range of proactive and reactive services that are delivered in order to prevent children from experiencing abuse, neglect, and/or maltreatment that may result in their removal from the family home. Family preservation programs are an example of a prevention service.

FAMILY PRESERVATION PROGRAMS

These are prevention services programs delivered, and measures taken, either in response to concerns expressed relating to a child’s well-being, or in situations where a child has been removed and a plan is in place for family reunification. These programs are often targeted to the specific needs of the parents and/or family.

Secondary and tertiary prevention programs are more reactive in nature, and emerge in response to issues of concern or the risk of crisis. These services are generally targeted to the needs of individual families in the form of family preservation programs. Family preservation programs are often presented as an alternative to removing children from their family home. They can also be used when children may have been removed, but there is a plan to support them to return home.

An Aboriginal child who is a Status Indian but does not reside on-reserve, or resides on a reserve that is not served by a DAA, receives the full range of child welfare services funded and delivered by MCFD. If that same child lives on a reserve served by a DAA, he or she receives a more limited range of services focused on protection rather than prevention. The federal government has recognized and is taking steps to provide additional funding to support prevention services for Status Indian children on-reserve, but very limited progress has been made in implementing the Enhanced Prevention Focus Approach in BC (RCY Report 2014–p.54).

PROVISION OF SERVICES

Prevention services, including family preservation programs, are primarily delivered through MCFD, in accordance with s. 5 of the *CFCSA*. However, in some cases, DAAs are tasked with delivering these services to children and families.

It is intended for all Indigenous children to have access to a level of service comparable to all other children in the province, regardless as to whether they are served by MCFD or a DAA. However, in practice, as identified by the RCY in the report *When*



Talk *Trumped Service* and in the 2016 CHRT 2 decision, funding eligibility requirements under Directive 20-1 have significant impacts on the availability of services on reserve. This translates into many Indigenous children, youth, and families being underserved by their responsible DAA in critical areas, including prevention and family preservation services.

In response to the 2016 CHRT 2 decision, INAC has made a commitment to new funding for prevention for child welfare. This funding could flow directly to Indigenous communities.

SECTION 5 OF CFCSA

Support services for families

5 (1) A director may make a written agreement with a parent to provide, or to assist the parent to purchase, services to support and assist a family to care for a child.

(2) The services may include, but are not limited to, the following:

- (a) services for children and youth;
- (b) counselling;
- (c) in-home support;
- (d) respite care;
- (e) parenting programs;
- (f) services to support children who witness domestic violence.

Now that the budget has passed Parliament, I am happy to report this funding will begin to flow into your communities...It is new funding for enhanced prevention for child welfare, which will flow to communities to begin the essential work of reducing the number of children in care.

– Minister Bennett at Assembly of First Nations Annual General Assembly, July 2016

Call to Action 2 in the TRC Final Report identifies the need for the federal government to work with the provinces and territories to ensure that there is accountability in place for spending on preventative and care services, as well as how effective interventions have been. At the provincial level, it is critical for this analysis to include a review of MCFD delivered prevention services compared to those services delivered by DAAs. This will support a review of equity challenges facing program delivery in Indigenous communities.

TRC FINAL REPORT – CALLS TO ACTION

2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, **the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.** (p. 140)

Community-developed programs that are delivered inside communities are often best suited to address the unique needs of Indigenous families. I heard often about the immediate and critical need to ensure that more of these services are made available through both MCFD and DAAs to connect Indigenous families with available prevention services close to home.

COMMUNITY-BASED PREVENTION SERVICES MODELS

In BC, there are a number of community-based models and programs delivering prevention services to Indigenous children and families. These programs develop prevention services tailored to the unique needs of each community, and are best able to ensure that culturally appropriate methods are applied in cases of prevention and family

FAMILY PRESERVATION PROGRAMS AT CARRIER SEKANI FAMILY SERVICES (CSFS)

CSFS provides culturally based wellness services to First Nations people in Carrier and Sekani territory. CSFS utilizes what is called the Carrier Life Cycle Model, which recognizes the interconnectedness and interdependency of everyone and everything, as well as the multiple determinants of wellness for people in each age group.

There are multiple service offerings available to families under CSFS, including tailored family preservation programs. These programs embed culturally appropriate approaches to family preservation.

FAMILY PRESERVATION AND MATERNAL CHILD HEALTH (ON RESERVE) PROGRAM

This program is available to families living on reserve in Sai'kuz, Nadleh Whut'en, Stellat'en, Takla, Yekooche, Lake Babine Nation, Burns Lake Band, Wet'suwet'en, Nee Tahi Buhn, Skin Tyee and Cheslatta. In keeping with the Life Cycle Model, services are provided from pre-conception until the time a youth is 19 years of age with an approach that addresses both community prevention and family preservation services.

Clients can self-refer to the program or may receive referrals from social workers, medical professionals, teachers, counsellors, women's shelters, etc. Services are tailored individually to each family and offer support in areas including counselling services, maternal child health, life skills and parenting programs, family events, and legal support.

This program operates with the goals of keeping children together with their families, and increasing each family's ability to safely care for and nurture their children.

INTENSIVE FAMILY PRESERVATION SERVICES (IFPS)

The IFPS program is available to families who are at an imminent risk of having children placed outside of the home. This program is available to all families in the Prince George area, and it requires a referral from an MCFD social worker.

IFPS clinicians work with each client to develop a tailored plan to support family preservation. They will utilize a variety of counseling approaches and connect clients with any necessary skills training. Meetings can be held either in the client's own home, or in the community, at the request of the client.

The IFPS program recognizes that every situation is different, and every family has a unique set of needs.

preservation. Carrier Sekani Family Services (CSFS) is one example of a DAA which delivers culturally based family preservation programs.

CSFS is one DAA receiving funding under the Aboriginal Services Innovations (ASI) program. Expansion of the ASI program funding would be one important way to ensure the necessary development and expansion of culturally appropriate prevention and family preservation services in Indigenous communities across BC (Recommendation 35).

LEAST DISRUPTIVE MEASURES

While efforts should always be made to keep a child together with their family, in those situations where a need for protection or high risk has been identified, considerations must of course be made to ensure the well-being of the child. In these instances, there is still an opportunity to think about how services can be designed and delivered to be the least disruptive measures possible. A number of provisions under *CFCSA* require that MCFD ensure

that the least disruptive measure is being applied, including in s. 6, which suggests coordination of supports to allow a parent to care for a child in his or her own home.

SECTION 6(4)(A) OF *CFCSA*

s. 6(4)(a) consider whether a less disruptive way of assisting the parent to look after the child, such as by providing available services in the child's own home, is appropriate in the circumstances...

Removing a child prior to a court order is not conducive to a model supportive of least disruptive measures, nor does it support a model of connecting families with preventative and family preservation services. For these reasons, I urge that the Province amend legislation to require

a court order prior to the removal of a child (Recommendation 39).

RECOMMENDATIONS AND RELATED ACTIONS

We must work to ensure that children and youth have every opportunity to safely remain at home with their families. Adopting prevention-based service models helps to support family preservation and reunification, and ultimately helps to break the cycles of intergenerational trauma present in our Indigenous communities. The following recommendations seek to promote the strength of prevention service delivery to Indigenous families across the province. Additional recommendations regarding funding of prevention services are found in Area for Focused Action 4 of this report.

Recommendation 34:

MCFD, DAAs and INAC work together to ensure core funding and other supports that will allow for the development of community based prevention and family preservation services for all Indigenous people and communities in BC.

Recommendation 35:

MCFD take the required steps to ensure that Aboriginal Services Innovations (ASI) family preservation can offer adequate core funding support to community-based program delivery.

Recommendation 36:

INAC take immediate action to develop, in partnership with First Nations in BC, an effective and efficient method to fund prevention services, taking into account economy-of-scale issues for all those First Nations in BC that are not

represented by a DAA (see also RCY Report – *When Talk Trumped Service*).

Recommendation 37:

BC take immediate action to ensure family preservation funding is provided. MCFD increase the annual Aboriginal Services Innovations budget by \$4 million in 2016/2017 (to be split evenly between MCFD and INAC) in order to expand the program and provide increased services through additional agencies.

Recommendation 38:

INAC and MCFD take action to ensure equity in prevention services delivery for all Indigenous communities in BC.

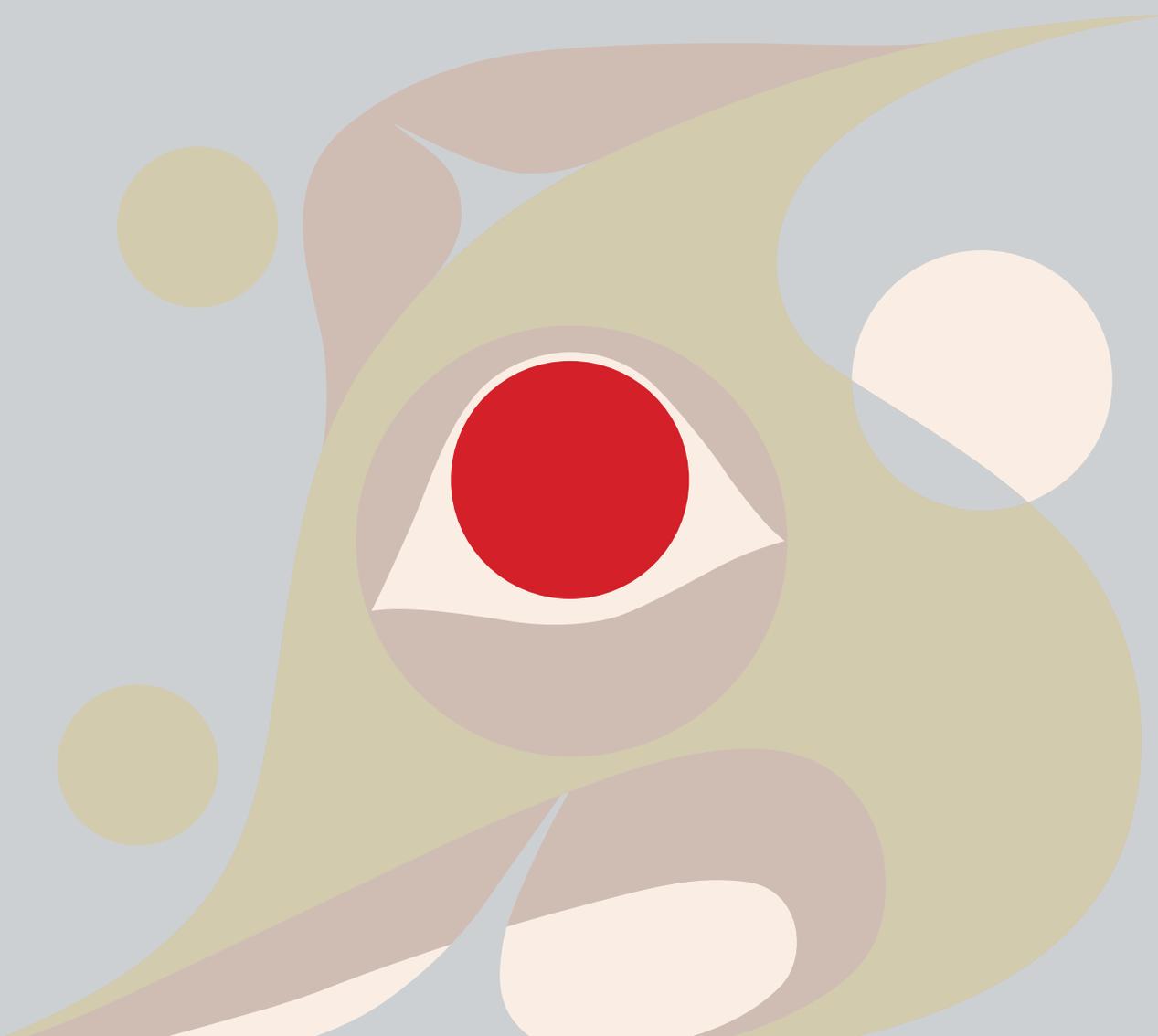
Recommendation 39:

Increase support for ‘least disruptive measures’ through provincial legislation:

- Amend existing legislation to require a court order prior to removal of a child, instead of the status quo that allows for a child to be removed before a court order.

AREAS FOR FOCUSED ACTION

AREA 5. REUNIFICATION AND PERMANENCY PLANNING



AREA 5. REUNIFICATION AND PERMANENCY PLANNING

REUNIFICATION

In the middle of this past winter, I met Sonia, a remarkable grandmother in Lillooet. The Chiefs had invited me to meet with them on matters relating to their children who were in care of MCFD or the Secwepemc Child and Family Services, a DAA located in Kamloops. Sonia spoke to me then about her efforts to get her 3-year-old granddaughter back. She gave me a handful of documents she had brought with her to the meeting. She had kept a meticulous set of notes, documenting her tireless effort to be reunited with her granddaughter.

On June 26, 2016, I attended a ceremony in Cayoose Creek to commemorate the return of the granddaughter by the non-Indigenous foster parents. It was a moment of anticipation for all those in attendance. Invited Chiefs, leaders, elders, and friends from neighbouring communities all attended. There were drums, songs of celebration and honouring, and a feast in the small community hall. I was advised that earlier in the day there were also songs of welcome between Cache Creek and Lillooet at the boundary with the neighbouring Indigenous peoples. The ceremony was to welcome the young child back to her territory and to her people.

Sonia and her husband brought their drums, offering songs and prayers and conveying their deep appreciation for the little girl's return. The little girl stayed close to the non-Indigenous foster mom and dad, obviously having established a meaningful bond during her time with them. I saw the love from the foster mom and dad. It was clear they had taken good care of this little girl. The process of reunification was at once one of happiness and

heartbreak. Later, I learned from the foster parents that when the child was placed in their care they were advised by government officials that no one was there for the child and that no one wanted her.

This story was not about money, not for the grandmother or the foster parents. However, I wanted to know how MCFD had supported the foster parents and how they were planning to support the Indigenous grandmother. I requested a briefing from MCFD and was surprised to learn the grandmother would receive approximately \$1,200 less per month than the foster parents. This disparity in payments is reflective of an inherent financial policy bias against permanency options for Indigenous children, which is particularly troubling in cases such as this one where a child has the opportunity to find permanency within his or her own family. This bias often results in permanency options not being seen as a preferred approach in caring for Indigenous children, and temporary placements end up becoming more prevalent. This funding inequity is taken up in further detail later in the report.

The Story of Sonia James

Sonia's story is the story of one First Nation grandmother and her determination to be reunited with her granddaughter. Sonia is a mother and grandmother from St'át'imc territory. She has two children and two grandchildren, and at the time that I met her, she had a third grandchild on the way. When I first met with Sonia, she was fighting to be reunified with her granddaughter who had been taken into care by MCFD. She resided on Sekw'el'was land where she has been an honorary band member since November 2014. Sonia has two half-brothers and eight half-sisters. She is her mother's middle child and her father's eldest child and was born in Vancouver, BC in a taxi cab.

I first met with Sonia early in my appointment as Special Advisor. Her story was at once heart wrenching, and empowering – poignantly illustrating the humanity of the issues that so many reports have addressed, highlighting the serious challenges we need to address in terms of the child welfare system, but at the same time demonstrating the resilience of Indigenous people and the power of reunification.

This is the story, written in Sonia's own words and abbreviated in a few instances, documenting her journey to ultimately be reunited with her granddaughter.

Sonia:

Early October 28, 2012, I got home from a long day – 17 hours plus driving home. Got home

around 11:30 pm. Visited my daughter and grandchildren. We fixed a big bed for all of us in the living room and went to sleep. At around 1 or 1:30 am a Ministry worker and police came to my door. When I answered the door the cop asked if my daughter and the baby were okay and I said, "Yes she is sleeping." They pushed the door hard and sprained my hand. They had the ambulance outside. I tried to ask why they were there and they said to take them to the hospital.

A few months went by before we could see our granddaughter in the Kamloops Ministry office. The lady at the front mentioned we could not take pictures. They wouldn't really let us hold her, so we basically sat there and just talked to my granddaughter and held her hand. When I told my daughter someday we will take your daughter home and that's when they said my granddaughter was addicted to drugs and had a heart machine she sleeps on. I told her that the doctor said my granddaughter was healthy ...

I tried to go see my granddaughter by myself, but was told I needed my daughter there. That's when we needed to make appointments in the Lillooet's Ministry office to see my granddaughter in the Kamloops office.

I went back to work and sent money to ensure my daughter could make it to all of her visits and court dates from where she was living. A year went by and we still didn't get anywhere.

When I was done work for the season, I tried to find out what was going on. I found out my

granddaughter's file was transferred to the Kamloops office. Going to talk to them they wouldn't give me information, except that she may have been transferred to Kelowna office. I couldn't find out where she was, and my daughter had already given up... Then one day I got a call about my granddaughter from the Secwepemc family find. I was so happy and said yes I'm Sonia and yes she is my granddaughter. Yes, I would like to take her home and I can fill out any papers and asked when I can see her...

I met with the Secwepemc worker here in Lillooet on June 9, 2014. We filled out all the papers and started the process. We talked about our drinking and said we were 6 months sober at the time. They mentioned we need to be sober for at least a year, but it will take about 8 months to do all the paper work so it should be good. I asked for copies and was told they need to be typed out and we can sign them at the next meeting.

July 14, 2014

We filled out more papers and they gave me forms for 3 people to fill out and send in: Reference letters, questionnaires and resources.

I got a call saying we need to talk about a few things. So, I told the social worker I could be there in a few hours. We got there and she mentioned we lied on our forms and it was about my partner's information, but he didn't lie. When he left the room she asked if I would leave him to get my granddaughter, and I said no, but maybe.

The meeting we had in April didn't go well, because they didn't support us. All I could say was why we are not bad people. I asked for once a week visits

and they called about a week later saying I got it. I just had to wait for a return call from them and set the dates.

I have taken many workshops and a few courses that were suggested to me:

- Connections
- Deeper Connections
- Character of Leadership
- Food Safe
- Emergency Medical Responder
- Women's Group
- Parenting – Nobody's Perfect
- FAS – workshop
- Wellbriety
- Hanen I'm ready

I'm currently doing a course in foster parenting.

I talked to a duty council and asked what I could do. She said nothing, that no lawyer would touch the case...

During the process, I answered questions like:

- Best describe early dating experiences
- Check the boxes that best describe your early sexual experiences
- How sexually compatible are you and your spouse/partner

Books I have read:

- Wrapping our ways around them
- Foster Parenting
- Raising Relative's children
- Foster Family handbook
- BC Foster Care Education Program
- Standards for Foster Homes
- Child and Family Development

I am at a standstill as to what I do next. They haven't given me any idea what I am told I need to do for another Safe Home Study.

I have learned lots over the past few years and have met many in the same boat who are walking the same beaten path.

I have lots to teach, I am teaching my niece:

- *How to listen to her surroundings*
- *What the animals mean, and what to harvest when you see or hear certain animals*
- *The stories and legends*
- *Songs and dances and what they mean and where they come from*
- *About medicinal and edible plants*
- *Fishing*
- *Tanning*
- *Net making*
- *Beading*
- *How to harvest cedar bark roots and what they are used for*
- *What each tree is used for*

Most of what I can teach them is what I was taught as a St'át'imc woman. I was raised to respect the Elders, leaders and ancestors.

I am proud of what our leaders are doing for our future generation. Protecting our rights as people, our lands/territory, our water, our fish, our four-legged and winged animals.

What good is all this if our future generation is being raised by the Ministry, away from our traditional lands at home?

I am fighting for my future generation, my granddaughter. I want her home, to learn what I can teach her.

She is in a Ministry approved foster home. She does not know our culture, she knows very little of our language, knows only what I teach her on our visits. They've taught her that sweat rocks are just rocks, Eagle feathers carry diseases, that the drum beat is too loud. No traditional foods "liked" because she wasn't raised eating it.

She already lost so much and she is only 3 years and 2 months old. She has so much to gain if she is returned to us... I was told by the foster mom that I was mean to take her away from the only family she knows. I don't see it as being mean. She belongs at home. The Ministry has been mean, taking kids from the parents and putting them with total strangers. What's wrong with family?



PERMANENCY PLANNING

Permanency planning for Indigenous children in care should be systematic and consistent, and be done early. I heard from many I met with the criticism that this is often not the case. Many Indigenous children in care, it was reported to me, do not have effective permanency planning in place. Not surprising, Indigenous children in care are often then without permanency, on average, three years longer than their non-Indigenous counterparts.

At present, there are **THREE PERMANENCY OPTIONS FOR INDIGENOUS CHILDREN IN CARE IN BC: FAMILY REUNIFICATION, TRANSFER OF CUSTODY, AND ADOPTION**. The reunification of a child with his or her biological family should be prioritized as the goal for permanency. However, there are cases where this is not possible or not in the best interests of the child, such as when there has been the presence of violence or various forms abuses, including both physical or sexual abuse.

For a child under a continuing custody order (CCO), I understand that MCFD considers adoption to be the preferred option for achieving a stable and familial environment. Social workers responsible for adoption planning for Indigenous children in care, are urged under the *CFCSA* in BC, as well as international law (*United Nations Convention on the Rights of the Child*), to work collaboratively with Indigenous communities in the development of plans in order to maintain connections to culture.

The United Nations Convention on the Rights of the Child provides that all children who cannot be looked after by their own family have the right to special care, and “must be looked after properly, by people who respect their ethnic group, religion, culture and language.”

Among Indigenous communities, however, adoption is not always seen as a positive option, and many Indigenous communities and families have a sense of mistrust towards the idea. Much of this can be attributed to the unsettling experience associated with the 60’s Scoop, but it is further exasperated by the absence of collaboration

FINAL REPORT ON “A FORUM FOR CHANGE” – BC REPRESENTATIVE FOR CHILDREN AND YOUTH

“A Forum for Change” brought together First Nations elders and leadership from across the province, representatives from federal and provincial governments, as well as Delegated Aboriginal Agencies (DAAs) with the goal of building upon the RCY’s June 2014 report, *Finding Forever Families: A Review of the Provincial Adoption System in BC*.

The following is an excerpt from the forum final report:

For many First Nations, Métis and Aboriginal people and communities, adoption is a dirty word because of the history of the use of adoption as a tool in the broader project of assimilation... Adoption is associated with an era of failed federal and provincial policies regarding children, including residential schools and other strategies aimed at “taking the Indian out of the child.” (p.9)

and information sharing between MCFD and Indigenous communities about the permanency planning process for Indigenous children in care. Issues inherent in the term itself were raised at the Representative for Children and Youth’s “A Forum for Change” event held in April 2015.

Concerns remain today when Indigenous children are adopted into non-Indigenous families and away from their communities. In a recent case of adoption involving a three-year-old Métis child, BC’s Representative for Children and Youth has been joined by many in expressing the opinion that insufficient attention was paid to the Métis heritage of the child when the child was removed from Métis foster parents and adopted by a non-Indigenous family in Ontario. Responding to this case, the RCY urged those parties involved give proper respect and scope for Indigenous legal traditions, and more broadly, work to ensure a child’s culture is protected to the best standard possible.

Indeed, many Indigenous communities refuse to consider or support regular adoption as an option for our children. While there are examples of adopted Indigenous children who have had positive experiences and pursued and been successful on their chosen paths, including in professional careers, from the outset it was clear, in my view, that regular adoption should not be the focus of permanency planning for Indigenous children in care. My engagements with many across BC have reinforced that a permanency strategy focused narrowly on adoption will not satisfy the goals and aspirations of Indigenous peoples in terms of an appropriate pathway to address the overrepresentation of Indigenous children in the child welfare system.

CUSTOM ADOPTIONS AND CUSTOMARY CARE

The idea of custom adoption carries with it less stigma, but there are barriers to its uptake among Indigenous families. First and foremost, prospective parents and communities are simply not receiving the necessary information about the custom adoption process as an option. Moreover, the discrepancy in post-adoption assistance for custom adoption versus regular adoption makes the idea of custom adoption less financially feasible for many Indigenous families.

MCFD, by holding private all the information about children, is seen to be continuing a practice of removal and reassignment of children into a non-Aboriginal family system, thus raising significant alarm for Aboriginal families and leaders (Final Report on “A Forum for Change” – BC Representative for Children and Youth, p.10).

MCFD needs to do a better job of communicating with Indigenous communities and prospective parents about the options available, as well as what some of the expected outcomes might be. Doing so effectively means first engaging Indigenous community leadership to understand how best to share and frame information in a respectful and positive way.

What is perhaps most urgent, however, is the reality that most MCFD staff involved in permanency planning are not adequately educated on custom adoption as an option. MCFD must improve its education and communications internally, to ensure staff members appreciate custom adoption as a concept, and understand both its cultural significance and legal nuances.

During my appointment, I met with Sophie Pierre, former Chief of ʔaq'am, a member community of the Ktunaxa Nation, and former Chief Commissioner of the BC Treaty Commission. We discussed the Ktunaxa traditional customary adoption and she described an entrenched practice of other Ktunaxa members raising Ktunaxa children when there was a need. In the Ktunaxa traditional customary adoption, extensive discussions are held in advance of a custom adoption and when a decision is made to go forward with an adoption, a formal custom adoption with the rights and responsibilities to the new family for the child is undertaken.

Indigenous communities undertake custom adoptions according to their own cultural practices. A custom adoption process allows for Indigenous communities to plan for the care of their children, including supporting a connection that allows children to maintain their cultural identity.

In 2009, my sister's children were to be adopted by a non-aboriginal couple in town when the father felt he could not take care of the two little girls. So we met with the adopting parents and we decided to adopt these parents in a cultural ceremony in the longhouse, with their promise to keep the girls connected to their family, community and culture. We always thought we had to do things the non-aboriginal way, but we have our own ways and we have responsibilities to the next generation. Our teachings are not written down, they are taught in the longhouse.

– Sts'ailes Elder at the Traditional Custom Adoption Session at Musqueam, March 2016

CASIMEL V. INSURANCE CORPORATION OF BRITISH COLUMBIA

In this case, the British Columbia Court of Appeal recognized the Carrier custom of adoption, in which grandparents may adopt a grandchild. In this decision, the grandparents were granted the rights entitled to natural parents of a child.

This case is recognized for the way that the courts incorporated Indigenous customary law into Canadian law and applied the provisions of statute law to individuals whose status of parents is established by way of customary adoption.

Custom adoptions are allowed under s. 46 of the *BC Adoption Act*, and have been recognized by the courts in cases, such as in the *Casimel* case. This legal recognition grants custom adoptive parents the legal right to make decisions for the custom adoptive child. It also provides certain legal entitlements to both the custom adoptive parents and child.

While custom adoptions are legally permitted in BC, there is tension between respect for the inherent rights of Indigenous communities to utilize custom adoption, and the responsibility of the province to ensure child safety and provide funding support to a child who is adopted through a custom adoption. Some I met with voiced their concern that custom adoption continues to be viewed within MCFD as a

less reliable option in terms of the ability to address child safety concerns, if and when concerns are raised. MCFD, DAAs and Indigenous communities need to work together to directly address these tensions, which I believe are presently acting as significant barriers to custom adoptions.

Custom adoptions are legally recognized. Therefore, going to BC Supreme Court should not be an additional step Indigenous families looking to adopt feel they need to take, and yet so many that I spoke with described the reasons they chose to go to court. Going to court is onerous, costly and time consuming for all involved. Implementing a formal mechanism where custom adoptions could be registered should be considered in BC to address the perceived need to go to court.

A custom adoption registrar recognizes, and provides a record of, custom adoptions that have occurred in Indigenous communities. Both Nunavut and the Northwest Territories have a system for recording custom adoptions, which appoints a custom adoption commissioner that is responsible for maintaining a record for the community or region in which they reside. In BC, implementing a registry of custom adoptions would help to facilitate the recognition of custom adoptions that have occurred, and help to simplify the process of allocating post adoption assistance to custom adoptive parents.

Custom adoptions require Indigenous adoptive parents. In order to effectively recruit Indigenous parents as adoptive parents, MCFD will need to increase post-adoption financial assistance for custom adoption to be on par with or greater than standard post-adoption assistance. The discrepancy is a significant barrier faced by a number of Indigenous families who are prepared to welcome a child into their homes.

There are other real barriers to custom adoption. In cases where a child is in care of the MCFD Director, a practical problem arises, making a “custom adoption” impossible. Where an Indigenous child is under a CCO, the parental ties to that child are severed, and as such, the parents cannot consent to a custom adoption. In this situation, following a home assessment, the MCFD Director may agree to move a child into “customary care,” with rights and benefits similar to an adoption. Many that I spoke with identified the need for a legislative change to address this issue. Existing legislation currently does not include customary care as an option, which is a challenging situation. Legislative changes will need to be undertaken to allow for this process, and to ensure that customary care arrangements afford children and their families the same support and rights as those in a custom adoption arrangement.

THE ADOPTION REGISTER AND CULTURAL DISCONNECTION

On a few occasions throughout my appointment, I was alerted to a troubling issue facing Indigenous children who are adopted into non-Indigenous families: the ‘A-list.’ INAC’s Adoption Register, otherwise known as the A-list, is a closed, confidential list of Indigenous children who have been adopted to non-Indigenous families. Children who are registered on the A-list do not have the ability to access information about their birth families, nor do they, or their adoptive parents, have the ability to access information about the child’s community of origin.

Many children included on the A-list are those who were registered at the time of their adoption. This ensures that their registration can be moved, relatively simply, from the open list of the child’s birth community to the A-list. When an adoptive

THE 'A-LIST' – INAC'S ADOPTION REGISTER

The Adoption Register, commonly referred to as the 'A-list', is a confidential list of First Nations children, who have been registered through the Indian Registry System (IRS), and have been adopted by non-Indigenous parents. This list contains information that connects children to their birth and adoptive identities, and the information contained within is accessible only to INAC's Adoption Unit staff.

The non-Indigenous adoptive parents of those children who are placed on the A-list receive a written notification explaining that their children are eligible to receive a registration number, access benefits and funding support that would be available to status children, and they are also notified that any funds that are disbursed by their birth community will be held for the child in trust until the age of 18. The parents are notified that, at the age of 18, the adoptive child may submit a written request for the release of funds, and he or she may also request to be transferred from the A-list to the open portion of the list.

child is on the A-list, the adoptive parents receive notice about their child's Indigenous ancestry, including the various benefits that are available to the child through their registration. This is, in no way, a perfect system, as it places the onus on non-Indigenous adoptive parents to connect their

child with Indigenous culture without providing the adoptive parents with basic information, such as the name of their child's birth community. A significant disconnection between the child and their Indigenous culture in general is often the result. The other consequence of a child being moved to the A-list, is that their name is removed from the list for their band. This impacts on youth who, as an example, are no longer listed as a band member and may attempt to access education funds from their band.

Even more significant problems arise for those children who are not registered at the time of their adoption. In these cases, the onus falls upon a child's social worker to ensure that the administratively rigorous registration process is followed – that eligible children are registered and that their registration is appropriately transferred to the A-list. As I have discussed elsewhere in this report, social workers and support workers currently face unrealistic caseloads, and on top of that, there are high turnovers and frequent reassignments for social workers. This often results in Indigenous children never becoming registered at all, let alone placed on the A-list. Many children facing this scenario never learn of their Indigenous ancestry, and spend their lives disconnected from their Indigenous culture and identity.

INAC should, together with the Provincial Directors and Indigenous representatives, immediately undertake a review of the federal A-List policy and practices with the goal of ensuring that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to birth family and community until their eighteenth birthday (Recommendation 52). This important work could be undertaken at the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting.

Given the repeated and unanswered concerns I heard from all parties on the adoption of status or registered children, it is important that INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/registered children.

AGING OUT – INDIGENOUS YOUTH IN CARE

At 19 years of age, young people ‘age out’ of care. I heard from many I met with that this transition poses significant challenges to Indigenous young people in care, who often do not have access to the services that they need to be supported through this transition. Without ensuring that each young person has a clear plan in place for him or her to move into adulthood, and without providing these young people with the necessary supports, we are further perpetuating cycles of poverty.

As I have previously mentioned in this report, Indigenous youth are the fastest-growing demographic in Canada. I have had the opportunity to speak with many Indigenous youth. At the time of our meeting, these youth were in care, or had previously been in care. Meeting with the Youth Advisory Council for the Provincial Director of Child Welfare was one such example. These inspiring young people called attention to some of the failures of the child welfare system and also offered recommendations on how the system could be improved to support Indigenous youth in the future. I thank each of the young people who took the time to speak with me. Their insights have been an important part of building recommendations relating to the supports and planning for youth in care.

We need to recognize the important voice of Indigenous young people as we move forward,

and we need to provide them with a platform to meaningfully engage in the process of reshaping our child welfare system.

The Usma Youth Council (UYC) is an example of a model utilized by the Nuu-chah-nulth Nations to empower their youth to participate in important discussions relating to youth in care and other issues. The UYC is one example of how Indigenous youth in care can be engaged successfully in transforming Indigenous child welfare, with a focus on connectedness to community, family and Indigenous culture. As such, this model is one that we need to explore across BC as a method of bringing the youth voice into our dialogue as we move forward.

Presently, MCFD has the ability to enter into an Agreement with a Young Adult (AYA) to help cover the costs of transitioning into adulthood, including housing, childcare, tuition, healthcare, and other services. Young people are eligible for an AYA if they are between the ages of 19 and 26 and were in a care arrangement when they turned 19.

Support should be given to each Indigenous youth aging out of care by their social worker, either through MCFD or the appropriate DAA. An aging-out plan should be a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of an Indigenous youth’s community. The necessary funding resources must be allocated to support this involvement. There should be a mandatory requirement for MCFD to proactively develop AYA to ensure continued support for youth who are transitioning out of care and into adulthood. Finally, a youth transition team should be established in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care. These teams will be responsible for monitoring

YOUTH ADVISORY COUNCIL FOR THE PROVINCIAL DIRECTOR OF CHILD WELFARE

Members of the Youth Advisory Council for the Provincial Director of Child Welfare were candid and identified important issues and proposed practical solutions. All of the youth on this advisory council have or had been in government care for 24 months or more. Each member had their unique experience, thoughts, and recommendations relating to the child and youth welfare system.

Street entrenched inner city youth are caught in an in-between world; a place of confusion. You can't trust government and you are disconnected from your people. The system took my parents and my grandparents. Why should I trust them (the system)? But the past is the past. It's okay to forgive. Homecoming is important; it is a part of your identity. Even if your community has problems, you have a place and an identity. – Bryant

I was in care – in white homes. There was a homecoming by the council of Haida Nation. It connected me to family members I didn't know. My nana, she unofficially adopted me. I was also moved from MCFD to VACFSS. The impact on me was less resources available to me from VACFSS. – Raven

I attended a homecoming, but no one from the chief and council attended. After that nothing has happened, feels like I've been forgotten. – Timothy

I have never been to Kitkatla. Going home is important. – Brenda

I have a Métis background from Saskatchewan, but I don't know anything else. MCFD needs to promote culture, encourage both sides (MCFD and Indigenous communities) to work together. – Guy

Connection is an important common denominator. Face to face meetings with the youth is important because it has a psychological impact. Go to their environment. Need to make extra efforts to humanize the face of MCFD. – Bryant

There are not enough aboriginal foster homes. But being in care in a foster home does not mean you lose a family, but you gain a family. – Ashley

It is important to facilitate communication with the First Nation where a youth who is aging out is from. This should be done in each of the 13 MCFD regions. – Chelsea

Cultural competency for MCFD social workers is awesome, but it is not enough. There is a need for a "trauma informed" mindset when working with indigenous children and families. – Audrey



EMPOWERING INDIGENOUS YOUTH – THE USMA YOUTH COUNCIL (UYC) MODEL

Usma Family and Child Services is a DAA serving 14 Nuu-chah-nulth Nations. UYC is a council representing youth in care from the Nuu-chah-nulth Nations. The council is focused on issues that impact youth in care on a daily basis, and on other youth-related issues.

The council began in May 2015 at the request of one of Usma's youth in care. The vision was that the council could bring awareness to issues facing Nuu-chah-nulth youth by creating a youth voice to inform Usma staff, communities and working groups. Now in its second year, the UYC is supported by Usma in areas of leadership, governance, youth in care rights, culture, traditions, and overall well-being. UYC is currently a 10-member council, but is open to all youth in care with Usma.

Since it was created in 2015, Usma officials report that UYC has created positive change for their youth through inclusion, empowerment, and culture. Usma reports that UYC has succeeded in increasing communication within the Usma organization, training and development opportunities, and youth involvement in the communities through volunteering and other opportunities to participate.

the AYAs and ensuring effective communication with Indigenous communities.

MODELS THAT PROMOTE CONNECTEDNESS

When planning for permanency for Indigenous children, every effort must be made to provide the child with a living arrangement that allows him or her to maintain a connection to family, community and culture. Through my appointment, a number of models were highlighted as being models to consider in our revisions to the child welfare system.

This report has spoken at length about just how critical it is to see our children placed with extended families, or other families within the community. Models such as the Kinship Program operated by the Children's Aid Society of Toronto offer examples of how a child welfare system can successfully ensure that every effort is made to place children within families that will support the preservation of their cultural identity.

Other programs, such as the Safe Babies Court Team Project, serve as models for developing community-based programming to address unique needs of children and their families. This particular model is noteworthy for the way that it strives to promote multiple approaches to achieving family

CHILDREN'S AID SOCIETY (CAS) OF TORONTO: KINSHIP PROGRAM

The CAS Kinship Program is founded on the recognition that children should be afforded every opportunity to a permanency placement with family or another individual who is close to the child. They recognize that it is critical for the cultural and ethnic identity of a child to be supported, and that all children should be able to remain in their own community.

The Kinship Program actively seeks kith and/or kin for the purpose of placement. Additionally, those from within the child's family or community can volunteer as foster parents, and CAS will work through the eligibility process with them to ensure that they are the best possible fit for permanency for the child.

reunification, and in the absence of reunification, ensuring that a connection is maintained between the child and his or her parent and extended family. It is especially unique in the way that each regional team is encouraged to develop tailored models to address local needs and circumstances. The success of this approach can be seen in its outcomes, including high rates of family reunification (38% of children), and comparably high rates of achieving permanency (2 to 3 times faster than children not served by the model).

The Safe Babies Court Team model is admirable in the way that it provides flexibility to allow regional Safe Babies Court Teams to draw on local networks and build tailored community support programs. There is much to be learned from the unique programs that have been developed at the community level, and the positive outcomes for the children and families who have been involved.

THE BC REPRESENTATIVE FOR CHILDREN AND YOUTH AND PERMANENCY PLANNING

In 2014, the BC Representative for Children and Youth issued her report, titled, *Finding Forever Families: A review of the provincial adoption system*. The Representative's Recommendation 4 called on MCFD, "in immediate partnership with First Nations and Métis communities and organizations, including DAAs, take specific measures to improve rates of successful permanency planning for Indigenous children in care through the following immediate actions or commitments:

- Produce annual reports to each First Nations Chief and Indigenous community on the status of children from their community who are eligible for custom adoption or other permanency options.
- Changes to existing regulations.
- Engage with Indigenous leadership to assist in developing a process to easily recognize these custom adoption practices, including an education element to assist MCFD staff in understanding all aspects of custom adoption.
- Work with INAC to ensure post adoption supports and out of care equal to PAA are provided for First Nations adoptive parents on reserve.

ZERO TO THREE – THE SAFE BABIES COURT TEAMS PROJECT

The Safe Babies Court Team is a program that began in 2005 in the United States. The intent of this program is to facilitate collaboration between partners in the child welfare system to assist with improving community response to child abuse and neglect for young children.

Each team is comprised of local representatives, including a judge, members of the local court system, community leaders, child welfare agencies, early childhood educators, and attorneys. These teams work together to offer services to abused, neglected, and maltreated infants and toddlers between the ages of 0-3. They also work to counter the structural issues in the child welfare system that may prevent families from succeeding.

The model prioritizes methods of encouraging family reunification, and offers individualized supports to birth parents and families. The program advocates for frequent opportunities for visitation and connection between parents and children, recognizing that this increases the likelihood for reunification, and helps to promote healthy attachments between parents and children. The local teams also work to provide parents with the necessary tools to assist on their personal healing journeys, recognizing the need to help interrupt cycles of intergenerational trauma. Services given to parents include supports for victims of domestic violence, programs for individuals struggling with substance abuse, and assistance to those facing enduring unemployment.

What is most notable in this model is that the regional teams are undertaking unique projects targeting the specific needs of the communities they serve. The team in Des Moines, Iowa was able to found 'R House', a home-like visitation centre, complete with playrooms, a bathtub, and a working kitchen. This allows parents and children to connect in a setting that is warm and inviting, rather than in child welfare offices, which are not child-friendly spaces. The Cherokee, North Carolina Safe Babies community team worked to gather donations of toys to help support the Child-Parent Psychotherapy (CPP) program in their community. The CPP program is having a tremendously positive impact on parents in that community, and many parents have come forward saying that the program is helping them to bond with their children in healthy ways.

- Work collaboratively with DAAs to develop an Indigenous-specific permanency planning strategy, including the development of a provincially delegated Indigenous adoption agency and Indigenous permanency committees in each of the regions, with a focus on timely permanency plans for Indigenous children.

- Engage with Indigenous communities and leadership to develop a consensus on how prospective adoptive parents are identified as First Nations or Métis and what validation requirement should be added to MCFD on custom adoption practice.
- Ensure all adoption and guardianship workers have mandatory cultural competency training as well as additional support and specialized training

RECOMMENDATIONS AND RELATED ACTIONS

Recommendation 40:

The Province work to amend the *CFCSA* to ensure an Indigenous child's connection to his or her natural parents is not severed.

Recommendation 41:

The Province consider the following amendments to the *CFCSA* in order to support improved permanency planning for Indigenous children and youth:

- Strengthening of s. 70 of the *CFCSA* to include mandatory permanency planning for all children in care;
- Including a provision(s) to ensure that for Indigenous children permanency plans are jointly developed by each child's family and community, including elders, cultural leaders, elected leaders, and matriarchs; and
- Including a provision(s) requiring independent review of permanency plans on an annual basis.

Recommendation 42:

MCFD develop a practice guide with instruction on how to prepare, develop, implement, and monitor jointly developed permanency plans for Indigenous children and youth:

- The practice guide should be developed in close partnership with DAAs, Indigenous leaders, communities, and organizations.

Recommendation 43:

MCFD and INAC act immediately to allocate funding required to prepare, implement, and monitor permanency plans for every Indigenous child or youth in care:

- INAC will only fund services for status children and families that are “ordinarily resident on reserve” and MCFD will need to take the necessary steps to ensure that the nature and scope of services required are properly identified; and
- Funding levels for agreed-to services should be reflected in the annual service agreement between INAC and MCFD.

Recommendation 44:

MCFD regional offices provide quarterly progress updates to Indigenous communities within their region regarding permanency planning for each child from that community.

NOTE: *The Nation-to-Nation Partnership Protocol referenced earlier in this report should establish regular meetings as agreed between Indigenous communities and the Executive Director of Services and/or the Community Services Manager to review the status of each of the community's children under a CCO and to provide Indigenous leaders, including Hereditary Chiefs and matriarchs with the necessary and full information to understand the situation of their children in care.*

Recommendation 45:

The BC Representative for Children and Youth be provided with a mandate and the appropriate resources to review and ensure resiliency, reunification and permanency planning be done for each Indigenous child under a CCO.

Recommendation 46:

MCFD develop in partnership with Indigenous communities, a provincial adoption awareness and recruitment strategy that includes a specific focus on recruiting more Indigenous adoptive parents from the Indigenous communities of origin of Indigenous children.

Recommendation 47:

MCFD develop and implement a quality assurance program for all adoptions, developing key performance measures and targets to track timely permanency planning, including adoption placements for children in care, as well as timely approvals for prospective adoptive families:

- Specific targets should be developed for moving Indigenous children in care into permanency.

Recommendation 48:

The Province commit to the creation of an Indigenous custom adoption registry for Indigenous children and youth, such as those models existing in Nunavut and NWT:

- Amend the *Adoption Act* to provide a mechanism, such as a custom adoption registrar, to register Indigenous custom adoptions.

Recommendation 49:

MCFD ensure all custom adoptions are eligible for post adoption services and pay rates similar to the current post adoption assistance, to those caregivers who utilize custom adoption:

- The determination of necessary post adoption services should be determined in consultation with Indigenous communities.

Recommendation 50:

The Province commit to legislative amendments in order to provide support for customary care options to be developed:

- Ensure that funding support for customary care is at the same level as custom adoptions.

Recommendation 51:

INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/registered children.

Recommendation 52:

At the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting, working together with the Provincial Directors and Indigenous representatives, INAC undertake to review and reform the federal A-List policy and practices to ensure that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to their birth family and community until their eighteenth birthday.

Recommendation 53:

INAC, MCFD and Indigenous communities work together to ensure that non-Indigenous adoptive parents have the necessary information and support to provide their Indigenous adoptive children with culturally appropriate resources that facilitate a connection between a child, and his or her Indigenous ancestry, including the culture of their birth community.

Recommendation 54:

MCFD continue to support the existing Youth Advisory Council for the Provincial Director on Child Welfare and work to expand their role and the reach of their voice:

- The goal of the expanded role should be to better integrate Indigenous youth voices in both strategies and long-term plans of MCFD; and
- Consideration should be given to ensuring Indigenous youth have opportunity to provide insight on permanency on a regular basis to MCFD, DAAs and the RCY.

Recommendation 55:

MCFD and DAAs commit to the following specific supports for Indigenous youth who age out of care:

- An Aging Out Plan be undertaken as a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of the child's Indigenous community;
- MCFD proactively develop Agreements with Young Adults (AYA) to ensure continued support for youth who are transitioning out of care and into adulthood; and
- MCFD establish a youth transition team in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care.

AREAS FOR FOCUSED ACTION

AREA 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS



AREA 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS

CULTURE, LANGUAGE, CONNECTEDNESS

Over my appointment, I heard consistently about the importance of cultural connection for children and youth to their communities. People often spoke of the importance of ensuring that children have access to cultural teachings and traditional language resources from a young age.

THE TRC FINAL REPORT ON THE DESTRUCTION OF RACE AND CULTURE

*Until recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the Indian residential school system. In addition, Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment. When children were abused in residential schools, the law, and the ways that it was enforced (or not), became a shield behind which churches, governments, and individuals could hide to avoid the consequences of horrific truths. Decisions not to charge or prosecute abusers allowed people to escape the harmful consequences of their actions. **In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by law.** Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression.*

To this point, the country's civil laws continued to overlook the truth that the extinguishment of peoples' languages and cultures is a personal and social injury of the deepest kind. ***It is difficult to understand why the forced assimilation of children through removal from their families and communities – to be placed with people of another race for the purpose of destroying the race and culture from which the children come – is not a civil wrong even though it can be deemed an act of genocide under Article 2(e) of the United Nations Convention on Genocide.***

Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation, Final Report of the Truth and Reconciliation Commission of Canada*, (Montreal/Kingston: McGill-Queen's University Press, 2015), Volume 6, p. 47-48



Knowledge of one's own language and culture is an essential part of establishing a strong sense of identity, and it has been proven that having a strong cultural identity as a child and adolescent leads to improved outcomes in education, employment, and health and wellness in adulthood.

In BC, it is a legal requirement that all children in care have a care plan that outlines the steps intended to preserve the child's cultural identity as provided for in s.2 of *CFCSA*. However, in my discussions with Indigenous community leaders and individuals at DAAs throughout the province, it was made abundantly clear that in practice there are a number of shortcomings in developing care plans. Care plans, I was informed, rarely include a strong cultural component that adequately addresses the language, culture and identity. For children who are residing outside of their community, it is even more unlikely that care plans include an adequate cultural component.

As I have discussed frequently throughout this report, many of our children are growing up feeling a sense of disconnection from their family, culture and communities. We know that this is at least partially attributed to the high numbers of Indigenous children who are growing up in care with little to no provisions in place to ensure a lasting connection with his or her family, community and culture. If we do not act to rectify this situation, by strengthening all care plans and by ensuring that children in care are supported to engage with their culture and communities, we can expect severe loss of language and cultural identity among Indigenous children in care and continuing intergenerational trauma due to the lack of connectedness.

THE CARE PLAN

In accordance with provincial law, and under the requirements outlined in the *CFCSA* regulations, MCFD must prepare a written plan of care for each child in care. MCFD utilizes a standard form to ensure the required elements under the legislation and regulations, as well as a series of items that they have identified to help support their process of planning for a child, are included in every plan of care. A section of this plan is intended to address cultural identity, including each child's individual strengths and needs, and an area to identify actions aimed at preserving a child's cultural identity.

Presently, no targeted funding exists to ensure the protection, as required under the Guiding Principles outlined in s. 2 of *CFCSA*, of an Indigenous child's cultural identity. Social workers, mainly non-Indigenous, who are delegated to ensure this vital protection, do not have knowledge of Indigenous cultures and languages. So, how do they include this in a child's plan of care? The answer is simple: they do not.

There is no consistent or predictable funding for Indigenous elders and cultural leaders who have the traditional knowledge, expertise, and experience. As well, where elders and cultural leaders express a desire to bring a child home to participate in their cultural ceremonies, I heard many personal accounts of how this is routinely denied by social workers.

Efforts to maintain a child's Indigenous identity are generic at best, and grossly fail to expose children to the necessary depth to help them build a true sense of connection to their family, culture, and community. The *Wrapping Our Ways Around Them* Guidebook identifies some of the generic efforts and ultimate failures in the current practices of building a cultural plan within a child's care plan:

CFCSA REGULATIONS ON CARE PLANS

PLANS OF CARE

s. 6 A plan of care must be prepared in writing by the director responsible for the child.

CONTENTS OF OTHER PLANS OF CARE

s. 8 (1) In this section, “plan of care” means a plan of care prepared for a court hearing to consider an application for an order,

- (a) other than an interim order, that a child be returned to or remain in the custody of the parent apparently entitled to custody and be under a director’s supervision for a specified period, or
- (b) that a child be placed in the custody of a director under
 - (i) a temporary custody order, or
 - (ii) a continuing custody order.

S. 8(2)

...

- (g) in the case of an aboriginal child other than a treaty first nation child or a Nisga’a child, the name of the child’s Indian band or aboriginal community, in the case of a treaty first nation child, the name of the child’s treaty first nation and, in the case of a Nisga’a child, the Nisga’a Lisims Government;
- (h) the parents’ involvement in the development of the plan of care, including their views, if any, on the plan;
 - (i) in the case of an aboriginal child other than a treaty first nation child or a Nisga’a child, the involvement of the child’s Indian band or aboriginal community, in the case of a treaty first nation child, the involvement of the child’s treaty first nation and, in the case of a Nisga’a child, the involvement of the Nisga’a Lisims Government, in the development of the plan of care, including its views, if any, on the plan;

...

- (m) a description of how the director proposes to meet the child’s need for
 - (i) continuity of relationships, including ongoing contact with parents, relatives and friends,
 - (ii) continuity of education and of health care, including care for any special health care needs the child may have, and
 - (iii) continuity of cultural heritage, religion, language, and social and recreational activities;



Efforts to maintain a child's Aboriginal cultural heritage are often generic, reflecting a failure to understand the child's unique cultural identity. Courts have found acceptable efforts to preserve the Aboriginal identity of a child in care as including: attending powwows or cultural activities; internet searches; age-appropriate reading materials; having Aboriginal artwork or artefacts in the foster home, or providing a child with Aboriginal foods.

Pan-Aboriginal daycares, play groups or cultural events should not be read as sufficient to fulfill the legal requirements under the CFCSA, because they do not achieve the benefits that flow from the involvement of the Aboriginal child's community, and do not protect a child's unique Aboriginal identity

Further, as I have discussed previously in this report, it is surprising to me that the leadership of First Nations communities, and representatives at many DAAs still are not aware of their right to access the list of their children currently under CCOs with MCFD. This makes it challenging, if not impossible, for the child's community to actively participate in the act of providing input into a child's care plan, as is required under s. 8(2)(i) of the CFCSA Regulations. Not providing this information to Indigenous communities is contributing to a significant disconnect between the child and their culture, language and home community.

In meeting with Indigenous communities, families, and leadership throughout BC, I am convinced that the only way to properly incorporate a cultural component into care plans is to have the child's Indigenous community work directly with MCFD or a DAA in the development of a plan. As BC's Representative for Children and

Youth has reinforced in numerous of her reports, including in *When Talk Trumped Service* (2013), good policy can give prominence to ensuring cultural connection for children to their communities. This is something I heard reinforced often through my own engagements and I have made reference to many of the suggested changes to policy and practice that were referenced in the recommendations.

There are also opportunities for better incorporation of culturally appropriate resources and relevant tools into cultural planning in working alongside Indigenous communities in care plan development. Many communities such as Wet'suwet'en, Ktunaxa, and the Okanagan Nation Alliance have established comprehensive approaches to reintroducing culture and language to their respective people. These can include activities such as culture camps and educational tools. A 2011 report to the Métis Commission for Children and Families of British Columbia reinforced the importance of community developed and led approaches that are focused specifically on Métis culture and language. The need for community developed and led approaches that reintroduce the specific Indigenous culture and language that are appropriate to a child's unique heritage and that reinforce and recognize the importance of a child's own language and culture should be supported by INAC, MCFD and DAAs.

COLLABORATION AND CARE PLANS

Given that MCFD has financial resources available to them and generally individual Indigenous communities do not, a priority requirement for senior MCFD officials should be to meet on a regular basis with Indigenous leaders in their communities, rather than requiring them to travel to distant towns or cities for meetings. While this commitment on the part of MCFD is something

emphasized in other areas of this report, it is a particularly important step to ensure collaboration on care plans with Indigenous communities.

At these community-based meetings, Indigenous leaders and senior MCFD officials can review the community's children under CCO and assign teams (including elders, Indigenous cultural, elected and hereditary leaders, and the child's immediate and extended family) to jointly develop strategies (i.e. timelines, finances, and annual assessment process).

The community-based meetings could be used to review existing care plans, and jointly develop,

establish and agree to permanency plans (including Indigenous language fluency) appropriate to the child's Indigenous cultural heritage. Permanency plans should recognize, support, and utilize traditional forms of permanency, including custom adoptions. These customary forms of permanency are known, used, and respected by cultural and traditional leaders and are discussed in other areas of this report in further detail. They substantiate the importance of cultural teachings and culturally based family and community connections.

These collaborative meetings will also serve as an opportunity to review the costs associated with developing and delivering culturally appropriate

OUR PAST, PRESENT, AND FUTURE – FRAMEWORK FOR MÉTIS CHILD AND FAMILY WELLNESS IN BRITISH COLUMBIA – RECOMMENDATIONS 6, 8, AND 10

In 2011, a report to the Métis Commission for Children and Families of British Columbia was prepared and presented by Dr. Jeannine Carriere, titled *Our Past, Present, and Future – Framework for Métis Child and Family Wellness in British Columbia*. Within the report, Dr. Carriere made 12 recommendations regarding Métis child welfare, including:

- *Recommendation 6: Cultural and spiritual ties for children in care should be enhanced through building capacity for cultural camps, language revitalization and ceremonial experiences that foster a positive Métis identity.*
- *Recommendation 8: Reconnection support through programs such as Roots can greatly address the current needs of Métis children in care.*
- *Recommendation 10: Policies and practices that guide Métis services must be holistic and based in Métis traditional values.*

This report also highlighted the need to ensure that Métis history and culture is incorporated into the training of MCFD staff and social workers, which would support the delivery of culturally appropriate services to children in care.



programs and services identified in the care plan to ensure that the culture component of every plan is fully actionable by all parties involved in its implementation. MCFD and INAC should work together to ensure that there is regularized funding allocated to support the implementation of the cultural components of all care plans.

MCFD has already recognized the need to support the development of cultural components in the development of all care plans and have been open to discussions on how this important work would be best supported and funded. MCFD has estimated that an additional \$500-1,000 per child in funding

would be required to support the development of both permanency plans and cultural planning supports. MCFD and INAC need to work together to ensure that this funding is made available to support adequate care plans for all Indigenous children in care (Recommendation 56).

LANGUAGE PLANNING

Exposure to one's ancestral language is a critical aspect of cultural identity. As discussed elsewhere in this report, during the time of the residential school system, Indigenous children were forbidden from speaking their own languages, resulting in many children being unable to communicate with

CANADA'S RESPONSE TO DATE ON THE 2016 CHRT 2 DECISION – CULTURALLY APPROPRIATE PROGRAMS AND SERVICES

Reflecting on what Canada has done and has not done to date to respond to the 2016 Canadian Human Rights Tribunal ruling regarding First Nations child welfare in Canada (*2016 CHRT 2 decision*), *2016 CHRT 16* identifies the critical need to allocate funding towards culturally appropriate programs and services, and to support the First Nations Child and Family Caring Society of Canada (FNCFS) to develop appropriate programming:

[45] For their part, the CCI Parties do not understand why the issue of funding legal fees, capital infrastructure and culturally appropriate programs and services cannot be addressed at this stage. There are actions that can be taken now to alleviate discrimination that fall entirely within federal jurisdiction and do not depend on corresponding provincial action, including simply adopting and adequately funding applicable provincial/territorial standards regarding these issues. Specifically, the CCI Parties request:

- *Each FNCFS Agency be provided \$75,000 in fiscal year 2016/2017 to develop and/or update a culturally based vision for safe and healthy children and families, and to begin to develop and/or update culturally based child and family service standards, programs and evaluation mechanisms;*

their families when they returned home. This served as one of the key disconnects between Indigenous children, their communities, and their traditional culture.

Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them (Mahe v. Alberta, [1990] 1 S.C.R. 342).

As we move forward in developing a plan to restore cultural teachings in the lives of our Indigenous children and youth, language planning needs to sit at the forefront, and special attention needs to be

paid to revitalizing Indigenous languages, many of which have become threatened by a long history of colonization.

I want to thank the First Peoples' Cultural Council (FPCC) for taking the time to speak with me about developing a language plan for children in care. The insights that they have provided on available language resources, as well as the opportunities that they have identified for collaboration to support language learning for children in care, have been invaluable.

In our discussions, the FPCC was able to identify some of the challenges facing children in care as it relates to learning their language. These include the following:

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES, REPORT OF THE FIFTEENTH SESSION, MAY 2016 - ON INDIGENOUS LANGUAGES

Clause 5: Indigenous languages form the bedrock of continuity for the survival and well-being of indigenous cultures from one generation to the next. This important intergenerational responsibility has been severely disrupted by colonialism and colonial practices, laws, policies and practices of discrimination, assimilation, forced relocation and residential and boarding schools among others.

Clause 9: The Permanent Forum recommends that States recognize the language rights of Indigenous peoples and develop language policies to promote and protect Indigenous languages, with a focus on high-quality education in Indigenous languages, including by supporting full immersion methods such as language nests and innovative methods such as nomadic schools. It is essential that States develop evidence-based legislation and policies to promote and protect Indigenous languages and, in that regard, they should collect and disseminate baseline information on the status of Indigenous languages. These activities should be conducted in close cooperation with the Indigenous peoples concerned.

- Children and youth in care are frequently separated from their home community and do not have access to their languages;
- Caregivers and social workers often know little about the language and culture of the child in care, and do not know how to support him/her to access available resources;
- Some children in care may not know which Indigenous nation or community they are from, as this information is not always documented when a child comes into care; and
- Children and youth need age-appropriate language and culture resources that are easy to access and that are engaging.

Staff at FPCC identified the following set of opportunities where the FPCC has the potential to deliver and/or partner with MCFD, DAAs and communities to deliver services:

- The development of language resources for children and youth in care;
- The gathering and development of language information and education for child welfare workers and caregivers;
- The development and delivery of programs connecting children and youth in care with their home communities;
- The development and/or delivery of prevention strategies for Indigenous families at risk; and
- Grant programs for language and culture projects, for social development agencies.

Upon my request, the FPCC developed a basic outline for a Language Plan to support meaningful and robust language learning for children in care. The outline provides valuable insight into what will be required by all parties to ensure the cultural component of each care plan for a child in care is robust and effective in helping a child retain

THE FIRST PEOPLES' CULTURAL COUNCIL (FPCC)

The FPCC is a Crown Corporation, founded by BC in 1990. FPCC operates with the mandate to support the revitalization of Indigenous language, arts, and culture in BC. They operate a number of language immersion and planning programs, and provide funding support to First Nations communities interested in undertaking language and cultural revitalization work. The FPCC has also developed a number of helpful tools to support language learning and sharing, as well as language revitalization planning

As an example, the FPCC curates the FirstVoices language archiving platform and provides technologies, training, and support to community language champions seeking to document their language for future generations. Indigenous communities across Canada are using this platform to archive their languages.

connectedness to family, culture, and community through language.

The FPCC offers a range of expertise, resources, and tools for Indigenous language revitalization. I strongly urge that their organization be supported to play a key role in working with Indigenous communities and knowledge holders to ensure an appropriate language component of all care plans.

TABLE 6: FPCC BASIC OUTLINE FOR A LANGUAGE PLAN

ACTION		WHO	OUTCOME
1	Identify the child's Nation and language	Social worker	The language, Nation and community are identified for each child.
2	Use FirstVoices to educate the caregivers and the social worker on the Nation and language	Social worker, caregivers	The social worker and caregivers are aware of the language and nation and the online resources available, and are able to support the child to access these resources.
3	Create an individualized Child & Family Language Plan for the child in care and her/his caregivers	Social worker, caregivers	The caregiver family and the social worker collaboratively develop a family language plan that identifies strategies and resources for language access and learning.
4	Connect the child to her/his language through FirstVoices and FirstVoices Kids (including apps)	Child, caregivers, social worker	The child gains online access to language resources using computers and/or tablets, and gains introductory knowledge of her/his language.
5	Participate in <i>Our Living Languages</i> tour event and/or cultural centre tour/event	Child, caregivers, social worker	The child and her/his caregivers develop more understanding of the language, and gain pride in being First Nations.
6	Welcome Home Culture Camp (This could include camps for children with their caregivers, and youth camps for older children. This model could also work for children in urban settings.)	Child, caregivers, social worker	The child and her/his caregivers connect to the home community and engage with the language and culture.
7	Connect the child with language support, resources and/or language mentors in the home community (This could include weekly calls or Skype chats.)	Child, caregivers, social worker	The child has the opportunity to build language proficiency and strengthens the connection to her/his home community.

ACTION		WHO	OUTCOME
8	Mentor-Apprentice Program for youth in care (This would be for children who are committed to becoming speakers of the language.)	Youth	The youth has the opportunity to become a proficient language speaker, and strengthens her/his connection to identity and culture.
9	Mentor-Apprentice Program for Social Workers and Caregivers (who are First Nations and would like to become speakers of their languages)	First Nations social workers, caregivers	These social workers and caregivers would develop a deeper understanding of the importance of First Nations languages and the worldviews they encode, and would be able to provide improved cultural services.

RECOMMENDATIONS AND RELATED ACTIONS

Recommendation 56:

As required in *CFCSA*, MCFD ensure robust, action-orientated cultural components within care plans are developed for each Indigenous child in care and that the cultural components include a focus on Indigenous language revitalization.

- The cultural component must be more than a high-level document and must address specific actions that will be taken to support the preservation of each Indigenous child's cultural identity, in accordance with s. 2, 4, 35, and 70 of the *CFCSA*;
- The cultural component must address all aspects of culture for children in care, including but not limited to the sharing of customs, ceremonies, traditional knowledge, and language; and
- The necessary supports must be made available to ensure all of the activities that have been identified within the cultural component of a child's care plan can be implemented.

Recommendation 57:

MCFD and INAC allocate immediate funding to support the involvement of Indigenous organizations, such as the First Peoples' Cultural Council (FPCC), in the development of the cultural components of care plans.

Recommendation 58:

The BC Representative for Children and Youth, the provincial court, or another independent body be required to conduct an annual review of care plans for Indigenous children in care, with special attention to ensuring that a cultural and language component of each care plan exists and is implemented.

Recommendation 59:

MCFD and INAC allocate immediate funding to support the engagement of Indigenous leadership, traditional knowledge holders, experts, elders, families, etc. in the process of developing the cultural components of care plans, and to support cultural teaching for Indigenous children in care.

Recommendation 60:

MCFD engage the First Peoples' Cultural Council for assistance in preparing a language plan as part of the cultural component of care plans, taking into consideration the tools and models that have been developed to support language revitalization in communities.

Recommendation 61:

MCFD ensure mandatory staff training regarding individual Indigenous identities and cultures, including Indigenous rights.

Recommendation 62:

MCFD and DAAs work collaboratively with Indigenous communities to review the suitability requirements for foster parents and foster homes to ensure compliance with the statutory obligations outlined in s. 71(3) of the *CFCSA*, which prioritizes placement of Indigenous children within their extended family or community.

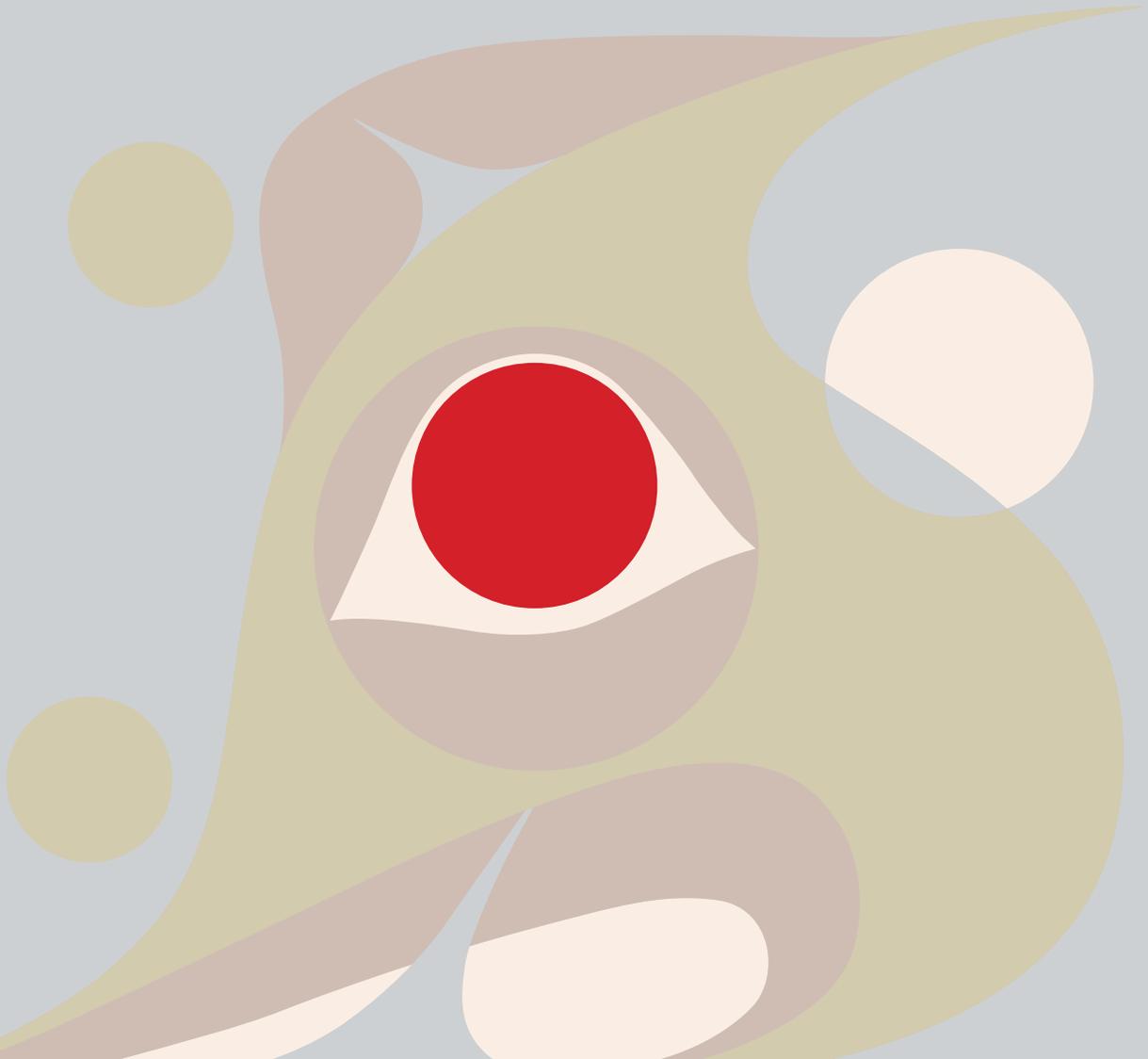
- Supports must be made available to assist a child's family and/or community to navigate the eligibility process for fostering a child;
- MCFD and DAAs must provide the necessary resources and support to meet the statutory requirements; and
- Possible amendments should be considered to the existing eligibility requirements for foster homes that would allow for more Indigenous foster parents who may currently be discriminated against under the existing MCFD requirements.

Recommendation 63:

MCFD must provide support to foster parents to ensure that they are equipped to meet the legislative obligation to preserve a child's cultural identity, as required under s. 4(2) of the *CFCSA*, particularly in the event that a child cannot be placed with family or within his or her community.

AREAS FOR FOCUSED ACTION

AREA 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS



AREA 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS

Every child and youth deserves the best we can offer to support every aspect of their physical, emotional, spiritual and cultural development. Our families' time and investments in the early years of each and every child are essential and are absolute necessities for their future – investments for their survival as Indigenous peoples and for their dignity and well-being. The works of experts in the field, such as the late Fraser Mustard and Clyde Hertzman, and of those Indigenous professors such as Cindy Blackstock (University of Alberta), Margo Greenwood (UNBC) and Amy Bombay (Dalhousie) attest to the value of such investments.

Dr. Bombay's groundbreaking research, cited in *2016 CHRT 2*, provides insightful understanding of the "the impacts of the individual and collective trauma experienced by Aboriginal peoples" (para. 415) and serves as a solid basis for developing initiatives and support for the well-being, health and dignity of Indigenous peoples and communities.

As we were advised in the *TRC Final Report*, Indigenous cultures, ways of life and languages were the subject of highly discriminatory assimilationist practices of the federal government. Institutions, such as residential schools, were mechanisms for the state to develop and apply policies and practices to "civilize" and "Christianize" Indigenous peoples, and under these assimilationist practices, Indigenous children, were viewed as vehicles for the demise of their own cultures and languages (*TRC Final Report*, p. 144). When the children lost their connections to parents, siblings, extended families, teachings, cultures, traditional territories, and their languages, the State would have achieved

its goal, contained in the discriminatory policies of assimilation. While these collective actions of the State did not succeed in killing "the Indian in the child", they had a major and direct hit, resulting in the sense of "disconnection" amongst many Indigenous people that I have discussed previously in this report.

The *2016 CHRT 2 decision* recognized and acknowledged the "transmission of Indigenous languages and cultures [as] a generic Aboriginal right possessed by all First Nations children and their families" (para. 106), and recognizes that "the culture, language and the very survival of many First Nations communities was put in jeopardy" (para. 408) by the residential school system, particularly due to the separation of children from traditional systems of knowledge sharing.

Many Indigenous languages in BC are endangered, in some cases critically, and on the verge of extinction. It is therefore essential for the provincial and federal governments to provide the resources to support early years initiatives in each and every First Nations community, and where they exist, in community health centres, early child development centres, pre-schools, and in the home. This will create more opportunities to bring language and cultural teachings back into the early years of childhood development.

A good example of this is the vision underlying Home Instruction for Parents of Preschool Youngsters (HIPPY). HIPPY is not an Indigenous-only program. In this program, the three-year-old child, before entering kindergarten, is introduced to lessons and skill development in the home. The child's parents become active partners in supporting the child's growth and development, and the program supports the child's parent(s) to become effective early years teachers. This supports

both their own and their child's development. These are the types of initiatives that need to be developed by Indigenous people and communities, promoted and supported in each community, as there is an emerging capacity in these communities to deliver these types of initiatives.

It is my advice that children, youth, and families in every First Nation community should have access to culturally-appropriate initiatives and services in their community. It is a significant "root solution" to the devilish root problems, which concern the Premiers in their report on Indigenous child welfare.

Honouring Indigenous methods of teaching also acknowledges the variance in Indigenous learning styles from non-Indigenous educational systems (from Indigenous Wise Best Practices for Early Childhood Development Programs, a report prepared by Celeta Cook for the Aboriginal Policy division of the Province of British Columbia).

DESCRIPTION OF CURRENT MCFD EARLY YEARS PROGRAMMING AND SERVICES

The developmental period of a child's life from pre-conception to kindergarten transition (0-6 years) is where children have the opportunity to build a solid foundation for life-long well-being. Having access to strong early years supports and programming is a proven core social determinant of health in both adolescence and adulthood.

MCFD provides a range of early years programs and services. Some of these offerings, such as early intervention therapies, autism funding, and child and youth with special needs support services, are intended to be accessible to Indigenous

children and families. MCFD also administers universal funding programs, including the child care subsidy and child care operating funding.

Other programming includes culturally-centred and relevant program delivery and, in some instances, programs intended to provide necessary support and training to parents, families, and communities. Based on the information provided to me, such programs include:

- **ABORIGINAL SERVICE INNOVATIONS-EARLY YEARS (ASI-EY):** this funding initiative targets Indigenous early years programs to support direct services for Indigenous children aged 0-6 and their families. The programs funded through ASI-EY include outreach and home visiting, family literacy, developmental screening, speech-language development, pre-kindergarten school readiness, teaching circles for parents and children, elder support, language and cultural activities, programs to support fathers, and child daycare.
- **BUILDING BLOCKS:** this umbrella term captures a number of family support programs and services that aim to increase the ability of parents or other caregivers to support the healthy development of children aged 0-6. The funding for Building Blocks does not target Indigenous communities specifically.
- **CHILDREN FIRST:** this program is a community development initiative that promotes the healthy development of children aged 0-6 by facilitating cross-sectoral partnerships and building early childhood development capacity within communities. Children First is open to all communities, including Indigenous communities.

- **ABORIGINAL FAMILY RESOURCE PROGRAMS:** these community-based programs are designed to strengthen parenting skills, promote family and community engagement, and provide stimulating environments for children.
- **ABORIGINAL EARLY CHILDHOOD DEVELOPMENT REGIONAL INITIATIVE:** this is a targeted program for Indigenous communities.
- **BC ABORIGINAL EARLY YEARS:** there are 12 Aboriginal/First Nations Early Years Centres in BC, in rural, remote and urban settings. These centres offer a range of supports and services to families with young children within Indigenous communities.

EARLY YEARS PROGRAMS AND SERVICES EXPANSION IN INDIGENOUS COMMUNITIES

I heard from many I met with that early years programs and services in Indigenous communities are an essential part of supporting the holistic development of our Indigenous children. While MCFD's early years programs are intended to provide supports that are universal or accessible to all Indigenous families within a community boundary, I heard often about the very limited services available to many Indigenous parents, families, and communities in BC. Therefore, I strongly urge that MCFD take immediate action, including working together with Canada as required, to expand the early years offerings and, in particular, those services available in Indigenous communities.

Canada should fulfill the commitment from the *Government of Canada Budget 2016* to: "Undertake urgent repairs and renovations of the facilities used by the Aboriginal Head Start On-Reserve Program and the First Nations and Inuit Child Care Initiative

through a proposed investment of \$29.4 million in 2016-17." As well, the budget proposal in 2017-18, providing \$100 million towards Indigenous early learning and child care on reserve, also signals a positive investment that Canada should be held to. These federal funding commitments represent an opportunity for Indigenous communities and governments in BC, and Canada to work together to ensure appropriate early years services for Indigenous children and families.

CANADA'S ABORIGINAL HEAD START ON RESERVE (AHSOR) PROGRAM

The AHSOR program was established in 1998 by the Government of Canada to help enhance child development and school readiness for First Nations, Inuit and Métis children living in urban centres and large northern communities. The AHSOR program both seeks opportunities to build self-confidence and a desire to learn in children, while also recognizing the critical role of parents, guardians and other family members as teachers in a child's life. It assists parents and caregivers in improving their skills to contribute to healthy childhood development.

As noted above, there is a critical need to establish long-term, sustained and predictable core funding for early years programming. Currently, many programs are delivered with limited funds that have been secured through the submission of proposals, and the lifespan of these programs often depends

on the success of short-term funding applications. Programs such as the Aboriginal Service Innovations – Early Years (ASI-EY) are founded on the availability of term-based funding with little assurance that programs will continue beyond the end of a funding cycle.

MCFD provides proposal-based funding to a range of early years programs (Table 7). These programs offer a range of services to Indigenous children and families, including support for family development, programming for children with special needs or developmental delays and/or disabilities, and education support for Indigenous students in early childhood education programs.

MCFD has considered expanding early years core services for Indigenous communities over a five-year implementation period. This would require the collaboration of the federal and provincial governments, as well as the First Nations Health Authority, to ensure the appropriate allocation of funding resources. MCFD and INAC should work directly with First Nations and Métis partners to determine the most appropriate early years services. A significant new investment is required so that these important services are treated as mandatory and not discretionary, with reliable annual funding.

TABLE 7: MCFD FUNDING FOR SELECT EARLY YEARS PROGRAMS

PROGRAM NAME	FUNDING FOR FY 14/15 (\$)
ABORIGINAL EARLY YEARS PROGRAMS AND SERVICES	
Urban Aboriginal Service Delivery Area	7,583,000
Aboriginal Service Innovations – Early Years	5,700,000
Aboriginal Early Childhood Development Regional Initiative	3,500,000
Building Blocks	936,000
Early Years Centres	624,000
Children First Regional	93,000
Aboriginal Success By 6	88,000
Aboriginal Family Resource Programs	66,000
ABORIGINAL EARLY CHILDHOOD DEVELOPMENT PROGRAMS AND SERVICES (CHILDREN AND YOUTH WITH SPECIAL NEEDS)	
Aboriginal Supported Child Development (ASCD) Programs	11,184,000
Aboriginal Infant Development Programs (AIDP)	4,506,000
Early Intervention Therapy Program	539,000
Fetal Alcohol Spectrum Disorder (FASD) Key Worker and Parent Support program	866,000
School-Aged Therapy Program	15,000
CHILD CARE PROGRAMS AND SERVICES	
Early Childhood Educator (ECE) Bursary Program	2,000,000*
Child Care Resource & Referral	430,000

***THIS FUNDING IS ALLOCATED OVER FY 14/15 AND 15/16**

ABORIGINAL SERVICE INNOVATIONS – EARLY YEARS (ASI-EY) PROGRAM

The ASI-EY Program provides \$5.7 million in funding to the Indigenous communities across BC. These programs offer targeted services to Indigenous children aged 0-6 and their families. The funding support secured through ASI-EY allows DAAs and Indigenous organizations to deliver direct services to children and families over a two year funding period.

This fiscal year, the program received 74 applications, of which 56 organizations were eligible for funding under the program requirements. Due to funding constraints, only 31 agencies were granted funding:

1. Carrier Sekani Family Services
2. Cheslatta First Nation
3. Circle of Indigenous Nations Society
4. Fraser Valley Aboriginal Child and Family Services Society
5. Haisla Nation
6. Hiiye'yu Lelum Society
7. Kw'umut Lelum Child and Family Services
8. Lake Babine Nation
9. Lii Michif Otipemisiwak Family and Community Services
10. Little Shuswap Indian Band
11. Lower Fraser Valley Aboriginal Society
12. Métis Community Services
13. Nuuchahnulth Child and Youth Services
14. Nzen'man' Child and Family Society
15. Okanagan Indian Band
16. Pauquachin First Nation
17. Port Alberni Friendship Center
18. Prince George Native Friendship Centre
19. Qualicum First Nation
20. Quatsino First Nation
21. Seabird Island Band
22. Secwepemc Child and Family Services
23. Southern Stl'atl'imx Health Society
24. Spirit of the Children Society
25. Squamish First Nation/Ayas Men Men Child and Family Services
26. Tillicum Lelum Aboriginal Friendship Centre
27. Upper Island Women of Native Ancestry
28. Victoria Native Friendship Centre
29. Wachiay Friendship Centre
30. Westbank First Nation
31. Wet'suwet'en Treaty Office Society

These organizations collectively offer over 100 tailored early years programs to over 78 Indigenous communities across the province.



RECOMMENDATIONS AND RELATED ACTIONS

With respect to the early development of an Indigenous child, it is absolutely necessary to provide short- and long-term support, as well as intensive support to families and to all children, especially those who are in vulnerable circumstances. This helps to ensure the best possible start and a strong foundation for adolescence and adulthood. Studies and common sense inform us that, in the long term, early investment in building a strong sense of “connectedness” in families and communities will help break down the cycle of poverty and underdevelopment. This will ultimately contribute to reducing the extensive social and economic gaps facing many Indigenous peoples.

The following recommendations are made in the area of early years programming and services, and link directly to recommendations made throughout this report in support of parents, families and Indigenous communities:

Recommendation 64:

MCFD and the federal government work to immediately expand Indigenous early years programming and provide new offerings and services to all First Nations communities, and Métis within BC:

- MCFD should engage immediately with DAAs and Indigenous communities across the province to determine the most appropriate core services required in the immediate term and long-term expansion;
- MCFD begin hiring immediately to support the expansion of early years programs and services across BC, including new staff positioned

directly within Indigenous communities (see Recommendation 1, in *Area for Focused Action 1*) and support to manage the expansion of early years programs; and

- MCFD increase ASI-EY funding by \$6 million annually in response to the high number of eligible proposals this fiscal that were denied funding based on availability, and with the objective of investing the additional \$5 million directly in Indigenous communities.

Recommendation 65:

MCFD and INAC invest in long-term and sustainable funding for early years programming:

- Special attention should be given to offering multi-year funding support to organizations based in Indigenous communities that have developed or wish to develop early years programming tailored to their culture, traditions and practices.

Recommendation 66:

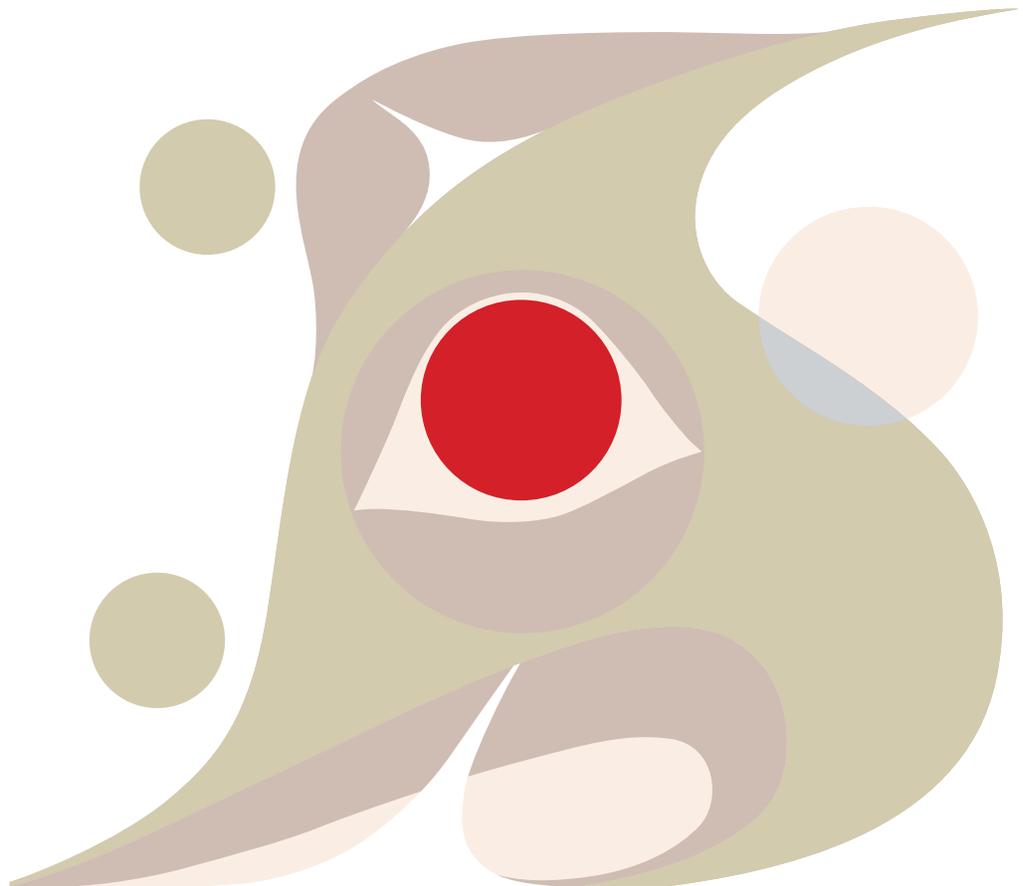
MCFD, DAAs, and INAC work immediately and in partnership with Indigenous communities to expand parenting programs and services available to Indigenous parents and families, as well as other professional expertise to assist Indigenous parent:

- Attention should be paid to ensure these programs are accessible for Indigenous parents and part of this means a commitment to ensuring that long-term, these programs are developed and delivered inside Indigenous communities.

Recommendation 67:

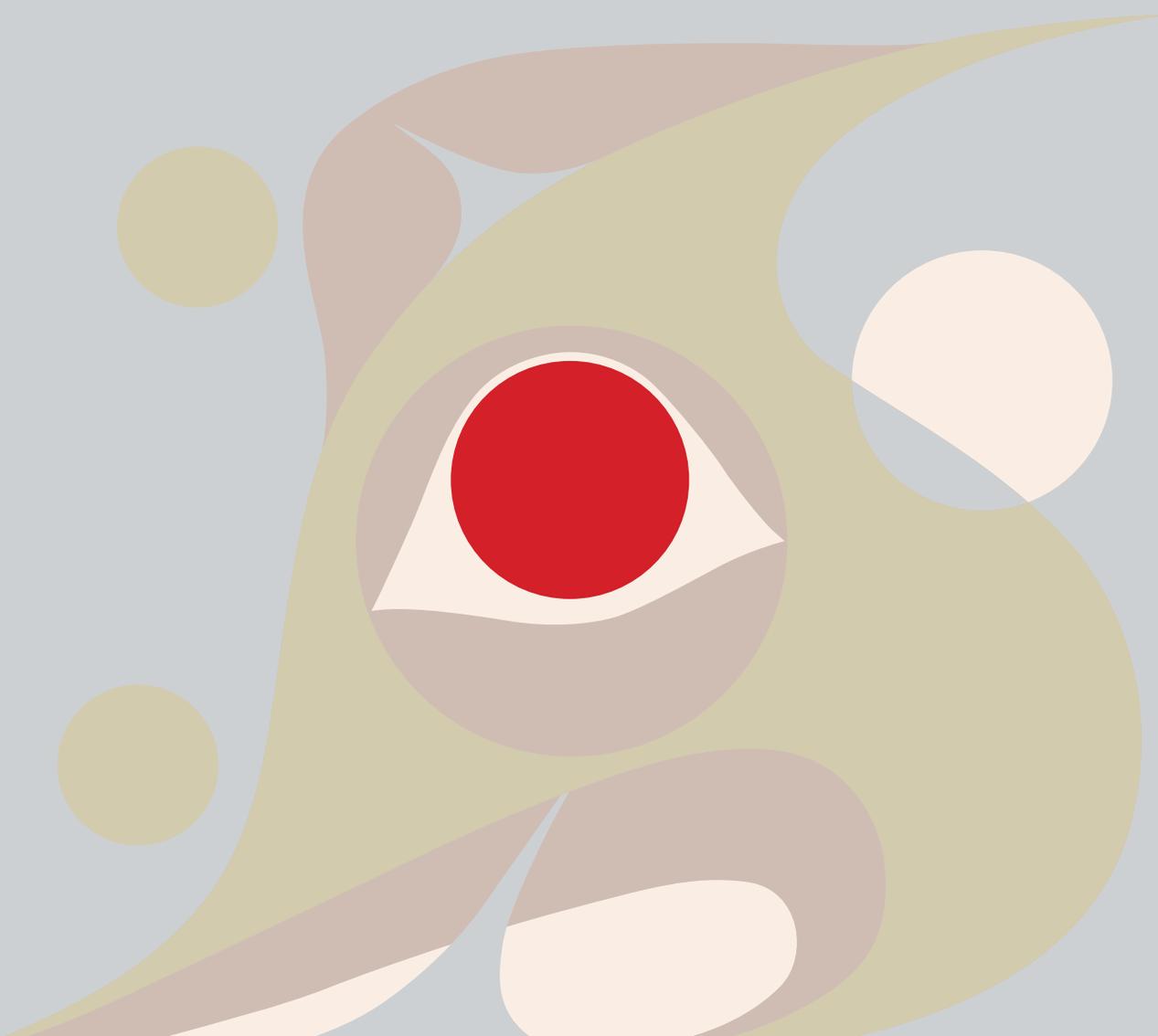
MCFD, DAAs, and INAC take immediate steps to ensure that any new or existing parenting programs and curricula are updated to include traditional values, knowledge, teachings and practices and that available parenting programs utilize, as much as possible, Indigenous elders and cultural leaders:

- Specifically, programming should be developed to support language and cultural revitalization in Indigenous communities, honouring traditional approaches to teaching and knowledge sharing (see *Area for Focused Action 6.*)



AREAS FOR FOCUSED ACTION

AREA 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE



AREA 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE

Twenty years ago, Canada's Royal Commission on Aboriginal Peoples (RCAP) urged that provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Indigenous peoples can undertake self-starting initiatives and exercise jurisdiction over child welfare.

In BC, the federal government has jurisdiction regarding "Indians and Lands reserved for Indians," under s. 91(24) of the *Constitution Act, 1867*, and the province has jurisdiction over child welfare matters

under s. 92(13) and (16). Unless there is a treaty or a federal law on child welfare, provincial laws of general application apply to "Indians." The Canadian Human Rights Tribunal (2016 CHRT 2) explained the application of provincial child welfare legislation as follows:

Instead of legislating in the area of child welfare on First Nations reserves, pursuant to Parliament's exclusive legislative authority over "Indians, and lands reserved for "Indians" by virtue of section 91(24) of the Constitution Act, 1867, the federal government took a programing and funding approach to the issue. It provided for the application of provincial child welfare legislation and standards for First Nations on reserves through the enactment of section 88 of the Indian Act. However, this delegation and programing/funding approach does not diminish AANDC's constitutional responsibilities... (2016 CHRT 2, para 83).

RECOMMENDATIONS REGARDING INDIGENOUS JURISDICTION OVER CHILD WELFARE IN THE RCAP FINAL REPORT

3.2.2 Aboriginal, provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Aboriginal nations can undertake self-starting initiatives.

3.2.3 Aboriginal, provincial, territorial and federal governments promptly reach agreements on the authority of Aboriginal nations and their communities for child welfare, and its relation to provincial, territorial and federal laws respecting child welfare.

While certain important developments have occurred and are discussed in this area of the report, Indigenous people in BC are not yet exercising full jurisdiction over child welfare and there is no federal legislation on Indigenous child welfare.

Nearly all of the meetings I attended included discussion around the importance of Indigenous communities increasing authority over child welfare, policies and practices that impact on the lives of Indigenous children and youth. This area for focused action discusses the past and ongoing efforts of Indigenous people and communities in BC to move beyond the self-administration of federal or provincial programs and services, and towards self-government in the area of child welfare. Several promising practices already employed

by Indigenous people and communities in BC governing in the area of child welfare are explored, as are existing challenges and opportunities for Indigenous leadership and communities that were raised during my engagements.

Legitimate and strong Indigenous Nations have already begun to change the way Canada is governed for the better, and will continue to do so. There is room in our country for different legal traditions and ways of governing—for an approach that respects diversity and equality and supports the social and economic advancement of Indigenous peoples as part of our evolving system of cooperative federalism and multi-level governance.

– Justice Minister and Attorney General of Canada, Jody Wilson-Raybould (Puglaas) at the AFN 2016 Annual General Assembly

DEVOLUTION AND REGIONALIZATION – LEARNING FROM THE PAST AND ENGAGING IN A DIALOGUE

In the 1970s, First Nations in BC pushed very hard for INAC (then DIAND) to devolve its programs and services to communities and to close their “district” level offices across the province in favor of locally based First Nations and Tribal Councils that would deliver devolved programs, applying to each and every First Nation regardless of size, location or capacity. Over the years, many INAC programs have been devolved to First Nations communities, to Métis, and some to regionally based Tribal Councils, including delivery of services in education, health, housing and infrastructure, economic development, social assistance, and membership. In BC, First Nations built offices, developed community-based staffing, and in some instances designed programs

to meet community needs. In many ways, this was a period of growth for First Nations governments.

In BC, 2001 to 2008 was a period of opportunity and marked progress in Indigenous child welfare. The provincial government had announced a commitment to establish Indigenous child welfare authorities in the regions and many felt this opened the door for Indigenous authorities based on the inherent rights and authorities of Indigenous peoples. The intention seemed to be focused in the right direction. Quickly though, it became clear that these new authorities would be similar in nature to the provincial health authorities – a regional delegation model, this time with a focus on child welfare. While it was anticipated that provincial legislation would be passed into law to support Indigenous peoples’ increased jurisdiction over Indigenous child welfare, the legislation was never tabled in BC’s Legislative Assembly, as there were First Nations’ concerns regarding the adequacy of consultation on the contents of the proposed legislation.

Despite challenges inherent in federal and provincial laws and policies concerning Indigenous people in BC, Indigenous communities have made important progress on many fronts through the devolution and regionalization of programs and services. Child welfare, however, has not been one of the areas where programs and services were devolved. The Province, with the support of the federal government, has continued to provide child welfare programs and services to many Indigenous peoples and communities. Under s. 88 of the *Indian Act*, provincial child welfare legislation is considered a “law of general application” applying to Indians on reserve and based on this, the inherent authority that Indigenous people and communities have for their children and families has largely been disregarded.

Today, circumstances have and are changing. From those I met, I heard resoundingly that we are at a new juncture and the existing federal-provincial arrangement concerning Indigenous child welfare is not acceptable to Indigenous peoples. In 2007, the United Nations General Assembly, with its adoption of the *United Nations Declaration on the Rights of Indigenous Peoples*, finally recognized the human rights of Indigenous peoples, providing a critically important and practical framework for reconciliation and redress. Earlier this year, Canada adopted without qualification the *United Nations Declaration on the Rights of Indigenous Peoples*, including the right to self-determination and self-government. The way forward on child welfare in this province must be cognizant of these important developments.

In *The Road to Aboriginal Authority over Child and Family Services*, the late Kelly MacDonald examined the governance models, finances, capacity, labour relations, culturally appropriate services, and overall strengths of the process for creating DAAs, and called the process to achieve authority “a bumpy road.” I have referenced this history and the process of devolution and regionalization with the goal of framing the road ahead based on what those I met with instructed we have learned from past opportunities, actions, and the results. **THE FOLLOWING TWO KEY LESSONS LEARNED FROM THE REGIONALIZATION PROCESS WERE IDENTIFIED REPEATEDLY DURING MY MEETINGS, AND EMPHASIZED AS CRITICAL TO ANY FUTURE PROCESS AIMED AT ACHIEVING INDIGENOUS JURISDICTION OVER CHILD WELFARE:**

- 1. A SOLID COMMUNITY-BASED APPROACH FOR CHILD WELFARE – A COMMUNITY OWNED AND DEVELOPED PROCESS – IS NECESSARY TO REALIZE INDIGENOUS JURISDICTION OVER CHILD WELFARE; AND**
- 2. EXISTING DAAS AND PROPOSED REGIONAL CHILD WELFARE AUTHORITIES SHOULD BE UNDERSTOOD AS “INTERIM MEASURES,” AND SUPPORTED AS PART OF A TRANSITION PROCESS TO THE EXERCISE OF FULL INDIGENOUS JURISDICTION IN CHILD WELFARE.**

The period of devolution provided Indigenous peoples with some limited opportunities in governance, but these amounted to small building blocks for Indigenous self-government. While these opportunities were limited, Indigenous communities should be celebrated for having, in many cases, converted these opportunities into a substantial and progressive foundation for self-government. Today, the area of Indigenous child welfare presents opportunities for Indigenous communities, Canada and BC to work together to form strong partnerships. No one party alone can do this work.

How should these partnerships be envisaged and emerge within the context of this modern era? This question is not new, and was canvassed during the four First Ministers conferences in the 1980s and in the Charlottetown process in the 1990s. There was no resolution then, but the absence of one singular vision for the path forward today should not diminish the resolve and determination of any of the parties to this work. The political will of Indigenous people and communities exists today, but in the context of Indigenous child and family services, what does this mean?

INDIGENOUS APPROACHES TO INCREASED JURISDICTION OVER CHILD AND FAMILY SERVICES

Indigenous peoples must necessarily be engaged as true partners and must be trusted with making decisions about their children, families and

communities. Partnerships must recognize and respect the authorities of elected Indigenous leadership and Hereditary Chiefs and matriarchs who are ably guided by respected elders and cultural leaders. The lack of focus on and respect for Indigenous communities, and the values and traditions that direct their work, have been serious gaps identified by those evaluating the devolution and regionalization processes. The positive news is that Indigenous communities and organizations have employed many different approaches to address the gaps themselves and to move towards full or increased jurisdiction over Indigenous child welfare. The development of community-based wellness frameworks that exercise inherent rights, along with the Splitsin by-law approach, the Nisga'a Treaty approach, the Métis MOU with MCFD and with the Adoptive Families Association of BC, and the activities of First Nations organizations at the provincial level, are just some of the Indigenous-led approaches that are being employed. Several of these are discussed in brief below for the purpose of illustrating the success and opportunities created through Indigenous-led root solutions.

THE OKANAGAN NATION ALLIANCE SYILX WELLNESS FRAMEWORK AND WET'SUWET'EN APPROACH TO WELLNESS – ANUK NU' AT'EN BA'GLGH'IYI Z'ILHDIC

During my meetings, those I met with reinforced that Indigenous communities and their values and traditions cannot be taken for granted or overlooked in the design of any process going forward. The **OKANAGAN NATION ALLIANCE (ONA)** and the Wet'suwet'en hereditary and elected leadership both shared information about their own culturally grounded approaches to child welfare.

The ONA serves to promote the health and wellness of all Syilx (Okanagan) people. Its approach to health and social development programs promotes self-sufficiency and also seeks to incorporate traditional and cultural approaches into program delivery. This base on Syilx values, traditions, teachings, and authorities forms an important foundation for the way forward in child and family services for ONA.

The ONA has undertaken a number of planning initiatives to shape service delivery for Syilx Child and Family Services, and has ensured that these plans are consistently designed to address complex root issues that have resulted from colonial policies and practices and their intergenerational trauma. The ONA approach to planning for child welfare places families at the centre of the process, with a focus on methods of prevention. The vision for the ONA planning processes seeks to integrate key aspects of Syilx culture – including captikwl (stories), the Nsyilxcen language, the Enowkin'wix process for conflict resolution, and community engagement in planning – into a framework for service delivery.

The **WET'SUWET'EN WELLNESS WORKING GROUP (WWWG)**, comprised of both hereditary and elected Chiefs, and organizational leadership from the five communities, has worked to build an approach for **ANUK NU' AT'EN BA'GLGH'IYI Z'ILHDIC (ANABIP)** that returns to Wet'suwet'en holistic approaches to wellness.

Through a participatory action research process, involving over 200 Wet'suwet'en people, the WWWG has built the Wet'suwet'en Holistic Wellness Conceptual Framework. This conceptual model is based on placing Yinta (meaning the people connected to the land) at the centre, with five key themes building off that foundation. These themes include: 1) being seen/being heard, 2) Hiltus (strengths), 3) spirituality, 4) sustainable livelihood,

and 5) social responsibility. Each of these five key themes has an identified and emerging set of cultural competencies, as well as quantitative and qualitative outcome indicators.

This model is utilized by the ANABIP practitioners to design, plan, implement, and evaluate all child welfare service activities delivered to the Wet'suwet'en, throughout their traditional territory. The application of this model ensures that ANABIP practitioners are delivering supports to clans and house groups, with consideration of how to incorporate traditional cultural protocols and practices relating to health and wellness.

Based on this conceptual model, ANABIP has developed a permanency planning framework for Wet'suwet'en children in care. It has been utilized with Wet'suwet'en children in care with VACFSS in Vancouver to help ensure Wet'suwet'en children remain connected to their extended families and cultural identities.

ANABIP is funded through MCFD's existing ASI funding program. As discussed elsewhere in this report, the ASI fund is year-to-year proposal driven funding. There are no guarantees that ASI funds will be available for the following year, which severely jeopardizes program sustainability.

ANABIP has made it clear that they continue to offer culturally relevant support to families, but that it is not a Wet'suwet'en DAA. The Wet'suwet'en communicated to me that their child and family governance and legislation negotiations have stalled since release of the BC RCY's report, *When Talk Trumped Service*. Since then, they have been relegated to the role of short-term service provider. The Wet'suwet'en continue to pursue jurisdiction over child welfare to ensure that all child welfare services are delivered with the Wet'suwet'en Holistic Conceptual Framework in mind.

The ONA and Wet'suwet'en approaches outlined briefly herein are just two examples. There are many such plans and initiatives in Indigenous communities, and their continued development and subsequent implementation, should be supported by Canada and BC, as argued throughout this report.

As well, the 23 DAAs in BC have developed valuable expertise and experience, many becoming leaders in the area of Indigenous child welfare and recognized within BC, Canada and internationally. The DAAs and their staff have much to contribute to ensure community-based challenges are met with community-based solutions and that effective child welfare services are delivered in culturally appropriate ways. To exercise Indigenous jurisdiction over child welfare, the way forward needs to be culturally appropriate, fully inclusive of all interests, and properly and fully authorized by community members providing direction to their political leadership. Those I met with also expressed their hope that Indigenous jurisdiction over child welfare could help ensure a prevention-focused approach with needs-based funding, and be outcomes-oriented, confirmed by measurable indicators.

SPLATSIN CHILD WELFARE BY-LAW APPROACH

In 1980, Splatsin (then the Spallumcheen Indian Band) demonstrated a strong commitment to child welfare in the ratification of ***A BY-LAW FOR THE CARE OF OUR INDIAN CHILDREN: SPALLUMCHEEN INDIAN BAND BY-LAW #3***. This by-law establishes that First Nations have a legal right to develop laws to govern the responsibilities surrounding the care and welfare of their children. This by-law approach is an excellent example of where a First Nation, in exercising its inherent authority, has assumed and

is exercising responsibility for all of its children, including those who come into care.

The focus of this by-law is to support the Splat-sin Chief and Council to ensure that all Splat-sin children are afforded the opportunity to remain connected to their families and to gain an understanding of what it means to be Splat-sin and Secwepemc.

Splat-sin Stsmamlt Services is an organization within the Splat-sin administration that operates on behalf of Chief and Council to ensure the effective execution of the Splat-sin Child Welfare By-law. The Splat-sin Stsmamlt Services program has faced challenges in recent years. MCFD maintains a position that the by-law only applies on Splat-sin lands reserved under the *Indian Act*. This has resulted in ever-decreasing cooperation between the First Nation and MCFD when it comes to the transfer of off-reserve cases for Splat-sin children to Splat-sin Stsmamlt Services.

It is the Province's view that *CFCSA* applies to all Indigenous children in BC, regardless of where they reside, and that the Splat-sin by-law is therefore invalid both on and off reserve. It is my hope that this important matter is one that can be resolved politically, rather than through the courts. This view is a clear example of the adversarial nature of matters relating to Indigenous child welfare and the inherent authority of Indigenous peoples to exercise jurisdiction for their children. As such, I consider this to be a very important political and policy question that Indigenous peoples, the Province and Canada must address.

Splat-sin filed a Notice of Civil Claim on October 13, 2015 with the intent to address the issue of jurisdiction and to initiate a fruitful discussion with Canada and BC on how to address some

of the procedural challenges that the Splat-sin Nation currently faces.

Identified shortcomings in the *CFCSA* have led to key procedural challenges in the Splat-sin model. S. 8 of *CFCSA* does not identify an Indigenous government as being eligible for custody, as the legislation currently reads that custody may only be transferred to a "person." This can often pose a significant barrier for Splat-sin to ensure the transfer of cases from MCFD to Splat-sin Stsmamlt Services.

A simple revision to *CFCSA* – changing "person" to "party" and including "First Nations" or "Indigenous governments" under the list of eligible parties – would offer a solution to Splat-sin, and would set the necessary legislative framework to support other Indigenous communities to adopt a similar legislative model, or adopt other by-laws that would work for their communities.

As identified by the RCY in the first recommendation in *When Talk Trumped Service*, it is critical that legislation supports the jurisdictional transfer and exercise of governmental powers over child welfare to Indigenous communities. MCFD should, as part of an overall review of *CFCSA*, ensure necessary changes are made to the legislation to support community-based initiatives like the Splat-sin By-law model.

INDIGENOUS JURISDICTION UNDER A MODERN TREATY – THE NISGA'A APPROACH

This year, the Nisga'a Nation celebrated the 16th anniversary of their treaty with BC and Canada. The Nisga'a Final Agreement includes specific provisions on child and family services, including:

Chapter 11, s. 89: Nisga'a Lisims Government may make laws in respect of child and family services on Nisga'a Lands, provided that

those laws include standards comparable to provincial standards intended to ensure the safety and well-being of children and families.

Chapter 11, s. 92: At the request of Nisga'a Lisims Government, Nisga'a Lisims Government and British Columbia will negotiate and attempt to reach agreements in respect of child and family services for Nisga'a children who do not reside on Nisga'a Lands.

When I met with the Nisga'a child welfare workers, they shared with me that there have been no removals of Nisga'a children in the last six years. They further explained that services on Nisga'a lands are delivered by Nisga'a people and within Nisga'a homes. Resources for protecting Nisga'a children and youth have been developed and are used as necessary. This is all possible, it was communicated to me, because of the existing relationship between Nisga'a and MCFD. Workers in Nisga'a communities are hired as "auxiliary" employees with MCFD.

Representatives from Nisga'a did suggest that there was room for further improvement, emphasizing that a preventative strategy on family wellness, with a focus on domestic violence, was important going forward in order to see things change substantively for communities and families.

The modern treaty Nations in BC all have different experiences and lessons to teach about the path forward in regards to Indigenous jurisdiction over child and family services. While many modern treaties provide the basis for the First Nations signatories to enact their own child welfare laws, thus far in BC, treaty First Nations have not fully exercised their authority.

MÉTIS AND JURISDICTION OVER CHILD AND FAMILY SERVICES

The Métis Memorandum of Understanding (MOU) with MCFD and with the Adoptive Families Association of BC is based on the perspective that "Métis people have traditionally acknowledged their children as sacred gifts from the ancestors" to ensure "the protection of 'Takaki Awasisiwin' a good childhood for our future." The MOU is an example of one initiative directed at increasing Métis jurisdiction over child and family services in BC.

Despite initiatives like this MOU, the issue of Métis jurisdiction over child and family services in BC is complicated. Following the *Daniels* decision by the Supreme Court of Canada, the Métis Nation of BC (MNBC) has been working with Métis people in the province to determine "who is Métis." Whether the federal or provincial government is "responsible" for Métis child and family services is currently a topic of much debate and discussion. Answering this question will be a challenge, as there are many historical and contemporary factors that the Métis need to consider.

Regardless of which government is determined to have the responsibility, child and family services for Métis should be equitable and provided without discrimination. Most of the recommendations and advice in this report should be interpreted as applying to Métis child and family services, although there are some instances where it was necessary to single out actions required to address specific challenges for Métis children, youth and families. Overall, I found in my engagements with MNBC and Métis leadership that there were more similarities than differences when Métis leadership described root causes and the need for root solutions.

RECOMMENDATION 12: *There is a need for thoughtful and visionary leadership, collaboration and communication in overseeing the development of a new system of Métis child and family services in British Columbia.*

- Report to the Métis Commission for Children and Families of British Columbia on Métis child welfare, 2011.

BC'S ROLE IN SUPPORTING INDIGENOUS JURISDICTION

While there are reasons to be optimistic about the opportunities for Indigenous jurisdiction over child and family services in BC – particularly given recent political commitments of the BC government, such as those at the BC First Nations Children and Family Gathering in May 2016 – it also needs to be acknowledged that the Province has fought Indigenous peoples in the courts to maintain provincial jurisdiction over child welfare.

In 2010, provincial statutory commitments were exuberantly paraded before the Justices of the Supreme Court of Canada in *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union* (2010 SCC 45) to demonstrate the Province had legislation supporting a culturally appropriate child welfare system for Indigenous children. In oral submission, the Province took the position that federal jurisdiction under s.91(24) should not be construed broadly to include First

Nations authority in child welfare, since doing so could, among other things, effectively result in:

- Reducing predictability in determining division of power issues;
- Reinforcing the notion of federal enclaves;
- Creating disincentives for provinces to establish and foster provincial programs and services to be delivered in a manner fully accommodating of Indigenous culture and tradition; and
- Placing at significant risk the province's management of land and resources in the province and the revenues generated from the land and resources by applying an interpretation of s. 91(24) to include broad asserted Aboriginal rights of self-government or general matters of culture, tradition and matters relating to Aboriginal community.

Conversely, First Nations argued that s. 91(24) of the *Constitution Act, 1867* should be interpreted broadly to include First Nations self-government to support First Nations authority in cultural matters and child welfare. While ultimately the Supreme Court of Canada decided that provincial labour laws applied to employees of a DAA in this case, in the absence of federal legislation, the legal arguments of all parties illustrated the highly complex, controversial and adversarial nature of Indigenous child welfare.

Despite the adversarial relations inside the courts in Canada and BC, there is evidence that Indigenous jurisdiction over child welfare is being considered by the Province. BC RCY, Mary Ellen Turpel-Lafond, has recommended to BC that the matter of jurisdiction and Indigenous child welfare authority should be handled by the BC Attorney General and that MCFD should focus its efforts and resources on services to Indigenous children and families:

RECOMMENDATION 1: *The government of British Columbia, with the leadership of the Attorney General, develop an explicit policy for negotiation of jurisdiction transfer and exercise of government powers over child welfare.*

- BC RCY report, *When Talk Trumped Service*

NIL/TU,O CHILD AND FAMILY SERVICES SOCIETY V. B.C. GOVERNMENT AND SERVICE EMPLOYEES' UNION, 2010 SCC 45

In *2010 SCC 45*, an Indigenous child welfare agency sought to organize and negotiate a collective agreement. Although the case before the SCC was on the issue of whether federal or provincial labour legislation applied, the underlying issue was the respective jurisdictional authorities of the federal government, the provinces and that of First Nations in matters relating to Indigenous child welfare.

Two letters between BC's Attorney General, Suzanne Anton and the RCY, dated May 27, 2016 and May 31, 2016, deal with this particular recommendation. The May 27 letter from Minister Anton to the RCY relates that self-government jurisdiction is a matter BC and Canada negotiate with First Nations under the BC Treaty process and that BC is "committed to working collaboratively with First Nations to implement new approaches

to self-governance and the delivery of child welfare services." As Canada's participation is also required, Minister Anton instructed in the letter that BC would be having discussions on child welfare jurisdiction and services with First Nations and Canada, though would not be developing an express policy like the one recommended by the RCY.

If the Province wants to address the serious inequities in Indigenous child and family services in BC and develop "root solutions" that directly address the "root causes" identified in the July 2015 *Report to Canada's Premiers on Aboriginal Children in Care*, there needs to be a serious commitment to move forward in support of Indigenous jurisdiction over Indigenous child and family services. The Province's current direction, towards a more centralized child welfare services approach, with more MCFD employees and with an expanded quality assurance program, may make it a more effective organizational structure for the provincial government. However, I do not believe these changes alone will significantly improve child welfare services to and outcomes for Indigenous children, families and communities.

CFCSA CHANGES TO SUPPORT INDIGENOUS JURISDICTION

Throughout my appointment, I was frequently alerted to the shortcomings of our provincial legislation for child and family services. One of the issues that I encountered most frequently was the existing limitations of the *CFCSA* to allow Indigenous governments to be assigned guardianship of children once they are removed. This legislative barrier has been exceptionally frustrating to Indigenous communities who are working hard to develop innovative programs to care for their children, such as in the case of Splatlin.

The existing provincial legislation fails to serve Indigenous communities in a number of ways. First, “custody” is an out-of-date term and a concept that fails to capture the complexity of caring for children. The *BC Family Law Act* has been updated with new terms and concepts, such as guardianship and parental responsibilities, that better address the needs in planning for the care of children. Updating the *CFCSA* to include this terminology would offer more flexibility in terms of assigning the various duties involved in raising a child, particularly in cases where the Indigenous government may be assigned the duty of guardianship, but may wish to assign a family or individual within the community to carry out the day-to-day care for a child. As it stands, “custody,” as defined in the *CFCSA*, encompasses both care and guardianship, which does not effectively support Indigenous communities seeking to employ alternative models of providing care to children. The *CFCSA* needs to be modernized so it can realistically address the complexities of caring for children and ensure that culturally relevant models of caring for children are supported.

A change in language alone will not fully address the limitations in the application of the *CFCSA*. For example, although the *CFCSA* provides for less disruptive measures, in practice, the *CFCSA* does not allow for children to be easily placed within their families and communities. This is because, throughout the *CFCSA*, the provisions only allow for custody to be assigned to an individual person, and do not allow for custody to be transferred to a collective, such as to an Indigenous government. This can pose a significant barrier to Indigenous governments and their supporting organizations, which are well equipped to provide placements that would be in the best interests of the child, but often struggle to bring that child into the care and control of Indigenous community.

An example of the challenges in applying this legislation can be seen in s. 8 of the *CFCSA*, which allows the Provincial Director of Child Welfare to enter into an agreement with a “person” who has been identified to provide care for a child. An Indigenous government does not fall within the legal definition of a “person,” nor does the legislation recognize a collective as being an eligible guardian. The Director cannot therefore enter into an agreement with an Indigenous government for the provision of child and welfare services.

There are similar issues within the legislation relating to both interim and temporary orders, as well as permanent orders, that arise from an absence of legal recognition of Indigenous governments as parties eligible for custody or guardianship. Amendments need to be made to the *CFCSA* to allow for Indigenous governments to be identified as eligible guardians.

Some of these issues could be rectified if the *CFCSA* were amended to replace “person” with “party” and with any additional required changes to ensure that Indigenous governments are identified as being an eligible party. This change is an example of the legislative support that can be developed to aid Indigenous communities to manage the placement of children within their families and communities much more effectively.

Currently, all parties to *CFCSA* proceedings are persons. This means the regulations under *CFCSA* would also need to be amended.

As noted elsewhere in the report, the existing provincial legislation allows for the current delegation model, which at present supports 23 DAAs under various levels of delegation. *CFCSA* provides that the Director may enter into the delegation agreements to establish DAAs. Going

forward, these agreements could be revisited and reframed by the underlying rights in the *UN Convention on the Rights of the Child* and UNDRIP. In other words, the legislation could be amended to provide a greater scope for new forms of government-to-government partnerships moving beyond the existing delegation model.

Under s.91 of *CFCSA*, the Minister for MCFD is authorized to “designate one or more persons as directors...” Designation must be in writing and may include any terms or conditions the Minister considers advisable. The Director has the power to delegate, in writing, any or all powers, duties or functions under the *CFCSA*. This is the mechanism for social workers who are delegated to exercise authority under the *CFCSA*. The power of the Director is a highly discretionary power and how it is exercised in relation to Indigenous child welfare is understandably a matter of serious concern in Indigenous communities. The possibility of the Minister designating an “Indigenous Director” is something that came up during my meetings. The underlying rationale of this approach is that an Indigenous person is more likely to understand and be sensitive to the historic circumstances, cultures and languages of indigenous peoples when making decisions under the authority of the *CFCSA*.

All of these critical changes and actions regarding *CFCSA* need to be considered immediately to ensure that the necessary legal mechanisms are in place to allow Indigenous governments to move towards full jurisdiction over Indigenous child and family services.

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are made in support of Indigenous communities increasing authority over child and family services and are focused on empowering Indigenous people and communities in BC to move beyond the self-administration of federal or provincial programs and services, and towards self-government in the area of child welfare. Further recommendations relating to Indigenous jurisdiction are found in *Area for Focused Action 9 – The Existing Policy Framework – Shifting Towards Patterns of Connectedness*, and *Area for Focused Action 10 – A National Strategy for Indigenous Child Welfare*.

Recommendation 68:

Recognizing Indigenous communities’ right to self-government, Canada, BC, DAAs and Indigenous communities and organizations collectively move towards a model where Indigenous communities can exercise full jurisdiction over Indigenous child welfare. This will require the parties to undertake the following collaboratively:

- Develop and implement an action plan to ensure that Indigenous communities have effectively built the necessary range of capacities to ensure equity of services to Indigenous children and families; and
- Build a comprehensive funding framework to ensure Indigenous communities are fully supported to offer equitable services for Indigenous children (see related recommendations in *Area for Focused Action 3 – A New Fiscal Relationship – Investing in Patterns of Connectedness*).

Recommendation 69:

While Indigenous communities move to implement full jurisdiction over Indigenous child and family services, MCFD and INAC work concurrently to also support the continued capacity building of DAAs in the following ways:

- Ensure DAAs maintain key involvement in the planning for and delivery of child welfare services to Indigenous children and families; and
- Ensure DAAs continue to have opportunities to develop expertise in exercising authority over Indigenous child welfare.

Recommendation 70:

The Province review and amend *CFCSA* in order to offer legislative support to Indigenous communities that have developed, or are seeking to develop, strong community-driven initiatives. This review of *CFCSA* should consider the following:

- Methods of ensuring *CFCSA* can support an Indigenous community and its government to exercise full authority and jurisdiction over decision-making related to the best interest of the child; and
- The limits that *CFCSA* places on specific models for increased Indigenous jurisdiction, such as the Splatshin's *By-Law for the Care of Our Indian Children: Spallumcheen Indian Band By-Law #3*.

Recommendation 71:

The Province review and amend *CFCSA* to provide for 'least disruptive measures' that make it simpler for a child to remain with his or her extended family or community in the event that there is a removal:

- Allow for the transfer of custody to a "party" rather than just a "person," as under the existing legislation. The legislation must recognize Indigenous governments as an eligible "party" to which custody may be transferred;
- Amend s. 8 of *CFCSA* to allow for Indigenous governments to enter into either temporary or long-term agreements with MCFD for the care of a child;
- Amend s. 35 and s. 41 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing interim and temporary orders; and
- Amend s. 49, s. 50, and s. 54 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing permanent orders.

Recommendation 72:

The Province review and amend *CFCSA* with the goal of achieving consistency with the *Family Law Act*:

- Moving away from "custody" as an out-of-date concept currently utilized in the *CFCSA*, and towards the concepts of guardianship and parental responsibility as defined in the *Family Law Act*.

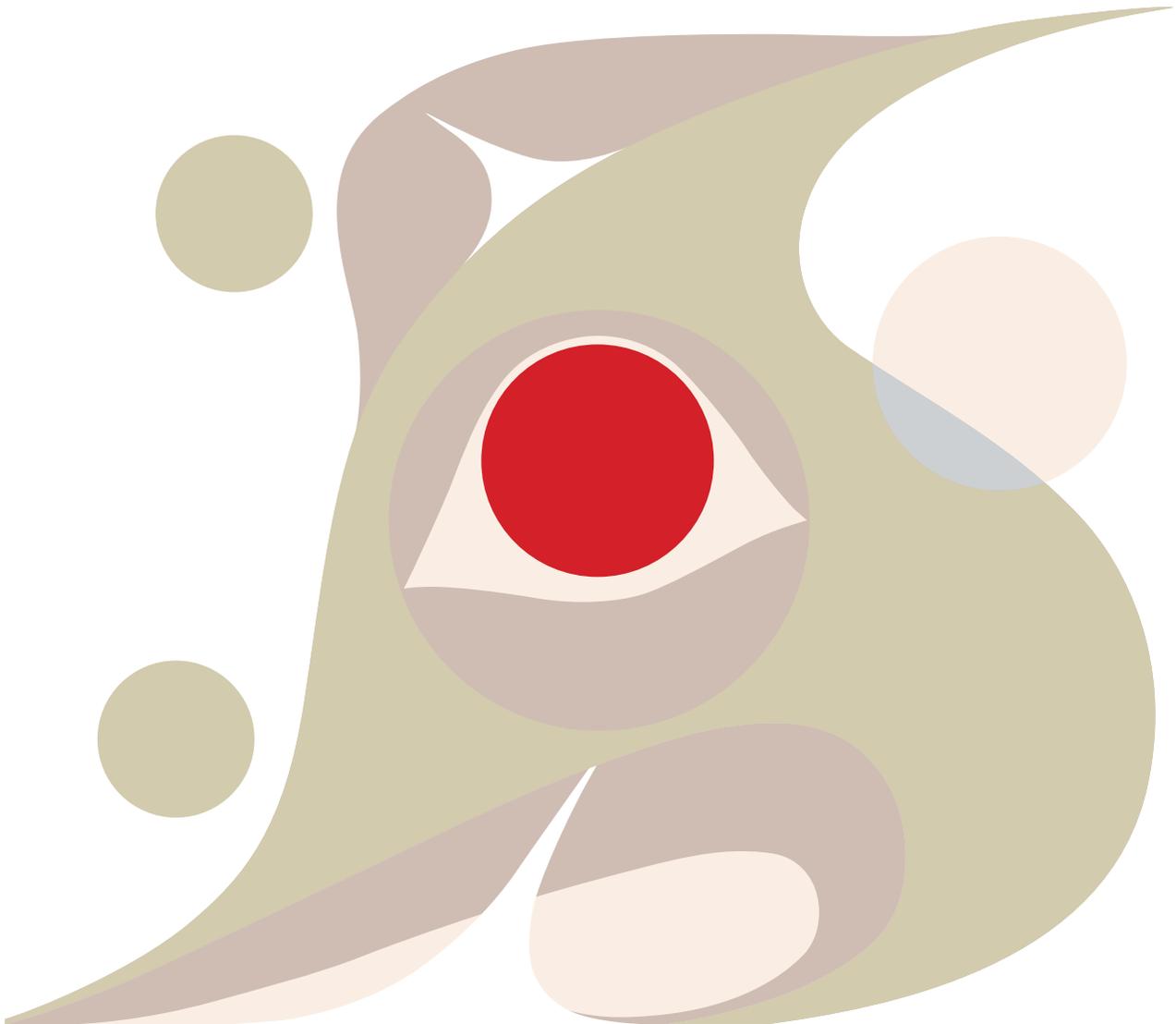
Recommendation 73:

MCFD review *CFCSA* with the specific aim of identifying legislative changes needed to minimize circumstances where a child is moved out of temporary care and under a CCO:

- Consideration during this review should be given to potentially requiring an Indigenous community's consent to move the child under a CCO.

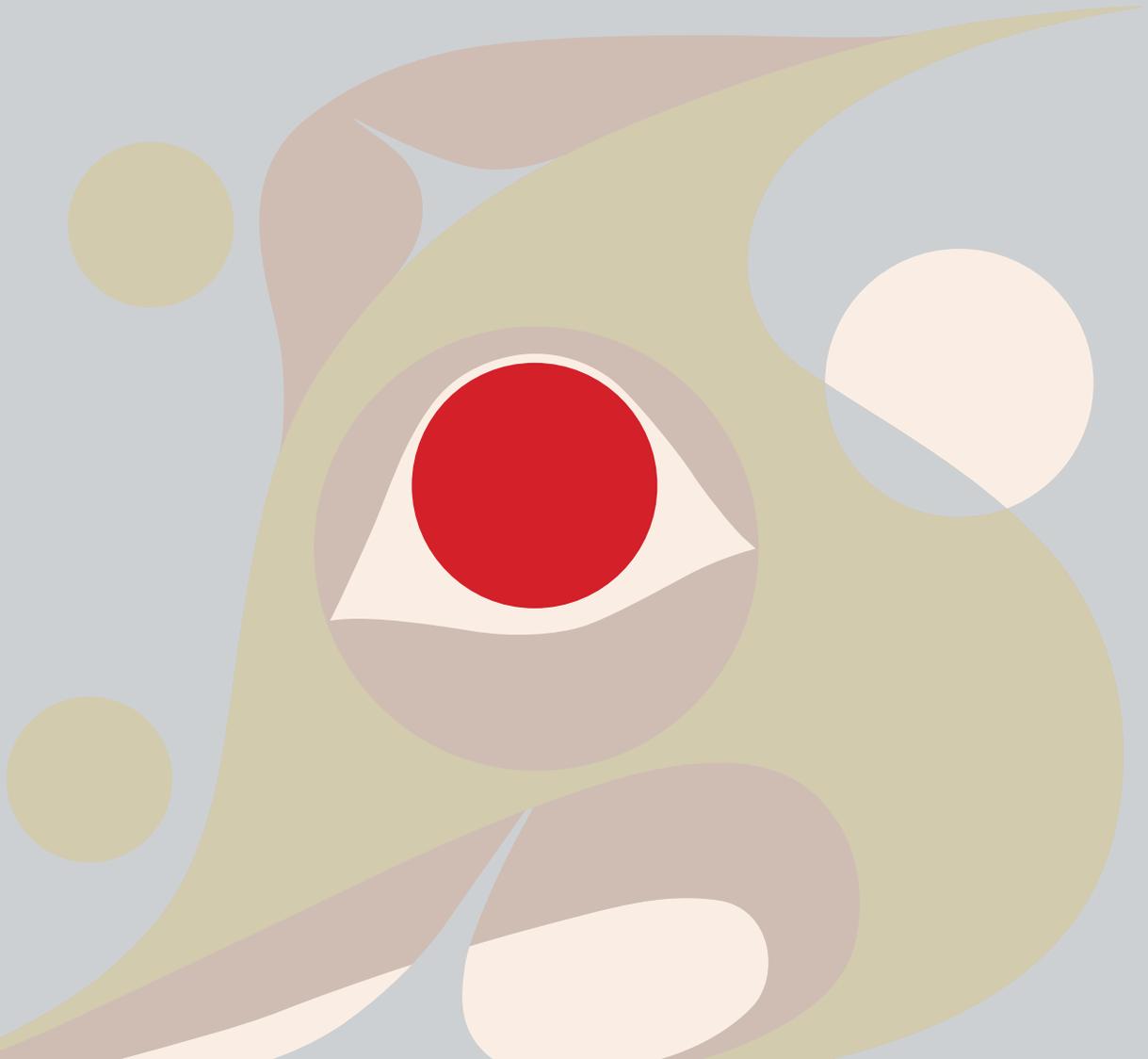
Recommendation 74:

MCFD designate an Indigenous Director under the authority of *CFCSA*, equipped to make decisions under the authority of *CFCSA* that are based on cultural knowledge, and better account for historical circumstances and resultant intergenerational trauma.



AREAS FOR FOCUSED ACTION

AREA 9. THE EXISTING POLICY FRAMEWORK – SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS



AREA 9. THE EXISTING POLICY FRAMEWORK – SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS

Numerous reports have described the inadequate policy framework governing Indigenous child and family services in BC. Still, the Province has seen “action plans” without timely commitments to the actions articulated. To quote the RCY, the provincial story of Indigenous children in care represents “a colossal failure of public policy to do the right thing for citizens” (RCY Report, *When Talk Trumped Service*, p.4). Without a strong policy framework guiding the efforts of the Province, I believe that those I met with are correct in warning that we can only expect to see the child welfare system continue to fail Indigenous children, youth, and families.

The Province requires an immediate investment in the development of a clear policy framework to govern its own service provision, and a renewed vision for engagement with the federal government and Indigenous governments and organizations.

While the Province is responsible for the regulation and provision of child welfare services to children in BC, the federal government has a responsibility to provide services for Indigenous Canadians. The relationship between the federal and provincial governments is far from straightforward, and a lack of clarity around roles and responsibilities has, in practice, confused reporting structures and negatively impacted the quality of services delivered to Indigenous children in BC.

As discussed earlier in this report, the 2016 CHRT 2 decision confirmed that the level of service provided by the federal government on reserves is significantly lower than the support provincial governments provide to children off reserve, and

that this constitutes discrimination. Challenges to funding for the child welfare system are explored at length throughout the 2016 CHRT 2 decision and in other sections of this report; however, the issues facing the system do not solely relate to funding levels.

There exists a significant departure between what is increasingly recognized as best practice in Indigenous child welfare, and existing public policy approaches. Most notable, Canada and the Province continue to invest in and support an expensive foster care system, rather than investing in the necessary supports to strengthen Indigenous families and communities, and break cycles of intergenerational trauma.

Throughout this report, I have made a series of recommendations for necessary changes to practice that will offer supports to Indigenous children, youth, parents, families, and communities. However, without a clear policy framework to guide the actions at all levels of government and service delivery, these changes – in isolation – are far less likely to be implemented effectively.

This section seeks to address some of the high-level policy changes that will be critical, at both the federal and provincial levels, to support the necessary changes to the child welfare system that serves Indigenous children and their families.

EXISTING MCFD POLICY DIRECTIVES

MCFD child welfare services and operations continue to suggest a bias towards child protection activities. Despite having available mechanisms in place to allow for flexibility in approaches, the absence of clear policy directives to prioritize preventative action and family preservation, for

example, often results in a child welfare system that remains focused on protection services versus preventative services.

The MCFD 2015/17 – 2018/19 Service Plan is premised entirely on child protection, including five goals and supporting objectives, strategies, and performance measures. There are opportunities throughout the Service Plan to have incorporated preventative actions and services to support the preservation of families. As an example of a gap, in order to advance and assist in achieving permanency for children and youth in care, attention must be paid to the critical need of parents who require access to services in order to keep their children. The plan addresses a number of supports to be made available to foster and adoptive parents, but does not set out a plan to support birth parents. The policy direction given by this Service Plan does not offer MCFD the necessary guidance to alter existing practices towards an approach that favours prevention.

In reviewing the Service Plan, I saw that there were references to Indigenous community services throughout. I would recommend that a completely separate service plan be developed, in accordance with the provisions within the *CFCSA* and the *BC Budget and Transparency Act*, that explicitly targets the needs of Indigenous communities and families (Recommendation 77). This will help to facilitate much more effective monitoring in terms of services delivered to Indigenous children and families.

Another potentially useful tool that is being underutilized is the *Aboriginal Policy and Practice Framework*. This Framework was co-developed by MCFD and DAAs in 2015, but has yet to be fully implemented. This framework outlines an approach to developing policy and practice that is grounded in restorative practices that empower Indigenous

communities to deliver services based on their own cultures and traditions.

The *Aboriginal Policy and Practice Framework* seeks to incorporate Indigenous practices for raising

THE ABORIGINAL POLICY AND PRACTICE FRAMEWORK – A GUIDE

The *Aboriginal Policy and Practice Framework* has been designed to support improved outcomes for Indigenous people through restorative policies and practices, which are those that are informed by experiences of trauma, and support and honour Indigenous cultural practices.

The foundational model of the framework is based on four key aspects of effective policy and practice:

1. Child, Youth, Family and Community-centred;
2. Culture-centred;
3. Inclusive, Collaborative and Accountable; and,
4. Resilience, Wellness and Healing.

The framework also includes a set of key values to guide and inform policy and practice and advocates for the use of a model called “The Circle” to shape approaches to care.



children. The framework highlights the importance of traditional approaches, such as prioritizing the need to incorporate a child's entire community into their upbringing, as well as placing an emphasis on supporting children to learn about their Indigenous identity and culture.

In BC, MCFD needs to work to implement the *Aboriginal Policy and Practice Framework* with the DAAs that see it as being complementary to their existing practice. This framework offers guidelines that can serve to alter practice in the Province in favour of preventative action and efforts to

THE ABORIGINAL POLICY AND PRACTICE FRAMEWORK AND INDIGENOUS APPROACHES TO RAISING CHILDREN

Roles of ancestors, community, elders, family and extended family in upholding the sacredness of children: Aboriginal cultures honour the sacred link between past generations and their responsibilities for current and future generations. For many Aboriginal peoples, children are considered sacred gifts from the Creator, with their place in the centre of the Circle. Of equal importance in the Circle are youth, young adults, family and community (inclusive of extended family and traditional family systems), and organizational and governing structures each have a role and share an important responsibility to uphold and support children, youth and families within the Circle.

The family, including extended family, is recognized as the expert in caring for their children. Elders and traditional knowledge keepers also hold an important role in sharing the traditional values and sacred teachings of caring for and nurturing children.

Roles of Ancestors, Community, Elders, Family and Extended Family in Upholding the Sacredness of Children – As policy leads and practitioners we must understand and value traditional approaches and cultural systems of caring. (p.13)

CULTURE, TRADITION, VALUES, LANGUAGE and IDENTITY: The roles of culture, tradition, values and language are essential to the well-being of Aboriginal children, youth and families, and are fundamental to healthy processes of identity formation. The way in which services are delivered – and the way in which Aboriginal children, youth and families are engaged with these services – must reflect and respect their particular cultures, language, traditions and values.

Role of Culture, Tradition, Values, Language and Identity – As policy leads and practitioners we must consider community protocol on how individuals are approached, who needs to be involved, the process of involving them, the language used and when translators, Elders or cultural persons are required. Traditional decision-making processes must be considered to strengthen the inclusion of culture, tradition, values and language and to support positive identity formation. (p.14)



ensure that every child is afforded the opportunity to remain connected to his or her family and community.

DOCUMENTING INDIGENOUS IDENTITY

Clearly documenting Indigenous identity is a critical part of ensuring that children and families have access to relevant services, including culturally relevant approaches and materials. The current system of gathering this information in BC is reliant on self-identification, or having a social worker make the identification. The current system results in a high level of underreporting for Indigenous children currently engaged in the child welfare system, including Indigenous children in care. It also leads to inaccuracies in data when it comes to analysis and monitoring of program impacts.

SUPPORTING CHILD WELFARE PROFESSIONALS IN INDIGENOUS COMMUNITIES

Well-trained and dedicated professionals are essential to effectively delivering child welfare services to Indigenous peoples. It is critical that child welfare providers are supported by their organizations, and that front-line social workers are given a manageable case volume, and access to a full range of services to support their clients. The RCY released a report in October 2015 titled *The Thin Front Line: MCFD staffing crunch leaves social workers over-burdened, B.C. children under-protected*. This report identified some of the challenges facing MCFD front-line social workers, including decreasing staffing levels and the increasing complexity of their work.

The British Columbia Government and Services Employees' Union (BCGEU) has also released multiple reports identifying systemic failures in the child welfare system in the province and how these

failures have translated into substandard service delivery on the ground. In their 2015 report, *Closing the Circle*, BCGEU identified a series of issues that front-line workers and clients face on an ongoing basis, including a lack of culturally appropriate programming, unrealistic case load volumes, and systemic complexity.

BUILDING AND SUPPORTING AN INDIGENOUS WORKFORCE

Indigenous people are significantly underrepresented in the child welfare workforce in BC. The RCY has, on many occasions, made recommendations to see enhanced Indigenous representation at MCFD. The 2014 RCY report, *When Talk Trumped Service*, suggested that “at least one person on the senior executive team must be an Aboriginal person.” The 2015 RCY report, *The Thin Front Line*, identified the need to increase the number of Indigenous staff members at MCFD, suggesting that there be a minimum increase in representation amongst social workers to at least 15%.

Many individuals I met with emphasized there is a critical need for a strong plan to be developed to recruit and retain Indigenous people to roles within MCFD (Recommendation 78 and 79). Those I met with reinforced that it is essential that this plan apply not only to front-line social worker positions, but also to positions within the senior executive team at MCFD. MCFD has developed an *Aboriginal Recruitment & Retention Workplan* that applies to all job classifications, across all six service lines, and corporate functions. The odds of successfully implementing this workplan would increase substantively if Indigenous communities and organizations were invited and supported to participate as active partners in this work to recruit and retain Indigenous workers.

CLOSING THE CIRCLE: A CASE FOR REINVESTING IN ABORIGINAL CHILD, YOUTH AND FAMILY SERVICES IN BRITISH COLUMBIA

In October 2015, the BC Government and Services Employees' Union (BCGEU) released a report titled, *Closing the Circle: a case for reinvesting in Aboriginal child, youth and family services in British Columbia* as a part of its Choose Children Campaign. This campaign seeks to bring attention to the systemic failures in the BC child welfare system and began with a report released in November 2014 titled *Choose Children: A Case for Reinvesting in Child, Youth, and Family Services in British Columbia*. This report identified a number of critical shortcomings in the child welfare system in BC, including a significant deficit in qualified and trained staff to work in Indigenous service agencies. It stressed the demand for specialized knowledge to ensure the effective delivery of services to Indigenous children, families and communities.

The *Closing the Circle* report took the next step to identify the systemic failures that existed specifically in the Indigenous child welfare system. The report reviewed key themes, including historical and cultural factors, mistrust, systemic complexity, lack of culturally appropriate services, insufficient funding, and workloads. Throughout this review, the BCGEU identified an extensive set of challenges facing the Indigenous child welfare system.

The report made a series of recommendations in response to this review, including:

- Developing a comprehensive policy framework for Indigenous child, youth and family services;
- Changing the existing welfare system to promote consistency for funding/services available to both on- and off- reserve populations;
- Enhancing systems to support the success of DAAs (i.e. relationship building, reducing bureaucratic obstacles, recruitment support, etc.); and
- Creating a core MCFD business area for Aboriginal Services that is responsible for developing a yearly "Operational Performance and Strategic Management Report" with clear indicators and statistics pertaining to service delivery and performance outcomes.

BCGEU suggested that establishing a core MCFD business area for Indigenous Services would afford the Ministry the opportunity to establish a transparent system of tracking for services delivered and funds expended on the needs of Indigenous children and families in the province. This would facilitate enhanced oversight for all operational areas of the province's Indigenous child welfare system.



BC'S REPRESENTATIVE FOR CHILDREN AND YOUTH ON THE NEED FOR AN INCREASED INDIGENOUS WORKFORCE

RCY Report, The Thin Front Line, Recommendation 5: That MCFD and the B.C. Public Service Agency make the recruitment and retention of Aboriginal staff at MCFD a priority and set specific targets to reach this goal.

The child welfare system needs the unique insights and perspectives that Aboriginal social workers can bring to their practice, and, as the number of children in care of Aboriginal background is a majority, this imperative to diversify is clear.

MOVING TO A NEW MODEL

Moving to a new model for Indigenous child welfare in BC will mean looking seriously at all child welfare services and the promising practices that are emerging to meet the needs of Indigenous children, youth, and families.

One example is Touchstones of Hope, a set of guiding principles intended to build reconciliation into child welfare services. These guiding principles have been utilized by DAAs in Northern BC to help shape their five- and ten- year child and family welfare plans. The Saskatchewan Advocate for Children and Youth has also adopted Touchstones

of Hope as guiding principles for promoting changes to the Indigenous child welfare system in Saskatchewan.

In addition to promising practices like Touchstones of Hope, it is also essential for BC to review various on-the-ground models of service delivery that support preventative action and family development. This will assist in developing a set of tools and practices that will better support children and families.

The Ktunaxa Kinbasket Child & Family Services Society (KKCFSS) is a DAA providing child welfare and child protection services to Indigenous peoples (First Nations, Métis, and Inuit) on and off reserve in Ktunaxa traditional territory. They have adopted an approach called Signs of Safety, which is a model that they feel aligns with Ktunaxa beliefs and culture.

This model employed by the Ktunaxa empowers Indigenous families to take ownership of their plan, and allows them to identify areas of concern, and develop their own solutions. The KKCFSS view the Signs of Safety as a non-threatening approach that helps the team, which is made up of the family and the KKCFSS, to visually showcase positive aspects of the situation, as well as areas that need to be improved. They have been using this model since 2008 and have found it to be a powerful tool for the work that they do.

During my appointment, I was advised by Ktunaxa leadership that MCFD was considering ending their support for the Signs of Safety model used by KKCFSS. This did not make sense to me, as this approach is producing positive and constructive results for Ktunaxa children, families, and communities. Fortunately, MCFD reconsidered and will continue to support Ktunaxa to utilize the approach that is working for them.

TOUCHSTONES OF HOPE

The four Touchstones of Hope were developed collectively by approximately 200 invited leaders who attended the conference *Reconciliation: Looking Back, Reaching Forward – Indigenous Peoples and Child Welfare* in October 2005.

They are a set of guiding principles put forth to support a reconciliation process for those involved in Indigenous child welfare activities. They are laid out in the report titled *Reconciliation in child welfare: Touchstones of hope for Indigenous children, youth, and families* where the authors discuss the touchstones as the four phases of reconciliation:

Truth Telling

A process in which there is an open exchange regarding the history of child welfare, including past and current harms. This account will require a full and truthful account that respects Indigenous children, youth, and families.

Acknowledging

An affirmation of Indigenous child welfare practices as the best way forward for Indigenous peoples and communities, and recognition that the practices that have been imposed on Indigenous communities are not effective.

Restoring

A situation where the problems of the past are addressed, and Indigenous and non-Indigenous people can take mutual responsibility for child welfare and its outcomes in the future.

Relating

A recognition that reconciliation is an iterative process and a new form of ongoing relationship building that requires Indigenous and non-Indigenous people to work together to develop and implement a plan for child welfare.

SIGNS OF SAFETY

Signs of Safety is a model developed in Australia by Andrew Turnell and Steve Edwards based on information received from a range of front-line practitioners about what methods actually work in practice. This model has since been utilized in communities across the world, including Indigenous communities in Canada.

The model is based on the idea that parents and families need to be involved in the planning process relating to child welfare, rather than having a practitioner telling the family what to do.

It is based on collaborative efforts to assess the situation and build a plan that will address the needs of the family.

The process includes a risk assessment framework that is completed collaboratively with the parents and family. There are also opportunities to ensure that the child has the opportunity to incorporate his or her voice into the plan. The development and implementation of a plan also requires the involvement of a family's community and network. This helps to ensure the family is supported to find success.

The Signs of Safety model is one promising practice that MCFD and DAAs can learn from going forward, as it is already working to shape new approaches to child welfare activities, particularly in the way that this model seeks to empower parents and families to take an active role in planning (Recommendation 80).

INDEPENDENT OVERSIGHT

Early in my appointment, I reviewed a consolidated list of recommendations on permanency that have been made by the RCY through various reports on the topic of Indigenous child welfare. These reports and the associated recommendations are insightful, sometimes cutting, yet unequivocally support efforts to ensure the safety, dignity and well-being of all children and youth in care, including Indigenous children and youth. I carefully reviewed those permanency-related recommendations the RCY provided to me and I support their implementation.

BC's RCY reports are tabled in the Legislature, and it would be helpful for MCFD and other ministries like Education and Health, to be required to table their respective considerations and actions taken in response to the recommendations in these reports. This should be done annually to

ensure the Province remains accountable to the recommendations presented in RCY reports.

I would additionally recommend that the mandate of the RCY should be revised to ensure that reports dealing with Indigenous children and youth are also tabled by RCY with the elected leaders of Indigenous communities and their representative organizations (Recommendation 81). Presently, many Indigenous leaders are not made aware of the reports, nor are they kept updated on developments made or actions taken on the recommendations put forth, and this is a lost opportunity. The reports deal with issues of critical importance to Indigenous peoples and their only source of information should not be the media or websites. There needs to be a better system of engaging Indigenous communities and leaders in this reporting process in order to support ongoing feedback.

The independent nature of the RCY's office provides important assurances that Indigenous child welfare issues do not languish in the bewildering layers of bureaucracy, legislation, regulations, policies and practice standards. The authority and power of the Director appointed by the Minister under CFCSA is immense, and for this reason alone there

is a continuing need for an independent-oversight mechanism. An improved but internal MCFD quality assurance model will not provide this in the same way that an independent officer of the legislature can.

In my opinion, given the gravity of what I have heard during meetings with Indigenous communities and families across BC, it is essential to continue to have an independent officer of the legislature review MCFD operations and practice involving Indigenous children under CCOs (Recommendation 81). I am certain that internal MCFD quality assurance instrument and accountability processes, no matter how well designed, will not provide the necessary level of comfort to the parents, extended families, matriarchs, Hereditary Chiefs, elected Chiefs and councillors. The divide is too wide and too deep, and suspicions about government intentions are always just below the surface.

RECONCILIATION AND A REFORMED POLICY FRAMEWORK

Positive changes to the child welfare system in BC will only happen if there is collaboration between the Province, the federal government, Indigenous governments, and non-government organizations. Each party has committed to put the interests of children first, but to achieve this goal in practice requires a clear Indigenous child welfare policy framework.

Nearly ten years ago, Members of Parliament in Canada's House of Commons unanimously supported Jordan's Principle and agreed to resolve jurisdictional disputes relating to Indigenous children in care. In BC, the time for a collaborative approach to developing Indigenous child welfare policy framework is now. In July 2016, on the heels of the 2016 *CHRT 2* decision that found that the narrow definition of the Jordan's Principle applied by the federal government is insufficient, Canada's Minister for INAC announced up to \$382 million in new funding to implement Jordan's Principle.

JORDAN'S PRINCIPLE

Jordan's Principle is based on the principle that First Nations children should never be denied immediate access to essential public services that would otherwise be available to all other Canadian children. The principle states that children should always come first in cases of jurisdictional disputes between the different branches of government and/or departments or ministries within the same branch of government – in the case of dispute the agency of first contact must pay for the service without delay or disruption.

It is named in honour of Jordan River Anderson. This young boy from Norway House Cree Nation in Manitoba who spent over two years in hospital waiting for services while the provincial and federal government disputed who would be responsible for him to have access to in-home care. He passed away in hospital in 2005 before the dispute was resolved.

The Canadian House of Commons unanimously passed a motion endorsing Jordan's Principle in 2007. The Principle has broad support with over 8,800 individuals and organizations having signed on as supporters of the principle in December 2014, including various government agencies such as INAC, Health Canada and the BC MCFD.

RECOMMENDATIONS AND RELATED ACTIONS

Through CHRT decisions, the *TRC Final Report*, numerous reports from the BC RCY, and others, the stage has been set to develop a comprehensive Indigenous child welfare policy framework that will support reconciliation and the resiliency of Indigenous families and communities in the province. Together with Indigenous communities and leaders, the federal and provincial governments can and should develop a framework that embeds an understanding and acknowledgement of trauma, outlining specific, goal-oriented actions to achieve change. The following recommendations identify specific actions towards the goal of a comprehensive Indigenous child welfare policy framework in BC:

Recommendation 75:

MCFD, INAC, and DAAs move to jointly adopt a clear and overarching Indigenous child welfare policy framework in BC that is premised on support for prevention and connectedness, reconciliation, and resiliency.

Recommendation 76:

MCFD take immediate steps to implement the jointly developed *Aboriginal Policy and Practice Framework* for those DAAs that see it as complementary and in support of their practices.

Recommendation 77:

MCFD, in collaboration with DAAs and representatives of Indigenous communities, develop a separate service plan for Indigenous child and family welfare, including an Indigenous ADM to oversee the plan, and confirm a distinct budget allocation for this planning process and its subsequent implementation.

Recommendation 78:

MCFD commit to immediate actions to recruit and retain Indigenous individuals for leadership positions within MCFD and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals who are recruited to these positions.

Recommendation 79:

MCFD commit to immediate actions to recruit and retain Indigenous social workers and front-line staff and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of the individuals recruited to these positions.

Recommendation 80:

MCFD work to remove any existing barriers for DAAs that have expressed an interest in continuing or shifting their child welfare approaches to utilize approaches that support community involvement, prevention, and reconciliation, such as Signs of Safety and Touchstones of Hope.

Recommendation 81:

The Province support the continued independent oversight role of the BC Representative for Children and Youth (RCY) as it relates to Indigenous children and youth through the following specific actions:

- Allocate funding to support the continuation of this oversight role;
- Expand the mandate of the BC RCY to ensure distribution of reports and reporting documents to Indigenous communities and organizations; and

- Expand the mandate of the BC RCY to provide oversight that will ensure the Province's commitment to actively involve Indigenous communities in planning for all Indigenous children under CCOs is upheld.

Recommendation 82:

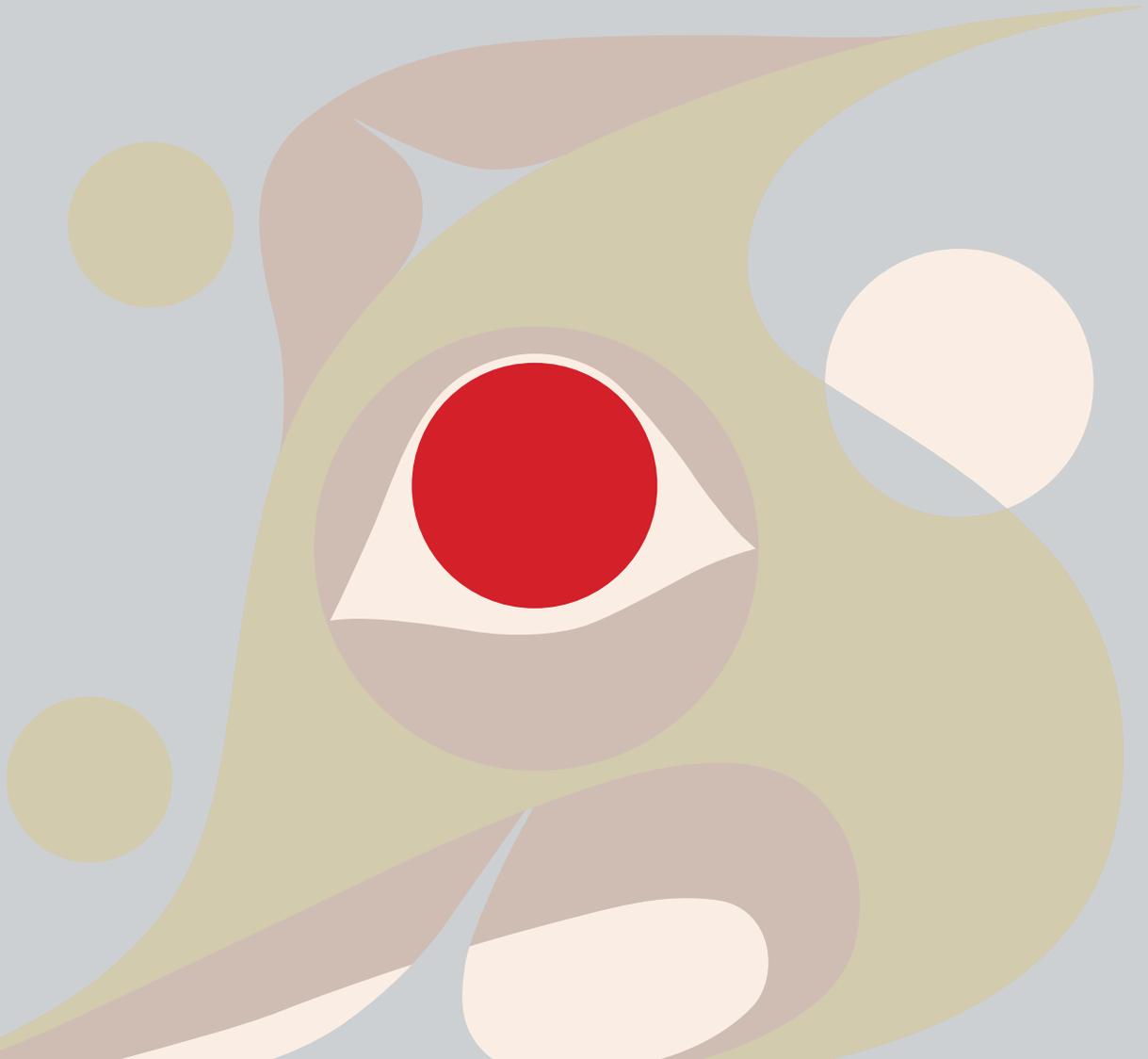
Provincial ministries, including MCFD, Education and Health, be required to table annually in the provincial Legislature their respective responses to BC RCY reports and recommendations regarding Indigenous child welfare.

Recommendation 83:

The Province and Canada commit to jointly develop improved data collection and analysis that will support program development and effective service delivery for Indigenous child welfare in BC.

AREAS FOR FOCUSED ACTION

AREA 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE



AREA 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE

The intergenerational trauma that is so prevalent in Indigenous communities across BC is a direct result of federal policies, such as those behind the 60's Scoop and the residential school system. This trauma has resulted in a breakdown of families in Indigenous communities, and a growing disconnect between our children and their cultures. The federal government must come to the table to work with the provinces, and Indigenous communities and organizations, to rectify the past damage that has been done and to develop action-centered policy that will support a child welfare system that truly serves Indigenous families.

While the regulation and provision of child welfare services may be a responsibility delegated to the provincial government, Canada's reconciliation with Indigenous people requires the federal government to be an active partner in addressing the existing ills of the child welfare system that are highlighted throughout this report.

The over-representation of Aboriginal children in Canadian child welfare systems is a serious national problem for which a solution must be found for the benefit of Aboriginal children, and all Canadians (Hon. Ted Hughes, The Legacy of Phoenix Sinclair: Achieving the Best for All Our Children, 2013, Vol. 1, p.49).

FEDERAL LEGISLATION ON INDIGENOUS CHILD WELFARE

I have discussed, throughout this report, the national Calls to Action set forth in the *TRC Final Report*, and the orders given through the 2016 *CHRT*

2 decision. In *TRC Call to Action 4*, the TRC tasks the federal government with developing national level Indigenous child-welfare legislation:

We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:

- i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.*
- ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision-making.*
- iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.*

To date, commitments made by the federal government to act on recommendations, such as those made by Prime Minister Trudeau in his response to the *TRC Final Report* in December 2015, have yet to be fully realized.

... we will, in partnership with Indigenous communities, the provinces, territories, and other vital partners, fully implement the Calls to Action of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

– Prime Minister Justin Trudeau during his Statement by the Prime Minister on the release of the Final Report of the Truth and Reconciliation Commission, December 2015

I heard directly from many with whom I met that Canada needs a new, strong legislative foundation. Consistent with the TRC's Calls to Action, I urge the federal government to act immediately to engage Indigenous peoples in Canada in the development of national legislation, such as an Indigenous Child Welfare Act (Recommendation 84). New federal legislation is required to set a national-level policy framework for Indigenous child welfare service providers across the country.

There have been many agencies and organizations addressing issues of national strategies for Indigenous child welfare, and many have addressed the need for national-level legislation. As an example, in 2010, children's advocates from nine provinces, together forming the Canadian Council

of Provincial Child and Youth Advocates (CCPCYA), produced a position paper titled, *Aboriginal Children and Youth in Canada: Canada Must Do Better*. In it, the CCPCYA put forth a series of recommendations, a few of which I wish to highlight, and expect to see addressed in legislation.

Strong federal legislation must be jointly developed with Indigenous communities and organizations. It must also ensure that mechanisms have been developed to overcome the jurisdictional challenges that currently impact data collection, equitable funding and service delivery, and must include clear definitions of roles and responsibilities. The development of this legislation should be a critical component of a new national strategy for Indigenous child welfare. In this regard, a

CCPCYA POSITION PAPER: ABORIGINAL CHILDREN AND YOUTH IN CANADA: CANADA MUST DO BETTER

The CCPCYA is an association of children and youth advocates from across Canada. They work to further the rights of children and youth across the country. They released a position paper in June 2010 titled, *Aboriginal Children and Youth in Canada: Canada Must Do Better*. This paper addressed some of the significant gaps in the Indigenous child welfare system and made a series of recommendations for national level actions.

Selected recommendations include:

1. Creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, a "National Children's Commissioner" with particular emphasis on Aboriginal children and youth and the national dimension of the work on programs, evaluation and outcomes;
2. A national initiative to measure and report on child welfare, education and health outcomes for Aboriginal children and youth. This will require creation and coordination of data, and clear assignment of roles and accountabilities.

critical examination of the Indian child welfare laws, standards, and practices in the US should be undertaken to inform the discussions about legislative development and the implementation of a national strategy.

NATIONAL ACTION PLANNING

In the 2016 CHRT 2 decision, the CHRT referred to the federal government’s ad-hoc funding adjustments in the area of child welfare as being analogous to “adding support pillars to a house that has a weak foundation in an attempt to straighten and support the house. At some point the foundation needs to be fixed or the house will fall down” (para. 463). This analogy should be more broadly applied to the policies, practices and regulations pertaining to Indigenous child welfare across the country. The need for a national-level strategy is evident.

Numerous international policy frameworks have called for national-level approaches and action plans relating to issues impacting Indigenous peoples. As an example, in the Outcome Document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, a resolution was adopted in September 2014, wherein the General Assembly addressed the importance of developing “national action plans, strategies or other measures” that would help to support achieving what has been set out in the *United Nations Declaration on the Rights of Indigenous Peoples*:

Resolution 8: We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.

Despite numerous calls, by multiple parties with diverse interests, for better coordination across jurisdictions, Canada continues to lack a comprehensive Indigenous child welfare strategy at the national level. Without such a strategy, provinces and service providers lack the ability to coordinate action. This results in failures that cause inconsistent data collection, inequitable standards of service delivery across jurisdictions, and gaps in child safety services and supports between provinces and/or territories.

In 2014, Premiers across the country agreed to work together towards the development of solutions to reduce the number of children in care. A working group of provincial and territorial Ministers was assembled in August 2014 with the goal of reporting promising practices to Canada’s Premiers by the following summer. Representatives at the federal level did not respond to invitations to participate in the work, an issue that is reflected in authors’ concluding words of the report:

As provinces and territories, and Aboriginal partners focus on reducing Aboriginal children in care and improving outcomes for Aboriginal children – either separately or in collaboration with each other – the need for meaningful federal engagement remains a critical necessity for positive change. (Aboriginal Children in Care: Report to Canada’s Premiers, July 2015)

I recommend that there be an immediate move towards the development of a national action plan on Indigenous child welfare involving the provinces, Canada and Indigenous governments. I challenge BC’s Premier to work jointly with the Council of the Federation to move this action forward (Recommendation 85) and develop a national-level strategy that specifically, though not exclusively, targets all key areas of jurisdictional dispute.

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are made in support of a national strategy for Indigenous child welfare in Canada, and urge the federal government to act to fulfill their commitment to reconciliation with Indigenous peoples in BC and across Canada in the area of child welfare. While these recommendations target the federal government, Indigenous peoples and governments, as well as the provinces, are viewed as critical partners in ensuring the effective implementation of these recommendations.

Recommendation 84:

Canada move immediately to develop new federal Indigenous child welfare legislation in partnership with Indigenous peoples and to support more consistent and improved outcomes for Indigenous children and families. At minimum, the new federal legislation should provide for:

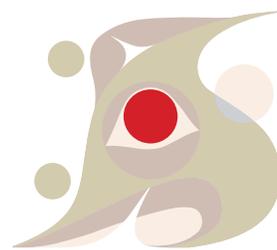
- The creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, whose role is to oversee the development of a comprehensive national strategy, as well as its implementation, and evaluate progress towards the outcomes laid out therein;
 - The establishment of clear roles and responsibilities for various levels of governments in the provision of child welfare services;
 - The setting of national standards for the provision of out-of-province / territory placements for children in their guardianship, and details on compliance with these standards; and
- The development of a national strategy that includes: principles and agreed-upon indicators to guide the national coordination of data collection, and collective, measurable targets and strategies to achieve them.

Recommendation 85:

The Premier of BC champion and work with other Premiers through the Council of the Federation to develop a national action plan on Indigenous child welfare. This plan should be developed in a way that:

- Ensures Canada's national approach to child welfare is consistent with the findings of the 2016 CHRT 2 decision and subsequent orders of the CHRT;
- Promotes the effective implementation of the TRC's Calls to Action 1-5;
- Ensures Canada's national approach to child welfare is consistent with commitments made in international decision documents such as the *World Conference on Indigenous Peoples Outcome Document*, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the *United Nations Convention on the Rights of the Child*; and
- Promotes child welfare services and approaches nationally that are culturally based, prioritize prevention and resilience, support connectedness with communities, and preserve and reunify families where possible.

III. FINAL REFLECTIONS



Over the past year, visiting Indigenous communities across BC, and meeting with leadership, parents, and families, has reinforced for me that progress towards addressing the serious challenges with child and family services, has been achieved through the determined leadership of Indigenous people, as well as strong community engagement, comprehensive strategic planning, and the creative execution of community-based solutions. I am convinced that the roles of federal and provincial governments should be to support community-driven initiatives within Indigenous communities, and not to direct solutions they deem to be in Indigenous communities' or children's best interests.

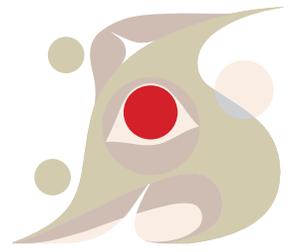
Indigenous peoples have been re-building new pathways in a modern world. Remarkable progress has been made when Indigenous peoples have built on the strengths of their cultures, and traditional knowledge and practices, combining these with teachings in universities, colleges and technical institutions. Countless examples are offered in this report of that important work. In BC, our Indigenous children and youth, with guidance and support from their elders and cultural leaders, are going to the longhouses in ever-increasing numbers. They are picking up their drums, learning their ancestral songs, creating new songs, listening to and gaining understanding of the teachings and practices on the floors of the potlatch houses. We all need to stand with them.

That there will continue to be challenges goes without saying. That there are situations in this province where Indigenous children are not able

to return to their parents' home is a difficult truth. Intergenerational trauma is very real and, to date, has not received anywhere close to an appropriate response, in terms of supports from all levels of government. As indicated in this report and numerous studies before it, it is also a reality that the socio-economic gaps between Indigenous and non-Indigenous people and families remain wide. Yet, no one, least of all Indigenous children and youth, is served by sitting and lamenting about these challenges. Our time is better spent working together to understand the root causes – the source and magnitude of these challenges – and to collectively develop root solutions.

The recommendations in this report reflect the collective advice I received from Indigenous communities and leadership in BC. I hope that the recommendations will be taken up in true partnership with Indigenous parents, families, and communities so that the root solutions can be developed to support our current generation of Indigenous children and parents.

ACKNOWLEDGEMENTS



I wish to acknowledge the small, dedicated team that worked to support me over the term of my appointment and in the development of this report. To Priscilla Sabbas-Watts and Holden Chu, who joined me on the journey from the beginning and were present at all of the meetings across the province with families, communities, organizations and leadership, thank you for your commitment to this work together. Thank you to Colin Braker and the First Nations Summit staff, who expertly dealt with the challenging logistics that made possible our meetings with so many. Thanks to Alyssa Melnyk, who joined our small team late in my term to support the writing and who worked expertly to ensure that the voices and strong recommendations of those I met with were reflected in this report.

Thanks are due to my colleagues on the First Nations Leadership Council for their support, and encouragement in this work.

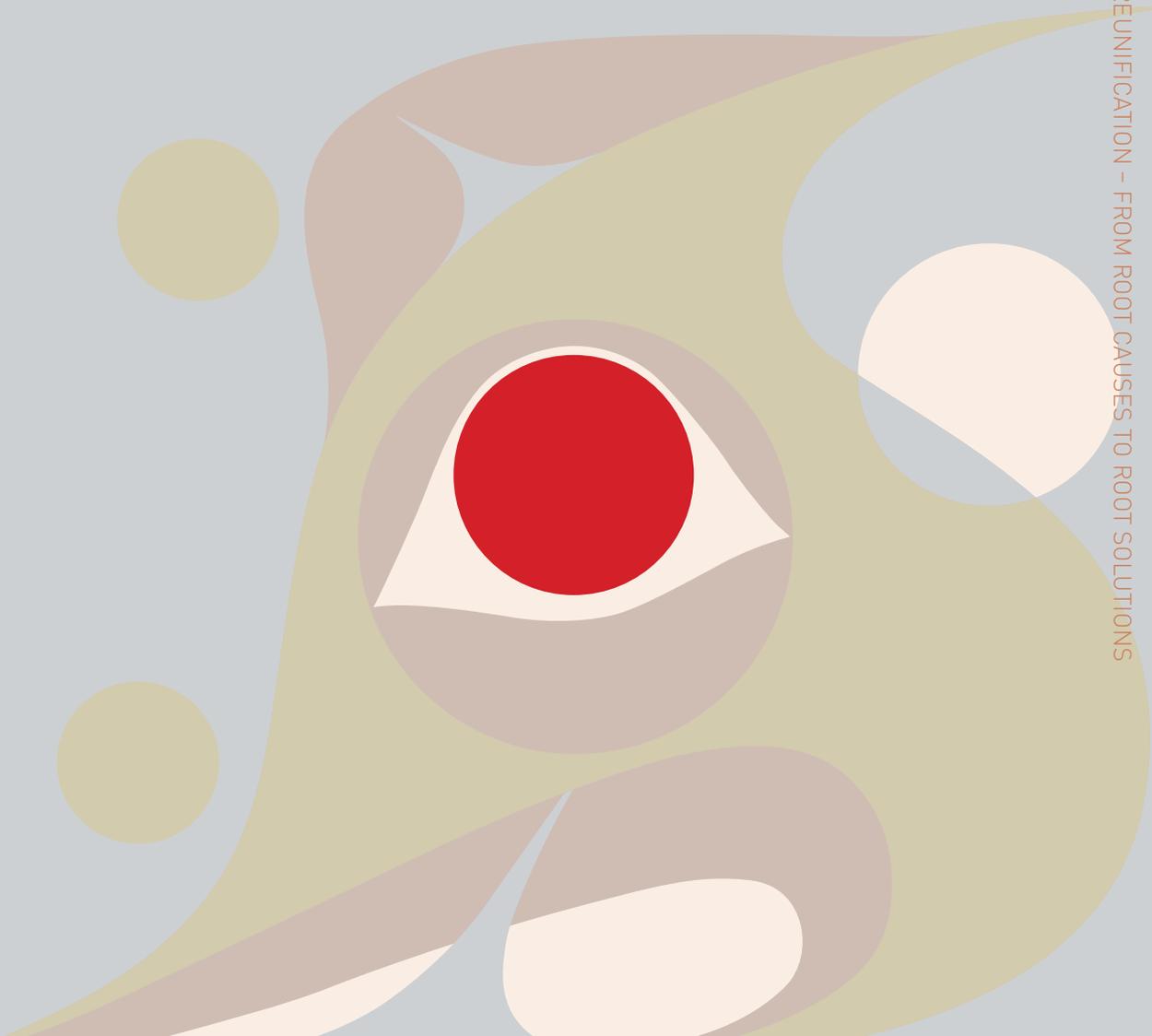
Throughout my appointment, I often requested information from the Ministry, and without exception, this information was provided quickly. This report benefited from the cooperation and support of leadership and staff at MCFD headquarters.

Many Indigenous children and families in BC are served by the 23 Delegated Aboriginal Agencies (DAAs) operating in BC. Special thanks are due to the devoted leadership and staff at these DAAs who gave so generously of their time and expertise during my appointment.

Finally, to all the dedicated individuals I met with over my appointment, thank you for the courage of your words and your steadfast commitment to our children. It is my sincere hope that this report will serve to support the advancement of the root solutions that you have so strongly advocated for and that we all desire.

APPENDIX A

CONSOLIDATED LIST OF RECOMMENDATIONS



AREA FOR FOCUSED ACTION

1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES

Recommendation 1:

MCFD and INAC invest in the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- MCFD and INAC commit to invest an additional \$8 million annually to increase the number of social workers, support workers, and others serving First Nations communities in BC by at least 92 FTEs over the next two years;
- MCFD take immediate action to ensure that the additional front-line staff identified above are placed directly within First Nations communities in BC;
- MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each First Nation community as a support service to parents, families, leaders, and members who require support within the community or to navigate the child welfare system; and
- MCFD, with the objective of maximizing its child safety recruitment, review the entry-level qualifications for front-line workers. to consider educational and experiential requirements for child safety positions.

Recommendation 2:

MCFD and INAC invest in the development and delivery of child and family services directly to the Métis in BC, by increasing the number of front-line staff working directly with Métis in BC.

Recommendation 3:

MCFD support existing promising practices that are focused on the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- In conjunction with Recommendation 1, MCFD and INAC provide support for the expansion of the Sts'ailes pilot project as a model for other interested First Nations communities within BC; and
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model to support prevention based on active interventions in support of children and families.

Recommendation 4:

Each MCFD region undertake a review of planned and existing front-line staff with a view to re-profile and direct, according to need, full-time employees to work directly within Indigenous communities to directly support parents and families, and to enhance community-based services.

Recommendation 5:

MCFD require their Regional Executive Directors of Services for each region to meet regularly with Métis leaders, and First Nations leaders/elders from communities within their region.

Recommendation 6:

MCFD regularly provide to each First Nation (First Nation Chiefs, councils, Hereditary Chiefs, and matriarchs) a list of all their children who are under a custody of care order.

Recommendation 7:

MCFD require that Regional Executive Directors of Service for each region have specific job requirements and performance measures that reflect the province's high-level commitment to reconciliation and the specific commitment to strengthen MCFD's relationship with Indigenous leadership, families, and communities.

Recommendation 8:

MCFD take the following immediate actions to ensure Nation-to-Nation Partnership Protocols are implemented between each Indigenous community (First Nation or Métis) and the regional MCFD office and DAA (as appropriate):

- Each MCFD regional director arrange to meet before January 2017 with all Indigenous communities and DAAs with the purpose of
 - 1) ensuring a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) or, in the instances where a protocol already exists,
 - 2) ensuring that the existing protocol is current, understood, and agreed to by all parties to the protocol;
- MCFD commit to an annual review of all Nation-to-Nation Partnership Protocols with all of the parties to each protocol.

Recommendation 9:

MCFD commit, at minimum, to the inclusion of the following core components of each Nation-to-Nation Partnership Protocol:

- A reciprocal commitment to baseline principles and objectives for a results-based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UNWCIP Outcome Document commitments and statutory commitments in *CFCSA*);
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;
- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child care plans with a focus on permanency;
- The identification of jointly agreed-to obligations and responsibilities, including the commitment to communications and accountability standards;
- An agreed-to approach to implementing the protocol, including but not limited to joint planning, monitoring, and a review process;
- The term of the protocol (i.e. year to year or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

Recommendation 10:

MCFD and INAC provide the specific support for community-based curriculum and community-

developed services for Indigenous children and families, involving and uplifting Indigenous elders, matriarchs and hereditary leadership:

- MCFD and INAC commit to support training so Indigenous individuals and communities understand their rights regarding child welfare and capacity within communities grows;
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model (identified in Recommendation 3) by providing funding for training of Care Committee/Group workers similar in scope to the training provided for those involved in the community Care Committee Model that was created through the Aboriginal Children and Families Chiefs Coalition.

AREA FOR FOCUSED ACTION

2. ACCESS TO JUSTICE AND CHILD WELFARE

Recommendation 11:

The Ministers of Justice and Attorney General, and Public Safety and Solicitor General convene a Justice Summit, within the context of the TRC Calls to Action on justice, to deal specifically with Indigenous child welfare matters.

Recommendation 12:

MCFD take the following specific actions, including legislative amendments to improve court proceedings relating to child welfare, thus improving access to justice for Indigenous children and youth, families and communities:

- Commit to a more collaborative approach with Indigenous communities at the start of a child protection file and in advance of the court,

by defaulting to presumptions that help instead of hinder an Indigenous community wishing to participate in court proceedings or alternative dispute resolution (ADR) processes;

- The issue of “privacy” has been used by MCFD officials as a reason to deny First Nations and Métis communities access to information, and as such, *CFCSA* should be amended to clarify, confirm and ensure appropriate First Nations and Métis community leadership have access to information on their children who are in care under CCO and other child-care orders;
- Provide a notice for each presentation hearing, as well as clear, comprehensive, and up-to-date information to the First Nation or Indigenous community where each child in care is from; and
- Provide the same information to the First Nation or Indigenous community and/or their designated representative through email, as well as through the existing processes identified in the *CFCSA* regulations.

Recommendation 13:

The provincial court appoint provincial court judges whose work will focus exclusively on Indigenous children, families and communities.

Recommendation 14:

Provincial court judges undertake the following in order to improve access to justice within the child welfare system for Indigenous children and youth, parents, families, and communities:

- Ensure meaningful compliance with s. 34 and s. 35 of *CFCSA* by requiring a review in court of the effort made by MCFD or a DAA to:
 - 1) notify the affected Indigenous community,

- 2) assist the Indigenous community in participating, and
 - 3) detailing any less disruptive measures investigated in advance of court;
- Review the form of order used in access orders for parents/guardians for children in care proceedings so that relevant issues can be raised by the child or parent and discussed;
 - Exercise the authority in s. 39 (4) *CFCSA* where a child at age 12 and older has the legal right to be provided with and represented by an advocate or lawyer;
 - Take into consideration how the rules of evidence are used to introduce hearsay evidence by MCFD officials in presentation hearings;
 - Balance the highly discretionary, unfettered and powerful authority of the Director under *CFCSA* by exercising a greater degree of scrutiny and discretion in considering presentation applications made on the behalf of the Director by MCFD officials;
 - Ensure their practice in court supports a trauma-based approach for Indigenous children and youth, parents, families, and communities, acknowledging the existing inter-generational trauma that has its roots in discriminatory laws, policies and practices of the state; and
 - Make every possible effort to keep siblings together in their orders.

Recommendation 15:

MCFD take immediate action to support and expand promising practices, programs, and models that have demonstrated success in improving access to justice for Indigenous children and youth, parents, families and communities:

- MCFD support and expand the First Nation Court model across BC so that all Indigenous communities have the opportunity to be served under this model;
- MCFD continue support for the Aboriginal Family Healing Court in New Westminster.

Recommendation 16:

The BC Ministry of Justice support and provide resources to the Legal Services Society to continue and expand the “Parents Legal Centre” model to other locations where a high demand exists, including expanding to Prince George, Kamloops, Williams Lake, Campbell River, Terrace/Smithers, Surrey, and Victoria:

- A final determination of the locations for expansion should be made in consultation with the Legal Services Society and Indigenous communities and organizations.

Recommendation 17:

Native Courtworkers be supported to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters:

- The mandate of the Native Courtworker and Counselling Association of BC (NCCABC) be expanded to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters; and

- Canada and BC provide the necessary financial support to NCCABC to effectively deliver these services.

Recommendation 18:

MCFD take the following immediate actions to support alternative dispute resolution (ADR) processes within the child welfare system:

- Dedicate new MCFD staff, or realign existing staff, to provide facilitation for various ADR processes;
- Reinforce with MCFD staff that ADR processes be the default and not the exception, including the use of new or strengthened performance and evaluation measures regarding the effective use of ADR processes;
- Ensure that ADR processes, appropriate to the circumstances, are the default and are utilized at the earliest instance, including before a removal, or even when there is a threat of removal, and that the courts be treated as an option of last resort; and
- When a removal does occur, mandate MCFD officials to offer some form of ADR process.

Recommendation 19:

The BC Attorney General continue and expand the existing mediation program so that it is an available option for all Indigenous parents and families involved in child welfare matters and interested in utilizing an ADR process.

Recommendation 20:

MCFD and INAC collaborate to ensure similar funds are provided to Indigenous communities for their effective participation in child protection hearings, and that these funds are provided directly to First

Nations or in the alternative through the INAC-MCFD service agreement.

Recommendation 21:

The Province undertake the following change to *CFCSA*, in the interest of improving access to justice for Métis children and youth, parents, families, and communities:

- Consistent with the Supreme Court of Canada decision in *Daniels*, the definition of “Aboriginal child” in *CFCSA* be amended to add “Métis child” with consequential amendments as necessary.

Recommendation 22:

MCFD provide First Nations and the Métis Nation BC with the financial support to create online information and corresponding print materials for First Nations and Métis citizens to inform them about the child welfare system and specifically about how to obtain First Nations or Métis-specific assistance and their related rights.

AREA FOR FOCUSED ACTION 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS

Recommendation 23:

Canada demonstrate its commitment to Jordan’s Principle by acting immediately to revisit its practice of providing funding only for those First Nations children and families “ordinarily resident on reserve.”

Recommendation 24:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work collaboratively to develop alternative funding formulas that will address the shortcomings of INAC's Directive 20-1 and the EPFA identified specifically by the CHRT in *2016 CHRT 2*, and ensure equitable service delivery to all Indigenous children in BC.

Recommendation 25:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that new or revised funding formulas provide for ADR processes to be funded as a prevention measure and, further, that a child placement arrived at through an ADR process be funded in a manner and to the same extent that a child who is removed under a court order is funded.

Recommendation 26:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision.

Recommendation 27:

In advance of the development of alternative funding formulas, INAC ensure that, in the short term, the additional funding committed to Indigenous child welfare address the most discriminatory aspects of INAC's current funding formulas, such as the incentive created through Directive 20-1 to bring Indigenous children into care.

Recommendation 28:

INAC and MCFD work together to ensure Indigenous communities not represented by DAAs are directly engaged in the negotiation of the annual *BC Service Agreement* between INAC and MCFD.

Recommendation 29:

Where Indigenous communities, through their own decision-making processes, decide to give their free, prior, and informed consent to DAAs that they have established, Canada and BC should ensure fair and equitable funding to DAAs based on needs and, at minimum, similar to the formula under which Canada transfers funds to the province.

Recommendation 30:

INAC and MCFD take the following immediate actions to address the issue of wage parity for DAAs in BC:

- INAC and MCFD commit in policy to ensure that the principle of wage parity is included in all agreements with DAAs in BC; and
- INAC and MCFD commit the required time and resources to negotiate in good faith and make the required amendments to all DAA agreements to ensure DAA workers are compensated at the same rate as MCFD workers, both now and in the future.

Recommendation 31:

MCFD take immediate steps to harmonize financial assistance for families who have permanent care of children in order to promote permanency opportunities for Indigenous children.

Recommendation 32:

MCFD should ensure that the payments for permanent, legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides.

Recommendation 33:

The Province should undertake a legislative review and financial policy review to determine the necessary changes that would allow the families that are under the “Extended Family Program” to receive the Child Tax Benefit and ensure the Child Tax Benefit amount is not deducted from MCFD payments for permanency placements.

AREA FOR FOCUSED ACTION 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED

Recommendation 34:

MCFD, DAAs and INAC work together to ensure core funding and other supports that will allow for the development of community-based prevention and family preservation services for all Indigenous people and communities in BC.

Recommendation 35:

MCFD take the required steps to ensure that Aboriginal Service Innovations (ASI) family preservation can offer adequate core funding support to community-based program delivery.

Recommendation 36:

INAC take immediate action to develop, in partnership with First Nations in BC, an effective and efficient method to fund prevention services, taking into account economy-of-scale issues for all First Nations in BC that are not represented by a DAA (see also RCY Report – *When Talk Trumped Service*).

Recommendation 37:

BC take immediate action to ensure family preservation funding is provided. MCFD increase the annual Aboriginal Service Innovations budget by \$4 million in 2016/2017 (to be split evenly between MCFD and INAC) in order to expand the program and provide increased services through additional agencies.

Recommendation 38:

INAC and MCFD take action to ensure equity in prevention services delivery for all Indigenous communities in BC.

Recommendation 39:

Increase support for ‘least disruptive measures’ through provincial legislation:

- Amend existing legislation to require a court order prior to the removal of a child, instead of the status quo, which allows for a child to be removed before a court order.

AREA FOR FOCUSED ACTION 5. REUNIFICATION AND PERMANENCY PLANNING

Recommendation 40:

The Province work to amend the *CFCSA* to ensure an Indigenous child's connection to his or her natural parents is not severed.

Recommendation 41:

The Province consider the following amendments to the *CFCSA* in order to support improved permanency planning for Indigenous children and youth:

- Strengthening of s. 70 of the *CFCSA* to include mandatory permanency planning for all children in care;
- Including a provision(s) to ensure that for Indigenous children, permanency plans are jointly developed by each child's family and community, including elders, cultural leaders, elected leaders, and matriarchs; and
- Including a provision(s) requiring the independent review of permanency plans on an annual basis.

Recommendation 42:

MCFD develop a practice guide with instructions on how to prepare, develop, implement, and monitor jointly developed permanency plans for Indigenous children and youth:

- The practice guide should be developed in close partnership with DAAs, Indigenous leaders, communities, and organizations.

Recommendation 43:

MCFD and INAC act immediately to allocate the funding required to prepare, implement, and monitor permanency plans for every Indigenous child or youth in care:

- INAC will only fund services for status children and families that are “ordinarily resident on reserve,” and MCFD will need to take the necessary steps to ensure that the nature and scope of the services required are properly identified; and
- Funding levels for agreed-to services should be reflected in the annual service agreement between INAC and MCFD.

Recommendation 44:

MCFD regional offices provide quarterly progress updates to Indigenous communities within their region regarding permanency planning for each child from that community.

NOTE: *The Nation-to-Nation Partnership Protocol referenced earlier in this report should establish regular meetings, as agreed between Indigenous communities and the Executive Director of Services and/or the Community Services Manager, to review the status of each of the community's children under a CCO and to provide Indigenous leaders, including Hereditary Chiefs and matriarchs, with the necessary and full information to understand the situation of their children in care.*

Recommendation 45:

The BC Representative for Children and Youth be provided with a mandate and the appropriate resources to review and ensure resiliency, reunification and permanency planning be done for each Indigenous child under a CCO.

Recommendation 46:

MCFD develop, in partnership with Indigenous communities, a provincial adoption awareness and recruitment strategy that includes a specific focus on recruiting more Indigenous adoptive parents from the communities of origin of the Indigenous children in care.

Recommendation 47:

MCFD develop and implement a quality assurance program for all adoptions, developing key performance measures and targets to track timely permanency planning, including adoption placements for children in care, as well as timely approvals for prospective adoptive families:

- Specific targets should be developed for moving Indigenous children in care into permanency.

Recommendation 48:

The Province commit to the creation of an Indigenous custom adoption registry for Indigenous children and youth, such as those models existing in Nunavut and NWT:

- BC amend the *Adoption Act* to provide a mechanism, such as a custom adoption registrar, to register Indigenous custom adoptions.

Recommendation 49:

MCFD ensure all custom adoptions are eligible for post-adoption services, and pay rates similar to the current post-adoption assistance, to those caregivers who utilize custom adoption:

- The determination of necessary post-adoption services should be decided in consultation with Indigenous communities.

Recommendation 50:

The Province commit to legislative amendments in order to provide support for customary care options to be developed:

- Ensure that funding support for customary care is at the same level as custom adoptions.

Recommendation 51:

INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/registered children.

Recommendation 52:

At the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting, working together with Provincial Directors and Indigenous representatives, INAC undertake to review and reform the federal A-List policy and practices to ensure that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to their birth families and communities until their eighteenth birthday.

Recommendation 53:

INAC, MCFD and Indigenous communities work together to ensure that non-Indigenous adoptive parents have the necessary information and support to provide their Indigenous adoptive children with culturally appropriate resources that facilitate a connection between a child, and his or her Indigenous ancestry, including the culture of their birth community.

Recommendation 54:

MCFD continue to support the existing Youth Advisory Council for the Provincial Director of Child Welfare and work to expand their role and the reach of their voice:

- The goal of the expanded role should be to better integrate Indigenous youth voices in both strategies and long-term plans of MCFD; and
- Consideration should be given to ensuring Indigenous youth have opportunity to provide insight on permanency on a regular basis to MCFD, DAAs and the RCY.

Recommendation 55:

MCFD and DAAs commit to the following specific supports for Indigenous youth who age out of care:

- An Aging Out Plan be undertaken as a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of the child's Indigenous community;
- MCFD proactively develop Agreements with Young Adults (AYA) to ensure continued support for youth who are transitioning out of care and into adulthood; and
- MCFD establish a youth transition team in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care.

AREA FOR FOCUSED ACTION 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS

Recommendation 56:

As required in *CFCSA*, MCFD ensure robust, action-orientated cultural components within care plans are developed for each Indigenous child in care and that the cultural components include a focus on Indigenous language revitalization:

- The cultural component must be more than a high-level document and must address specific actions that will be taken to support the preservation of each Indigenous child's cultural identity, in accordance with s. 2, 4, 35, and 70 of the *CFCSA*;
- The cultural component must address all aspects of culture for children in care, including but not limited to the sharing of customs, ceremonies, traditional knowledge, and language; and
- The necessary supports must be made available to ensure all of the activities that have been identified within the cultural component of a child's care plan can be implemented.

Recommendation 57:

MCFD and INAC allocate immediate funding to support the involvement of Indigenous organizations, such as the First Peoples' Cultural Council (FPCC), in the development of the cultural components of care plans.

Recommendation 58:

The BC Representative for Children and Youth, the provincial court, or another independent body be required to conduct an annual review of care plans for Indigenous children in care, with special attention to ensuring that a cultural and language component of each care plan exists and is implemented.

Recommendation 59:

MCFD and INAC allocate immediate funding to support the engagement of Indigenous leadership, traditional knowledge holders, experts, elders, families, etc. in the process of developing the cultural components of care plans, and to support cultural teaching for Indigenous children in care.

Recommendation 60:

MCFD engage the First Peoples' Cultural Council for assistance in preparing a language plan as part of the cultural component of care plans, taking into consideration the tools and models that have been developed to support language revitalization in communities.

Recommendation 61:

MCFD ensure mandatory staff training regarding individual Indigenous identities and cultures, including Indigenous rights.

Recommendation 62:

MCFD and DAAs work collaboratively with Indigenous communities to review the suitability requirements for foster parents and foster homes to ensure compliance with the statutory obligations outlined in s. 71(3) of the *CFCSA*, which prioritizes

the placement of Indigenous children within their extended family or community:

- Supports must be made available to assist a child's family and/or community to navigate the eligibility process for fostering a child;
- MCFD and DAAs must provide the necessary resources and support to meet the statutory requirements; and
- Possible amendments should be considered to the existing eligibility requirements for foster homes that would allow for more Indigenous foster parents who may currently be discriminated against under the existing MCFD requirements.

Recommendation 63:

MCFD must provide support to foster parents to ensure that they are equipped to meet the legislative obligation to preserve a child's cultural identity, as required under s. 4(2) of the *CFCSA*, particularly in the event that a child cannot be placed with family or within his or her community.

AREA FOR FOCUSED ACTION 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS

Recommendation 64:

MCFD and the federal government work to immediately expand Indigenous early years programming and provide new offerings and services to all First Nations communities, and Métis within BC:

- MCFD should engage immediately with DAAs and Indigenous communities across the province to determine the most appropriate core services required in the immediate term and long-term expansion;
- MCFD begin hiring immediately to support the expansion of early years programs and services across BC, including new staff positioned directly within Indigenous communities (see Recommendation 1, in *Area for Focused Action 1*) and support to manage the expansion of early years programs; and
- MCFD increase ASI-EY funding by \$6 million annually in response to the high number of eligible proposals this fiscal that were denied funding based on funding availability, and with the objective of investing the additional \$5 million directly in Indigenous communities.

Recommendation 65:

MCFD and INAC invest in long-term and sustainable funding for early years programming:

- Special attention should be given to offering multi-year funding support to organizations based in Indigenous communities that have developed or wish to develop early years programming tailored to their culture, traditions and practices.

Recommendation 66:

MCFD, DAAs, and INAC work immediately and in partnership with Indigenous communities, to expand parenting programs and services available to Indigenous parents and families, as well as other professional expertise to assist Indigenous parents:

- Attention should be paid to ensuring these programs are accessible for Indigenous parents,

and part of this means a commitment to ensure that long-term, these programs are developed and delivered inside Indigenous communities.

Recommendation 67:

MCFD, DAAs, and INAC take immediate steps to ensure that any new or existing parenting programs and curriculum are updated to include traditional values, knowledge, teachings and practices and that available parenting programs utilize, as much as possible, Indigenous elders and cultural leaders:

- Specifically, programming should be developed to support language and culture revitalization in Indigenous communities, honouring traditional approaches to teaching and knowledge sharing (see *Area for Focused Action 6*)

AREA FOR FOCUSED ACTION 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE

Recommendation 68:

Recognizing Indigenous communities' right to self-government, Canada, BC, DAAs, and Indigenous communities and organizations collectively move towards a model where Indigenous communities can exercise full jurisdiction over Indigenous child welfare. This will require the parties to undertake the following collaboratively:

- Develop and implement an action plan to ensure that Indigenous communities have effectively built the necessary range of capacities to ensure equity of services to Indigenous children and families; and

- Build a comprehensive funding framework to ensure Indigenous communities are fully supported to offer equitable services for Indigenous children (see related recommendations in *Area for Focused Action 3 - A New Fiscal Relationship – Investing in Patterns of Connectedness*).

Recommendation 69:

While Indigenous communities move to implement full jurisdiction over Indigenous child and family services, MCFD and INAC work concurrently to also support the continued capacity building of DAAs in the following ways:

- Ensure DAAs maintain key involvement in the planning for and delivery of child welfare services to Indigenous children and families; and
- Ensure DAAs continue to have opportunities to develop expertise in exercising authority over Indigenous child welfare.

Recommendation 70:

The Province review and amend *CFCSA* in order to offer legislative support to Indigenous communities that have developed, or are seeking to develop, strong community-driven initiatives. This review of *CFCSA* should consider the following:

- Methods of ensuring *CFCSA* can support an Indigenous community and its government to exercise full authority and jurisdiction over decision-making related to the best interest of the child; and
- The limits that *CFCSA* places on specific models for increased Indigenous jurisdiction, such as the Splatshin's *By-Law for the Care of Our Indian Children: Spallumcheen Indian Band By-Law #3*.

Recommendation 71:

The Province review and amend *CFCSA* to provide for 'least disruptive measures' that make it simpler for a child to remain with his or her extended family or community in the event that there is a removal:

- Allow for the transfer of custody to a "party" rather than just a "person," as under the existing legislation. The legislation must recognize Indigenous governments as an eligible "party" to which custody may be transferred;
- Amend s. 8 of *CFCSA* to allow for Indigenous governments to enter into either temporary or long-term agreements with MCFD for the care of a child;
- Amend s. 35 and s. 41 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing interim and temporary orders; and
- Amend s. 49, s. 50, and s. 54 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing permanent orders.

Recommendation 72:

The Province review and amend *CFCSA* with the goal of achieving consistency with the *Family Law Act*:

- Moving away from "custody" as an out-of-date concept currently utilized in the *CFCSA*, and towards the concepts of guardianship and parental responsibility as defined in the *Family Law Act*.

Recommendation 73:

MCFD review *CFCSA* with the specific aim of identifying legislative changes needed to minimize circumstances where a child is moved out of temporary care and under a CCO:

- Consideration during this review should be given to potentially requiring an Indigenous community's consent to move the child under a CCO.

Recommendation 74:

MCFD designate an Indigenous Director under the authority of *CFCSA*, equipped to make decisions under the authority of *CFCSA* that are based in cultural knowledge and better account for historical circumstances and resultant intergenerational trauma.

AREA FOR FOCUSED ACTION 9. THE EXISTING POLICY FRAMEWORK – SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS

Recommendation 75:

MCFD, INAC, and DAAs move to jointly adopt a clear and overarching Indigenous child welfare policy framework in BC that is premised on support for prevention and connectedness, reconciliation, and resiliency.

Recommendation 76:

MCFD take immediate steps to implement the jointly developed *Aboriginal Policy and Practice Framework* for those DAAs that see it as complementary and in support of their practices.

Recommendation 77:

MCFD, in collaboration with DAAs and representatives of Indigenous communities, develop a separate service plan for Indigenous child and family welfare, including an Indigenous ADM to oversee the plan, and confirm a distinct budget allocation for this planning process and its subsequent implementation.

Recommendation 78:

MCFD commit to immediate actions to recruit and retain Indigenous individuals for leadership positions within MCFD and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals recruited to these positions.

Recommendation 79:

MCFD commit to immediate actions to recruit and retain Indigenous social workers and front-line staff and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals recruited to these positions.

Recommendation 80:

MCFD work to remove any existing barriers for DAAs that have expressed an interest in continuing or shifting their child welfare approaches to utilize approaches that support community involvement, prevention, and reconciliation, such as Signs of Safety and Touchstones of Hope.

Recommendation 81:

The Province support the continued independent oversight role of the BC Representative for Children and Youth (RCY) as it relates to Indigenous children and youth through the following specific actions:

- Allocate funding to support the continuation of this oversight role;
- Expand the mandate of the BC RCY to ensure distribution of reports and reporting documents to Indigenous communities and organizations; and
- Expand the mandate of the BC RCY to provide oversight that will ensure the Province's commitment to actively involve Indigenous communities in planning for all Indigenous children under CCOs is upheld.

Recommendation 82:

Provincial ministries, such as MCFD, Education and Health, be required to table annually in the provincial Legislature their respective responses to BC RCY reports and recommendations regarding Indigenous child welfare.

Recommendation 83:

The Province and Canada commit to jointly develop improved data collection and analysis that will support program development and effective service delivery for Indigenous child welfare in BC.

AREA FOR FOCUSED ACTION 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE

Recommendation 84:

Canada move immediately to develop new federal Indigenous child welfare legislation, in partnership with Indigenous peoples and to support more consistent and improved outcomes for Indigenous children and families. At minimum, the new federal legislation should provide for:

- The creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, whose role is to oversee the development of a comprehensive national strategy, as well as its implementation, and evaluate progress towards the outcomes laid out therein;
- The establishment of clear roles and responsibilities for various levels of governments in the provision of child welfare services;
- The setting of national standards for the provision of out-of-province / territory placements for children in their guardianship, and details on compliance with these standards; and
- The development of a national strategy that includes: principles and agreed-upon indicators to guide the national coordination of data collection, and collective, measurable targets and strategies to achieve them.

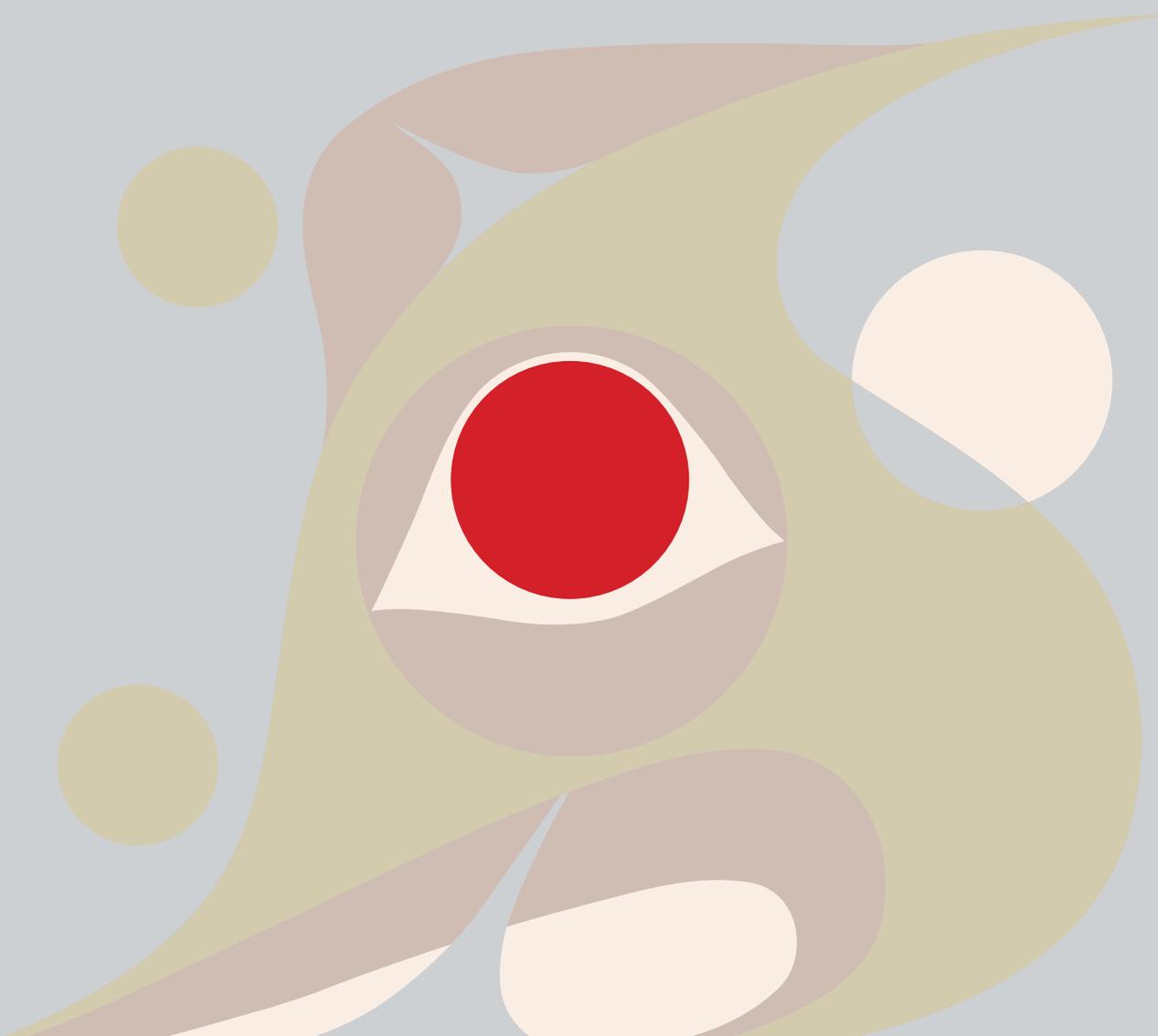
Recommendation 85:

The Premier of BC champion and work with other Premiers through the Council of the Federation to develop a national action plan on Indigenous child welfare. This plan should be developed in a way that:

- Ensures Canada's national approach to child welfare is consistent with the findings of the 2016 *CHRT 2* decision and subsequent orders of the CHRT;
- Promotes the effective implementation of the TRC's Calls to Action 1-5;
- Ensures Canada's national approach to child welfare is consistent with commitments made in international decision documents such as the *World Conference on Indigenous Peoples Outcome Document*, the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*; and
- Promotes child welfare services and approaches nationally that are culturally based, prioritize prevention and resilience, support connectedness with communities, and preserve and reunify families where possible.

APPENDIX B

TERMS OF APPOINTMENT FOR SPECIAL ADVISOR



PART 1. TERM:

1. Subject to section 2 of this Part 1, the term of this Agreement commences on September 14, 2015 and ends on March 31st, 2016.
2. The term of these services can be renewed for a term of one year pending agreement of both parties.

PART 2. SERVICES:

Aboriginal children (First Nations, Inuit and Métis) in Canada are served by systems that include legislation, policies and standards developed by provincial/territorial, federal, and Aboriginal governments, are in a state of change. As well, there is increasing recognition of, and support for, the need for more culturally appropriate and culturally based services for Aboriginal children and families. Across Canada, high numbers of Aboriginal children are reported to be at high risk of neglect and abuse, and as a result, they are removed and placed in care at rates far in excess of non-Aboriginal children. Once Aboriginal children come into care, they stay in care longer and are returned to their parent's care less than that occurs with non-aboriginal children. The impacts on the child, parents /family, including the extended family and community are traumatic and often become lasting and inter-generational.

The Canadian *National Household Survey* indicated that 48% of 30,000 children and youth in foster care across Canada are Aboriginal children, even though Aboriginal peoples account for only 4.3% of the Canadian population.

In British Columbia, the Aboriginal child population makes up 8% of the total child population, yet more than 55% of children living out of their parental home in the province are Aboriginal. One in five

Aboriginal children in the province will be involved with child welfare at some point during his or her childhood. The total number of Aboriginal children in care has been relatively the same since 2001, but the proportion has increased as the Province has been successful in reducing the non-Aboriginal children in care population.

In August 2014, Canada's Premiers directed the provinces and territories to work together to share potential solutions to mitigate child protection concerns that would result in a reduction in the overall number of Aboriginal children in child welfare systems.

A follow-up report was provided to Premiers at the Council of the Federation (COF) in July 2015.

Also, the Ministry of Children and Family Development (MCFD) supports early childhood development and child care in British Columbia, including hosting the Provincial Office for the Early Years, which is responsible for facilitating collaboration among ministries, service providers, and stakeholders regarding early years and child-care programs, goals and outcomes. Promoting improved services for Aboriginal children and families, and the development of relevant performance outcomes are areas of interest for MCFD and many Aboriginal communities. It is clear that supporting child development in the early years results in greater levels of improvements and successes in later years.

OUTPUTS

The purpose of this contract is to appoint a Special Advisor to the Minister of MCFD, Hon. Stephanie Cadieux, on Aboriginal Child Welfare to:

- Provide a focused role on creating permanency for Aboriginal children in care, particularly those

in care through continuing custody orders (in care until reaching the age of majority);

- After the release of the COF report, assign follow-up for British Columbia (encourage national-level leadership and facilitate provincial level discussions); and
- As necessary, assist the MCFD Minister in developing advice to Cabinet members on these matters.

Staff in MCFD and the Office for the Representative of Children and Youth are engaged in activities to support planning and outreach for permanency. This team may be augmented by further assignments (with policy/operational experience in permanency) plus secondments from Aboriginal agencies in consultation with the Special Advisor. Chief among the Special Advisor's role will be to lead the team's outreach to First Nation leaders at both a provincial and community level in order to:

- Assess and strengthen current plans of care, for children and youth in care, through continuing custody orders; and,
- Meet with local First Nations to identify, confirm, and review plans for children and youth, with a view to exploring permanency options for the children and youth.

The Special Advisor will also work with the MCFD Minister and Deputy Minister to develop plans consistent with the direction emerging from the Council of the Federation (COF), specific to British Columbia, to engage:

- First Nations and Aboriginal leaders in discussions to assist the Province and Aboriginal communities to jointly and collaboratively reduce the number of First Nations and Aboriginal Children in care;

- With the federal government in meaningful work to enhance prevention and intervention work, as well as to address 'root causes' as discussed in the COF report.

As discussed with the Minister and in conjunction with her, the Special Advisor may also speak and work with other members of Cabinet in pursuit of these objectives.

The Special Advisor, along with the MCFD Minister, Deputy Minister, ministry staff and staff from the office of the Representative have developed a work plan to guide the work above.

There may also be an opportunity for the Special Advisor to work with the MCFD Minister and Deputy Minister on projects related to Early Child Development. A work plan will be considered for this area between the Special Advisor, Minister, Deputy Minister, and ministry staff.

PART 2. DELIVERABLES:

The Special Advisor will provide:

- Monthly reports to the MCFD Minister to inform of progress, identify barriers and strategies to address them;
- Monthly reports to First Nations/Aboriginal leaders on progress, barriers and strategies; and,
- A final report summarizing the Special Advisor's activities relating to both permanency planning, as well as advancing British Columbia's work, after the release of the COF report, and any activity relating to Early Childhood Development.

INPUTS

The Special Advisor must provide the equipment and software required to provide the services associated with the deliverables.

OUTCOMES

Throughout the delivery of the services, the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor, to comply with other provisions of this Part, the Special Advisor will provide effective First Nations leadership to MCFD and the Office of the Representative for Children and Youth, to improve permanency planning, including securing permanency plans for First Nations and Aboriginal children in continuing custody.

Given the Special Advisor's background and expertise, the Contract will also consider current legal and policy frameworks and provide advice to improve effective and ongoing support for families to raise their child/children in their community, or to develop permanency options in their communities for children currently in care.

The Special Advisor will assist the MCFD Minister and Deputy Minister to, after the release of the COF report, facilitate related dialogue with First Nation leaders on how to collaboratively approach reducing the over representation of First Nation and Aboriginal children in care, and to assist the MCFD Minister and Deputy Minister to engage in strategies and discussions to address over representation with the federal government.

