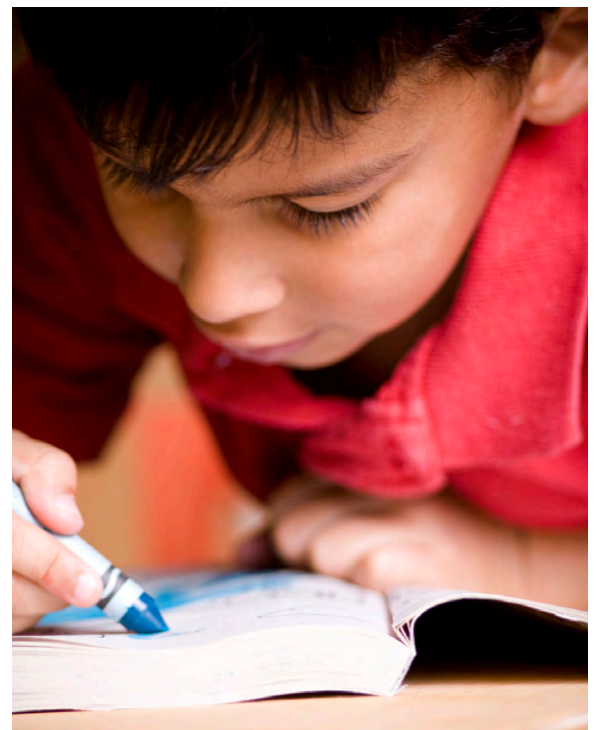
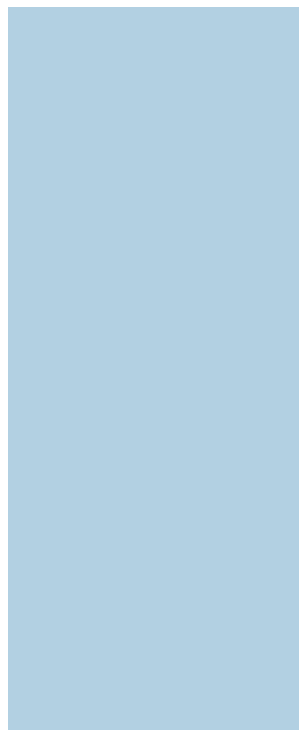
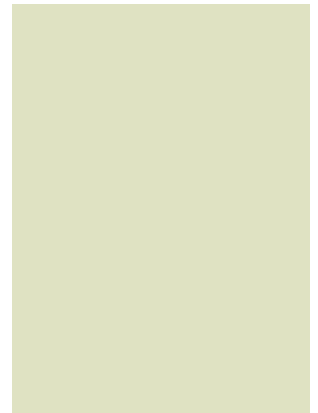


# The Road to Aboriginal Authority over Child and Family Services

Considerations for an Effective Transition



by Kelly A. MacDonald

NOVEMBER 2008



Centre for Native Policy  
and Research



CCPA  
CANADIAN CENTRE  
for POLICY ALTERNATIVES  
BC Office

## THE ROAD TO ABORIGINAL AUTHORITY OVER CHILD AND FAMILY SERVICES: CONSIDERATIONS FOR AN EFFECTIVE TRANSITION

By Kelly A. MacDonald

November 2008

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## ABOUT THE AUTHOR

KELLY A. MACDONALD, B.A., LL.B., LL.M., Barrister and Solicitor, is Haida/Tsimshian and Scottish. She was called to the bar of British Columbia in 1992 and received her Masters in Law in 2000. Her thesis was entitled: *First Nations Child & Family Services: Whither Self-Government?* Kelly has authored numerous reports and studies on behalf of local, provincial and national Aboriginal organizations. Her passion is working on behalf of Aboriginal children and youth. Kelly works as a lawyer and also sits as a Senior Adjudicator for the national Indian Residential Schools Adjudication Secretariat.

## DEDICATION

This paper is dedicated to four gentle warriors, who passed too quickly through this world, and who all contributed to the advancement of Aboriginal child welfare in British Columbia:

My beloved and dear friend the late Larry Guno, Sim'oojit S'iidaawihl, whose passionate leadership and commitment is greatly missed. He was the Chair of the Northern Aboriginal Planning Committee.

Autumn Jenkinson, a social worker who, despite her young age, made immense contributions to Aboriginal children and youth. She cared deeply.

The late Harvey Charlie who recently passed away. It was his tenacity, vision and great love for his grandchildren that grabbed the public's attention and compelled the government to launch a review of the child protection system.

Finally, and most poignantly, the late Sherry Charlie. A precious *usma* (child) whose tragic death sparked the need for changes to the delivery system for child and family services in British Columbia.

To all of them I am indebted for their inspiration and their contributions to improving the lives of Aboriginal children, youth, families and communities. They have left their mark on this world, for the benefit of us all.

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**Debra Hanuse**, Barrister & Solicitor. A member of the Namgis Nation and kindred spirit. Her intelligence, friendship and wisdom have helped guide my through the years.

**The Honourable Ted Hughes**, whose report on child protection has led to improvements to the child welfare system and the creation of an Independent Representative for Children and Youth. He devoted a significant portion of his report to observing and making recommendations specifically with regards to the delivery of Aboriginal child and family services. I thank him and am grateful for his mentorship over the years.

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**Kylie Walman**, Barrister and Solicitor, a true friend who has assisted me with the research and writing of a number of reports in the area of Aboriginal child and family services. She co-authored *Jordan's Principle* with me and I know that she will continue to make many important contributions to the advancement of social justice.

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## SUMMARY

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# The Road to Aboriginal Authority Over Child and Family Services

## Considerations for an Effective Transition

### THE GOVERNMENT PROPOSAL FOR REGIONAL ABORIGINAL AUTHORITIES

The process that the provincial government has undertaken in order to develop the RAAs has been confusing and difficult for all involved.

In 2001, the Province of British Columbia committed to establishing a community based governance structure for all child and family services, with five service delivery regions. Each region was to be governed by a Regional Authority.

The Aboriginal community rejected the notion of five Regional Authorities and demanded the creation of five separate Regional Aboriginal Authorities (RAAs).

The government has since abandoned the plan for the *non-Aboriginal* Regional Authorities, but has continued to declare its intention to develop the Regional *Aboriginal* Authorities. However, after nearly seven years, only two Interim Aboriginal Authorities have been established. The process that the provincial government has undertaken in order to develop the RAAs has been confusing and difficult for all involved.

During these years, there have been many changes to the system for child protection and the delivery of services for children, families and communities. The devastating consequences of these changes were well documented in the 2006 report by the Honourable Ted Hughes, *BC Child and Youth Review: an Independent Review of BC's Child Protection System* (2006).

The Representative for Children and Youth, Mary Ellen Turpel-Lafond, detailed the disturbing lack of government action on Hughes' recommendations in her *Progress Report on the Implementation of the Recommendations of the BC Children and Youth Review* (2007).

This report follows the process so far and raises important questions and concerns. If the province is to continue to move towards establishing RAAs, significant changes must be made to the process; in particular, Aboriginal communities must be consulted and involved in a truly meaningful manner. However, it is questionable whether the provincial government should be moving forward with this model at all.

### A SLOW AND FLAWED PROCESS

In the preparation of this report, fourteen individuals were interviewed, all of whom have been involved in and/or will be affected by the process of establishing the RAAs. Individuals interviewed include: Aboriginal Directors of Child and Family Service Agencies; Chairs of the Regional Aboriginal Authorities Planning Committees; Nicholas Simons, the Opposition Critic for Children and Families; Aboriginal politicians Chief Judith Sayers (First Nations Summit), Grand Chief Stewart Phillip (Union of BC Indian Chiefs) and Bruce Dumont (President of the Métis Provincial Council of BC); and most importantly an advocate for youth in care, as well as a First Nations Elder. A literature review was conducted, which examined Hansard Debates, scholarly literature, newspaper articles and reports.

If the province is to continue to move towards establishing RAAs, significant changes must be made to the process; in particular, Aboriginal communities must be consulted and involved in a truly meaningful manner.

This research revealed some troubling aspects of the move towards RAAs.

One of the main problems is that this attempt to set up a new model is being undertaken by the Ministry of Children and Family Development, which has a long and well-known history of dealing poorly with Aboriginal communities, in particular regarding child protection. Justice Ted Hughes, Representative for Children and Youth Mary Ellen Turpel-Lafond, and BC Auditor General John Doyle have all published detailed critiques of the Ministry. At the same time, in spite of these concerns, there have been significant cuts to the Ministry's budget.

In 2002, Aboriginal leaders from communities across the province came together and signed the Tsawwassen Accord, which accepted in principle the creation of Regional Aboriginal Authorities. Following the Accord, a Memorandum of Understanding was signed by the Union of BC Indian Chiefs, the First Nations Summit, the Métis Provincial Council, and the Province of BC. The MOU proposed a joint dialogue and decision-making process regarding the safety and well being of Aboriginal children and families. A Joint Aboriginal Management Committee (JAMC) was created as a result of the MOU, which was comprised of the Ministry, Aboriginal leadership and service providers.

The MOU was to be renewed annually, which has not occurred. The JAMC has proven to be a slow-moving and ineffective body, hampered by the sheer

number of participants and lack of clarity about its role and authority. Directors of Aboriginal child and family services agencies, who should have been a key part of this process, have largely been absent.

There are serious financial concerns about the restructuring process. The provincial government has spent millions of dollars with few tangible results. If the RAAs are eventually established, it is unclear which services will be paid for by the provincial government and which by the federal government. The federal government funds on-reserve services while the provincial government funds off-reserve services. On-reserve funding is further complicated by jurisdictional conflicts and gaps. Historically the federal and provincial governments have engaged in contentious debates over who will pay for what.

Directors of Aboriginal child and family services agencies, who should have been a key part of this process, have largely been absent.

To date there have been only two Interim Aboriginal Authorities formally established. The Vancouver Island region achieved Interim Aboriginal Authority status in June 2007 and the Fraser region achieved Interim Aboriginal Authority status in September 2007. The agreements with the provincial government that established these interim authorities appear to provide little autonomy for Aboriginal communities. This lack of autonomy has led to conflicts within Aboriginal communities about whether or not to support the RAAs.

During the Spring 2008 sitting of the BC Legislature, legislation was to be tabled which would have enabled the establishment of RAAs. Because of the lack of consultation with Aboriginal communities about the legislation, many Aboriginal leaders publicly expressed their lack of support for it. The legislation was not tabled.

## RECOMMENDATIONS FOR A NEW APPROACH

These recommendations stem from careful reflection on and analysis of the opinions expressed by informants, and others, as well as what has been learned from the literature examined. These recommendations are not meant to be exhaustive, and many of them have been made before.

### 1. Creation of a Common Vision

The need for a common vision and clarity has been underscored by Larry Guno, Ted Hughes and Mary Ellen Turpel-Lafond. A deliberative dialogue, with focused discussion, should occur for the purposes of creating a common vision.

### 2. Determination of the Appropriate Governance Model

Despite how lengthy this transformation process has been, there continue to be many unanswered questions about what the governance model for the RAAs will look like. These questions need to be answered in order to give representa-



tives of Aboriginal communities confidence in the process. There need to be reassurances that:

- The model will capture the goals and aspirations of Aboriginal peoples;
- The model will not abrogate or derogate Aboriginal self-government rights in this area; and
- There are adequate resources in place and/or anticipated.

There needs to be an opportunity to explore alternatives to the RAAs and/or ensure that the RAAs have enough flexibility and funding to design a model for service delivery that is culturally appropriate and improves the outcomes for Aboriginal children and youth. Once alternatives have been explored, the federal, provincial and First Nations governments must develop a detailed plan in order to implement the process of transformation.

### 3. Ensuring Adequacy of Budget/Capacity Building

The government must provide assurances that the necessary resources will be there. As the provincial Auditor General recommended earlier this year, the provincial government needs to make their business case; so too do federal and First Nations governments. This should have been a foundation upon which to engage in this journey. The fact that the process began during a time of provincial fiscal restraint and cost-cutting measures raises serious concerns.

### 4. The Need to Change Direction

We do not need to go back to the drawing board; we simply need to change direction and take the road that our ancestors travelled and resume governance over taking care of our children and families based on traditional values in contemporary times. The Aboriginal community must, in true partnership, with the federal and provincial governments, embark in a new direction on a road that will benefit our children, youth and families.

We do not need to go back to the drawing board; we simply need to change direction and take the road that our ancestors travelled and resume governance over taking care of our children and families based on traditional values in contemporary times.

# Introduction

IN 2001, THE PROVINCE OF BRITISH COLUMBIA committed to establishing a community based governance structure for all child and family services, with five service delivery regions. The plan was to create five Regional Authorities. This was part of a proposed “transformation” of the Ministry of Children and Family Development in order to improve services.

The Aboriginal community rejected the notion of five Regional Authorities, demanding the creation of five separate Regional Aboriginal Authorities (RAAs). The government has since abandoned the plan for the non-Aboriginal Regional Authorities, but has continued to declare its intention to develop the RAAs. However, after nearly seven years, only two interim RAAs have been established. The process that the provincial government has undertaken in order to develop the RAAs has been confusing and difficult for all involved.

During these years, there have been many changes to the system for child protection and the delivery of services for children, families and communities. The devastating consequences of these changes were well documented in the 2006 report by the Honourable Ted Hughes, *BC Child and Youth Review: an Independent Review of BC's Child Protection System* (2006). Hughes observed:

The strongest impression I have gleaned from this inquiry is one of a child welfare system that has been buffeted by an unmanageable degree of change. There has been a revolving door in senior leadership positions... And much of this has gone on against a backdrop of significant funding cuts, even though it is commonly understood that organizational change costs money.<sup>1</sup>

The Representative for Children and Youth, Mary Ellen Turpel-Lafond, detailed the disturbing lack of government action on Hughes' recommendations in her *Progress Report on the Implementation of the Recommendations of the BC Children and Youth Review* (2007).

This paper will endeavour to examine, from the perspective of a First Nations lawyer, where we are at and where we are going on the road to the establishment of RAAs and whether it is a road we should be travelling on at all.

## Methodology

A number of informants were interviewed for their perspectives about the process of transformation to RAAs. There were a total of twelve individuals interviewed with two additional informants providing written responses to a series of open-ended questions (see Appendix). All of the individuals interviewed have been involved in and/or will be affected by the transformation process. With the exception of political representatives, informants were advised that their responses would be kept confidential.

Individuals interviewed include: representatives of First Nations/Aboriginal Directors of Child and Family Service Agencies (4); Chairs of the Regional Aboriginal Authorities Planning Committees (3); Nicholas Simons, the Opposition Critic for Children and Families; Aboriginal politicians Chief Judith Sayers (First Nations Summit), Grand Chief Stewart Phillip (Union of BC Indian Chiefs) and Bruce Dumont (President of the Métis Provincial Council of BC); and most importantly an advocate for youth in care, as well as a First Nations Elder. Every effort was made to ensure that there was regional representation and a diversity of perspectives canvassed from Métis, urban and land-based (on-reserve) First Nations. The term Aboriginal is used inclusively—as it includes the Métis, Inuit, status and non-status First Nations Indians.

Representatives from the Ministry for Children and Family Development were informed in person, by letter and by e-mail about the report and invited to participate. Unfortunately, they chose not to. I received a letter from Minister Tom Christensen, at the end of May 2008, after the interviews and first draft of this paper had already been completed. He suggested that:

I regret that Ministry of Children and Family Development staff are unable to participate in an interview process at this time. In fact, given recent events, you may wish to consider postponing the preparation of this study until it is clear how the ministry and the Aboriginal community will be moving forward with the governance agenda.<sup>2</sup>

A literature review was conducted, which examined Hansard Debates, scholarly literature as well as newspaper articles and reports.

Themes were generated from discussions with the informants as well as from an examination of the literature. Strengths and impediments were identified. Finally, and most importantly, solutions have been identified. These I humbly present as a First Nations lawyer committed to improving the lives of Aboriginal children and youth.

# Historical and Contemporary Context

The 2008 federal and provincial Auditors General reports raise deep concerns about how the system is (and is not) serving Aboriginal children and youth.

MUCH HAS BEEN WRITTEN regarding the impact of colonization on Aboriginal peoples, including the impact of the residential school system and the devastating effect of the application of provincial child welfare laws. In 2002 the Provincial Health Officer of British Columbia, Dr. Perry Kendall, provided a succinct analysis of the impact of colonization, observing that:

The high rate of Aboriginal children-in-care reflects the historical disadvantages experienced by Aboriginal communities. Residential schools caused generations to grow up without opportunities to develop parenting skills. Poverty, unemployment, relative isolation, and inadequate housing all contribute to family disruption. When Aboriginal families experience difficulties, they have not always been given the resources and support they need to ensure that children are raised in their home communities and culture.<sup>3</sup>

Furthermore, the application of provincial child welfare laws on Aboriginal peoples has dislocated children from their families and communities, alienating them from their culture, identity and language. The Ministry of Children and Families (as it was formerly known) acknowledged, as far back as 1999, the detrimental effects of “past practices” in their *Strategic Plan for Aboriginal Services*.

These “past practices” are not past at all, but continue to have a detrimental effect on Aboriginal children, youth and communities. The 2008 federal and provincial Auditors General reports raise deep concerns about how the system is (and is not) serving Aboriginal children and youth. The provincial Auditor General observed that:

Studies indicate that in British Columbia an Aboriginal child is about six times more likely to be taken into care than a non-Aboriginal child. Of all of BC children who are in care, 51

percent are Aboriginal—yet Aboriginal people represent only about 8 percent of BC’s population.<sup>4</sup>

The conclusion he drew from these facts was that:

... these results would indicate ministry practices are not likely effective.<sup>5</sup>

At the same time the government was proposing community governance, however, they were introducing significant budget cuts to the Ministry of Children and Family Development. The original projected target was a 23 per cent reduction overall, with the government later reducing these cuts to 11 per cent over the three year period between 2002 and 2004.<sup>6</sup> These cuts occurred concurrently with significant cuts to other government services and funding for non-governmental services.

Included in the many cuts to social services were cuts to the Ministry of Human Resources—income assistance rates were cut, shelter allowances reduced, and time limits were placed on the length of income assistance an “employable” person could receive. Other important services that were cut, which had a direct impact on the poor, were cuts to legal services, child care subsidies, women’s centres and child welfare programs.

During this time, a number of United Nations Committees singled out British Columbia, in their reports on Canada, and admonished the provincial government for these cuts. The United Nations Human Rights Committee, in 2005, and the United Nations Committee on Economic, Social and Cultural Rights, in 2006, noted that the severe cuts to welfare programs in British Columbia have had a detrimental impact on women and children, in particular Aboriginal peoples. As well, the United Nations Committee on the Elimination of Discrimination Against Women (UN CEDAW Committee) pointed out, in 2003, that the recent changes in British Columbia have had a disproportionately negative impact on women, *in particular Aboriginal women*. The Committees recommended that the provincial government adopt remedial measures and analyse the cuts in order to amend them where deemed necessary. This does not appear to have occurred.

A report written about the impact of these cuts on single mothers noted that:

The Government of British Columbia has refused to respond to the recommendations of the CEDAW Committee and other United Nations bodies. The result is that... BC is in clear violation of international human rights treaties. The government has failed to respect its obligations under international human rights law....<sup>7</sup>

In addition to the budget cuts and service reduction, there have been a great deal of changes to the system. As pointed out in the Hon. Ted Hughes’ report, the system has been “buffeted” by changes.

This, then, is the context and historical backdrop within which the move to transformation of governance for Regional Aboriginal Authorities is being planned.

The United Nations Human Rights Committee, in 2005, and the United Nations Committee on Economic, Social and Cultural Rights, in 2006, noted that the severe cuts to welfare programs in British Columbia have had a detrimental impact on women and children, in particular Aboriginal peoples.

# Regionalization: A Bumpy Road

THE ROAD TRAVELLED thus far for the creation of Regional Aboriginal Authorities (RAAs) for child and family services has been a bumpy road. This section chronicles some of the bumps and has been divided into areas of major concern, from the perspective of informants as well as from the literature canvassed.

## PROCESS

In 2001, the government of BC launched their efforts to create five regional authorities for governance and service delivery over matters related to children and families. These would be “blended authorities”—that is, they would serve the general population, including Aboriginal people. This was part of the newly-elected Liberal government’s efforts to decentralize services.

As Hughes noted five years later,

Decentralization is sometimes seen as an offloading of responsibilities without a commitment to corresponding funding, and recent history offers some support of this view.<sup>8</sup>

Hughes further observed that decentralization has evolved without a guiding plan or apparent strategy and noted that the process that has occurred to date has proceeded in “fits and starts.”<sup>9</sup> He provided a set of recommendations to improve the process of decentralization. It became clear to me, in reviewing informants’ concerns, that the provincial government has apparently not paid a great deal of heed to his road map.

## Tsawwassen Accord and MOU

In response to this government initiative for blended authorities, the Aboriginal community, including land-based First Nations, Métis and Urban Aboriginal peoples, stood together and signed the Tsawwassen Accord (2002). They rejected “unequivocally” the proposal for blended Regional Authorities and accepted in principle the creation of five separate Regional Aboriginal Authorities. The Accord also confirmed that “Aboriginal Nations have an inherent right of self determination including jurisdiction relating to the children and families of those Nations.”

Grand Chief Stewart Phillip, an informant for this report, was present at the meeting that resulted in the Accord. He saw this as “the beginning of the resurgence of unity and solidarity [among Aboriginal peoples], in the province.”

Following the Accord, a Memorandum of Understanding (MOU) was signed by the Union of BC Indian Chiefs, the First Nations Summit, the Métis Provincial Council, and the Province of BC. The MOU set out a process to establish a joint dialogue and decision-making process regarding both general and systemic issues relating to the safety and well being of Aboriginal children and families that:

- a) is on a government to government basis;
- b) recognizes that First Nations, the Métis Nation, Inuit and other Aboriginal peoples assert jurisdiction over their children and families, regardless of residency;
- c) recognizes the importance of transferring the delivery of services to Aboriginal communities;
- d) draws on the expertise of Aboriginal service delivery agencies and research institutions; and
- e) reflects the historic and new relationship established at Tsawwassen on June 11, 2002.<sup>10</sup>

The MOU set out the purpose for their joint dialogue and decision making-process, which was to focus on:

- a) reducing the number of Aboriginal children in care and returning Aboriginal children to their home communities where it is appropriate to do so; and
- b) other topics or issues agreed to by the Parties.<sup>11</sup>

A Joint Aboriginal Management Committee (JAMC) was created as a result of the MOU, which was comprised of the Ministry, Aboriginal leadership and service providers. The mandate of the JAMC was set out in the MOU and included the following:

- c) ...serve as a forum for dialogue and exchange of information among the participating organizations and, once established, Regional Aboriginal Authorities;
- d) enable the participating organizations and, once established, Regional Aboriginal Authorities to keep their respective constituencies informed regarding the dialogue process....<sup>12</sup>

Quite clearly, the development of RAAs was included in the mandate of the JAMC. There were other laudable goals articulated which have also not been achieved, such as establishing priorities and monitoring the progress on reducing the number of Aboriginal children in care. The MOU was to be renewed annually, which has not occurred.

In discussions with informants, the work of the JAMC does not appear to have been successful for a number of reasons. For instance, concern was raised that there have been too many people at the table. Some informants felt that the membership of the committee should have been restricted to the Aboriginal leadership, and many felt that the agendas of the meetings were ministry-driven. As one informant noted:

I don't think that JAMC has been a very strong advocate on behalf of the Regional Aboriginal Authorities. Originally the JAMC was set up as the political leaders getting together to talk about what the issues were and trying to come up with solutions, but what has happened is that we have all these interest groups at the table now and we can have upwards of 75-80 groups at the table and politicians can't have discreet conversations to allow Aboriginal leaders to do the business... I think that we have seen that over the period of the last three or four years where the JAMC could have been a very effective piece of the process but has become inept because of the lack of direction and the lack of ability to make decisions....

Grand Chief Phillip acknowledged that one of the reasons the process has been difficult to move forward is because of its organizational evolution. He explained that at the time of the signing of the MOU there was no First Nations Leadership Council (FNLC); the Council was not formed until 2005. The FNLC is comprised of leaders from the First Nations Summit, the Union of BC Indian Chiefs and the BC Assembly of First Nations. He said that if it had been in existence, the FNLC "would have been better positioned to deal with this issue." He also acknowledged that:

If you reflect back to the MOU, if we had to do it all over again, we would have taken greater time with the MOU. We weren't really involved with that, that was mostly the province's doing.

Chief Philip added that the leadership should have developed detailed terms of reference for the JAMC but did not do this.



The organizational structure, thus, had its shortcomings from the outset. The transformation process was proposed by the Ministry. The Aboriginal community was pressured into what could be best described as a knee jerk reaction to the proposed model of five Regional Authorities. Thus were created the first bumps and forks on the road to Aboriginal control of child and family services.

## Participants

The proposed RAAs were planned for five regions that coincided with the five health regions established by the province. These regions include: the North, Interior, Fraser, Vancouver Coastal and Vancouver Island. There was no acknowledgement of the fact that some land-based First Nations tribal councils or bands would be arbitrarily divided as a result of these boundaries.

The five RAAs established Aboriginal planning committees. These committees each have a chair, of whom three were informants for this report. The committees were to include representation from land-based First Nations, Métis and Urban Aboriginal peoples. The committee members were mandated by government, and arguably by the Aboriginal community, to work toward the transfer of Ministry resources for child and family services. Although in some ways it is laudable that the Aboriginal community appears to have agreed to work together, the various Aboriginal stakeholders have disparate views and interests.

Interestingly, there has been one group of stakeholders largely absent from the planning process—First Nations Directors of child and family services. This omission will be discussed later in this paper. It is an omission that has perhaps caused the most significant bump in the road.

As part of the transformation process the Ministry also set up their own Youth Advisory Council and an Elders Advisory Council. One of the informants, who works closely with youth in care, made this observation:

...often young people who are already in a vulnerable position, they are often the last to know, last to be asked and the last to be involved in the actual process of regionalization, even in areas where there are good intentions, youth advisory committees etc....

One of the informants for this report sits as a member of the Elders Advisory Council that was formed by the Ministry. It is their observation that the Ministry has not utilized them in an advisory capacity. They noted that the committee does not have a clear mandate, and that most of their time has been spent being “trained” as opposed to being utilized for their expertise. They opined that the group is not representational, because most of the members come from the same community and are related to each other.

The proposed RAAs were planned for five regions that coincided with the five health regions established by the province. There was no acknowledgement of the fact that some land-based First Nations tribal councils or bands would be arbitrarily divided as a result of these boundaries.

## Timeliness

As mentioned earlier, it has been almost seven years since the RAAs were proposed, and they have still not been established. Some informants pointed out the benefits of the slow process.

Bruce Dumont, leader of the Métis Provincial Council, pointed out that it's important to "do it right." An urban representative advised that the time it has taken has allowed for the ability to gain knowledge, conduct research, and engage in meaningful debate.

Most of the informants, however, were in agreement that the process has taken much longer than anyone, even the Ministry, anticipated. One informant observed that:

My thoughts are that watching it evolve over the years, there has been a lot of two steps forward, one step back, a bit of a dance, as the political will shifted to make it happen.

This same informant noted, in contrast, that there are areas in the province where the speed of regionalization has been too fast:

In some areas, I am alarmed at the speed that regionalization is taking place, the lack of communication with the children and the families about what it is going to mean for them, how things are going to be different for them and a general confusion in the public about what it all means and who to go to for help and who is responsible.

For such an enormous and important endeavour there have not been any firm timelines established. Where there have been—for instance, proclamation of enabling legislation—they have not been met.

## Clarity

The Hon. Ted Hughes wisely advised that:

The provincial government actively collaborate with Aboriginal people to develop a common vision for governance of the Aboriginal child welfare system; and whatever Aboriginal child welfare model evolves from that process must be the subject of widespread community consultation before its enactment.<sup>13</sup>

Despite his sage advice, it is apparent, from discussions with informants and an examination of the literature, that there doesn't appear to be much advancement on this issue. It was readily apparent, from discussions with informants, that the process of "transformation" has been marked with confusion and a lack of clarity. As one informant noted:

For such an enormous and important endeavour there have not been any firm timelines established. Where there have been—for instance, proclamation of enabling legislation—they have not been met.

I think it has been very disorganized; part of the problem is that when they first started the process there were a couple of questions that should have been asked that were not asked... So because these questions were not asked from the very beginning, and there has been no clear answers as to how it was going to work, it became a very confused process and each deputy minister or minister that comes in comes in with an assumption that things have to be done a certain way... we just perpetuate the confusion by continuing on a process that not everybody is in favour of.

A similar sentiment was raised by one of the Chairs of an RAA Planning Committee who lamented that:

There have been a lot of twists and turns and changes on the ministry's part, much like a game of baseball where the rules keep changing. It just seems very convoluted. It's been that way the entire time. Each time there was a change of minister and/or senior staff or change in conceptual ideas, it seems the whole process changes to accommodate that.

Without clarity, without guideposts, or timelines, and more importantly without community vision, the road travelled thus far has been painstakingly slow and foggy.

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## Summary

Grand Chief Stewart Phillip summed up his observations on the process to date:

The journey... up until now has been fraught with issues and problems. There were a couple of things that the province did that completely side-swiped the process. It has been very difficult for us on our side of the table, to work of the issues and differences between ourselves... So, I guess the point of all of this is that it is the most difficult and frustrating process that I've ever been involved in.

It became clear, in reviewing the informant interviews, that for most of them the process has been frustrating and taken much too long.

The original top down approach by government caused the Aboriginal community to react, perhaps too quickly, to the notion of regional authorities. Since then the organizational structure to address system change, on both the Ministry and Aboriginal side, has lacked direction and clarity.

There have been some efforts to remedy this. In January 2008, the First Nations Leadership Council held the Indigenous Child at the Centre Forum. Grand Chief Phillip stated that "the goal of that forum was to bring the political leadership together to give them the opportunity to offer their comments and concerns

about regionalization.” However, some participants were disappointed that the Forum did not actually focus on specific issues and concerns relating to the Aboriginal regionalization process.

In May 2008 a draft paper was circulated that included some strategic goals and an action plan resulting from the Forum. The paper speaks to First Nations assertion of self-governance in the area of child and family services. References to Regional Aboriginal Authorities are included in the action items under the goal of creating “governance structures.” Another Child at the Centre Forum was held in July, the outcome of which was unavailable at the time of writing this report.

In the words of the Elder who was interviewed for this paper, during that time “the silence of our leaders has been deafening.”

The process, after the expenditure of significant time and resources, does not appear to be much further ahead than when it was started. This is illustrated by the many “action items” identified in the Indigenous Child at the Centre Action Plan. These matters should have been attended to at the outset, and were not. As Opposition Critic Nicholas Simons pointed out:

There were so many signposts along the way that said to be careful and no one paid attention.

As a First Nations lawyer, I wonder why our leaders have not been more attentive to this lack of progress. Although I applaud them for now paying attention, it has been over seven years since the process began. In the words of the Elder who was interviewed for this paper, during that time “the silence of our leaders has been deafening.”

## GOVERNANCE

The Representative for Children and Youth observed (2007) that:

I understand that recent discussion between the Ministry of Children and Family Development and Aboriginal leaders on the regional Aboriginal Authorities have not yet resulted in an agreement on a new working model of governance. There may need to be reconciliation of strongly differing viewpoints....<sup>14</sup>

Chief Judith Sayers observed that there continue to be unanswered questions and not enough for the development of a model (or models) for the RAAs or alternatives.

To date there have been only two Interim Aboriginal Authorities formally established. The Vancouver Island region achieved Interim Aboriginal Authority status in June 2007 and the Fraser region achieved Interim Aboriginal Authority status in September 2007.

The two Interim Authorities signed agreements with the provincial government (Government’s Letters of Expectations) which specify that the Interim

Authorities must “conduct their operations and financial activities in a manner consistent with the legislative, regulatory and policy framework established by the Government.”

The framework, therefore, is a delegated model that does not appear to provide a great deal of room for an Aboriginal approach to the delivery of services. The following analysis of informant interviews suggests that this is not what the Aboriginal community wants.

### Buy-In

As noted above, there is, at this late stage in the process, a lack of buy-in from all Aboriginal stakeholders. Even the two regions that have moved to formalized Interim Aboriginal Authority status do not have the necessary buy-in from their communities, with some First Nations, First Nations agency Directors and Métis directly opposed to their establishment. Grand Chief Stewart Phillip noted that on Vancouver Island there are divisions.

A recent article in the Chilliwack Times, “Family Fight Gets Uglier: Aboriginal War of Words Heats Up,” notes that representatives from many Sto:lo Bands, who represent the majority of Aboriginal peoples in the Fraser region, as well as the Métis, “have stood in strong opposition to the FRIAA [Fraser Region Interim Aboriginal Authority].”<sup>15</sup> Sto:lo Chief Tyrone McNeil is quoted as saying it is:

... a non-starter, a costly bogus social enterprise that enjoys virtually no support by the First Nations, the local Métis Nation and urban Aboriginal people.<sup>16</sup>

President Kevin Patterson of the Métis Nation of the Fraser Valley is quoted as stating “let’s get the story straight, the existing authority never did get the support... It did, however, get a large chunk of cash from the Ministry.”<sup>17</sup>

Chief Judith Sayers underscored that not having the necessary buy-in creates the risk that the Regional Authorities will not be perceived as very credible in the long run.

The Hughes Report highlighted the need to develop a common vision—it is obvious this has not occurred.

### Ministry-Driven

Another concern clearly articulated by almost all of the informants is the perception and/or reality that the governance structure has been ministry-driven. They expressed their concerns about the consequences of having a top-down approach. Namely, they argued that there might be little flexibility for the Aboriginal community to develop their own models of services, policies and standards.

The concerns expressed by informants included the following:

The risks are the acceptance of a crown corporation model as the only solution for the authority. There has been no exploration of other models. That model does not have within it any real power or authority or ability to make the necessary changes to improve the lives of Aboriginal people in the community and local decision making. It also doesn't respect culture because it is based on a Western European model of helping....

Without the active collaboration of Aboriginal peoples in the process and in the development of models, the end result will be failure.

A First Nations Agency Director was more forceful in their stated concern:

Regionalization is a fancy word for colonization, the power stems from a central political agenda at whatever cost. This is contrary to the notion of citizenship of First Nations and the members of the Nation are acculturated and homogenized, a contemporary form of genocide.

Without the active collaboration of Aboriginal peoples in the process and in the development of models, the end result will be failure.

John Doyle, the provincial Auditor General, implied that the current system is not working in his 2008 report, *Management of Aboriginal Child Protection Services: Ministry of Children and Family Development*. Yet it is apparent, from the responses of informants, that the Ministry is reluctant to step aside. In short, these governance models run the risk of becoming business as usual, travelling on the same road, with the Aboriginal community taking on the role of paving contractor.

## Jurisdiction

In the 2002 Memorandum of Understanding between the Minister of Children and Family Development and the Aboriginal leadership, the Province agreed to recognize a "government to government" relationship, as well as Aboriginal peoples' assertion of jurisdiction over child and family matters regardless of whether or not the child was living on-reserve.

In a review of the restructuring of the child welfare system in Alberta in 1997, legal scholar Marlee Kline pointed out that the Alberta government's discussion of self-government didn't actually bear much likeness to the Aboriginal communities' notions of the same. She stated that:

... this recognition of the importance of Aboriginal child welfare appears to be driven more by the legitimacy that such association accords with the Alberta government's own child welfare agenda than by a genuine change in approach and attitude towards First Nations.<sup>18</sup>

Reflecting on the informant interviews and the literature canvassed, this also appears to be the case in BC. There does not appear to be any real flexibility for Aboriginal communities to exercise, or map the road to, self-government as we know it.

The First Nations Directors Forum (a forum for Directors of First Nations child and family service agencies) set out similar concerns in a position paper presented to the Deputy Minister of Children and Family Development, Lesley du Toit, in 2007:

Throughout most of this Regionalization process, MCFD and the Planning Committees have insisted that RAAs will be different and they will be a step forward for community ownership. As a consequence of a conflicted history, the Forum naturally looks at MCFD driven governance changes with a healthy suspicion. Rather than seeing Regionalization as a step forward, it is perceived by the Forum as a step backwards with the re-creation of a Crown Agent—this one dressed in Aboriginal clothes—standing in between a First Nations right to engage in government to government negotiations.<sup>19</sup>

Some view the governance model, however ill-defined, to be a transition towards full jurisdiction. Chief Judith Sayers stated that she saw it as an interim solution with the caveat that it's a difficult model because it is a delegated authority.

Grand Chief Phillip echoed Chief Sayers observations and said that he would like to see the RAAs as a transition to full jurisdiction.

To truly effect change, the governance models would need to be flexible enough to ensure a healthy and effective transition to self-government. Many First Nations in BC are engaged in the treaty-making process. Governance over child and family services will be included in most (if not all) of these treaties. The Nisga'a set a precedent in their final agreement that provides them with the right to make laws in this area as long as those laws include standards to ensure the safety and well-being of their children. If the government remains inflexible in their approach, and maintains a rigid position with regards to the model(s), the ultimate goals and aspirations of First Nations will not be achievable. In the words of the Elder who was interviewed:

The first most important thing is to deal with us as nations not as regions. Unless that happens, nothing is going to change....

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## Alternatives

An important issue that was raised by informants was the lack of any exploration by the provincial government of alternatives to the regionalization process. The First Nations Directors have consistently asked for the process to be revisited and other alternatives explored.

Mary Ellen Turpel-Lafond, the Representative for Children and Youth, in her report on the Ministry's progress in implementing the recommendations made in the Hughes Report, said:

The durable consensus essential to moving forward has not yet been reached, perhaps because governance models under discussion are not clearly linked to community and self-government rights and processes, or do not appropriately build on the experience of delegated agencies. Moreover, very little work has been done to link any discussion of governance models or options to specific improvements in the lives of the most vulnerable Aboriginal children. Indeed clear expectations are lacking in this regard.<sup>20</sup>

She recognized in her report the valuable planning work that both the Ministry of Health and the Ministry of Education had done anchoring their work with strategies and:

... in data indicators regarding Aboriginal health and education gaps, and allied performance measures, so that changes in service delivery can be evaluated to determine if they are effective and responsive in closing those gaps.<sup>21</sup>

This same work has not been done in the development of a governance model(s) for RAAs or other alternatives.

## Legislation

During the Spring 2008 sitting of the BC Legislature, legislation was to be tabled which would have enabled the establishment of RAAs. According to press reports and discussions with informants, there was insufficient consultation on this legislation. This caused a public backlash from some of the Aboriginal leadership. Grand Chief Phillip wrote a letter to the Minister of Children and Family Development stating that the Union of BC Indian Chiefs "vehemently opposed" the introduction of RAA legislation. He also noted that the government was moving ahead with the legislation despite the fact that the First Nations Leadership Council (FNLC) had met with the Ministry and said that they could not support the legislation at this time. In a *Vancouver Sun* article the following was reported:

He couldn't support the legislation, partly because of concerns about inadequate funding. He was also dismayed the government was rushing through legislation that the council said it didn't support.<sup>22</sup>

Grand Chief Phillip underscored, in his letter, the lack of meaningful consultation on the scope and contents of the proposed legislation. Chief Judith Sayers confirmed this, noting that it wasn't until just prior to the spring sitting of the legislature that they saw the Bill for the first time.



The First Nations Directors Forum, in their 2007 position paper to the Deputy Minister, raised a number of concerns regarding the drafting instructions for the proposed legislation.

In sum, First Nations agencies do not have a choice to opt out and RAAs will have the legal authority to impose themselves as child and family service providers, and policy standard developers for First Nations Communities.<sup>23</sup>

The Representative for Children and Youth's report on the Hughes recommendations was cautious about the development of legislation.

Drafting or crafting legislation to pass to Aboriginal peoples a child welfare system or an interim authority structure that lacks clear performance measures, prevention resources, modern information technology, and capacity to secure better outcomes for children is not adequate. This may result in few—if any—improvements to the lives of these children and youth. While recent discussions are positive, there is not enough agreement or planning to meet these important conditions for an effective and responsive system for Aboriginal children and youth.<sup>24</sup>

Grand Chief Phillip's interview for this report occurred in April, before the legislation debacle. He said that he had recently attended a FNLC meeting where they thought they were going to talk with the Minister about funding; however:

... [we] were shocked to hear him talk about the provincial government's notions of logging the legislation into the legislature in the next three weeks. Given everything that I've told you, you better believe that he got an ear full, to say it would fly in the face of everything that has happened to this point if they were to do that unilateral, pre-emptive move. It would pretty much blow everything out of the water completely.

Chief Sayers reported that not only did the FNLC advise the Minister that they wouldn't support the legislation, they also met with Deputy Minister Lesley du Toit before the Minister planned to introduce the bill and told her that the bill was not supported by the FNLC.

Minister Christensen himself is quoted in the *Vancouver Sun* as saying:

In hindsight now, both myself and, I think, members of the leadership council probably could have done more to ensure that we were all meeting on a more regular basis to talk about how the legislation was progressing.<sup>25</sup>

## BUDGET/CAPACITY

Many concerns were raised by informants regarding the costs of the transformation process, as well as the cuts to child and family services that were the context for this process. Some argue that these budget cuts were in fact the impetus for the transformation process.

There were also concerns raised about how, and whether, this new arrangement will affect First Nations agencies funding and service provision.

Opposition Critic Nicholas Simons is reported in Hansard Debates (May 2008) as stating that the transformation process to date has cost "... after six years of failure... \$39 million of wasted money or money misspent..."<sup>26</sup>

There is no doubt that the process has been costly and has suffered from setbacks such as the scandal in 2004, when the Ministry cut funds to the Vancouver Coastal Aboriginal Planning Committee after an audit revealed serious financial mismanagement by the dbappleton consulting firm.<sup>27</sup>

After the release of his report, Ted Hughes said that the provincial government "took the knife too far [in cutting spending], after it was elected in 2001 and that it must now restablize the system."<sup>28</sup>

When the Premier was in opposition he chastised the former government for not spending more on children and said, "It's clear that to do the job of protecting children, more resources are going to be required... Big changes cost money if we're going to protect kids." However, when the Premier was elected into office he cut the budget for abused and neglected children.<sup>29</sup>

The BCGEU, in a 2008 Information Bulletin, outlined what those cuts have been:

The government's own figures show the child protection budget was cut by \$241.3 million—or 30 per cent—between 2003 and 2005....

Despite the valuable solutions proposed by Hughes, funding for child protection services is still \$50 million a year less for the 2008/09 budget than that spent in 2002.<sup>30</sup>

As pointed out in the BC Association of Social Workers submission (2006) to the Hughes Commission, the budget cuts to community support agencies resulted in a diminished capacity for contracted agencies to engage at-risk families, which "inexplicably leads to a reactive child protection system that primarily responds when situations have become abusive, the family is in crisis and the child is likely in need of removal."<sup>31</sup> Within this context the stated goals of the MOU have failed miserably.

In recent reports the federal and provincial Auditors General raised concern about the lack of adequate resources to support Aboriginal child and family services.

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BC Auditor General John Doyle recommended that the Ministry make a business case for additional resources to support Aboriginal child and family services:

As part of this case, the ministry needs to state clearly where it is unable to meet its legislative and policy-driven responsibilities to Aboriginal children and their families with the funding currently available.<sup>32</sup>

In addition, Doyle observed that neither the provincial or federal governments take policy requirements sufficiently into account when establishing levels of funding for child and family services. Furthermore he stated that:

Funding for services needs to match the requirements of the policies and also support the delivery of services that are culturally appropriate which is known to take more time and resources. Current funding practices do not lead to equitable funding among Aboriginal and First Nations communities.<sup>33</sup>

Those of us in the First Nations community have been making this argument for years, and have witnessed little if any improvement. The authors of *First Nations Child and Family Services: Joint National Policy Review* advocate for increased and equitable resources:

Funding is an issue that has plagued Aboriginal communities. First Nations agencies do not receive adequate funding to deliver services. Specifically they do not receive adequate resources to provide preventative, alternative and least disruptive/intrusive measures for children at risk.<sup>34</sup>

What is concerning about these recent admonishments is that the transformation process has continued for almost seven years, and information has yet to be collated regarding the true costs of services and what projected costs will be for the Aboriginal community to “do it right.” It is common knowledge that Aboriginal agencies will require extensive resources in order to address the many social problems that go hand in hand with the poverty experienced by Aboriginal peoples. Some years ago Haida Elder Lavina White recommended that:

In determining levels of financial resources available to our communities for family and child services, governments must be cognizant of the damage done to our communities by the residential school process, and by the process of removing Aboriginal children from their families through apprehension and adoption.<sup>35</sup>

Ted Hughes echoed White’s concerns in his report:

Aboriginal child welfare agencies in many cases face greater obstacles than non-Aboriginal agencies and yet do so with fewer resources. Some operate in small, remote communities that do not have the level of health, educational and social services that exist elsewhere. And whether in small communities or in downtown Vancouver, Aboriginal agencies can find

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in their caseloads some of the most challenging cases, as a result of poverty, substance abuse and other social ills.

I support the principal that Aboriginal communities should have greater control of delivery of services to children and families, but it has to be done with the resources the work requires.<sup>36</sup>

The BC Association of Social Workers in their submission to Hughes recommended “the government engage a one year process whereby a true costing out of necessary child welfare services is conducted.”<sup>37</sup>

One of the informants had this to say:  
*I am concerned that we may be setting some Aboriginal agencies and therefore the children and families, up for failure, especially in terms of lack of finances for the services that hasn't come in terms of realistically doing a cost analysis of what is needed to support families.*

One of the informants had this to say:

I am concerned that we may be setting some Aboriginal agencies and therefore the children and families, up for failure, especially in terms of lack of finances for the services that hasn't come in terms of realistically doing a cost analysis of what is needed to support families. It is not just about the finances but also capacity building and such. The extra financing is required to do training, to have people on the ground and to provide the support we expect.

The issue of resourcing is complicated by the fact that the federal government funds on-reserve services while the provincial government funds off-reserve services. On-reserve funding is further complicated by jurisdictional conflicts and gaps. Historically the federal and provincial governments have engaged in contentious debates over who will pay for what. I applaud the federal and provincial governments for endorsing *Jordan's Principle*, which is an alternate dispute mechanism I drafted with my colleague Kylie Walman, designed to address this issue.<sup>38</sup> Now it is important that it actually be implemented.

The First Nations Directors have consistently raised concerns about how their on-reserve funding will be affected by regionalization. In 2003, Gordon Hogg, Minister of Children and Family Development, stated that:

As we move to authorities which are aboriginal, the aboriginal-delegated agencies will be funded by aboriginal authorities in those regions... The delegated agencies receive funding directly from the state today. They will in the future receive their funding directly from the aboriginal authority.<sup>39</sup>

The scenario depicted by then Minister Hogg should be very troubling to First Nations agencies. First Nations agencies do not receive adequate funding from the federal government. The fact that the province has cut their funding makes this assertion even more troubling and is complicated by the federal government's constitutional responsibility to fund on-reserve. There needs to be clarification, transparency, and resolution of this important issue.

## LABOUR RELATIONS

Labour relations matters appear to have been left largely unaddressed in the debate about the process of creating RAAs. A discussion paper from Saskatchewan, entitled *Barriers to Aboriginal Employment Resulting from Collective Agreements and Legislative Provisions*, specifically notes that the goals of Aboriginal communities when resuming governance over service delivery include:

- First, aboriginal communities want to gain more control over the social, cultural and economic aspects of their lives;
- Secondly, aboriginal communities want to improve the quality and cultural fit and effectiveness of these programs; and
- Thirdly, aboriginal communities want to create employment opportunities for qualified aboriginal persons.<sup>40</sup>

The discussion paper goes on to note that in Saskatchewan, when a business or service is sold, the employees, pursuant to their collective agreement, go with the transferred service. A similar process, whereby non-Aboriginal Ministry workers are moved to Aboriginal Authorities is being proposed in BC. Yet as this paper argues, this kind of collective agreement and employment practice “can effectively prevent the Aboriginal community from achieving any of the above objectives.”<sup>41</sup>

If non-Aboriginal Ministry workers are moved over to Aboriginal authorities, how then is the notion of Aboriginal governance truly enhanced? The BC Association of Social Workers pointed out:

Keeping Ministry workers in jobs is not the responsibility of Aboriginal communities or agencies. It is inappropriate to demand that they provide the solution to this personnel dilemma. To delegate responsibility to the Aboriginal community but force it to take on workers who are still employees of the government makes a mockery of community governance.<sup>42</sup>

At this late stage in the process of transformation in BC, it remains a mystery and a glaring omission that there have not been significant discussions around this issue.

## DELEGATED AGENCIES

The Hon. Ted Hughes, Mary Ellen Turpel-Lafond (the Representative for Children and Youth) and the 2002 MOU all stipulated that First Nations Directors of delegated child and family service agencies should be involved. They have not been.

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First Nations Directors have consistently opposed the regionalization process. Curiously, however, in 2006 the Deputy Minister stated that:

Aboriginal communities and the Leadership Council, together with Delegated Agencies and urban service providers are working towards developing regional model/s of decision-making and service delivery which best meets the vision and goals for Aboriginal children, youth and families.<sup>43</sup>

For the most part the Directors have felt left out of the process of transformation and have expressed their frustrations and concerns on numerous occasions.

It is apparent that this is not the case. For the most part the Directors have felt left out of the process of transformation and have expressed their frustrations and concerns on numerous occasions. As early as March of 2002 they expressed their concerns and asked the following important questions—which at this late stage in the process continue to be unanswered:

- What will the relationship with First Nations Agencies look like?
- Will authorities direct service providers?
- Will authorities delegate agency employees?
- If an agency, with the support of its Board and Council does not want to fall under the jurisdiction of an authority, what will be the result?<sup>44</sup>

According to *Regionalization: Fast Facts* (2008), a fact sheet prepared on behalf of the First Nations Directors, they have consistently requested several meetings with officials to discuss these matters, without any success.

The questions posed by the Directors are questions that informants for this report raised as well. Chief Judith Sayers stated that she still hasn't had any satisfactory answers regarding how the regionalization process will affect First Nations agencies:

That is a question that I've never been able to have answered in a good way and we've had this discussion in Tribal Council before and I said to them, "is it going to take away jobs from us? If it is we don't want it." "Is it going to take away any authority from us? If so, we don't want it." "If it's going to be taking away training or our ability to build our capacity, we don't want it." "If it is going to support us in all of those areas, then we want it"... We've asked these questions and I don't think we've ever had a satisfactory answer on those questions... Does the authority stand between First Nations and the province? Does the regional authority take on the liability that the province would take on? It's still not totally clear in my mind on how that's going to work...

Another informant, the Chair of an Aboriginal Planning Committee, noted that there are mixed messages from the Ministry around these issues. The Chair of one Regional Planning Committee acknowledged that the relationship with the Directors needs to be "further defined." Yet again, it's my observation that at this late stage in the process of transformation this is remarkable.

In June 2006 the Directors met, for the first time, Deputy Minister Lesley du Toit, who is reported to have advised them that “agencies have every right to be angry and feel disrespected... whatever was on the table before can be re-visited.”<sup>45</sup>

In September 2007, the Directors sent a letter to Minister Christensen advising him that they rejected the drafting instructions for the proposed Aboriginal Authorities Act and that:

The failure of the Regional Aboriginal Planning Committees and Interim Authorities to engage in meaningful consultation with our communities, and the misrepresentation of the involvement of the First Nations Delegated Agency Directors has grievously flawed the consultation process. Therefore the Forum strongly requests a public inquiry into the process to date.<sup>46</sup>

In January 2008, the Deputy Minister is reported to have written letters to individual Directors, which, according to their 2008 Fact Sheet, “alluded that they were unprofessional and lack leadership for not engaging in regionalization.”<sup>47</sup>

## CHILDREN AND YOUTH

The MOU signed by the Minister and the Aboriginal Leadership (etc.) set the goal of reducing the numbers of Aboriginal children in care. Tom Christensen, current Minister of Children and Family Development, recently acknowledged that:

When we embarked on this journey in 2002 we set a basic goal. That goal was to reduce the number of Aboriginal children in care in the province of British Columbia. Together we have failed. We have failed miserably in reaching that goal.<sup>48</sup>

We know now that the numbers have increased. In fact, in 2008 the provincial Auditor General found that 51 per cent of the children in care are Aboriginal, “which is considerably higher than the national average of 30-40 percent.”<sup>49</sup> Opposition Critic Nicholas Simons says that during this period of transformation:

... the percentage of Aboriginal children in care went from 42 percent to 52 percent. There is chaos and disillusionment in the ministry, and there is anger among first nations.<sup>50</sup>

Informants were asked if they felt the move to RAAs would improve the outcomes for Aboriginal children and youth. Their responses were mixed. Several informants gave qualified responses—expressing hope that the move would have positive outcomes. Others responded that they simply didn’t know.

Two informants felt quite strongly that RAAs would improve the lives of Aboriginal children and youth.

Finally, there were those who felt that the RAAs, as presently envisioned, would make no difference in the lives of Aboriginal children and youth, underscoring

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that no one has bothered to ask Aboriginal children and youth what their opinions are:

I don't think it will. I think it's going to be status quo. They have no voice now... if they were to change tomorrow to a regional authority I don't think Jane or John or any child that's in care would even notice a difference and that's the sad part.

There were those who felt that the RAAs, as presently envisioned, would make no difference in the lives of Aboriginal children and youth, underscoring that no one has bothered to ask Aboriginal children and youth what their opinions are.

An informant, who advocates on behalf of children and youth, had this to say:

Being asked what handing over their file to another agency means, it means they have to develop new relationships in a situation where they already had to develop numerous new relationships. This is just one more hoop that they have to jump through because the system is doing what it does instead of doing what is best for them....

Nicholas Simons said:

I don't think it will have any difference. I don't think it will reduce the number of Aboriginal children coming into care; it won't increase the safety and strength of families. What it will do is create more conflict over the scarce resources that exist.

In 2008, when Auditor General John Doyle examined the Ministry's latest annual service plan report, he noted that the plan for reporting on client outcomes included only two measures related to Aboriginal child protection:

- 1) the number of Aboriginal children safely placed with extended family or community as an alternative to coming into care over the last four years; and
- 2) the percentage of Aboriginal children in care served by delegated Aboriginal agencies.<sup>51</sup>

Not surprisingly, the Auditor General observed that the Ministry did not meet its targets.

## CULTURALLY APPROPRIATE SERVICES

There were various opinions voiced by informants regarding the ability that the RAAs will have to deliver culturally appropriate services. Currently, according to the provincial Auditor General, the Ministry is unable to do so. He noted that neither cultural sensitivity nor cultural appropriateness appear to have been formally defined by the Ministry. He observed that:

The ministry measures these concepts by counting the number of Aboriginal children receiving services from Aboriginal agencies. What this does not capture is how well the ministry



is doing when it delivers services, and the improvements it needs to make to meet the Aboriginal children's needs.<sup>52</sup>

This is reaffirmed from a front-line perspective. The BC Association of Social Workers complained, in 2006, that there is no indication that the current allocations of full-time equivalent positions take into account the number of hours needed to understand and plan for meeting a child's cultural needs. They noted that many social workers have agonized over the fact that their workload has made it difficult, if not impossible, to meet with the band, community and extended family members, resulting in the lack of cultural plans and the failure to meet this primary human need.

For the most part, informants did not believe that they would be able to have the flexibility to do much better:

No. Because the regionalization process essentially incorporates the provincial legislation and the provincial policies and the provincial standards.

On the other hand, one of the Aboriginal Planning Committee Chairs was far more optimistic:

Yes it will because we've built in the cultural component, not by having cultural workshops but by gathering information from the community members...

The Auditor General recommended that:

The Ministry in consultation with First Nations and Aboriginal organizations determine the resources (including social workers and support services) required to meet those needs in a culturally appropriate way.<sup>53</sup>

This is sage advice and mirrors advice made by other commentators. For the benefit of children, youth and families, it must be acted upon with haste.

## STRENGTHS

Informants were asked to identify what they felt were the strengths of the transformation process. Grand Chief Stewart Phillip felt it was too soon to ask that question. Others, including Chief Judith Sayers felt that:

The strength is bringing everyone together and collectively building a vision. The other strength is to work with the province to try and find some solutions.

In addition, informants identified the opportunity to care for our own children as a strength.

# A New Road: Recommendations

BELOW I LIST A NUMBER of recommendations that are intended to help identify a new road toward Aboriginal jurisdiction over child and family services. These recommendations stem from careful reflection on and analysis of the opinions expressed by informants, and others, as well as what has been learned from the literature examined. These recommendations are not meant to be exhaustive, and many of them have been made before.

## Creation of a Common Vision

In 2005, just weeks before his death, my dear friend Larry Guno wrote out his thoughts about creating a common vision in order to move the transformation process forward. In his role as Chair of the Northern Aboriginal Planning Committee, he was concerned about the lack of progress, lack of resources, and the increasing frustration of stakeholders in moving the agenda forward. He recommended working together to create a common vision and quoted a labour leader who said “If you don’t know where you’re going, you will surely end up somewhere else.”<sup>54</sup>

The need for a common vision and clarity has been underscored by others such as the Hon. Ted Hughes as well as the Representative for Children and Youth Mary Ellen Turpel-Lafond.

The Child at the Centre Forum, held in January 2008, offered a beginning. The July 2008 Forum was meant to further the discussion, however, from my perspective the agenda was too wide in scope and lacked focus. Another Forum

should be convened in the spirit of true partnership. I recommend that a deliberative dialogue, with focused discussion, occur for the purposes of creating a common vision.

Representative Mary Ellen Turpel-Lafond said, in her report, that she would help in any way that she could. I strongly suggest that she be taken up on this generous offer.

### Determination of the Appropriate Governance Model

Despite how lengthy this transformation process has been there continue to be many unanswered questions about what the governance model(s) will look like. These questions need to be answered in order to give representatives of Aboriginal communities confidence in the process. To not do so runs the risk, as identified by Chief Judith Sayers, that communities won't buy in and the authorities (or alternatives) won't be viewed as credible.

What will the model(s) look like? Will it be merely an offloading of Ministry driven services pursuant to provincial legislation and standards or will there be enough flexibility in the model(s), with resourcing and capacity building for innovative and Aboriginal-driven approaches. Will the model(s) represent a true opportunity for a resumption of First Nations governance of child and family services?

It is clear from the fact that the First Nations Leadership balked at the proposed enabling legislation that there needs to be greater assurances provided, that the model(s) will capture the goals and aspirations of Aboriginal peoples. There need to be assurances that First Nations self-government rights to govern in this area are not abrogated or derogated. There needs to be assurances that there are adequate resources in place and/or anticipated with an acknowledgment that past colonial practices have lead to a greater need in Aboriginal communities to redress poverty and social ills and thus will require "more than."

We know the current system doesn't work, so there needs to be an opportunity, as recommended by the Directors and others, to explore alternatives to the RAAs and/or ensure that the RAAs have enough flexibility and funding to design a model(s) that is culturally appropriate and improves the outcomes for Aboriginal children and youth. To date, the "healthy suspicion" articulated by the First Nations Directors is warranted. If, after almost seven years, the proposed "transformation" has not come to fruition, it is unlikely that it will. Alternatives need to be explored that will ensure the inherent rights of First Nations peoples to govern in this area are not abrogated or derogated.

I recommend the exploration of other model(s) premised on a common vision. Once alternatives have been explored, the federal, provincial and First Nations governments must develop a detailed plan in order to implement the process of transformation.

## Ensuring Adequacy of Budget/Capacity Building

First Nations, Aboriginal Leaders, the Auditors General, Ted Hughes, the BC Association of Social Workers and others have all advocated for increased resources for Aboriginal communities to deliver culturally appropriate services—so they can do things differently and most importantly improve the outcomes for our children and youth. The government must provide assurances that the necessary resources will be there. As the provincial Auditor General recommended earlier this year, the provincial government needs to make their business case; so too do federal and First Nations governments.

I am alarmed that despite all of the time that has been devoted to transformation that this has not occurred. It should have been a foundation upon which to engage in this journey. The fact that the process began during a time of provincial fiscal restraint and cost-cutting measures raises serious concerns. I remind the readers that the context within which this transformation began was such that four United Nations Committees admonished our provincial government for the cuts and their disproportionate impact on Aboriginal women and children.

I strongly recommend that the “business case” be created and that it be done now.

## The Need to Change Direction

*The overrepresentation of Aboriginal and First Nations children in care—and the indications that outcomes are poor—call for all parties involved in the child welfare system to find better ways of meeting these children’s needs.<sup>55</sup>*

I don’t believe that we need to go back to the drawing board; we simply need to change direction and take the road that our ancestors travelled and resume governance over taking care of our children and families based on traditional values in contemporary times. The road towards Aboriginal Authority, on which the Aboriginal community has travelled thus far, has been paved by the provincial government. The journey has been foggy and lacking in clarity. The Aboriginal community must, in true partnership, with the federal and provincial governments, embark in a new direction on a road that will benefit our children, youth and families.

If the Ministry is truly committed to improving the outcomes for Aboriginal children and youth they need to retrace their steps, go back to the fork in the road, the inception of the creation of RAAs and provide Aboriginal communities with the support and capacity to travel on their own terms. This is what the Tsawwassen Accord envisioned. We must not continue to travel on the road

that Manitoba Judge Kimmelman identified had such a devastating effect on Aboriginal children and families:

The road to hell was paved with good intentions and the paving contractor was the child welfare system.<sup>56</sup>

As always I have hope. A great many people have worked incredibly hard in order to try and accomplish something better for our children. In memory of Sherry Charlie and all the Aboriginal children who tragically passed through this world too quickly, we must work together, we must be courageous, we must admit where we have erred, we must explore alternatives, and we must get it right. Our children deserve nothing less.

## NOTES

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- 1 Hughes, 2006.
- 2 Christensen, 2008.
- 3 Province of British Columbia, 2002b.
- 4 Doyle, 2008.
- 5 Ibid.
- 6 Province of British Columbia, 2003d.
- 7 Brodsky, Buckley, Day and Young, (undated).
- 8 Hughes, 2006.
- 9 Ibid.
- 10 Province of British Columbia, 2002c.
- 11 Ibid.
- 12 Ibid.
- 13 Hughes, 2006.
- 14 Turpel-Lafond, 2007.
- 15 Henderson, 2008.
- 16 Ibid.
- 17 Ibid.
- 18 Kline, 1997.
- 19 First Nations Child and Family Service Directors Forum, 2007b.
- 20 Turpel-Lafond, 2007.
- 21 Ibid.
- 22 Fowlie and Cuthbert, 2008.
- 23 First Nations Child and Family Service Directors Forum, 2007b.
- 24 Turpel-Lafond, 2007.
- 25 Fowlie and Cuthbert, 2008.
- 26 Simons, 2008.
- 27 Lee, 2004.
- 28 Cernetig, 2006.
- 29 Smyth, 2003.
- 30 BCGEU, 2008.
- 31 BC Association of Social Workers, 2006.
- 32 Doyle, 2008.
- 33 Ibid.
- 34 McDonald and Ladd, 2000.
- 35 White and Jacobs, 1992.
- 36 Hughes, 2006.
- 37 BC Association of Social Workers, 2006.
- 38 MacDonald and Walman, 2005.
- 39 Hogg, 2003.

- 40 Saskatchewan, 1999.
- 41 Ibid.
- 42 BC Association of Social Workers, 2006.
- 43 Province of British Columbia, 2006e.
- 44 First Nations Child and Family Service Directors Forum, 2007b.
- 45 First Nations Child and Family Service Directors Forum, 2007c.
- 46 First Nations Child and Family Service Directors Forum, 2007a.
- 47 Ibid.
- 48 Fowlie and Cuthbert, 2008.
- 49 Doyle, 2008.
- 50 Simons, 2008.
- 51 Doyle, 2008.
- 52 Ibid.
- 53 Ibid.
- 54 Guno, 2005.
- 55 Fraser, 2008.
- 56 Kimmelman, 1985.

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## Interview Questions

- What are your thoughts on the regionalization process to date?
- What are the strengths or benefits of the current regionalization process?
- What are the weaknesses or risks of the current regionalization process?
- Do you have concerns about how the regionalization process is unfolding?
- How might the existing regionalization process be enhanced? What needs to be in place for regionalization to occur safely and successfully?
- What effect will regionalization have on delegated agencies?
- How does regionalization address the goal of Aboriginal people to gain jurisdiction over their children?
- How will regionalization contribute to culturally appropriate child welfare practice?
- How will regionalization affect the lives of Aboriginal children in care?

## ECONOMIC SECURITY PROJECT

The Economic Security Project is a research alliance led by the CCPA's BC Office and Simon Fraser University, and includes 24 community organizations and four BC universities. It looks at how provincial policies affect the economic well-being of vulnerable people in BC, such as those who rely on social assistance, low-wage earners, recent immigrants, people with disabilities, seniors, youth and others. It also develops and promotes policy solutions that improve economic security. The project is funded primarily by a grant from the Social Sciences and Humanities Research Council of Canada (SSHRC) through its Community-University Research Alliance Program.

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The Centre for Native Policy and Research is a non-partisan, social justice, progressive Aboriginal think tank. Its focus is on the social, economic and environmental policy and research concerns of Aboriginal people in BC and Canada. The Centre encourages collaborative solutions by bringing people together beyond politics to promote participatory research, policy alternatives and hope.

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