

17th Legislative Assembly of the Northwest Territories

Standing Committee on Social Programs

Report on the Review of
Bill 47: *An Act to Amend the Child
and Family Services Act*

Chair: Mr. Alfred Moses

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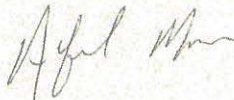
Patricia Langlois
Committee Advisor

June 3, 2015

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Programs is pleased to provide its Report on the Review of Bill 47: *An Act to Amend the Child and Family Services Act* and commends it to the House.



Alfred Moses, MLA
Chairperson

**STANDING COMMITTEE ON
SOCIAL PROGRAMS**

**REPORT ON THE REVIEW OF
BILL 47: *AN ACT TO AMEND THE CHILD AND FAMILY
SERVICES ACT***

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**STANDING COMMITTEE ON
SOCIAL PROGRAMS**

**REPORT ON THE REVIEW OF
BILL 47: *AN ACT TO AMEND THE
CHILD AND FAMILY SERVICES ACT***

INTRODUCTION

Bill 47: *An Act to Amend the Child and Family Services Act* makes enhancements to the *Child and Family Services Act*. The Bill is a long-awaited response to the statutory review by the Standing Committee on Social Programs in 2010.

The Bill proposes to expand services offered to youth; require Aboriginal organizations to be notified in advance of child-apprehension hearings or youth-protection hearings; require the Director of Child and Family Services to advise clients of their right to legal counsel; provide for mediation processes; require an application for an apprehension order to include a statement of alternatives that were considered; require a review of the *Act* every five years; include involvement in prostitution as grounds for a child or youth needing protection; and adjust time limits for temporary custody depending on the child's age.

Bill 47 was referred to the Committee on March 3, 2015. The public hearing with the Minister was held on April 20, 2015. The clause-by-clause review was held on June 1, 2015. With the Minister's agreement, five motions to amend the Bill were passed at the clause-by-clause review. These amendments are discussed below.

In its review of Bill 47, the Committee heard from many stakeholders, including the Family Law Section of the Northwest Territories branch of the Canadian Bar Association; the Northwest Territories Information and Privacy Commissioner; the Yellowknife Seniors' Society; UNICEF; the Canadian Equal Parenting Council; the Northwest Territories Human Rights Commission; the Greenland family in Aklavik; social workers, including government employees and those in private practice; community advocates; and dozens of residents from across the Northwest Territories.

The Committee held public meetings in Yellowknife, N'Dilo, Hay River, K'at'l'odeeche First Nation (Hay River Reserve), Fort Simpson, Behchokò, Délj̄ne, Inuvik and Aklavik. Poor weather prevented the Committee from flying to Fort Liard and Tuktoyaktuk as planned. During the two-week itinerary, Members

also heard from residents about Bill 44: *An Act to Amend the Hospital Insurance and Health and Social Services Administration Act*.

While there was broad support for the Bill's provisions, numerous ideas for improvement were raised. In addition, scores of stakeholders and private residents pointed out deficiencies in the child and family services system. These matters are addressed in the remainder of the report. The concluding section is devoted to recommendations for additional courses of action.

ECHOES OF THE 2010 REPORT

The Department's poor track record in the area of child and family services cast a dark shadow over the Committee's review of Bill 47. The 2010 report served as ready reference document, and the bleak results of the 2014 report of the Auditor General of Canada were fresh in the minds of Members, including the report's conclusion that the department had been failing to meet key legislative requirements.

While Members are pleased to see a number of recommendations from the 2010 report reflected in the Bill, they noted that nearly five years have elapsed. This lack of urgency demonstrates that child and family services occupy a low-priority status on the government's agenda. Indeed, many stakeholders were pessimistic about the Bill resulting in meaningful change. In a similar vein, some stakeholders stated that amendments to the *Act* will not address the core issues at hand because legislation and policies are only as good as the infrastructure, programs, and staff that are in place in the communities.

In keeping with the core findings in the 2010 report, dozens of residents and community advocates called for greater compassion from child-protection workers and the system in general. They also called for a collaborative approach for dealing with family members as opposed to an adversarial approach. Noting the legacy of the residential school system, and the loss of so many children due to child-protection concerns, numerous stakeholders requested a stronger focus on prevention and early-intervention strategies, including parenting skills and help for families who are healing from the impact of trauma, addictions, and inter-generational abuse.

The widespread lack of resources was another prevalent theme. One long-time foster parent said, "When I look around at what services are available, I see nothing—nothing, nothing, nothing." Dozens of respondents complained about a lack of resources across the board, from the lack of funding for respite care to give foster parents occasional relief from their duties to the lack of resources for

FASD children and their families, and the high rates of staff turnover, which lead to patchy and inadequate service delivery.

Several social workers described their heavy caseloads, noting that the volume, complexity and intensity of work in the North pose greater demands on them than their southern peers. Along with a number of private residents, these overworked social workers called for more effective inter-departmental collaboration, especially in small communities where resources are thin on the ground.

It is worth noting that the Tlcho Community Services Agency reported a number of positive changes flowing from the Department's action plan, which was developed in response to the Auditor General's 2014 report.

MEDIATION

During the review of Bill 47, scores of stakeholders and residents called for stronger mediation processes as an alternative to the adversarial court process. Members recalled this as one of the core recommendations from the Committee's 2010 report, and commended the Minister for including a mediation provision in the Bill. However, Members agree with the stakeholders who asked for the provision to be fleshed out. The Committee saw merit in the submission from the Family Law Section of the NWT Branch of the Canadian Bar Association and agreed with a number of its recommendations.

Accordingly, the Committee brought forward three motions. First, a motion was passed to ensure that the parties entering into mediation jointly agree on who will serve as mediator. Second, a motion was developed to ensure that communications and evidence gathered during any mediation process will be treated as confidential and not used in court proceedings. The Minister agreed with these two motions. Third, a motion was developed to authorize a judge to order parties to engage in mediation, and to set the terms for such a process, and to direct the Director of Child and Family Services to cover the cost of mediation. The Minister did not concur with that motion. As it is unlikely that parents involved in child-protection proceedings will be able to afford the cost of mediation, Members urge the Department to reconsider its position.

The Committee noted that mediation in support of child-protection concerns is very successful in other Canadian jurisdictions. With the help of trained and neutral mediators, parents are brought together with social workers, children, grandparents and extended family members, band representatives, legal counsel and others to identify joint solutions. Successful mediations typically result in agreements about such matters as who will care for the child, who will have access to a child in care, how parents can participate in support services, and

how the plan of care will unfold. Mediations build trust through collaboration, and thus foster less adversarial relationships between the parties. Indeed, parents who have participated in successful mediations often report that the process enabled them to “find a voice” and feel empowered to make positive changes. The Committee believes that greater use of mediation will, in the long run, result in cost savings by virtue of earlier resolution of matters.

It is worth noting that, in the midst of the review, the Committee inquired about the Department’s capacity to provide mediation services in each of the thirty-three communities of the Northwest Territories. In its correspondence, the Committee noted that a number of mediators are based in Yellowknife but that capacity would likely need to be developed to ensure that child-protection matters can be mediated in the communities where they occur. Regrettably, the Minister did not provide a formal reply to this query.

ALTERNATIVES TO APPREHENSION

The Committee commends the Minister for including a new provision requiring an application for an apprehension order to be accompanied by a sworn statement listing the alternatives to apprehension that were considered. The provision is meant to curb the frequency of apprehensions and to ensure that child protection workers have availed themselves of the least-intrusive measures. All too often in the Northwest Territories, families lose their children instead of getting help.

The Committee approached the Department about an additional provision which would clearly identify the measures taken to facilitate kinship care, including any provision of financial support, and why those measures proved insufficient to prevent an apprehension. The Minister concurred with this motion at the clause-by-clause review.

In addition, responding to a query from a front-line worker, the Committee confirmed that any statement listing alternatives to apprehension would be supplied by affidavit and that the rules of evidence would apply.

KINSHIP CARE

During the Committee’s public hearings, residents stated repeatedly their desire for a “family first” approach that will give extended family members—especially grandparents—the right of first refusal whenever a child is in need of protection or care. A companion request was for extended family members to receive financial compensation when they care for children on an informal or temporary basis. According to one wearied grandmother who has fostered several

grandchildren, “I’m tired and I’m angry—this government is actually going backward. When are things going to change for the better?”

In a similar vein, community residents strongly and repeatedly expressed their desire to see more children remaining in their families and communities of origin, and within their cultures. To this end, the Committee noted section 2(f) of the *Act*, which states that child-protection measures must promote family and community integrity wherever possible, and section 3(c) of the *Act*, which states that determining the best interests of the child must include consideration of the child’s cultural, linguistic and spiritual upbringing and ties.

In an attempt to address residents’ concerns within the scope of Bill 47, the Committee sought an amendment to the provision that requires an application for an apprehension order to include a statement of alternatives that were considered. The amendment will require that the statement also include a list of any financial supports provided to extended family members to help maintain the child. It is the Committee’s hope that this provision will, in appropriate cases, result in the courts rejecting the application and ordering financial support be provided to family members who are willing to care for the child. Recognizing that this amendment does not mandate the provision of financial support for kinship care, the Committee noted that these statements will have extra weight because they must be supplied by affidavit.

The Committee feels it cannot overstate the degree of concern over perceived deficiencies of the current arrangements, especially when grandparents step in to care for grandchildren and find themselves drained of their personal and financial reserves. Indeed, the discussion surrounding kinship care led Members to conclude that the *Child and Family Services Act* should be completely revised in the 18th Assembly. Specifically, Members want to see comprehensive new provisions to address kinship care and family-preservation strategies. Potential amendments could include revisions to the preamble so that kinship care is given a prominent place throughout the *Act*. Another example would be a new provision authorizing the court to place a child with a member of the extended family as an alternative to temporary custody.

YOUTH SERVICES

The Committee recalled one of its core findings in 2010: that young people aged 16 to 19 are disadvantaged in our system—to the point where their human rights are compromised. The gap in services for this age group was first raised in 1977, and remains to this day. The changes proposed in Bill 47 allow the Director of Child and Family Services to offer the same services to youth as are offered to

children, and to extend the Director's parental responsibility for permanent wards to the age of 23.

Like many stakeholders, the Committee was pleased to see new provisions for youth services. However, the Committee notes, the provisions are largely *discretionary*. Members are therefore unconvinced that the Department will actually follow through on the provision of these services. As a case in point, a number of discretionary provisions to provide youth services already exist in the *Act* and yet these services have largely been denied to young people as they age out of the system.

The Committee noted that youth who have been through the child-protection system are at a much higher risk of becoming homeless; developing addictions and mental health issues; becoming involved in crime; and committing suicide. Accordingly, Members want like to see a much broader range of services offered to these youth. Multi-departmental teams should be set up to support these high-risk youth, and the teams should be comprised of experts in areas such as psychiatry and mental health, literacy and career counselling, nutrition, and crime prevention.

CHILD AND FAMILY SERVICES COMMITTEES

The Committee's 2010 report included a core recommendation to set up and fund Child and Family Services Committees in every community, as set out in the *Act*. Only one community, Fort McPherson, has ever had a Child and Family Services Committee, although provisions were first made for them in the *Act* nearly twenty years ago. The lone Fort McPherson experiment was fragile and short-lived.

During the public review, the Minister clarified that these expanded roles in communities would be performed on a voluntary and unpaid basis. Members were uniformly displeased to hear this and their dismay was shared by scores of private residents. The Committee concludes that the unpaid and voluntary status of Child and Family Services Committees would be an impediment to lay people's involvement and would not make the committees more viable.

In the midst of the review, the Committee wrote to the Minister and asked if serious consideration had been given to allocating meaningful resources toward this important community-based work. Regrettably, no reply was received. Concluding that the proposed provision to expand roles is empty of substance, the Committee prepared a motion to eliminate it. The motion received the concurrence of the Minister.

The Committee wishes to note that the motion to eliminate an expansion of duties for Child and Family Services Committees was initially a gesture of protest. Upon further deliberation, however, Members concluded that the model has never proven to be viable. The Committee is therefore urging the Department to introduce a separate bill to remove all provisions pertaining to Child and Family Services Committees in the *Act* and, further, urging the Department to investigate viable alternatives for involving community members in the child-protection process. The Committee notes, for example, that New Zealand and a number of Canadian jurisdictions have had success in their use of Family Group Conferences.

NOTIFYING ABORIGINAL ORGANIZATIONS

Bill 47 includes a new provision which requires aboriginal organizations to be notified in advance of an apprehension hearing or youth protection hearing. While the Information and Privacy Commissioner expressed concerns about the privacy implications of this provision and called for tighter restrictions, the Committee did not agree, noting that companion provisions already exist in the *Act*.

A number of representatives from aboriginal organizations expressed confusion over the purpose of the notification provisions and, specifically, what they are expected to do with the information once it is received. The Committee therefore urges the Department to establish a protocol with aboriginal organizations for handling sensitive information. The goal should be to strike a balance between the rights of aboriginal governments to know what is happening to their children, on the one hand, and the privacy rights of children and family members, on the other hand.

RIGHT TO LEGAL COUNSEL

The Committee commends the Minister for the new provision requiring the Director of Child and Family Services to inform clients of their right to legal counsel. However, the Committee wanted to see stronger obligations. The Minister agreed to a motion to amend which places a positive obligation on the Director of Child and Family Services to facilitate clients' access to legal counsel and, where appropriate, the services of an interpreter. In the Committee's view, this additional provision merely codifies what should already be happening in practice.

RECOMMENDED ACTIONS

The Standing Committee on Social Programs recommends the following courses of action:

- 1) That the Department of Health and Social Services completely rewrite the *Child and Family Services Act* in the 18th Assembly, with renewed emphasis on kinship care and strategies oriented toward mediation, prevention, early intervention and family preservation;
- 2) That the Department of Health and Social Services take stronger measures to keep children within their families and communities of origin, including devoting additional funding for prevention, early intervention and family-preservation strategies;
- 3) That the Department of Health and Social Services move swiftly and assertively to build capacity in the area of mediation across the Northwest Territories;
- 4) That the Department of Health and Social Services cover the cost of hiring and training mediators in order to facilitate more collaborative and favourable outcomes;
- 5) That the Department of Health and Social Services establish a protocol with aboriginal organizations for handling sensitive information, striking a balance between the rights of aboriginal organizations to know what is happening to their children and the privacy rights of children and family members;
- 6) That the Department of Health and Social Services act immediately to introduce a bill to remove all provisions pertaining to Child and Family Services Committees in the *Act*;
- 7) That the Department of Health and Social Services investigate viable alternatives to Child and Family Services Committees that will promote community involvement in the child-protection process;
- 8) That the Department of Health and Social Services investigate the approach whereby the problem parent is removed from the home instead of apprehending the child;
- 9) That the Department of Health and Social Services provide community-based workshops and healing camps to parents and

families as a cost-effective alternative to sending people out for treatment or counselling;

- 10) That the Department of Health and Social Services work toward building people's capacity to parent effectively and competently; and
- 11) That the Government of the Northwest Territories engage in discussions with UNICEF to examine whether this jurisdiction is doing to enough to recognize and promote children's human rights.

RECOMMENDATION

Recommendation 1

That the Government of the Northwest Territories provide a comprehensive response to this report within 120 days.

CONCLUSION

The Standing Committee on Social Programs thanks all stakeholders who provided comments on Bill 47 or attended the public hearing.

The Committee advises that it supports Bill 47 as amended and reprinted and presents it for consideration to the Committee of the Whole.

