Ontario Native Women's Association's

Submission to the Ministry of Child and Youth Services on the review of the Child and Family Services Act, Section 226

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Introduction

The Ontario Native Women's Association (ONWA) would like to first thank you for granting us the opportunity to host a consultation with our members, staff and clients on the important issue of reviewing Section 226 of the Child and Family Services Act. The one day consultation was held in Thunder Bay, ON, on Friday February 19, 2010 and although the timeline was condensed for this review, the ONWA is satisfied with the results that were produced by attending stakeholders and this document represents their feedback.

Background

The Ontario Native Women's Association (ONWA) is a not for profit organization, incorporated in 1971 dedicated to the empowerment and support of Aboriginal women and their families in the province of Ontario.

Affiliated with the Native Women's Association of Canada (NWAC), the ONWA encourages the participation of Aboriginal women in the development of Federal, Provincial and Municipal/Local government policies that impact their lives and ensure issues affecting Aboriginal women and their families are heard at key government tables.

The ONWA is committed to providing services that strengthen communities and guarantees the preservation of Aboriginal culture, identity, art, language and heritage. Ending violence against Aboriginal women and their families and ensuring equal access to justice, education, health, environmental stewardship and economic development, sits at the cornerstone of the organization. The ONWA insists on social and cultural well-being for all Aboriginal women and their families, so that all women, regardless of tribal heritage may live their best lives. The ONWA strives to ensure that all Aboriginal women are able to learn, teach and practice traditional ways of life so that future generations may be able to do the same. Cultural practices, such as traditional placenta ceremonies, are important to maintain a healthy spirituality for Aboriginal women in Ontario.

Child welfare issues are of the utmost importance to the ONWA. The ONWA is constantly working towards strengthening the family unit and increasing respect for all members of society. For this reason the ONWA is pleased to submit recommendations on the Child and Family Services Act, with contribution from our members, clients and staff.

Methodology

The ONWA hosted a one full day consultation with 30 participants comprising of ONWA locals, board, staff, community stakeholders and clients from across the province. The participants were broken into four working groups comprised of 6-7 people per group, providing a structure that ensured the integrity of recording their responses and a venue that would allow all participants to contribute their views. In order to ensure well-rounded and diverse dialogue, the break-out working groups were pre-determined based on the expertise and knowledge and group representation of the participants allowing for engaged dialogue on the key questions provided by the Ministry. Mid-day and end-day entire group discussions were held for the break out working groups to present their findings to the group at large and post their recordings. The participants were provided with four dots per group discussion to identify their top priorities in order to frame the ONWA's position within the context of this report.

Discussion /Results

Through the consultation process, several concerns and ideas were brought forward by the participants. Although the questions set out by the Ministry were answered during the session, additional concerns and suggestions were presented by participants that would have a direct impact on Aboriginal children who are affected by the CFSA. One of the key issues that were identified as supplementary to the provisions was that the entire CFSA affects Aboriginal children and their families and not solely the provisions under review in section 226.
The additional discussion comments have been included in this response paper for the benefit of the Ministry. The ONWA anticipates that if these additional comments are not addressed through this review, then the Ministry will incorporate them in future activities and potentially expand the review of CFSA in its entirety to Aboriginal agencies and stakeholders.

Question 1: What is the current level of compliance with the CFSA provisions that impose obligations on societies when providing services to Indian/Native persons?

The level of compliance varies from agency to agency and depends on the specific provision being addressed, resulting in challenges in delivery of service to clients and therefore negatively impacting the child of each specific case. There are differences between how each worker handles a case, specific to their own personal experiences and biases on child welfare, poverty and Indian/native persons. There is no way to withdraw the human element of the work being done under the CFSA, nor should there be, however consideration into the way workers deal with individual cases should be measured to help alleviate the discrimination that exists. Directors have freedom to interpret the legislation in a fashion that best suits their agency, not necessarily on what best suits the children to whom they provide service. Although the legislation intends to provide children with the finest protection possible, different agencies interpret the legislation in a variety of ways. Clarifying the intent of specific provisions to the agencies providing service to Indian/native children would ensure that all children receive the same standard of care across the province.

Compliance of Section 2.2(b)

Section 2.2(b) indicates that a society or agency should ensure that "decisions affecting the interests and rights of children and their parents are made according to clear, consistent criteria and are subject to procedural safeguards". There is non-compliance with this section as often the basis for such decisions are unclear to the family and will fluctuate between agencies. This inconsistency in decision making does cause concern in that children and their parents are being treated differently in various parts of the province. The ONWA does acknowledge that each case is to be handled on an individual basis and supports that process. However, the decisions in each case should be methodically clear to the parents/guardians involved in the service being provided.

Compliance of Section 4.2 and 1.2

Section 4.2 includes provisions ensuring that the person who is authorized to give or refuse consent on behalf of a child should have the capacity to do so, is reasonably informed, is not coerced into making a decision and has the opportunity to obtain reasonable advice. Section 4.2(a) specifically states that a person should have the capacity to make such a decision, meaning that a person has the capacity to understand and appreciate the nature of a consent or

agreement. Participants emphasized how this section was not being upheld on behalf of the agencies that the ONWA members, staff and clients are interacting with. Participants recounted occurrences of intimidation tactics that were used such as threats of court orders and isolation of the children from their care if they did not sign an agreement immediately. Not only have parents been badgered into accepting/signing agreements, but they do not always have the capacity to fully understand the legalized agreement and the consequences of signing the agreement. It should be the responsibility of the worker to present the information in a way that meets the capacity of a parent/guardian and to ensure that the families have the opportunity to seek legal advice.

Section 1.2(1) includes a stipulation that services should be provided on the basis of mutual consent. Parents and guardians have signed documents under the fear of losing their children completely. How can this be justified as mutual consent? This is absolutely intolerable and should be addressed immediately.

Compliance of Section 213

Section 213 indicates that a society or agency shall *regularly* consult with the bands or native communities of Indian/native children on matters including but not limited to apprehension, placement of case workers, preparation plans care of children, temporary care and special needs care and adoption. There is non-compliance with this section because although the intention of the legislation appears to ensure that bands and communities are kept privy to the ongoing care of a child, the term "regularly" is up for interpretation and can be considered relative in nature. A regular consultation with one agency does not mean the same time frame as another. This often leaves bands and communities left uninformed as to the child's welfare until a mandatory meeting is scheduled. Notice is often minimal, not allowing sufficient travel time for bands or communities to attend the very important consultation. This current practice followed absorbed by several agencies is not respectful of the child, band or community or of the child welfare process.

Compliance of Section 1.2(4) and (5)

Section 1.2(4) and (5) denotes that services should be provided in a manner that recognizes their culture, heritage, and traditions and the concept of extended family and where possible Indian and native people should provide their own child and family services. This section is often violated through the action of workers. Workers that interact with families are not always trained from a cultural background and do not acknowledge languages and customs of the Aboriginal people. This creates the feeling of insensitivity towards the family. Cultural competency courses do not provide ample cultural training, as they do not fully recognize the differences within various First Nations cultures, cultural norms, the history individuals and families may have with residential schools and any previous interaction with the child welfare system, including the "Indian agent" of the 1960's. All of these items have the possibility to compound into intergenerational trauma which should be considered when working with a family.

Question 2: Are these provisions in the CFSA well understood?

No. There are several reasons that the provisions are not well understood, as interpretation varies from individual perspectives – by agency, director, worker and family. In addition to

interpretation, lack of training, individual and organizational capacity, cultural ignorance, racism, and inconsistencies across the province will confound the level of comprehension of the CFSA.

Question 3: What barriers, if any, have been identified by CASs and/or by stakeholders related to CAS compliance with the provisions under review?

Stakeholders at the ONWA consultation identified several barriers when accessing services provided to Indian/native children and their families, resulting in non-compliance of the provisions under review. The barriers have been divided into three groups: Barriers in process, practices and legislation, Barriers for families, guardians and bands, and Barriers for agencies.

Barriers in process, practices and legislation

Review process – Section 226 states that every review of the CFSA should also include a review of provisions that refer to service obligations for Indian/native persons. There is no disputing that a review has been completed of the noted provisions, however the ONWA would have preferred more time to prepare a proper analysis of the provisions within the CFSA, analysis of the compliance by various child and family service agencies, and to gather more complete responses from key ONWA stakeholders. More notice of this review would have benefited the children affected by the CFSA.

Transparency – Although there are provisions within the CFSA to ensure agencies are reporting directly to the Ministry, there are no provisions for the band/community or other parties involved to access pertinent information. The ONWA stakeholders completely agree that the identity of the child and case information should be protected for obvious reasons. However, once appropriate provisions have been exercised and once consent has been provided to include a band or native community representative in the process, that representative should have access to the information relevant to the case and relevant to assisting the band or native community to engage in decision making concerning the child. The level of participation of the bands/community is limited due to the lack of information and time allotted from the time of preparation in assessing the child's case. The lack of transparency on behalf of the agency and, to some degree the Ministry, restricts and sometimes inhibits the engagement the band can have in a child's welfare case.

Accountability – Parents and guardians have accountability not only to their children, but to the Children's Aid Society they may be involved with. The CAS, however, has restricted responsibility to the parents. There is limited information shared with parents about the process, normal practices and applicable legislation. In practice, the CAS workers have no obligation to inform parents about their legal options, likely outcomes of the situation and recommended action to take. The CFSA will continue to be undermined if parents do not receive the support they require.

Customary Care/Crown Wardships –The process of having a child in care is a traumatic experience for any parent. However, not having the financial resources to have your child in a preferred Customary Care Agreement (CCA) only adds increased stress to the already heartbreaking situation. This may result in a child being put into a more restrictive Temporary Care Agreement (TCA). Finally, after a very long process parents lose the option of having their children returned to them due to the Crown wardship's contingent timeframes and entangled

processes. The participants emphasized a moratorium on crown wardships as a priority in the review of the CFSA.

Within section 212 of the CFSA, band or native communities must declare the child is being cared for under a CCA and the agency may grant subsidy to the person caring for the child under such an agreement. This is illogical as many bands and natives communities lack the capacity to exercise their and the child's rights to obtain representation that may be available to the system, never mind having the capacity to plan and declare a Customary Care Agreement without the proper supports in place. Furthermore, agencies are reluctant to provide funding to persons caring for the child under CCAs and these persons are still subject to meeting the unrealistic prescribed requirements set out by the agencies and the CFSA. CCA should always be an option for parents and guardians, without concern of financial means and the lack of band or community capacity. Whether the process is at fault or the implementation of the process is to blame, the entire family unit is negatively affected. Correcting conditions due to practice or to process should be a focus of protection implementation.

Barriers for families, guardians and bands

Requesting Prevention Services – The nature of Children's Aid Societies is generally one of protection. However, section 15.3 (c) includes notation of agencies providing service to families for the prevention of circumstances requiring protection, in addition to protection services. This is somewhat of a paradox as a family may ask the CAS for prevention services, and then be under surveillance from that same agency simply for asking for help. It is too often that a family may be looking for preventative and supportive service and end up receiving unnecessary and undesired protection services. At the same time, if a family does not request prevention services, the family situation may continue to develop in a way that protection services are then necessary. In this paradoxical nature of the CAS, how can a family improve their situation while preventing scrupulous inspection of their personal lives?

Capacity – Parents, guardians and bands do not always have the capacity to make the best possible decisions for their child. This can be for several reasons, but most reported are limited knowledge of the process and terminology interpretation issues. Information presented to parents is often very garrulously perplexing, creating miscommunication. Parents should be presented with information that is clear and concise, and directly demonstrates the options that are being presented to them.

Funding – In regards to section 213, regularly consulting with a band or native community, funding can be a barrier in participation. Not all bands or native communities have access to the financial resources that allow them to travel to a consultation about a child's best interests. The band/community may want to attend to ensure the best interests of the child are being met, but the funding opportunities may be limited for that band/community. Also, limited financial resources translates into limited legal resources the band/community may be able to access. Without being able to pay for a lawyer to assist the band/community, they may not have the legal capacity to contribute significantly in a consultation.

Barriers for agencies

Caseloads – As reported to the ONWA at the consultation, caseloads are going under reported by agencies that provide services under the CFSA at the agency-to-Ministry level. This overload

in aiming to increase services to increase numbers of families only diminishes the quality of service a family may receive, therefore reducing the needs being met. Through the ONWA led consultation, several reasons were listed as the culprit to the overload, including but not limited to lack of funding, funding agreements in limiting families accessing service, limited number of accessible staff, and excessive paperwork. Although this is not an issue that the ONWA can directly propose to solve, it is important to point it out as a barrier that agencies are facing to the Ministry.

Training and Support – Not all workers who provide service to Indian/native children receive appropriate training and/or support in cultural sensitivity. There is much information regarding traditions and culture, community norms, and intergeneration/multigenerational trauma that would benefit the workers providing service. The intergenerational history of a family and of the Aboriginal community as a whole has deeply impacted Aboriginal and community views of child and family services. It is only through truly understanding these views that the worker be trusted by the family and community, and therefore be able to provide an increase quality in service.

Question 4: Are there changes to legislation, regulation or policy that, if implemented, would support compliance by CASs with the provisions under review?

The CFSA is very comprehensive and does include very important provisions that address some of the needs of Indian/native children. Although the provisions are present, implementation is somewhat lacking. As previously mentioned, interpretation of the CFSA is creating inconsistencies across the Province.

Identifying Indian, Native, Inuit and Métis Children

The provisions under the CFSA state that Indian children (those who are status or are eligible for status) and native children (those who are affiliated with a band or native community) will be included under the specific provisions. Unless a child is a status-Indian, they are not likely to receive culturally relevant services or to be included under the provisions. The provisions clearly state native children are to be included under the provision but methods to identify or self identify native children and their cultural needs are often absent. Some agencies take it upon themselves to only recognize status-children, which is in contrast to legislature guidelines. In addition, for reasons outside of the child's control, they may not be associated with a band or native community, but still have strong cultural ties. These children should be permitted to be included under the provisions and receive the services that will most benefit them.

Not only are native children not receiving the legislated services that would benefit them, Inuit and Métis children are not even considered throughout the CFSA. These children may have very rich cultural lives, and uprooting them from this balance is inadvisable. Provisions should include Inuit and Métis children if they would benefit from culturally relevant services. Status or on-reserve residency should not be the only prerequisites to receiving services provided through the obligated provisions.

Apprehension and prevention- the double edged sword

Families are not able to properly access prevention services if protection services (including apprehension) are each a part of the duties of each CAS. Parents put their family at risk when contacting an agency for assistance. The workers who provide the much needed assistance to improve a life situation will also be examining the family's lifestyle, habits, financial situation and internal culture without hesitation. This may unfortunately lead to protection services, including apprehension of the child or children. Prevention services may be better accessed and implemented if the service was provided for by an agency other than CAS. The same agency should not provide both prevention and protection services.

Poverty – cause of apprehension

As stated under section 37.2 (l), a child is need of protection where "the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part". The statement of "unable to care" is subjective in its interpretation. Many families throughout the province are living in poverty, but have never harmed or allowed harm to come to their child – emotionally, physically, psychologically or sexually. The family may be very supportive and full of love, but since the family can not financially provide for the child they are apprehended to be put into protective custody. The ONWA membership, staff, stakeholders and clients agree without hesitation that children should be provided for in the best way possible. However, what may be most beneficial for the child is to provide the family with financial assistance rather than disrupt the child's life in a violent act of apprehension. Poverty is not an easy obstacle to overcome on one's own. Having accessible support services without fear of apprehension should be a clear option for parents and guardians.

Additional comments as presented by attending stakeholders.

Funding Formula

Although the funding formula for Children's Aid Societies is not included in the CFSA, there is a common notion that the more children in care an agency has, the more funding they receive. It is believed that if an agency reduces the number of children in care, their funding is also reduced. Since this is not included in the CFSA, it is difficult for the ONWA to comment on. At the same time, it was a major concern that some agencies may be operating under those assumptions, and therefore pushing more children through the system in order to maintain a minimal level of funding. If the Ministry of Child and Youth Services finds this to be true, the ONWA would suggest an alternative method of funding distribution. An agency should never be in fear of losing funding because of fewer children in care/custody. Rather than reduce overall funding to the agency, it should simply be reallocated to prevention services to maintain the low level of care/custody services being provided.

Jordan's Principle

This is a child first principle aimed at resolving jurisdictional dispute with and between Federal and Provincial/territorial governments. It applies to all services and Ministries that provide service to children, youth and their families, including but not limited to the areas of child welfare, education, health, childcare, recreation and culture. The principle states that where jurisdictional disputes arise around government services being provided to status Indian or Inuit children, that the children's needs are met first. The government of first contact shall pay the

service fees, and then refer the matter of intergovernmental processing. The dispute should be handled second to service to ensure that the child is receiving any required care and services.

Although several governmental officials, including the former Minister of Aboriginal Affairs, Brad Duguid, have publicly supported Jordan's Principle, no government has yet implemented this important principle. It is the hope of the ONWA that the Ministry of Child and Youth Services implement Jordan's Principle as they see applicable and when warranted. The ONWA would be happy to work with MCYS on this very important initiative.

Timeline

There are several timelines embedded throughout the CFSA that emerge as barriers for parents/guardians in maintaining custody of their children. For example, section 29.6(2) conveys that any previous time in care or custody (as a society ward, under a temporary care agreement or under a temporary order) will be counted towards the time limit of care of a child. Only if there is a consecutive period of 5 years not in care is any previous time not accumulated. Although the intention of this section is to benefit the best interests of the child, factors often lay outside the control of parents/guardians. Sometimes parents are on waiting lists for healing processes and/or treatments that will ultimately improve their life and the life of their children, but may extend past the allotted time in the CFSA. It is unjust to not extend those requirements when there is obvious action being taken in regards to improving their family situation. Although timelines do create structure within the CFSA and are intended to prevent the continuous movement of a child from one person's care to another, flexibility and adaptability should be present when looking at individual cases.

Summary of Recommendations

The Ontario Native Women's Association is recommending:

- To work with the CASs throughout the province to provide consistency in the service delivery so that all children can receive the same standard of care.
- To ensure parents, guardians and bands are fully included in the process by working at the capacity of those parties involved in the process.
- Define "regular consultation" so that bands and native communities may fully participate in dialogue about the services for their child of concern.
- Increase and test the cultural capacity of workers by providing information and resources on the differences in First Nations, cultures and traditions, language, and the history of past trauma, including residential school trauma.
- Improving transparency and accountability of the CAS to the families they serve, by increasing shared information and support services.
- The implementation of the ONWA's additional comments throughout the activities of the Ministry.
- Change the legislature to reflect the always present option of customary care agreements, and increase the responsibility agencies have to providing funding for CCA.
- Have separate agencies that implement prevention and protection services to better support parents in their attempts to strengthen their family unit, without fear of apprehension.
- Change the legislature to include Indian, Native, Inuit and Métis children under the provisions should they require culturally relevant services.

- Eliminate the risk of apprehension due to poverty alone, as this is an economic reality facing many Ontarians. Increasing support services for those families in economic crisis will help keep families together.
- Eliminate Crown wardships so parents may have time to enter a healing process, as for some people this may take a lifetime.
- The full implementation of Jordan's Principle with the assistance of the ONWA to ensure no child will ever have to pay the price for intergovernmental disputes.

Conclusion

The ONWA looks forward to the positive changes that your Ministry is going to be making to the above mentioned provisions. If the ONWA can be of further assistance for this process or other issues concerning the welfare of Aboriginal children, please do not hesitate to contact Cora-Lee McGuire-Cyrette, Program Director at (807) 623-3442 or at hr@onwa-tbay.ca. The ONWA would be keen on an on-going relationship with the Ministry of Child and Youth Services.

Thank you again for your work in improving the child welfare system for all children in the province of Ontario.