

TRANSFORMING CHILD WELFARE LEGISLATION IN MANITOBA

.....
**Opportunities to Improve Outcomes
for Children and Youth**

Report of the Legislative Review Committee

September 2018



Available in alternate formats upon request.



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Letter from the Legislative Review Committee

On December 21, 2017, then Families Minister announced a formal review of Manitoba's child welfare legislation. As community leaders, we were very pleased to be asked to lead this important initiative. Following our appointment, we spent the next four months holding meetings and reviewing written submissions and online survey responses. In addition to hearing formal presentations in Winnipeg, we met with key stakeholders in Thompson, Dauphin and Brandon. It is remarkable that over 1,540 individuals provided input in such a short frame of time.

As a committee, we are pleased to present the Families Minister the results of the child welfare legislative review. This report summarizes what we heard from youth, grandmothers, service providers, researchers, advocates, Child and Family Services (CFS) agencies and Authorities, and community leaders on ways the legislation should be changed to improve outcomes for children and youth. The report is not an academic or legal document. Instead, it is a tool to reflect child welfare calls to action.

The majority of the stories and information we gathered referenced Indigenous children, youth and families. This reflects the alarming fact that in Manitoba almost 90 per cent of children in care are Indigenous. The causes are deeply rooted in a legacy of colonial practices and policies, such as the legacy of the residential school system and the 60's Scoop. These practices separated children from parents, family, community, culture and language and have been clearly linked to high rates of substance abuse, violence and poverty within Indigenous communities, perpetuating the cycle of children being removed from their familial homes.

Against this backdrop, however, there is firm hope. We heard loud and clear that the system must change in order to better support communities, families and non-governmental organizations to take greater responsibility for their children and youth. It is with this driving spirit that the committee developed its recommendations for fundamental change. Some of our most important recommendations will require a shift towards sustainable, flexible and equitable funding.

We are indebted to everyone who provided input. We are especially thankful to the young people and Elders who participated and shared their views, insights and personal experiences with us. We would also like to thank the organizations and individuals that provided resources, guidance and support so that Manitobans experiencing barriers could participate and complete the child welfare online survey. As we submit this final report, we are ever hopeful that important changes will be made to the child welfare system so that families and communities are truly empowered to care for their children and youth.



Left to right: Andrew Micklefield, Michael Champagne, Natalie Daniels, Sherwood Armbruster, Frances Chartrand, Joanne Crate

Missing are two committee members: Diane Redsky and David Daniels.

Respectfully submitted,

Andrew Micklefield, MLA for Rossmere

Sherwood Armbruster, Community Member

Joanne Crate, Manitoba Keewatinowi Okimakanak (MKO)

Diane Redsky, Ma Mawi Wi Chi Itata Centre (Ma Mawi)

Frances Chartrand, Manitoba Métis Federation (MMF)

Michael Champagne, Aboriginal Youth Opportunities (AYO!)

David and Natalie Daniels,
Southern Chiefs' Organization (SCO)

Introduction

Children and youth are the future of this province. And as adults, we are responsible for protecting them, guiding them and giving them safe places to grow.

Yet in this province, we are failing too many of our children and youth, and in spite of multiple reports and calls for action in the last 20 years, the situation in Manitoba has continued to get worse.

There is almost universal agreement that the current system we have to protect children and youth is not working. Government has not held an overall review of child welfare legislation over the past 15 years. Among Canadian provinces, Manitoba has the highest rate of children in care.

In reviewing Manitoba's child welfare legislation, the committee did not focus on children and families of any region, ethnicity or cultural background in isolation. This report contains numerous recommendations intended to improve outcomes for all children and families.

However, the dramatic over-representation of First Nation, Metis and Inuit children in the child welfare system cannot be overlooked and must be confronted. This requires a recognition of the history of Canada's Indigenous Peoples, including their unique relationship with the Crown and their inherent and constitutionally protected rights, Canada's colonial history, and the harmful impacts of residential schools, the 60s Scoop and intergenerational trauma.

The report begins with a snapshot of the present state of child welfare in Manitoba, a brief review of the undertakings of the committee and an overview of fundamental facts and beliefs that guided the content of this document. Next, the report makes recommendations on the purpose and overarching principles of existing legislation, before moving into specific recommendations, organized around various themes or areas for change, to support a dramatic shift in policy and practice within the Child and Family Services (CFS) System.

"...the legislation as it stands is broken and geared to removing children from their homes! This causes unnecessary trauma for the children, youth and the family. It needs to be revamped to better serve families."

- Child Welfare Survey respondent

.....
"The system is broken in many ways."

- Child Welfare Survey Respondent

.....
"[We need] practical, common sense approaches with every day language and transparency for all those involved."

- Child Welfare Survey Respondent

Although the committee was mandated to make recommendations specific to improving existing child welfare legislation, presenters and survey participants provided valuable insights into areas for child welfare improvement beyond the scope of legislation. Recognizing that the current failures of child welfare are systemic, and that changes to the law must be supported by related improvements in policy, practice and governance, the committee chose to capture these other recommendations, organized around key themes in the final section of this report.

While this document represents only a starting point to reforming the child welfare services in Manitoba, the Legislative Review Committee hopes that it is the call to action that everyone needs to start addressing the situation now.

We can wait no longer. The time to address the issues facing the child welfare system in this province has long since passed and Manitoba children and families need us to act immediately.

Section 1 – Current state of child welfare

*** Note: From here on, the word child refers to any person under the age 18, including youth.

Truth and Reconciliation Commission Principle #4:

“Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples’ education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.”

As previously noted, Manitoba has the highest rate of children in care among Canadian provinces. Figures indicate that there are over 11,000 children in care in Manitoba and this number has been steadily rising over the years.

“Some Facts – Manitoba’s Child Welfare System” (as at October 2017)

- Almost 90 per cent of all children in care were Indigenous.
- Almost 60 per cent of children in care were permanent wards, meaning that they were under the permanent guardianship of a CFS agency and the guardianship rights of their parents had been terminated.
- There was an 85 per cent increase in the number of children in care over the past decade.
- Manitoba’s annual child welfare budget almost tripled over the past 12 years, to \$514 million in 2016/17 (\$46,800 per child in care). This figure did not include federal funding for on-reserve child and family services.

Children who grow up in care have significantly worse life outcomes as adults, compared to children who grow up in forever families. Apprehended children often experience loss and trauma by being separated from their parents and losing contact with siblings, other family members, friends, and community members who may have been involved in their lives.

Studies in Manitoba and elsewhere have found that children in care:

- have poorer educational outcomes than children who have never received services from Child and Family Services (CFS).¹
- experience markedly higher hospitalization rates than the rates for the total population,² and
- are at greater risk of attempting or committing suicide than children and adolescents who are not in care.³

Research indicates that former children in care (young adults) encounter high rates of unemployment,⁴ contact with the justice system⁵ and housing instability,⁶ such as homelessness.⁷

A recent Manitoba-based study shows that children are not the only ones affected by contact with the child welfare system. Mothers of children who are taken into care see a significant deterioration in their health and social situation after apprehension, such as increased rates of depression, anxiety and substance use.⁸

There is little that has not been said on the detrimental impact policies such as the Residential School system and the 60's Scoop have had on Indigenous peoples and

communities. These negative impacts are felt through the overrepresentation of Indigenous families involved in child welfare and the staggering number of Indigenous children in care in Manitoba. The Manitoba government is committed to improving outcomes for children and families involved with the child welfare system, reducing the number of children who are brought into care and reducing the number of days that they spend in care.

Reforming the legislative framework that guides the delivery of child and family services in our province is a key step in improving the path forward for children and families whose lives are profoundly affected by the child welfare system.

Section 2 – Committee Mandate and Legislative Review Process

On December 21, 2017, then Families Minister Scott Fielding appointed a working committee of community leaders to develop recommendations designed to amend the legislation that guides the child welfare system, including The Child and Family Services (CFS) Act, The Child and Family Services Authorities (CFSA) Act, and related regulations.

The purpose of the committee was to:

- Lead targeted consultations by hearing formal presentations from key stakeholders in various parts of the province.
- Request and assess written submissions from individuals and organizations invested in child welfare.
- Review the results of a public survey on child welfare reform.
- Based on all information received, inform the development of this final report with recommendations for change.

Throughout the consultation process, the committee was aware of the fact that the changes it would recommend to the existing legislation would only be an interim measure.

The committee's recommendations aim to support First Nations, Metis and Inuit peoples' long-term objective to have their own child welfare laws and processes that respect their right to self-determination and honour their unique and diverse protocols in caring for their children, families and communities.

Sources of Information

Individuals were invited to provide feedback through:

- a public online survey, posted on the Manitoba government website, from December 21, 2017 to February 1, 2018

- regional consultations in Winnipeg, Thompson, Dauphin and Brandon, whereby individuals, organizations and agencies delivered formal presentations (held in January and February 2018)
- written submissions

Less structured meetings were also held in March and April. A document outlining the voices of youth in care was prepared by the Manitoba Advocate for Children and Youth, for the committee's consideration. For a list of sources that informed this legislative review, please see Appendix A.

Online Survey

The online survey was designed to collect public feedback. A wide range of respondents completed the survey including those who self-identified as child protection workers, parents and grandparents of children in care, youth and foster parents. From December 21, 2017 to February 1, 2018, a total of 1,506 responses were received.

Regional Consultations

In January and February 2018, the committee held meetings and heard 26 formal presentations from key stakeholders, including youth who had aged out of care, grandmothers, CFS agencies and Authorities, Indigenous leaders and advocates, and community workers. Meetings

were held in Winnipeg, Thompson, Dauphin and Brandon. The committee is grateful for having had the opportunity to hear from key stakeholders and ask presenters many questions. Please see appendix A for a list of presenters.

Written Submissions

Other individuals and organizations were also asked to submit their input in the form of a written submission. Seventeen submissions were received. The submissions represent a cross-section of the sectors that support children, youth and their families. Please see appendix A for a list of organizations that prepared written submissions.

To help structure the input received through the online survey, formal presentations and written submissions, the committee relied on themes and questions that formed part of the [Child Welfare Discussion Guide](#). The recommendations section of this report is organized around these themes, among others.⁹

Other documents and instruments

The committee recognized that its work was not being done in a vacuum. Its recommendations should be considered as part of a broader initiative to redefine how, as a society, we ensure the protection and wellbeing of children. The recommendations and information found in numerous documents helped to inform the content of this report.

More specifically, the committee considered law reform from the lens of important rights-based instruments, including:

- The United Nations Convention on the Rights of the Child (UNCRC) and
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The work of the committee was also aided by critical reviews and reports that have been completed, including:

- Reports from the [Office of the Advocate for Children and Youth](#)
- The [Metis Children and Families and the Child Welfare System Report](#) (2013)
- The [Legacy of Phoenix Sinclair: Achieving the Best for All Our Children Report](#) (2014)
- [Options for Action: An Implementation Report for The Legacy of Phoenix Sinclair: Achieving the Best for All Our Children](#) (2015)
- The Assembly of Manitoba Chiefs' [Bringing our Children Home Report](#) (2014)
- [The Truth and Reconciliation Commission's Calls to Action](#) (2015)
- The [Keewaywin: Our Way Home – Manitoba First Nations Engagement](#) (2017)

**** Note: Throughout this report (and where applicable) the Committee has included excerpts from some of these key documents in order to further validate its calls to child welfare action.*

Fundamental Facts and Beliefs

During the consultation process, the committee received tremendous support for making recommendations to the current child welfare system. Presenters and survey respondents generally agreed that the existing CFS legislation, standards and regulations need to be fundamentally reformed, to develop a system that better supports and provides greater control and influence to families and communities.

Regarding meetings held in various parts of the province with key stakeholders, the committee would like to acknowledge what it believes to be the following key facts, beliefs and statements:

- A fundamental distinction exists between child welfare situations that necessitate child protection services and situations requiring support to improve a child’s well-being. There is therefore a strong need to ensure that the CFS system clearly distinguishes between situations where there is an immediate threat to a child’s safety and situations where conditions create a risk of abuse. In cases where risk factors are present, the law needs to reflect the critical role and responsibility of community-based prevention and early intervention services, instead of protective services.
- Prior to colonization, Indigenous communities cared for their children within communities and in accordance with their diverse cultural practices and traditions. The current CFS system focuses on children and their parents in isolation of their families and community. Meaningful solutions to the dramatic over-representation of Indigenous children in care must be grounded in restoring and strengthening these bonds.
- Although the CFS system may be devolved on paper, meaningful devolution (transfer) of resources and authority to Indigenous governments and communities has not been a reality.
- Current child welfare funding models can inadvertently incentivize child apprehensions, which enable CFS agencies to access resources that may not otherwise be available to children and families. Changes to funding models must also ensure sustainable, equitable and flexible funding and resources to support communities to maximize their role and incentivize the success of prevention, early intervention and family restoration efforts.

Analysis and Development of Final Recommendations

All of the survey responses, written submissions and presentation material were reviewed, and analyzed under key themes. The information in this report represents a summary of what was heard and deliberated upon by the committee. Given the diversity of voices, the complexity of the topics under review, and the often detailed responses received during the review process, it is important to acknowledge that this report provides recommendations on the main themes the committee heard, rather than an exhaustive list of every issue raised over the course of the review.

Section 3 – Committee Recommendations

Theme 1: Purpose Statement and Guiding Principles

Purpose Statement

In reviewing the current legislation, the committee found that, while The Child and Family Services Authorities (CFSA) Act includes a purpose statement, The Child and Family Services (CFS) Act does not. In creating a mechanism for change in the legislation, the committee recommends that the purpose of the CFS act be made clear from the outset.

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1. The committee recommends that the purpose of the CFS act read as follows:

- The focus of this act is to protect and promote the safety and wellbeing of children in need of child and family services intervention, by offering culturally safe services that are designed to restore, maintain, support, and preserve the family in the least disruptive manner.
- The act ensures the meaningful inclusion of families and communities in decisions where CFS intervention is required; and, in all cases where the intervention of CFS is not required, family and community are empowered in their primary roles and responsibilities of caring for children.”

Guiding Principles

The principles in the CFS act are the underlying shared values that drive the decisions made under the legislation. Notably, the courts, including the Supreme Court of Canada, have been clear that CFS agencies and courts must apply the principles in the CFS Act when making decisions about children. Care decisions and actions of CFS agencies must reflect these guiding principles. When interpreting child welfare law and its application with respect to decisions made by CFS agencies, the courts must take the principles into account in determining legal questions.

.....

*United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):
“Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.”*

.....

2. The committee recommends The CFS Act Principles be amended to read as follows:

The Legislative Assembly of Manitoba hereby declares that the fundamental principles guiding the provision of services to children and families are:

*** *Bold text signifies changes and/or additions to the existing principles of the CFS Act.*

- The safety, security and wellbeing of children and their best interests are fundamental responsibilities of society.
- The family is the basic unit of society and its wellbeing should be supported and preserved.
- The family is the basic source of care, nurture and acculturation of children, and **parents and families** have the primary responsibility to **ensure the protection and wellbeing** of their children.
- Families and children have the right to the least interference with their affairs.
- Children have a right to a continuous family environment in which they can flourish.
- **Parents and families have the right to be involved in, and informed of decisions made about their children** (New proposed principle).
- **In recognition of the right to self-determination, First Nations, Metis and Inuit peoples** are entitled to the provision of child and family services in a manner which respects their unique status as **Indigenous** peoples.
- Families are entitled to receive preventive and supportive services directed to preserving **and restoring** the family unit.
- Families are entitled to services, which respect their cultural and linguistic heritage.
- Decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status.
- Communities have a responsibility to promote the best interests of their children and families and have the right to participate in services to their families and children.
- **Parents and guardians have rights and responsibilities for the safety and well-being of their children, and children should only be separated from their parents, either partly or entirely, when all other measures are exhausted. Separation from parents should be the last resort.** (New, proposed Principle).
- **The delivery of child and family services in Manitoba should be guided by the calls to action of the Truth and Reconciliation Commission, the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples and the norms expressed in the United Nations Convention on the Rights of the Child.** (New, proposed Principle).
- **Appropriate sharing of information between individuals, Indigenous governments and organizations that are planning or providing programs and services for children is critical to ensuring successful outcomes for children and families.** (New proposed principle)
- And in the provision of services to **First Nation, Inuit and Metis** children and families, these guiding principles are founded on the recognition of **their** children's fundamental need and right to maintain their cultural identity and connections to **their** communities and the necessity of ensuring, wherever possible, the customary involvement of Indigenous communities, **families and extended family members** in caring for their children
- Amendment to new, overarching Principle included in bill 18, The Child and Family Services Amendment Act (Taking Care of our Children).

.....
A key guiding principle in the revision of CFS legislation is the belief that separation from parents and families be the last response and that alternatives should be considered prior to separation.
.....

Theme 2: Legal Definitions

The current CFS act provides definitions of terms that appear throughout the act. These definitions impact ways in which the act is interpreted and services are delivered. Changes to the definitions section of the act will be necessary to properly implement the recommendations outlined in this report. The committee's recommendations are intended to support a meaningful shift in practice within the child welfare system.

It will be necessary for government to undergo a complete review of this section to ensure existing definitions in acts and regulations are modernized and responsive to the existing reality and needs of children, families and communities.

The committee recommends the following changes to the Definitions section of existing CFS legislation:

1. That the definition of "family" in the CFS act be replaced with the definition of a "family member," under section 22 of Manitoba's Employment Standards Regulation (please see Appendix B for an excerpt of this definition). The concept of family needs to be broadened beyond biological ties, and include a child's "family of choice," which includes persons who are considered to be a close relative, whether or not they are related by blood. For example, family may include individuals with biological, extended, blended, foster or adoptive ties to a child.
Phoenix Sinclair Inquiry – Volume 1
Recommendation: That child welfare agencies accommodate reasonable requests by parents or other caregivers and children and youth for participation of an individual they identify as a support in their dealings with the child welfare system.
2. That, throughout CFS legislation, the following words be used to reference Indigenous Peoples: "First Nations, Metis and Inuit." This legislative change has been made in Ontario's child welfare legislation.
3. The child welfare system must respond in different ways to cases requiring child protection due to an immediate safety threat and cases where risk factors necessitate supports to improve a child's well-being. The existing definition and illustrations of a "child in need of protection" therefore must be replaced with a new and carefully researched definition that ensures there is a clear distinction between safety and risk. Furthermore, the Manitoba government should review the section of Alberta's Child, Youth and Family Enhancement Act that provides a definition of "a child in need of intervention," to determine its applicability in Manitoba (see Appendix B for more information).

4. The word “permanent” throughout the act (e.g., “permanent ward”) is detrimental to the efforts of a CFS agency and family to work together towards successful family restoration and reunification. The term “permanency” removes a child’s connection with the family and community. It is therefore recommended that the word “permanent” be eliminated from legislation and replaced with a description that is less demoralizing and focused on reunification with family and community (examples include: “on-going” or “continuing care”). This change would help support a shift in philosophy and practice within the child welfare system. The new term established in this matter should be understood to mean that a family (in the new broad definition of the term, as discussed under page 11) must be a part of the child’s future whenever possible. The new term can also more clearly indicate to the CFS agency that continued involvement of the parent(s) and their family, despite legal status of the child, is to be expected, if in the best interests of the child.

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United Nations Declaration on the Rights of the Child (UNDRC) – Article 9.3 – “State parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.”

.....

5. That work be undertaken to define and use the term “culturally safe” with respect to any services provided under the legislation. Cultural safety encompasses cultural awareness, cultural appropriateness and cultural sensitivity, but goes further to consider how social and historical contexts, as well as structural and interpersonal power imbalances shape experiences. When offering services, practitioners who espouse the philosophy of cultural safety are self-reflective and self-aware with regard to their position of power and the impact of this role in relation to service recipients.¹⁰
6. That the word “apprehension” throughout the legislation be replaced with the phrase “separation from parents and caregivers.”
7. The current legislation does not include the terms “reunification” or “restoration”. These critical concepts need to be introduced and emphasized throughout the legislation, in order to support and promote a significant shift in practice to parent, family, community and local decision making.

Cultural Safety

- Encompasses cultural awareness, cultural sensitivity and cultural appropriateness.
- Considers how social and historical contexts, as well as interpersonal power imbalances shape experiences.
- Service providers are self-reflective and self-aware with regard to their position of power and the impact of this role in relation to service recipients.

Theme 3: Community Involvement

Prevention and early intervention can stop children from experiencing risk factors that may lead to mandatory CFS intervention. There is great value in supporting families and communities before risk factors become serious concerns that require child protection.

Although parents have the primary responsibility to care for and protect their children, there is a wider role that extended family members and communities can and must play, in promoting the safety and wellbeing of children in Manitoba.

Family, extended family and community involvement is a key factor in planning for and making decisions related to a child's safety and well-being.

Presenters, survey respondents and members of the committee regularly acknowledged that prior to colonization, Indigenous communities cared for their children in accordance with their diverse cultural practices and traditions. Many responses described how colonial policies and practices that disrupted traditional systems of care have contributed to structural conditions which perpetuate the overrepresentation of Indigenous children in care.

The legislation needs to enable and support communities to develop systems and structures that reflect the child caring roles in their areas. The objective should be to recognize the diversity of communities such as rural, urban, northern,

isolated, Indigenous, non-Indigenous and newcomer settings, and to accommodate these differences through equitable laws, policies, practices and funding models.

In addition to the role of families and communities in creating a safe environment for children, the committee also recognizes the value of the support systems that are made available throughout the province through both mandated and non-mandated services.

The committee heard, over and over again, that wherever possible, non-mandated community-based service providers should be the only players engaged in prevention, early intervention and family restoration work, because they are part of the community and often better received and trusted by families. Non-mandated agencies tend to take a strength-based approach to the provision of support that should be encouraged in the delivery of all services.

Non Mandated Services

Services that are not made mandatory by law or regulation, and include services and supports provided by community based agencies and organizations.

.....
United Nations Convention on the rights of the Child (UNCRC) – Article 5 – “State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”
.....

.....
Phoenix Sinclair Inquiry – Volume 1

... “The commission heard repeatedly that mistrust of the child welfare system is a barrier that prevents many families from engaging with that system in a productive way.”

... “I [as the Inquiry’s commissioner] learned of the valuable role played by community-based organizations that are trusted by families and can contribute to efforts to prevent child maltreatment.”

... “The ability of community-based organizations to build trusting relationships with the families they support is invaluable in the protection of children in the broadest sense, and they deserve to be supported.”

.....

Truth and Reconciliation Commission Report – Call to Action 1. iv. [Ensure] that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.

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The committee proposes the following recommendations on community involvement:

1. Community involvement should be a key factor in planning decisions related to a child’s safety and wellbeing. In all areas, the legislation must acknowledge the critical supports to children and parents that are provided by a family’s support network and service providers outside of the child welfare system (i.e., non-mandated, community-based agencies). Support networks need to be adequately resourced and equitably funded to ensure the effective and efficient delivery of prevention and early intervention services in communities throughout Manitoba.
2. Amend legislation to include a requirement for non-mandated (non-governmental) agencies to lead family group conferences or similar alternative dispute resolution (ADR) processes within a maximum number of days following CFS involvement. ADR options must be built into the legislation, as they recognize family strengths, focus on safety within reunification, and bring family and community together in support of the child. Short-term decisions and long-term care plans are created within these circles, which ensures a child is taken care of as part of an entire family and community. Mandating ADR processes, with a court-based option as a last resort when the protection of a child cannot be ensured or when parents opt to have their case heard in court, will shift the way child welfare is practiced in Manitoba and foster self-governance at the community level.
3. Courts should take into account and reference results from ADR forums, when making decisions about a child.

4. The term “community” should be defined in the legislation and should include persons who have a legitimate interest in the child’s wellbeing - either linked to a legal responsibility for the child, or one that flows from demonstrated commitment. Examples include community advocates, trusted service providers, extended family members or others with a known relationship of love, care and trust with the child.
5. The section of the CFS act that details the “best interest of the child” should be amended to clarify the critical importance of a child’s connection to immediate and extended family, culture and community. How a child’s best interests are assessed should be based on the values and traditions of the community that they come from.
6. Leadership groups, community councils, local child care committees and Community Mobilization HUB models that include grandmothers, grandfathers, knowledge keepers, youth and community experts should be established to guide and support services. It is important to acknowledge the important role these groups play in the lives of families and children. Further, the legislation should be drafted to allow each community to develop a system and structure that ensures and empowers local decision-making.

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Truth and Reconciliation Commission Report - Principle # 7: “The perspectives and understandings of Aboriginal Elders and Traditional Knowledge Keepers of the ethics, concepts, and practices of reconciliation are vital to long-term reconciliation.”

.....

United Nations Declaration on the Rights of Indigenous Peoples – Article # 18: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

.....

As the concept of enhanced community involvement was most prevalent in this legislative review, the committee wished to include numerous quotes from a cross section of individuals who spoke about the community’s fundamental role in caring for children.

Quotes – Community Involvement

“If there’s a way to shift CFS so that it’s community minded, that would be awesome.”

- Service provider and former child in care

.....

“This is the only sustainable way to create safety. Community and family have more involvement and regular presence in the child’s life, subsequently increasing safety. In addition, these family and community members love their children and can more naturally step in as an alternate caregiver, should things ever come to that point, if they are brought into the planning early on.”

- Child Welfare Survey Respondent

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“Schools. Daycares. Churches and close neighbors. [It] takes a community to raise a child.”

- Child Welfare Survey Respondent

.....

“We [as a CFS agency] are trying to create safety for children by involving family networks. We [staff] are not with families 24/7, that is why we need to find people who care about the family and the child. It’s a fundamental shift; staff are very committed to it. Legislation that would support these principles is welcomed.”

- CFS agency staff member

.....

“I see a great benefit in engaging community members who have a close relationship and perspective and who can provide a unique level of support to the family. In my experiences as a support worker for youth, I appreciated and was a great advocate for my youth when given the opportunity and could provide a perspective that was not readily apparent to [those] who did not know the youth on a personal level. Those engaged in planning for children in care should be selected carefully, but there are many others who may be able to provide input in a non-decision-making way.”

- Child Welfare Survey Respondent

“Relatives usually get irate with loved ones who are not parenting well.”

- Northern CFS Agency worker

.....
“Individuals in the extended community of the child will know the child’s needs on a more personal level. Each child in care will have their own unique needs and any supports in the child’s life, to provide insight on these needs, would be beneficial to short-term and long-term well-being. Bringing together a pool of supports from the community will also help a child at risk become aware of the extra support available to him or her. A child at risk can feel isolated and a pool of support can help decrease this sense of isolation.”

- Child Welfare Survey Respondent

.....
“The grandmothers should be involved. All of the child’s extended family should be involved. They should be interviewed to give their feedback as to what is happening and they should be asked what they think is best for the child. They should then be given the opportunity to care for the child by having the child at their residence, if necessary or possible. The other extended family should be contacted as well. By this I mean the child’s friends and teachers and such. They should be allowed to give input too as to what is happening with the child.”

- Child Welfare Survey Respondent

.....
“It’s imperative that community is an integral part of the apprehension process. When children come into care, a major cause of adverse outcomes is being removed from one’s home community and placed in several more areas and environments.”

- Child Welfare Survey Respondent

Theme 4: Determining When a Child is in Need of Protection/Intervention

In Manitoba, a child is defined as “in need of protection” where the life, health or emotional wellbeing of the child is endangered by the act or omission of a person. This definition can be broadly interpreted. It is critical that the child welfare system distinguish situations involving risk factors from situations requiring protection due to a safety threat.

The committee believes that the CFS act must acknowledge the right of families and communities to access culturally-safe resources for their health, safety and wellbeing. The committee understands communities’ desire to have resources shifted from maintenance after a separation from parents to prevention, so that separations do not happen in the first place.

In their discussions, committee members were led by the conclusion that the legislation must be written to address two main, yet distinct sides of child welfare:

- a Child’s Need for Support, to promote their well-being – be that requested voluntarily by parents or guardians, or through an assessment of the need for supports
- a Child’s Need for Protection/Intervention – be that through willful neglect or abuse (as defined in legislation)

“Our mandate has become so wide. It’s not fiscally sustainable”

- CFS agency worker

.....

“Let’s focus on children who are truly unsafe”

- CFS agency worker

.....

“I’m not anti-CFS; it is needed. However, I don’t believe that all apprehensions need to happen.”

- Community advocate and former child in care)

.....

“[My] primary concern is the continuous apprehension of our children that happens so easily. I have a major concern on this, because in our history as a people...as children, we were taken and placed into what we call the residential school system...where the parental rights and responsibilities were stripped...”

- Grandmother

Different interventions should be activated depending on the situation. For example, an identified need to support a child’s wellbeing (e.g., ensuring a caregiver can look after children while a single parent is working a night shift) can be handled through community supports, whereas a child who is in immediate danger or has been abused is best served by the child protection system.

The committee proposes the following recommendations on Child Protection/ Intervention:

1. That it be embedded in legislation, policy and practice that CFS agencies must explore and exhaust the following alternative options for placing a child in care (in order of priority):
 - With a relative
 - With extended family member(s) living in the child’s community, or a neighbour or other member of the child’s community (with consent of a relative)
 - With extended family member(s) living outside of the child’s community, with whom the child, at the time of being taken into care, had a meaningful relationship
 - With individuals from a child’s culture
 - With individuals from another culture

If a court determines that it is necessary to remove a child from the care of a parent or guardian, that the legislation mandate the court, before making an order, to consider whether each these options were fully explored and whether alternative placement opportunities under these categories exist.

The committee recommends that Manitoba explore Nova Scotia’s child welfare legislation, from which this recommendation was inspired.

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

“In the case of apprehension, the extended family has to be the first line of contact and consultation...so that they can collectively make a decision based on the best interest of the child. I know I can’t be a good parent, but maybe I have a cousin who may be able to do that.”

- Grandmother

2. The CFS act should be revised to emphasize the need of a family to receive assistance when there is no immediate safety threat necessitating child protection services, without the implication or finding that the parent has caused their child to be in need of protection. The focus must be on providing culturally-safe and community-based supports to help the family and mitigate risk factors, rather than separating the child from parents. The decision to separate a child from her or his parents must be specific to the urgent safety of the child and a child should not be separated due to poverty concerns or neglect that is caused by socio-economic conditions (e.g., food insecurity or inadequate housing). The removal of a child should be based only on immediate harm or danger – not on an assessment of potential future risk.

When an addiction is severely compromising parental responsibilities and threatens a child's safety, the protection of that child must be paramount. However, the best interests of the child are not always met by removing a child from a parent or guardian with an addiction. The committee recommends a community-based harm reduction framework that focuses on supporting parents in the fulfillment of their parental responsibilities. This is an alternative to government care of children and can be a more practical way to support children and families. The act must ensure that addiction supports are provided when a parent seeks help, and that an addiction not be considered a valid reason for apprehension when a parent is actively pursuing or participating in addiction services.

3. There are times when CFS agencies remove a parent or guardian from the home, and leave the child in their natural environment under the care of a community member or an extended family member. The applicability of this alternative and the potential expansion of this practice should be further explored, particularly in urban centres.
4. Children and youth in care are especially vulnerable and can be exposed to a variety of risks including being exploited by others. Section 52 of the CFS act must be enforced, so that any person who interferes with or exploits a child in care is held accountable by means of a fine or imprisonment. In addition, the section should not be applied to individuals working in the best interests of the child.

.....

United Nations Convention on the Rights of the Child (UNCRC) – Article 34 – “State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use in pornographic performances and materials.”

Theme 5: Safety and Risk Assessments

Assessment tools are very important in supporting workers to determine if a child is in need of protection/intervention. How an assessment tool is designed and used can significantly affect whether or not a child is separated from her or his parents and guardians and taken into CFS care.

Although the original focus of the questions under this theme were on assessments, the responses received throughout the review helped

the committee to expand the scope of the theme to include issues related to cultural safety. The committee believes that any reference to cultural sensitivity or cultural appropriateness in the legislation be altered to read and mean “cultural safety.”

The committee found that the current lens through which assessments are conducted are often inappropriate, as they can be focused on deficits instead of strengths.

The committee proposes the following recommendations on assessments, training and service provision:

1. That child protection services, including the undertaking of risk and safety assessments, be provided in culturally-safe ways. Risk assessments tools should recognize the unique cultures and ways of life in communities and families across the province. Utilizing or mandating a standardized risk assessment tool should be avoided, thus providing the option to consider unique circumstances in different settings, communities and regions. Cultural safety must reflect the beliefs, values, customs, rituals, and languages of families and communities in Manitoba.

.....
Phoenix Sinclair Inquiry Report – Volume 1 “Assessment tools must be used in a way that takes into account a family’s cultural, social and economic circumstances.”
.....

2. That all workers completing safety and risk assessments of children and families take into account a person’s background, such as experiences that may have caused trauma.

“Similar to the Gladue report, which informed court that the background of indigenous people must be considered during criminal sentencing, a similar law may be needed for potential wards of CFS, to have their cultural differences observed and recognized as legitimate and fundamentally different from the experiences of non-indigenous families”

– Survey respondent.

.....
*The United Nations Declaration on the Rights of Indigenous Peoples –
“Concerned that Indigenous peoples have suffered from historic injustices
as a result of, inter alia, their colonization and dispossession of their lands,
territories and resources, thus preventing them from exercising, in particular,
their right to development in accordance with their own needs and interests.”*
.....

*The Truth and Reconciliation Commission (TRC) Report – Call to Action # 1 (v)
“[Require] that all child-welfare decision makers consider the impact of the
residential school experience on children and their caregivers.”*
.....

3. The Structured Decision Making (SDM) tool should not be the only safety assessment tool in the province. CFS Authorities and agencies, in consultation with their communities, must be assisted to select or develop appropriate and culturally-safe assessment tools. It is important that all assessment tools lead workers to a determination of whether child protection services are required based on an immediate safety threat and not on a probability assessment of future risk. Training will be required to ensure assessments are conducted effectively.
4. The legislation must mandate CFS Authorities and agencies to communicate assessment criteria with parents and families in a way that is clear and understandable.
5. The legislation must require that placements of children into temporary and ongoing care be culturally safe.
6. The legislation must ensure that mandatory training be provided to foster parents on caring for children in ways that respect and promote their culture, community, heritage and traditions. This training must be recurring every few years and, if the foster child is Indigenous, the curriculum ought to be developed and approved by First Nations, Inuit and/or Metis leaders.

Theme 6: Planning for Children in Care

The committee believes that the focus of the legislation should be on reunification and family restoration. When children need to be separated from their parents or guardians to ensure their safety, planning efforts must be focused on returning them to their homes as soon as is safely possible. This report acknowledges that the child, regardless of her or his legal situation, has the right to maintain a parental, family and community connection, where family is defined in broader terms, as recommended earlier in this report.

The committee also recognizes that for its recommendations to be implemented properly, the child protection system and communities must have adequate resources. Child protection worker caseloads should be reviewed to ensure that they are established in a manner that helps cases workers to adequately do their jobs.

The focus of the entire planning process is to ensure that children do not lose connections to their communities, culture and heritage. As such, legislation must make it mandatory that the child remains connected to her or his community and culture.

.....
“As far as the importance of culture, it is very important. Some of the more successful young people have been given the opportunity to explore who they are. We are working on a project on identity right now...their transitions, ethnicity, and sexuality...just have stronger confidence to get through whatever it is they need to get through.”

- Service provider and former child in care
.....

The committee proposes the following recommendations on planning for a child who has come into care:

1. That the legislation be amended to require agencies to develop one overarching plan focused on reunification and family restoration. Reunification and family restoration can be broader than the direct family and could include extended family and community members. The recommended plan should include measures taken to maintain a child’s connection to his or her culture, as well as measures to help parents maintain their relationship and attachment with their children while they are addressing protection concerns. CFS agencies should demonstrate their attempts to support the family in caring for the child before receiving any type of order of guardianship. Before an agency can go to court, they must show that they have developed a solid reunification and family restoration plan. Plans must be reviewed by the caseworker and identified family member(s), no less than every three months.

.....
*United Nations Convention on the Rights of the Child (UNCRC) – Article 25 –
“State Parties recognize the right of a child who has been placed by the competent authorities for the purpose of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”*
.....

.....
Truth and Reconciliation Commission (TRC) Report - Principle # 8: “Supporting Aboriginal peoples’ cultural revitalization and integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential.”
.....

.....
United Nations Declaration on the Rights of Indigenous Peoples – Article 8.1 – “Indigenous Peoples and the individuals have the right not to be subjected to forced assimilation or destruction of their culture.”
.....

2. Should guardianship of an Indigenous child be proposed, an opportunity to provide written consent or objection, within 28 days of notification, must be provided to the community with whom the child is affiliated in advance of any action being taken.
3. That all efforts be made to ensure siblings remain together and are not separated. Siblings who are placed together use their relationships and connections to understand who they are. They help one another adapt to new and sometimes frightening situations, and can remain important figures throughout life.
4. Courts should be encouraged to follow the Gladue Report regarding the maximum period of time that children are under temporary guardianship. Based on the results of a Gladue assessment for a case that involves Indigenous parents, judges should have the ability to alter timelines, in order to support a family in its healing and reunification process. This recommendation will require the development of related training resources for judges.

.....
The Truth and Reconciliation Commission (TRC) Report – Call to Action # 1 (v) “Require that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.”
.....

5. Voluntary Placement Agreements (VPAs) are precisely that: “voluntary.” VPAs should be available to families and CFS workers must not be permitted to refuse a request from the parent or family to end a VPA.
6. Parents should not have to voluntarily place their child in CFS care when seeking services or supports. Children in Manitoba who have a mental disability, chronic medical disability, or require other specialized services should not need to come into the care of a CFS system that is designed and staffed to provide services for children who are in need of safety protection. Services for these children should be accessible through various other government services and non-governmental organizations.

.....
“Parents [should] not need to sign their children into the care of the child welfare system, which lacks knowledge of disability services and is simply not focused on disability issues.”
.....

- CFS Agency worker

Theme 7: Transition Supports for Youth

Many youth in care experience trauma and, after extended involvement with the child welfare system, can have difficulty transitioning on their own into society when they reach the age of 18. Youth in care often lag behind their peers when it comes to coping and life skills, educational outcomes and job experiences.

Currently, youth who are in care are supported by the CFS system until they are 18 years old. Those who are permanent wards may be eligible to receive supports until the age of 21, through an [extension of care agreement](#). The committee

believes that youth aging out of CFS care should have priority access to programs and supports beyond the age of 21 that will help them successfully transition to independence.

The ultimate goal of the recommendations below is to create a process that replicates the safety net that all children and youth should be able to expect from a family. In developing this set of recommendations, the committee believes strongly that no specific set of conditions should be set to determine eligibility for supports.

The committee proposes the following recommendations on supporting youth as they transition out of CFS care:

1. That transition planning for youth in care should be entrenched in legislation, in such a way that allows youth to develop independent living skills at an early age in an age appropriate manner. Transition plans should also ensure that youth leaving care have essential supports and possessions, such as a bank account, social insurance number, birth certificate and driver's license. An identified community member willing to be actively involved in supporting a child's transition should be a part of transition plans.

“Transitioning should also start much younger than the average which is often just months before they are discharged. Particularly if a youth has been in the system most of their life, why are life skills programing not a part of their individual care plan?”

- Child Welfare Survey Respondent

.....
“There are countless youth who were once in care and they turn eighteen are kicked out of care, many with no place to live couch surfing or living on the streets falling into drug addictions or many with mental health, FASD [fetal alcohol syndrome disorder]. There should be a plan in place to find youth housing, rooming before being released out of care and checked up on. It should be mandatory for youth to attend or have life skills coaching starting at age 13. Foster homes should be required to teach life skills and prove what has been taught.”

- Child Welfare Survey Respondent

- 2. That youth aging out of CFS care have priority access to programs and supports that will help them successfully transition to independence.

.....

“I think there should be another (different) resource system available for them [youth]. There should be a different entity to do this work, which should incorporate ceremonies and teachings as well – ensure youth get priority services.”

- Service provider

.....

“Not enough life skills are being provided to children 18 and 21 transitioning out of care.”

- Child Welfare Survey Respondent

.....

- 3. That the legislation ensure youth who have been in the care of CFS are eligible to receive culturally safe supports up to 25 years of age. The legislation should allow for supports, either through mandated or non-mandated services. Youth who are 18 to 25 years of age should have the option of opting back into an extension agreement to access supports if they deem further growing is necessary. The language used in the legislation should allow for the reconsideration by a young adult of their decision not to enter into an extension agreement at any point, up to the age of 25.
- 4. Youth should have direct and meaningful input into planning their futures, although the maturity level of the youth needs to be considered in determining plans. The legislation should provide youth between the ages of 16 and 18 with more input and involvement in their transition plans. Youth-driven transition plans, based on their specific needs, interests and realities, and with direct involvement and support from their family, fosters greater personal choice and accountability.

Theme 8: Youth Rights

The current CFS Act allows for the views of children, aged 12 years and older, to be considered in decision-making processes. The committee repeatedly heard that young people feel they have little ability to influence the adults around them who have the power to make decisions about where they live and with whom they spend their time.

It is important for teenagers within the system to be heard and, within the legislation, they should be entitled to certain rights. However, at this point in the review process, the committee is not prepared to recommend that youth should have a final say in decisions affecting their care.

In addition to the recommendations in the previous section on transition supports for youth, the committee proposes the following recommendations on the topic of youth rights:

1. That independent Family Advocates be established for each of the CFS Authorities’/Secretariats’ governing bodies, in order to protect youth rights.
2. That the legislation contemplate court-appointed advocates or guardians ad litem to represent their rights. See Appendix B for a relevant excerpt from Nova Scotia’s legislation.

.....
*United Nations Convention on the Rights of the Child – Article 12.2 –
“[Children shall] be provided the opportunity to be heard in any judicial
and administrative proceedings affecting the child, either directly, or
through a representative or an appropriate body, in a manner that is
consistent with the procedural rules of national law.”*
.....

Theme 9: Governance

During the presentations, the committee heard that many communities are of the opinion that the CFS system is flawed and not meeting the needs of First Nations, Inuit and Metis children.

A complete review of the processes related to accountability and governance in the CFS legislation, regulations and standards must be done immediately, with the goal of developing a more effective governance model for services in each community.

The new governance model for services to Indigenous children should be Indigenous-led and reflect the reality of the majority of children in care in Manitoba, and that it continue to be a devolved system of authority. The sector must reflect the people that it serves.

In amending the legislation, the committee asks that Indigenous leadership be represented in the review of changes that are being made, and that legal representation from these groups have an opportunity to assess the proposed changes before they are implemented in the legislation.

The committee also wishes to offer the following observation, not a recommendation, as it relates to the concept of governance in the child welfare system:

- First Nations leaders are currently negotiating child welfare services and rights with the federal government and while it is generally recognized that this process will take longer than the provincial review of legislation, it is important to recognize that these two reviews are taking place concurrently. Throughout the discussions, it is imperative that the changes and agreements made in this process can complement and potentially even strengthen the work being done at the federal level.

Finally, it is important to re-emphasize, that the changes proposed in this document are only an interim measure. The committee's long-term goal for child welfare reform is to create legislation that enables Indigenous peoples to have their own child welfare system that respects their right to self-determination.

The committee proposes the following recommendations on governance:

1. That a complete review of the responsibility, role and authority of the All Nations Coordinated Response (ANCR) Network be conducted, to ensure that the organization is fulfilling its original mandate. Input received has suggested that the community wants ANCR to focus its role as an intake and referral organization that provides strong, seamless front-end services and operates under clear roles, responsibilities and timelines that work in the best interests of families.

.....

Phoenix Sinclair Inquiry Report - Volume # 1

Recommendation: That ANCR – whose role is triage and delivery of short-term services – no longer provide family enhancement services but should transfer families who need services to a family services unit, as soon as possible...This will avoid disruptions in service for families whose needs cannot be effectively met within ANCR's limited time frame.

.....

2. That the Manitoba government formally engage with Indigenous leadership to further discuss the concept of transitioning CFS Authorities so they become Secretariats of MKO, MMF and SCO. This will require significant amendments to the existing Child and Family Services Authorities Act. This process should include a governance review aimed at reducing duplication and overlap of services and responsibilities.
3. That Leadership Council meet quarterly, and that each council member have an opportunity to put forth agenda items in advance of each meeting. Minutes from meetings should be made public.

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Truth and Reconciliation Report - Principle # 9: "Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources."

.....

4. The creation of a common table of federal, provincial and Indigenous that meets regularly and coordinates child welfare efforts is encouraged.

Theme 10: Accountability

Accountability helps Manitobans ensure that government, CFS Authorities and agencies, as well as other stakeholders, fulfill their responsibilities. In the CFS system, where

decisions about the protection, continuing care (permanency) and wellbeing of children and families are being made every day, accountability is very important.

The committee proposes the following recommendations on accountability:

1. That amendments made to CFS legislation be written in plain language. The flow between sections of statutes and regulations also needs to be improved.

“Legislation should be clear, concise, and written or defined in plain language.”

– Survey respondent

2. That a mandatory, legislated review of child welfare legislation take place every three years, and that the Southern Chiefs Organization (SCO), the Manitoba Keewatinowi Okimakinak (MKO), and the Manitoba Metis Federation (MMF) be empowered and resourced to appoint members to sit on independent committees tasked with reviewing child welfare legislation. Committees should also include community representatives.
3. That a key purpose of the legislative review be to evaluate the effect of the legislation on First Nations, Metis and Inuit children, families and communities, and that the results of the legislative review be made public and published in plain language.

Theme 11: Confidentiality

While children and families involved with the CFS system need to have their privacy respected, there are times when the careful sharing of information is beneficial (e.g., when planning or providing services for the child). Greater

communication and information sharing helps build a stronger mutual understanding. In this theme, the committee focused its efforts on developing suggestions that reduce the barriers for sharing information.

The committee proposes the following recommendations on confidentiality:

1. The current CFS act has not been updated or reviewed for many years, and as a result, the terminology and the references to confidentiality and privacy issues are outdated. In response, a complete review should be done to ensure the terminology and references are up-to-date and accurate. More specifically, Section 76 of the CFS act should be updated to reflect current laws on privacy and confidentiality. This section should also be amended so as not to hinder the implementation of this report’s recommendations.
2. In line with the relatively new [Protecting Children \(Information Sharing\) Act](#), the CFS act should be amended to allow for responsible and timely sharing of information within clearly identified criteria – for example, provided that the sharing of information is being done to enhance care or care planning. Any person, agency or organization that is seeking to support a child and family should be given relevant information. Internet Service Providers (ISPs) should be compelled to provide information related to CFS investigations.
3. Former children in care who are now adults must be able to receive a full copy of their CFS file. The act must ensure that people have a right to their own records. Redactions should only be confined to referral sources (e.g., informants) and third party information on other victims.

.....

***United Nations Convention on the Rights of the Child (UNCRC) –
Article 8.1 – “State Parties undertake to respect the right of the child
to preserve his or her identity, including nationality, name and family
relations as recognized by law, without unlawful interference.”***

.....

4. Adults should be allowed to access their own family records and consent to the release of information. Parents should also be allowed to access and share information from their child’s file, when it is considered to be in the child’s best interests.
5. The Manitoba government should enter into negotiations with Indigenous governments to develop agreements for the collection, use and access to information about them. Such agreements would ensure the collective and individual privacy rights of First Nations, Metis and Inuit people are acknowledged and respected and ensure that Ownership, Control, Access and Possession (OCAP) principles are followed.

6. A statute of limitations of no more than seven years should exist in the act, so that a record in the system is eventually absolved. This process should be initiated by an application to have one's record eliminated. The process should allow for an application to be denied only in specific circumstances involving an active and continuing threat to child safety, protection and wellbeing.

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“When a child comes into the system under the Child and Family Services Information System, they’re there forever...it follows them...and the parent is criminalized forever.”

- CFS worker in northern MB

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Theme 12: Other Recommendations

In addition to the original themes that were identified for the Legislative Review, feedback collected from individuals, communities and organizations, helped to introduce new topics and specific recommendations that the committee wanted to make sure were not overlooked in this report. While committee members recognize that some of these recommendations may fall outside of the scope of legislation, they wanted to honour the time and efforts spent by numerous stakeholders who brought these important issues to their attention.

Funding

The current funding structure for child welfare services provides incentives in the wrong places by providing funding based on the number of open cases and children in care.

1. The committee recommends that a complete audit of the existing funding structure be conducted to evaluate the flow of money from the funding source to intended recipients.
2. A new funding structure that is focused on reunification must be equitable (e.g., south versus north, reserve versus urban, Indigenous versus non-Indigenous, newcomer versus non-newcomer, and large versus small organizations). Equity in programming must be a core principle of service delivery.
3. The revised funding structure needs to focus on outcomes and processes that ensures everyone is accountable for results. As part of the process, a system of checks and balances needs to be

created within the funding system to enable the tracking of funds, and ensure that the money is reaching the intended service recipients: children, youth, families and communities.

4. As noted in the Phoenix Sinclair Inquiry, the capacity of community-based organizations needs to be enhanced with sustained long-term funding for the delivery of holistic services, and with a particular emphasis on supporting Indigenous-led organizations and programs that promote cultural identity in Indigenous communities.
5. Jordan's Principle must be properly implemented in Manitoba. To protect and ensure the well-being of children, the Manitoba government must take an active lead in the implementation of Jordan's Principle. In the field, agencies must be required to provide supports immediately and be concerned about who pays for the supports once the safety of the child is in place.

.....
Truth and Reconciliation – Call to Action #3
“We call upon all levels of government to fully implement Jordan’s Principle”
.....

6. The CFS system should ensure there is a seamless transfer of funds when a child's case is moved from a Designated Intake Agency to another CFS agency that is responsible for providing ongoing services and supports.

.....
United Nations Declaration on the Rights of Indigenous Peoples – Article 5
“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

Legal/Incorporated Status of CFS Agencies

Any barriers that may prevent a mandated CFS agency from engaging with, or accepting monetary and non-monetary contributions from the community to support children in care must be removed. The legal/incorporated status of all CFS agencies (including Winnipeg Child and Family Services) should be consistent.

Profit-Based Entities

That all possible steps should be taken by agencies to avoid using for-profit entities offering or delivering services for children in CFS care. This includes foster homes and group care resources. For-profit entities should only be used in limited and defined circumstances when service is necessary and alternative providers are unavailable.

Child and Family Services Information System (CFSIS)

That a review of CFSIS be done with an emphasis on developing a more modernized information system. That the government address the current challenges of CFSIS, which leads to front line workers spending too much time inputting information, thus impairing their ability to provide direct care and support services to children. The current CFSIS system should be replaced with a system that provides essential information in a user-friendly process and format.

Birth Alerts

That the current birth alert process be replaced by community-based and culturally-safe services to identify and assist at-risk parents during and after pregnancies.

Protection from Liability for Child Protection Workers

All child protection workers should be granted protection from liability for anything done or omitted in good faith, while exercising their powers, duties or functions. That a provision on protection from liability, similar to the provision found in British Columbia's legislation, be adopted in Manitoba (see Appendix B for an excerpt).

Authority Determination Protocol

The Authority Determination Protocol (ADP), and the requirement to select an Authority of service creates conflict and unwarranted competition within the system. The protocol is also irrelevant in some isolated communities and is known to further complicate an already burdensome bureaucratic process. If possible from a constitutional perspective, the legislation should be reformed to eliminate the current ADP process and replace it with an automatic process of fast and effective referrals to culturally safe Authorities/Secretariats. Choice should be allowed only when a parent or guardian makes a proactive and specific request for an application to be serviced by a different CFS Authority.

Foster Parent Appeals Process

After much consideration and extensive discussion on the topic, it is recommended that the foster parent appeals process be replaced with a new and child-centred conflict resolution process that is led by a neutral and independent party, and ensures all affected individuals, including children, have a voice at the table. Using the new definition of family, which includes foster parents, the committee recommends that child-centred alternate dispute resolution mechanisms be used as the primary format for conflict resolution.

Section 4 – Conclusion

Among Canadian provinces, Manitoba has the highest rate of children in care and there is an urgent and undeniable need to make changes to the CFS system, in order to create better outcomes for children and youth. The committee is pleased that the Manitoba government has made child welfare reform a priority, and asked for this legislative review to be conducted.

Committee members do not wish their efforts to become another report that is filed for consideration. Additionally, the committee wants to make it clear that the recommendations in this report are only a starting point towards meaningful, long-term child welfare reform.

As a next step, the committee proposes that the Manitoba government work together in partnership with Indigenous leaders and other

key stakeholders to ensure that any amendments to child welfare legislation respond to and reflect the priorities of their communities and empower families and communities to care for their children.

Collectively, Manitobans can create an improved environment where children and youth feel safe, cared for, valued and loved.

Appendix A: Sources of Information

**** The committee sincerely thanks these organization and individuals who supported its work.
If there are errors or omission, please accept our apologies.*

Presentations

**** Note: The majority of presenters submitted written versions of their presentations*

1. Fearless R2W – Aboriginal Youth Opportunities
2. The Metis Child and Family Services Authority and The Manitoba Metis Federation (joint presentation)
3. The Advocate for Children and Youth
4. First Nations of Northern Manitoba Child and Family Services Authority, the Kinosao Sipi Minisowin Agency and Island Lake First Nation Family Services (joint presentation)
5. Ma Mawi Wi Chi Itata Centre Inc.
6. The General Child and Family Services Authority
7. Winnipeg Child and Family Services
8. The Nisichawayasihk Cree Nation (NCN) Family and Community Wellness Centre
9. Manitoba Keewatinowi Okimakanak Inc
10. Awasis Agency of Northern Manitoba
11. Nikan Awasisak Agency Inc.
12. Marymound (northern office)
13. VOICES: Manitoba's Youth In Care Network
14. Child and Family All Nations Coordinated Response Network (ANCR)
15. Metis Community Liaison Department – Manitoba Metis Federation
16. Grandmothers Paynter and Maytwayashing
17. Michif Child and Family Services
18. Metis Child, Family and Community Services
19. Metis Provincial Youth Council
20. Southern Chiefs' Organization
21. The Hub (Community Mobilization Westman)
22. Child and Family Services of Western Manitoba
23. Grandmother Rita Cullen and Minister Mayer, Manitoba Metis Federation
24. Southern First Nations Network of Care
25. Peguis Child and Family Services
26. Dakota Ojibway Child and Family Services

Written submissions

27. Addictions Foundation of Manitoba
28. Advocate for Children and Youth – A document outlining the voices of Youth
29. Faculty of Social Work – University of Manitoba
30. Manitoba College of Social Workers
31. Manitoba Adolescent Treatment Centre
32. Manitoba Centre for Health Policy
33. Siloam Mission
34. Manitoba Foster Families Network
35. Council of Child Care Treatment Centres
36. The Canadian Centre for Child Protection
37. Southeast Child and Family Services
38. West Region Child and Family Services
39. The Manitoba Association of Friendship Centres
40. Grandmothers from northern Manitoba (Opaskwayak Cree Nation)
41. The Adoption Council of Canada (based in Ottawa)
42. Anonymous individual (submission sent to committee Chair, Mr. Micklefield)
43. Bruce Unfried (submission sent to committee vice chair, Mr. Armbruster)

Survey respondents: 1,506

Appendix B: Excerpts – Legislative Provisions

Employment Standards Regulation (Manitoba)

“Family member” — expanded definition

22) For the purpose of the definition “family member” in subsection 59.2(1) of the Code, a person is a family member of an employee if the person is:

- (a) a brother, sister, step-brother, step-sister, uncle, aunt, nephew, niece, grandchild or grandparent of the employee or of the employee’s spouse or common-law partner;
- (b) a parent of the employee’s spouse or common-law partner;
- (c) a current or former foster parent of the employee or of the employee’s spouse or common-law partner;
- (d) a current or former foster child, ward or guardian of the employee or of the employee’s spouse or common-law partner;
- (e) the spouse or common-law partner of a person mentioned in any of clauses (a) to (d); or
- (f) any other person whom the employee considers to be like a close relative, whether or not they are related by blood, adoption, marriage or common-law relationship.

Alberta’s Child, Youth and Family Enhancement Act

Interpretation

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

- (a) the child has been abandoned or lost;
- (b) the guardian of the child is dead and the child has no other guardian;
- (c) the child is neglected by the guardian;
- (d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
- (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
- (f) the child has been emotionally injured by the guardian of the child;
- (g) the guardian of the child is unable or unwilling to protect the child from emotional injury;
- (h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment.

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

- (a) is unable or unwilling to provide the child with the necessities of life,
- (b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child, or
- (c) is unable or unwilling to provide the child with adequate care or supervision.

(3) For the purposes of this Act,

- (a) a child is “emotionally injured”
 - (i) if there is impairment of the child’s mental or emotional functioning or development, and
 - (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of:
 - (A) rejection,
 - (A.1) emotional, social, cognitive or physiological neglect,
 - (B) deprivation of affection or cognitive stimulation;
 - (C) exposure to domestic violence or severe domestic disharmony;
 - (D) inappropriate criticism, threats, humiliation, accusations or expectations of or toward the child;
 - (E) the mental or emotional condition of the guardian of the child or of anyone living in the same residence as the child;
 - (F) chronic alcohol or drug abuse by the guardian or by anyone living in the same residence as the child;
- (b) a child is physically injured if there is substantial and observable injury to any part of the child’s body as a result of the non-accidental application of force or an agent to the child’s body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;
- (c) a child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behaviour including prostitution related activities.

Nova Scotia’s Children and Family Services Act

Disposition Order (section 42.1.3)

Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether:

- (a) it is possible to place the child with a relative, neighbour or other member of the child’s community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; and
- (b) where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child’s community.

Child as party and appointment of guardian (section 37)

(1) A child who is sixteen years of age or more is a party to a proceeding unless the court otherwise orders and, if a party, is, upon the request of the child, entitled to counsel for the purposes of a proceeding.

(2) A child who is twelve years of age or more shall receive notice of a proceeding and, upon request by the child at any stage of the proceeding, the court may order that the child be made a party to the proceeding, where the court determines that such status is desirable to protect the child's interests.

(2A) Where the court orders that a child under sixteen years of age be made a party to a proceeding, the court shall appoint a guardian *ad litem* for the child.

(3) Upon the application of a party or on its own motion, the court may, at any stage of a proceeding, order that a guardian *ad litem* be appointed for a child who is the subject of the proceeding and, where the child is not a party to the proceeding, that the child be made a party to the proceeding, if the court determines that such a guardian is desirable to protect the child's interests and, where the child is sixteen years of age or more, that the child is not capable of instructing counsel.

(4) Where a child is represented by counsel or a guardian *ad litem* pursuant to this Section, the Minister shall in accordance with the regulations, pay the reasonable fees and disbursements of the counsel or guardian as the case may be, including the reasonable fees and disbursements of counsel for the guardian.

British Columbia's Child, Family and Community Service Act

Protection from liability

101 No person is personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of

(a) a power, duty or function conferred under this Act, or

(b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Act.

End notes

- ¹ Brownell M, Chartier M, Au W, MacWilliam L, Schultz J, Guenette W, Valdivia J. *The Educational Outcomes of Children in Care in Manitoba* Winnipeg, MB. Manitoba Centre for Health Policy, June 2015.
- ² Brownell M, De Coster C, Penfold R, Derksen S, Au W, Schultz J, Dahl M. *Manitoba Child Health Atlas Update*. Manitoba Centre for Health Policy, Winnipeg, MB: November 2008.
- ³ Katz L, Au W, Singal D, Brownell M, Roos N, Martens PJ, Chateau D, Enns MW, Kozyrskyj AL, Sareen J. Suicide and suicide attempts in children and adolescents in the child welfare system. *Canadian Medical Association Journal*, 2011; 183 (17):1977-1981.
- ⁴ Hook, J.L., & Courtney, M.E. (2011). Employment outcomes of former foster youth as young adults: The importance of human, personal, and social capital. *Children and Youth Services Review*, 33: 1855-1865.
- ⁵ Ontario's Provincial Advocate for Children and Youth (April 2017) "Exploring Youth Outcomes after Aging-Out of Care." Report written by Jane Kovarikova.
- ⁶ Curry, S.R., & Abrams, L.S. (2015). Housing and social support for youth aging-out of foster care: State of the research literature and directions for future inquiry. *Child Adolescent Social Work Journal*, 32:143–153.
- ⁷ Dworsky, A., & Courtney, M.E. (2009). Homelessness and the transition from foster care to adulthood. *Child Welfare*, 88(4): 23-56.
- ⁸ Wall-Wieler E, Roos LL, Bolton J, et al Maternal health and social outcomes after having a child taken into care: population-based longitudinal cohort study using linkable administrative data *J Epidemiol Community Health* Published Online First: 05 October 2017.
- ⁹ The themes outlined in the Child Welfare Discussion Paper were: Community Involvement; when a child is in need of Protection; Culturally Sensitive Safety Assessments; Planning for a child who has come into care; Supports for youth Transitioning out of care as they reach adulthood; youth rights; accountability; and confidentiality. As the review proceeded and information was obtained, the Committee decided to include additional themes and recommendations to this report; they are: Legal Purpose Statement and Guiding Principles; Legal Definitions; and Governance. The final part of the report includes other (additional) recommendation.
- ¹⁰ What is Indigenous Cultural Safety—and Why Should I Care about It? Here to Help website www.heretohelp.bc.ca/visions/indigenous-people-vol11/what-is-indigenous-cultural-safety-and-why-should-i-care-about-it (accessed online - May 2018).