

New Brunswick Aboriginal Peoples Council

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Brief for the Minister of Social Development Review of the *Family Services Act* in New Brunswick

Filed on behalf of
New Brunswick Aboriginal Peoples Council

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Brief for the Minister of Social Development

Review of the *Family Services Act* in New Brunswick

The purpose of this brief is to ensure that the voices and rights of 29,380 status and non-status Aboriginal peoples living in urban and rural communities in New Brunswick are heard, and that the Calls for Justice, especially pertaining to changes in the New Brunswick child welfare system are implemented.

The brief includes explanation as to who the New Brunswick Aboriginal Peoples Council is, together with recommendations from the Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission Calls to Action, as well as the Calls for Justice to be recognized and included in the Family Services Act, particularly pertaining to Aboriginal peoples who live off reserve.

These recommendations to the new child and youth welfare legislation, are made in order to improve the lives and experiences of Aboriginal children and families involved in the child welfare system, with the hopes that one day Aboriginal children and families will no longer be involved in the child welfare system.

On behalf of New Brunswick Aboriginal Peoples Council, we look forward to contributing to further deliberations specifically regarding the impact of child welfare legislation and policies on status and non-status Aboriginal peoples who live off reserve in New Brunswick.

Wela'lin,



Chief Barry LaBillois

Background: Who We Are

Since 1971, Native Councils have represented the interests of non-status Indians and Métis across Canada.¹ While we are all Indigenous, historically, some of us have not always been recognized under the law as Indian people. To achieve this, the Canadian government has employed various methods, including the Indian Register under the Indian Act.² When the government sought to register all Indian people, a large number did not register. Some did not know they were supposed to register, others were afraid to acknowledge their heritage, and some were deliberately left off the registry. They and their children were therefore not entitled. Some people were voluntarily and involuntarily enfranchised.³ One of the more familiar ways that a person became a non-Indian pertains to status women marrying non-status men and the children who were born from these marriages.⁴ The policy result was to deny needed assistance through the creation of a new class of non-status Indian or the “forgotten Indian.”⁵

Many non-status women lobbied governments to repeal the resulting discriminatory practices and policies of the Department of Indian and Northern Affairs. In 1985, after many years of pressure, the Canadian government attempted to fix the damage the Indian Act had caused. Bill C-31⁶ enabled those who were negatively impacted by section 12(1)(b) of the Indian Act and their first generation of children to register as status Indians.⁷ However, the change did not address other discriminatory practices of the Indian Act and how it applied to the Indigenous people who live off-reserve.⁸ While many who were non-status in the early 1970s are today registered Indians, most continue to live off-reserve and are still represented by Native Councils.⁹ Today, over 70%¹⁰ and nearly 24% of First Nations people do not have status.¹¹ Despite non-status people making up nearly one quarter of the First Nations population and the majority of Indigenous people in Canada living off-reserve, these groups are often ignored or forgotten by the Canadian government and people in Canada. They are disadvantaged and denied the necessary material benefits to manage their affairs. They also face consistent erasure due to a disproportionate focus by Canadian settlers on reserve communities. This makes non-status and off-reserve people extremely vulnerable to violent victimization. In its decision in Daniels,¹² the Supreme Court of Canada recognized that non-status Indians and Métis people are “Indians” under section 91(24) of the Constitution Act, 1867,¹³ and therefore the federal government is responsible for legislation

¹ See “Our Mandate”, online: Congress of Aboriginal Peoples.

² RSC 1985, c I-5, ss 2, 5.

³ See e.g. Canada, Report of the Royal Commission on Aboriginal Peoples, vol 1 (Ottawa: RCAP, October 1996) at 263–65, online (pdf): [RCAP, vol 1]

⁴ Ibid at 276–79; Canada, Report of the Royal Commission on Aboriginal Peoples, vol 4 (Ottawa: RCAP, October 1996) at 22–23, online (pdf): [RCAP, vol 4].

⁵ G. P. Gould & A. J. Semple, *Our Land: The Maritimes* (Fredericton: Saint Annes Point Press, 1980).

⁶ An Act to Amend the Indian Act, SC 1985, c 27, amending RSC 1985, c I-5.

⁷ See Indian Act, supra note X, ss 6(1)–6(2); see also RCAP, vol 1, supra note 3 at 280; RCAP, vol 4, supra note 3 at 32–34.

⁸ See e.g. RCAP, vol 1, supra note 3 at 280–83; RCAP, vol 4, supra note 3 at 32–34.

⁹ See e.g. RCAP, vol 4, supra note 3 at 34. 2 of Indigenous peoples live off-reserve

¹⁰ Of the 1,673,785 people reporting Aboriginal identity in the 2016 Census, 1,334,190 (79.7%) live off-reserve. See Statistics Canada, *Census of the Population, 2016, Catalogue No 98-400- X2016154* (Ottawa: Statistics Canada, last modified 16 January 2018); see also Appendix I: Indigenous Population by Residence and Region, Census 2016.

¹¹ See Canada, Statistics Canada, *Aboriginal Peoples in Canada: Key results from the 2016 Census*, (Ottawa: Statistics Canada, last modified 25 October 2017), at “First Nations population growing both on and off reserve”, online: .

¹² *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 [Daniels].

¹³ (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

about them.¹⁴ The Court also recognized that the law is settled “that the Crown owes a fiduciary duty to Métis and non-status Indians”¹⁵ and has a duty to consult with all Aboriginal peoples when their rights are impacted.¹⁶ The continued under-service and ignoring of off-reserve and non-status Indigenous people is unacceptable.

Founded in 1972, the New Brunswick Aboriginal Peoples Council (NBAPC) constitutes a community of Aboriginal people, both status and non-status, who live off-reserve in New Brunswick. NBAPC is duly mandated to protect the right of off-reserve Aboriginal peoples to have direct representation to government, exemplifying self-government practices. Furthermore, NBAPC defines and enforces its own membership base. Membership is required before an Indigenous person in New Brunswick can be active politically in the Council and receive certain benefits, programs and services. Membership is based on ancestral connection, genetic or not, to a verified and known Aboriginal person since July 1, 1867.¹⁷ In addition, applicants must be recognized by a local community prior to membership review.¹⁸ Since its inception, NBAPC has offered long-term programs such as housing, food, social, ceremonial and commercial fishing assistance, economic development, education, and employment training assistance.

Child and Family Welfare Services

Close connection between child apprehension and MMIW

The specter of child apprehension looms large in Indigenous families and communities including in families residing off reserve. Our research has shown that families with prior involvement with child welfare agencies are less likely to report when a family member goes missing for fear of having other children of the household apprehended. This puts young people at extreme risk of violent victimization. More generally, the omnipresence of the threat of child apprehension makes Indigenous people wary of all state agencies, including agencies that might otherwise be able to deliver important services. Because of police involvement in child apprehension, it also enlarges and reinforces the trust gap between Indigenous people and law enforcement.

Indigenous children overrepresented in the foster care system

Indigenous children are vastly overrepresented in the Canadian foster care system.¹⁹ Research in New Brunswick found that the Department of Social Development does not consistently collect data on children’s Indigeneity, which prevents an accurate determination of the number of Indigenous children in care in the province. An estimate provided by a former Department of Social Development program

¹⁴ See Daniels, *supra* note X at paras 19, 46, 50.

¹⁵ *Ibid* at para 53.

¹⁶ *Ibid* at paras 54, 56. 3 a verified and known Aboriginal person since July 1, 1867.

¹⁷ See Jula Hughes & Roy Stewart, “Urban Aboriginal People and the Honour of the Crown – A Discussion Paper” (2015) 66 UNBLJ 263 at 287.

¹⁸ *Ibid*.

¹⁹ In 2011, “Aboriginal children accounted for 7% of all children in Canada but for almost one half (48%) of all foster children.” See Statistics Canada, Living Arrangements of Aboriginal children, *supra* note X; see also Dupré et al, “Let’s Get It Right” (2018) <https://uakn.org/wp-content/uploads/2016/02/Lets-Get-It-Right-FINAL-Report-Oct-2-1.pdf>

manager for Region 3 indicates that, at minimum 20% of children in care were off reserve Aboriginal children. It would seem that Indigenous children are more overrepresented than statistics suggest.²⁰

Recommendation 40: We call on governments and child welfare agencies to take active measures to reduce the overrepresentation of Indigenous children in care and increase the supports available to Indigenous families.²¹ This must include consistently recording the Indigeneity of children in care, with a focus on ensuring that non-status and off-reserve urban and rural Indigenous children and families are recorded as Indigenous.

Risk assessment tools are culturally inappropriate

Testimony during this Inquiry explained that the risk assessment tools used in Canadian child welfare practices are inadequate for responding to the Indigenous context in Canada.²² The intersecting issues that affect Indigenous people as a result of colonialism and the legacy of residential schools and the Sixties Scoop, such as poverty, addiction, and violence in families, result in many Indigenous families categorized as high risk therefore subject to child apprehension if assessed, regardless of their individual successes and strengths.²³ We heard that risk assessment tools do not account for factors outside of parent or caretaker control. Neither do they treat Indigenous kinship relations or cultural connections as factors that benefit Indigenous children in their families.²⁴

Recommendation 41: We call on child welfare services to collaborate with all Indigenous organizations to ensure policies and risk assessment methods accurately evaluate risk, are appropriate in Indigenous contexts, and do not apprehend children based on racial biases.

Lack of focus on prevention, strong reliance on apprehension

Our research with *Let's Get It Right* and the TRC's Final Report have noted how a lack of focus on supporting families and preventing child apprehension greatly contribute to the overrepresentation of Indigenous children in care.²⁵ Research with Indigenous families has demonstrated how quickly apprehension is resorted to, including when parents come to child welfare services to receive support in parenting and demonstrate a desire to provide the best for their children.²⁶ Inquiry testimony also discussed how the funding for child and family services organizations is based on the number of children in care, so there are incentives to apprehend children rather than provide families with supports that would allow them to keep custody.²⁷

²⁰ See Dupré et al, *supra* note 19 at 12.

²¹ *TRC Calls to Action*, *supra* note X at Calls 1, 2, 4, 5.

²² See Institutional & Expert/Knowledge-Keeper Hearings, vol 13, *supra* note X at 128–30, 309–11.

²³ *Ibid* at 128–30.

²⁴ *Ibid* at 128–30, 309–11.

²⁵ Dupré et al, *supra* note 19 at 12; *TRC Calls to Action*, *supra* note X at Call 2.

²⁶ See Assembly of Manitoba Chiefs, "Bringing Our Children Home: Report and Recommendations" (June 2014) at 5, online (pdf)>.

²⁷ See Canada, National Inquiry into Missing & Murdered Indigenous Women & Girls TruthGathering Process: Parts II & III Institutional & Expert/Knowledge-Keeper Hearings: "Child & Family Welfare", vol 11 (Winnipeg: NIMMIWG, 2 October 2018) at 27–28, online (pdf): [Institutional & Expert/Knowledge-Keeper Hearings, vol 11].

Recommendation 42: We call on child welfare agencies to establish practices that prioritize prevention, rather than apprehension, by working with families to provide the supports that would enable them to care for their own children and using apprehension as a last resort. Prevention efforts must include increasing the resource capacity of Indigenous organizations that serve off reserve urban and rural communities, such as Friendship Centres and Head Start programs, to develop and provide programming to support off-reserve families who are at risk of child apprehension.

Service Provision and Risk Assessment

Collaboration among service providers

Research tells us that collaboration between child welfare efforts by the federal and provincial governments and Indigenous organizations is necessary for responding to the needs of Indigenous families and children and sustaining culturally appropriate supports and resources.²⁸ A troubling lack of cultural competence and knowledge about culturally safe practices exists for social workers.²⁹ This lack poses a serious risk to Indigenous children and their families and continues the long-established colonial practice of removing Indigenous children from their homes and cultures.³⁰ Institutionalized cultural competency training for those working in child welfare is crucial to reducing the apprehension of Indigenous children,³¹ and the imposition of colonial norms in policies that contribute to the disproportionate and harmful assessment of Indigenous parents.

Recommendation 43: We call on child welfare agencies to institutionalize cultural competency training. We recommend that cultural competency training address the false assumption that Indigenous families solely live on reserves which results in off-reserve Indigenous families not having their unique needs met by parenting programs and resources.³²

Supporting and protecting children while in care

During the Missing and Murdered Indigenous Women and Girls Inquiry we heard about professional indifference on the part of social workers dealing with children in care.³³ This includes the labelling of Indigenous children as ‘service resistant’ for not responding to colonial services and programs while not offering culturally safe programs rooted in Indigenous cultures and practices that could benefit them.³⁴ Despite the overrepresentation of Indigenous children in foster care, foster parents in New Brunswick have stated that they are not properly trained and do not receive the required supports to provide children with culturally appropriate care.³⁵ Encouragingly, Indigenous-specific care approaches have been established in several jurisdictions where children are placed in their home communities, such as with family members.³⁶ These placements allow for frequent and sustained contact between children and

²⁸ Dupré et al, *supra* note 19 at 12.

²⁹ *Ibid* at 16.

³⁰ See Assembly of Manitoba Chiefs, *supra* note X at 7–8

³¹ Dupré et al, *supra* note 19 at 12; TRC Calls to Action, *supra* note X at Call 1.

³² See *Institutional & Expert/Knowledge-Keeper Hearings*, vol 13, *supra* note X at 85, 99–100.

³³ See *Institutional & Expert/Knowledge-Keeper Hearings*, vol 13, *supra* note X at 85, 99–100.

³⁴ *Ibid* at 102–03.

³⁵ Dupré et al, *supra* note 19 at 12.

³⁶ *Ibid*.

their parents and family and for continued participation in community and cultural activities, so that children in care are not removed from their cultural identities.³⁷

Recommendation 44: We call on child welfare agencies to emphasize placing children in care in their own communities, such as with other family members, and in Indigenous foster care placements. We recommend that non-Indigenous foster care providers receive significant training in culturally safe care for Indigenous children, including the importance of connections to the land, Indigenous languages, and Indigenous spiritual practices. We recommend adequate resourcing of off-reserve Indigenous organizations to allow for such programming.

Supporting Indigenous parents

While in-community placements are crucial to develop and support, significant attention must also be paid to supporting Indigenous parents before and after their children are placed in care, so that they can avoid losing their children or are able to regain them.³⁸ When children have been apprehended, parents often face impossibly high standards and requirements for having their child returned to them, which frequently makes apprehension permanent.³⁹ In many ways, parents face barriers to improving their ability to parent due to past mistakes, such as how a parent whose child has been apprehended can be barred from volunteering in areas such as early childhood education and learning parenting skills and strategies from those positions.⁴⁰ Indigenous parents are therefore not only under higher scrutiny by child welfare organizations, but the higher scrutiny can prevent them from taking advantage of opportunities to improve their skills, which in turn makes apprehension of subsequent children likely. Programming, such as Head Start programs, provide supports to Indigenous parents, including advocating for parents seeking to regain custody of children who have been apprehended.⁴¹ Currently, in New Brunswick, the majority of Aboriginal Head Start programs are found in on-reserve communities, and there is only one Head Start program in one urban center to service the entirety of off-reserve communities.⁴²

Recommendation 45: We call on child welfare agencies to ensure that children in care have continued connection with families and communities and cultures by offering Indigenous-focused programs and services, rather than colonial ‘one-size-fits-all’ programs. We recommend that off reserve Indigenous families are identified as Indigenous and receive culturally appropriate programming. We call on child welfare agencies to consult with and provide the resource capacity to Indigenous organizations such as Head Start programs, Native Councils, and Friendship Centres to provide culturally appropriate and safe programming for Indigenous families, Indigenous children in care, and non-Indigenous care providers.

³⁷ *Ibid.*

³⁸ See e.g. Jodoin, *supra* note X at 16.

³⁹ See e.g. Assembly of Manitoba Chiefs, *supra* note X at 6.

⁴⁰ See Jodoin, *supra* note X at 17.

⁴¹ See Institutional & Expert/Knowledge-Keeper Hearings, vol 11, *supra* note X at 58-59.

⁴² See “Under One Sky Friendship Centre”, online: *Connect Fredericton*

<www.connectfredericton.ca/agency/detail/agency_id=82804.

CALLS FOR JUSTICE

The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls delivers 231 Calls for Justice for governments, institutions, social service providers, industries and all Canadians to act upon. Further discussion is necessary in order to determine how the Calls for Justice are being included in the review of the Family Services Act and child welfare legislation.

For ease of reference, Calls for Justice pertaining to Calls for Social Workers and Those Implicated in Child Welfare are as follows:

12.1 We call upon all federal, provincial, and territorial governments to recognize Indigenous self-determination and inherent jurisdiction over child welfare. Indigenous governments and leaders have a positive obligation to assert jurisdiction in this area. We further assert that it is the responsibility of Indigenous governments to take a role in intervening, advocating, and supporting their members impacted by the child welfare system, even when not exercising jurisdiction to provide services through Indigenous agencies.

12.2 We call upon on all governments, including Indigenous governments, to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children. These services must be adequately funded and resourced to ensure better support for families and communities to keep children in their family homes.

12.3 We call upon all governments and Indigenous organizations to develop and apply a definition of “best interests of the child” based on distinct Indigenous perspectives, world views, needs, and priorities, including the perspective of Indigenous children and youth. The primary focus and objective of all child and family services agencies must be upholding and protecting the rights of the child through ensuring the health and well-being of children, their families, and communities, and family unification and reunification.

12.4 We call upon all governments to prohibit the apprehension of children on the basis of poverty and cultural bias. All governments must resolve issues of poverty, inadequate and substandard housing, and lack of financial support for families, and increase food security to ensure that Indigenous families can succeed.

12.5 We call upon all levels of government for financial supports and resources to be provided so that family or community members of children of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people are capable of caring for the children left behind. Further, all governments must ensure the availability and accessibility of specialized care, such as grief, loss, trauma, and other required services, for children left behind who are in care due to the murder or disappearance of their caregiver.

12.6 We call upon all governments and child welfare services to ensure that, in cases where apprehension is not avoidable, child welfare services prioritize and ensure that a family member or members, or a close community member, assumes care of Indigenous children. The caregivers should be

eligible for financial supports equal to an amount that might otherwise be paid to a foster family, and will not have other government financial support or benefits removed or reduced by virtue of receiving additional financial supports for the purpose of caring for the child. This is particularly the case for children who lose their mothers to violence or to institutionalization and are left behind, needing family and belonging to heal.

12.7 We call upon all governments to ensure the availability and accessibility of distinctions based and culturally safe culture and language programs for Indigenous children in the care of child welfare.

12.8 We call upon provincial and territorial governments and child welfare services for an immediate end to the practice of targeting and apprehending infants (hospital alerts or birth alerts) from Indigenous mothers right after they give birth.

12.9 We call for the establishment of a Child and Youth Advocate in each jurisdiction with a specialized unit with the mandate of Indigenous children and youth. These units must be established within a period of one year of this report. We call upon the federal government to establish a National Child and Youth Commissioner who would also serve as a special measure to strengthen the framework of accountability for the rights of Indigenous children in Canada. This commissioner would act as a national counterpart to the child advocate offices that exist in nearly all provinces and territories.

12.10 We call upon the federal, provincial, and territorial governments to immediately adopt the Canadian Human Rights Tribunal 2017 CHRT 14 standards regarding the implementation of Jordan's Principle in relation to all First Nations (Status and non-Status), Métis, and Inuit children. We call on governments to modify funding formulas for the provision of services on a needs basis, and to prioritize family support, reunification, and prevention of harms. Funding levels must represent the principle of substantive equity.

12.11 We call upon all levels of government and child welfare services for a reform of laws and obligations with respect to youth "aging out" of the system, including ensuring a complete network of support from childhood into adulthood, based on capacity and needs, which includes opportunities for education, housing, and related supports. This includes the provision of free post-secondary education for all children in care in Canada.

12.12 We call upon all child and family services agencies to engage in recruitment efforts to hire and promote Indigenous staff, as well as to promote the intensive and ongoing training of social workers and child welfare staff in the following areas: • history of the child welfare system in the oppression and genocide of Indigenous Peoples • anti-racism and anti-bias training • local culture and language training • sexual exploitation and trafficking training to recognize signs and develop specialized responses.

12.13 We call upon all governments and child welfare agencies to fully implement the Spirit Bear Plan

12.14 We call upon all child welfare agencies to establish more rigorous requirements for safety, harm-prevention, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. We also insist that governments provide appropriate care and services, over the long term, for children who have been exploited or trafficked while in care.

12.15 We call upon child welfare agencies and all governments to fully investigate deaths of Indigenous youth in care.