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CUSTOMARY CARE

THE CARE AND SUPERVISION OF INDIAN CHILDREN UNDER THE
CHILD AND FAMILY SERVICES ACT

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Children's Services Branch
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THE RECOGNITION OF CUSTOMARY CARE UNDER THE CESA, AND THE NEED FOR A PROVINCIAL FRAMEWORK

Recognition of Customary Care

Section 191 in Part X of the CESA recognizes the concept of "customary care" as "the care and supervision of an Indian or native child by a person who is not the child's parent, according to the custom of the child's band or native community". Section 195 provides authority to an agency or society to grant a subsidy to the person caring for the child, "where a band or native community declares that an Indian or native child is being cared for under customary care".

Guidelines Originally Proposed

The Ministry released a discussion paper in the summer of 1986 on the implementation of Part X, and other matters affecting Indian and native children and families under the CESA. In that paper, the Ministry proposed a number of guidelines for the implementation of customary care under the Act. These guidelines proposed that:

- customary care for purposes of the CESA could include any informal arrangement of care that is agreed to by all of the parties involved, including the parent and child, where the child is 12 or older, the caregiver, the agency, and the band or native community;
- customary care under the CESA would not include involuntary admission to care under Part III (Child Protection) or Part IV (Young Offenders);
- the amount of subsidy would be determined by the society or agency in consultation with the parties involved, including the band or native community, but should be consistent with the foster allowance rate under the Family Benefits Act and the General Welfare Assistance Act;
- there would be a written agreement to specify the duration of care, the names of all parties involved, and the reason for the arrangement; and,
- periodic reviews would be taken, the frequency depending on the particular circumstances, but at least once a year to ensure that the arrangement is still satisfactory and continuing.

Response to Proposed Guidelines

Chiefs of Ontario

The Chiefs of Ontario opposed to the Ministry's proposed guidelines. It was and continues to be their position that:

- there should be no provincial policy or guidelines on this matter because customary care practices vary from band to band, and change over time;

it is up to First Nations to define what customary care is;

agencies and societies should provide customary care subsidies, upon request of any First Nation; and

it is discriminatory to subsidize customary care at the GWA/FBA "foster allowance" rate as these rates are substantially lower than typical foster care rates under the CESA.

The Chiefs asked for an amendment to section 195 to make the payment of customary care subsidies mandatory, upon request of a First Nation. At the present time section 195 permits the payment of a subsidy but does not make the payment of such subsidies mandatory.

Other Indian and Native Organizations

The majority of other Indian and native individuals and organizations consulted fully agree with the Chiefs of Ontario. Some also have the view that customary care should be even more informal than suggested in the Ministry's proposed guidelines, and are opposed to any involvement of the agencies and societies, other than to provide the subsidy required.

Non-Native Societies and Agencies

Representatives of non-native children's aid societies and other non-native agencies were not satisfied with the proposed customary care guidelines either. Some feel that societies and agencies should not be involved in any customary care arrangements, and propose that either the customary care provisions be removed from the Act altogether, or that the Act be amended to provide for direct Ministry funding to bands and native communities for customary care.

Purpose and Approach of This Paper

The customary care guidelines originally proposed by the Ministry were withdrawn in response to the strong negative reaction from all sides. The alternatives proposed were examined, and the Ministry undertook to develop a provincial framework in a more responsive and consultative manner, with input from native agencies and organizations. The purpose of this paper then is to examine the emerging models of customary care, and propose a revised provincial framework.

The Ministry considered the Chiefs' request for an amendment to make the payment of customary care subsidies mandatory upon request to be unnecessary and inappropriate. Sections 191 and 195 in Part X of the CESA were included to make it possible to provide customary care when it is necessary to look after children as a result of situations described in the Act. It would be inappropriate to require payment under the CESA for situations

that go beyond the Act, and in cases where there is a need for financial assistance but no CFSA issue is involved, application for assistance may be made under the General Welfare Assistance Act or the Family Benefits Act.

The Ministry also considered the Chiefs' position that there should be no provincial policy, or guidelines on this matter. In proposing a provincial framework, the Ministry is not seeking to prejudice or pre-empt the legitimate aims of First Nations for self-government. However, at the present time, the Minister of Community and Social Services has a clear constitutional responsibility for the protection of all children in Ontario, including Indian and native children, and the provision of services to children with special needs. In the absence of constitutional change, the Minister must carry out these responsibilities in accordance with the CFSA.

Where the Minister has legal responsibility, he must act in accordance with the law. Where he is accountable, there must be some means to ensure accountability. Thus, a provincial framework and guidelines are necessary with respect to customary care under the CFSA.

It is recognized that customary care is occurring and will continue to occur outside the parameters of the CFSA. That is fully acceptable. Where there is a need for agency involvement under the Act however, whether or not a subsidy is required, there has to be accountability.

The Ministry considered it to be inappropriate to repeal customary care from the CFSA, and is committed to the development of culturally appropriate and flexible services. "Customary care" is regarded as an appropriate means of accomplishing this objective precisely because:

- (1) it allows services in accordance with the CFSA, thus meeting the Minister's responsibilities; and,
- (2) there is great flexibility under the CFSA regarding customary care, thus allowing the provision of culturally appropriate, community-based services.

Section 1 of this paper explains the Ministry's rationale for recognizing customary care and providing special considerations and opportunities for Indian and native children and families in the CFSA.

Section 2 describes the current and proposed practices and procedures of the new Indian child and family service agencies in Ontario. The paper examines the proposed and existing models of customary care that have been developed by Tikinagan Child and Family Services, Payukotayno: James and Hudson Bay Family Services, and Weechi-it-te-win Family Services.

Section 3 examines the issues that emerge out of the current and proposed models and procedures, and Section 4 makes recommendations for a revised provincial policy and guidelines for the placement of children outside their homes under customary care.

The Ministry recognizes that there are other native agencies under development and they may each propose somewhat different customary care models and programs. It is anticipated however, that the issues raised by those models already developed will probably also be raised by other models that may be developed in the future. The discussion in this paper is intended to propose a provincial framework for customary care, which may be revised as appropriate, over time, depending on other models and issues that emerge.

The framework proposed in the paper does not pre-empt the option of funding bands or native communities directly for the purposes of customary care. The Ministry has not received any specific proposals for this option and it raises issues that need careful consideration. At present, it is not possible to fund bands or native communities directly for the purposes of customary care under the Act. The Act permits the payment of a subsidy by an agency or a society, and not the Minister or Ministry directly. The subsidy must be paid to the person caring for the child, and not to the band or native community. Individual bands and native communities could not use customary care for protection purposes, unless a mandated agency is involved.

1. RATIONALE FOR CUSTOMARY CARE AND THE INDIAN AND NATIVE PROVISIONS IN THE CHILD AND FAMILY SERVICES ACT, 1984

Inadequacies of Services To Native Children and Families In the Past

The inadequacies of services to native children and families in the past are well documented in numerous studies and reports. Historically, a disproportionately high number of native children were removed from their families and communities. While in Ontario Indian children accounted for only approximately 1.1 percent of the child population (0-19) in the early 1980s, during the five year period from 1977-81, Indian children accounted for approximately as much as 8 percent of all children in care of children's aid societies in the province, in each year.

There is also evidence that once native children were admitted to care, they were less likely than non-native children to be returned to their parents, and more likely to experience frequent moves. In addition, the majority of native children adopted were adopted by non-native families. In 1981, for example, 72.7 percent of all status Indians adopted, were adopted by non-Indians. And in 1983, 94% of the native (status and non-status) children placed for adoption in Ontario, were adopted by non-native families.

Effects on Native Children, Their Families, Communities, and Culture

The effects of the inadequacies of child welfare services to native children and families in the past are also well documented. Many native children grew up being so dislocated in terms of their culture, their race and their family, they have no clear sense of identity and no home to which they could return.

Some argue that the effects of apprehension on an individual native child was often more traumatic than for a non-native child. Frequently, when a native child was taken from his parents, he/she was also removed from a tightly knit community of extended family members and neighbors, and from a unique, distinctive and familiar culture. Many native children were lost to their families and communities, and as a result suffered serious cultural conflicts arising from their placement in foster homes and institutions alien to their social and cultural experience.

The effects of apprehension were often as painful for the parents as they were for the child. Often, difficulties the parents may have been experiencing were further aggravated. Problems of alcoholism and emotional stress were often exacerbated when a child was removed, and this in turn increased the likelihood of other children in the family being apprehended.

The disproportionately high number of native children removed during what has been called the "Sixties Scoop" also caused severe damage on their cultures and society as a whole. Some argue that past child welfare practices threatened their very existence and survival.

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Reasons Why Native Children Were Removed From Their Homes and Communities In the Past

There are many factors which contributed to the disproportionately large number of native children who were removed from their families and communities in the past.

One major contributing factor is that the service delivery system was not culturally appropriate or compatible with native customs, values, and traditions. Non-native child welfare workers had little understanding of the differences in child-rearing practices and beliefs that distinguish native from non-native people.

Another major contributing factor is rooted in the economic conditions in native communities. Many native children were apprehended and taken into care primarily because their parents were poor, or were perceived to be poor, and therefore, judged to be inadequate as parents.

Studies indicate that the reasons given for the majority of removals had to do with neglect, social deprivation, or emotional damage to the child. Very few removals were undertaken on the grounds of "physical abuse". Often, the finding of neglect was based on standards inconsistent with native cultural values and social norms. In many communities, the extended family rather than the nuclear family, was the norm. Child care was often traditionally the responsibility of grandparents or other relatives. Some communities would allocate responsibility to very young children, allowing them to go unsupervised. This was frequently interpreted by non-natives as parental permissiveness or indifference.

Parental abuse of alcohol was also frequently advanced as a cause for removal of children. Some critics have charged that agency officials would much more frequently remove children from native parents who abused alcohol than from similar non-native parents.

Intent of the Child and Family Services Act

Part X of the CFSA and the many other Indian and native sections throughout the rest of the Act are intended to encourage the provision of appropriate protection services which recognize the uniqueness of Indian and native culture, heritage, traditions and the concept of the extended family. The Declaration of Principles at the beginning of the Act states that one of the purposes of the Act is:

"to recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family".

Part X and again, the many other Indian and native provisions throughout the rest of the Act are intended to achieve this objective.

Ontario's Native Affairs Policy Framework, 1985

The special provisions for Indians and natives in the CESA is consistent with Ontario's Native Affairs Policy Framework established in 1985.

The policy framework provides a set of principles to guide ministries in the development and delivery of services and programs for aboriginal peoples in Ontario. The principles require ministries to:

- . develop program initiatives in conjunction with native people;
- . design programs which are supportive of native self-determination and self-reliance; and
- . provide native specific services to meet the needs of native people and support the protection of their cultures.

2. EMERGING MODELS AND PRACTICES OF THE NEW INDIAN CHILD AND FAMILY SERVICE AGENCIES

The new Indian child and family service agencies in Ontario and their communities have developed or proposed a new form of culturally appropriate services and care under the CFSA.

The Erosion of True Customary Care

Tikingagan and Payukotayno undertook an extensive consultation and research project for the purpose of developing a community based program/service delivery model which would incorporate traditional methods of customary care. In their report, As Long As the Sun Shines...From Generation to Generation (1988), Tikingagan and Payukotayno, explain that:

"in the past there were few issues surrounding child care. Problems arising from child abuse and neglect were rare. Generally, some form of non-parental care was needed only in cases where children were orphaned. In such cases, the extended family would incorporate the children following the wishes of the parents or the advice of the family elders. Children were also placed in non-parental homes for reasons other than protective ones. For example, children were often "given" to grandparents in order to provide assistance to the grandparents, to show respect and gratitude, and to foster the transfer of traditional knowledge. Children might also be "given" to homes where a child had been lost, or where there were no children, or to alleviate a child's illness. While the child would be raised as a member of the "gifted" family, there was no doubt as to the birth parents, nor any limitation on the child's right to return to his birth parents, and extended family in the traditional system. Children knew their parents and were free to return to the parental home. Birth parents were expected to take an active role in the child's life".

Tikingagan and Payukotayno further explain that the past can only guide the future generally. Their report on customary care states that:

"the pattern of child care developed in the past was embedded in a way of life very different from that of modern village life. The relationship between individual, family and community has changed with the more sedentary life that came with day schools. The structure of child and family problems is greatly different than in the past. Incest, abuse, neglect, teenage crime, and marriage dissolution are recent phenomena."

True Customary Care Should Not Be Defined By Provincial Legislation

It is the position of Tikinagan and Payukotayno that true customary care cannot be and should not be defined by provincial legislation. They explain that "customary care is Indian care of Indian children under Indian jurisdiction". Weechi-it-te-win Family Services agrees with this view and is working under the CFSA as an interim measure pending federal legislation in this area.

Contemporary or Community Care

Recognizing the erosion of truly traditional care, and pending resolution of the jurisdictional issues, the Indian child and family service agencies have proposed and begun to implement a new form of care not specifically available under the CFSA. In the case of Tikinagan and Payukotayno, this new form of care is referred to as "contemporary care". Weechi-it-te-win refers to this new form of care as "community care". Weechi-it-te-win's principles for the placement of children in care are similar to those of Tikinagan and Payukotayno.

The major difference between the evolving system and the traditional system is the increased role given to the Chief and Council to deal with the new problems of child abuse and neglect".

Principles

While each of the Indian child and family service agencies are organized differently to reflect the specific communities they serve, there are common approaches among them for the delivery of services under the Act, and the implementation of their mandate as child protection agencies. The principles for the admission and placement of children into care under customary or contemporary care can be generalized as follows:

1. The removal of a child from his or her own home is highly destructive and must be undertaken only as a last resort after all other avenues have been exhausted.
2. Where a child must be removed from his or her own home, the first choice of placement for the child should be with members of his or her own extended family.
3. If placement with a member or members of the child's extended family is not possible, the child should be placed with other members of the same community, if possible.
4. Admission to care and placement must be undertaken on a voluntary basis, whenever possible.

5. The courts and other external agencies (e.g. the police) should only after all other avenues have failed.
6. The child's own family, including siblings and parents, extended family and other people in the child's community, including the Chief and Council, the Family Service Committee, and Elders, should be involved in the decision-making around admission to care, placement, and plan of care.
7. Placement outside the home should be on a temporary basis, wherever possible, while the family has the opportunity and support to resolve their problems.
8. Where placement outside the home is required on a longer-term basis, the child's natural parents should continue to be involved in matters of major importance, such as the religious upbringing, medical procedures and education.
9. Help should be given to assist and support troubled families and children in a nonpunitive and non-judgemental manner.
10. When a decision is made by the child's family to place the child with another family, (for example, as in 'gifting', or in the case of death or a debilitating illness of the caregiver) and there is no protection issue, any financial support that is offered should also be a matter for family decision there should be no subsidy from the agency.

Practice

Tikinagan and Weechi-it-te-win are already implementing the proposed model and principles. Payukotayno in the other hand is implementing its protection mandate as prescribed for other children's aid societies, pending the Ministry's response to their report, As Long As the Sun Shines.

The practices that are emerging (i.e. with respect to Tikinagan and Weechi-it-te-win) are consistent with the principles described above, except to some extent the last one.

Where it is necessary for a child to be placed outside his or her own home, the band family service workers who are employed by the bands to organize and provide services under the CFSA for band members, determine the details around the placement and plan of care in consultation with the child's extended family and others in the community, including the Chief and Council, the Family Service Committee, Elders, and the designated agency. Band family service workers are not designated protection workers under the Act.

Tikinagan and Weechi-it-te-win each negotiate Community Service Agreements with every band in their geographic territory. These agreements outline the individual responsibilities of the community and of the agency with respect to service delivery under the CFSA.

Tikinagan and Weechi-it-te-win employ their own staff and provide coordinative support for each of the band family service workers, making referrals, providing back-up services and consulting with them on decisions on cases, where necessary. The agency is involved (either through the Program Consultants in the case of Weechi-it-te-win or through Regional Supervisors in the case of Payukotayno) in all cases of abuse or suspected abuse. The agency maintains central case records and is responsible for meeting the fiscal and reporting requirements of MCSS on behalf of the bands.

The agency enters into a customary care agreement if the placement and plan of care are deemed to be appropriate (i.e. that the placement selected and proposed plan of care will be beneficial to the child). Responsibility for the care and supervision of the child are transferred by means of a written agreement to the designated caregivers or co-parents. The band and agency are parties to this agreement, as well as the parent, the caregivers, the older child, and in some cases, a representative of the band's family service committee.

The agency provides a subsidy to the caregivers, normally at a rate comparable to regular CAS foster care payments.

The placement is monitored by the band family service workers and reviewed by the agency on a regular basis. A plan of care is developed to specify the program goals related to the child's natural parents and the child. Even where it is clear that the placement will be required on a long-term basis, the agency and band family service workers would seek the natural parents continuing input into matters of importance such as religious upbringing, medical procedures, and education, wherever possible.

The agreements are each for a specified time, (e.g. six months or 1 year) but can be renewed and the arrangement may continue for as long as necessary.

If the child cannot be placed with another family and requires placement in a group home or institution, the agencies use temporary care or special needs agreements as prescribed under Part II (Voluntary Access to Services).

Child protection proceedings under Part III are initiated only if the child's parents do not consent to the arrangement proposed, where it is determined by the band family service worker and agency that placement outside the child's home is necessary to protect the child.

While the majority of existing arrangements appear to be made for reasons of protection, there are some which appear as though they could be eligible for the GWA/FBA "foster allowance". For example, there are some cases where a child has been cared for by extended family for some time already on a voluntary basis, while others are more a matter of financial support to extended family.

3. ISSUES

No Statutory Limitations Are Set Out Regarding Customary Care Under Part X

Part X does not set out any legislative requirements or regulation-making authority relating to customary care. It does not set out any time limitations, age limitations, or placement requirements, and does not specify the circumstances under which customary care may or may not be used under the Act. The only statutory limitation that would apply under Part X with respect to customary care, is that a customary care agreement can only be made in respect of a child, which is defined under the CFSA to mean a person under the age of 18 years.

Original Intent

Again, as noted earlier in the introduction to this paper, the original intent of including customary care under Part X was to allow for informal and voluntary arrangements of care for Indian and native children, where they are members of a band or designated native community. It was never intended that customary care be used for protection purposes. The proposed guidelines clearly distinguished customary care from care required pursuant to Part III of the CFSA (child protection).

It was originally the intent that:

- . the requirements under the Act and regulations concerning a child in need of protection would apply to all children and families, including Indian and native children and families; and,
- . the requirements and procedures to be followed by children's aid societies and other service providers under the Act would also apply to native service providers and agencies; unless,
- . specific exemptions were made pursuant to subsection 206(a) in Part XI of the CFSA.

Subsection 206(a) permits the Lieutenant Governor in Council to make regulations for the purposes of Part X, exempting an "Indian or native child and family service authority, a band or native community or specified persons or classes of persons, including persons caring for children under customary care, from any provision in this Act or the regulations".

There are many other provisions throughout the Act specific to Indian and native children and families, and their communities. Subsection 37(4) in Part III, for example, requires that "where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity". Where the court finds a child in need of protection and is satisfied that intervention

A. THE USE OF CUSTOMARY CARE AGREEMENTS FOR PROTECTION PURPOSES UNDER THE CFSA

The new Indian child and family service agencies propose to use, and in some cases are already using, customary care agreements as an alternative to protection proceedings under Part III of the CFSA.

May/should customary care agreements be used for protection purposes, as an alternative to supervision, society wardship, or crown wardship under Part III?

May/should customary care be used without the consent of the parents and/or child involved?

Care Under the CFSA

At present, under the CFSA, a child may come into care either by means of a voluntary agreement under Part II, or as a result of a protection hearing under Part III. There are three types of voluntary agreements under Part II: temporary care agreements, special needs agreements, and special needs agreements for 16 and 17 year olds. Under Part III, where the court finds the child to be in need of protection, the court may make an order for supervision, society wardship or Crown wardship.

Temporary care or special needs agreements may be used under Part II, depending on the circumstances where parents and children voluntarily seek assistance or need help, and there is no need to involve the court. A person who is temporarily unable to care adequately for a child in his or her custody, and the society having jurisdiction where the person resides, may enter into a written agreement for the society's care and custody of the child. (Special needs agreements for 16 and 17 year olds are examined later in the discussion of age considerations).

Temporary care agreements are used to help the family by providing care for the child while the family works to resolve the problems that led to the need for care. They are intended to be used when circumstances temporarily prevent the parent from adequately caring for the child, or there is a strong possibility protection services will eventually be required, even if the criteria defining a child in need of protection are not immediately present. The parent must want to plan for and be involved with the child, and the likelihood must exist that the child may be returned home within a maximum of one year. The parenting abilities of the parent can be supported while the problem is resolved.

Temporary care agreements are not intended to be a substitute for wardship under Part III, and may not be used where the issue is abuse or neglect, except under unusual circumstances, for example where:

the parent recognizes there is a problem and voluntarily requests help;

through a court order is necessary to protect the child in the future, the court is instructed under subsection 53(5) to place the child with a member of the child's extended family, a member of the child's band or native community, or another Indian or native family unless there is a substantial reason for placing the child elsewhere. Subsection 57(2) sets out similar instructions for children's aid societies having to place Indian and native Society or Crown wards into residential care.

The CFSA also contains many provisions for the involvement of a child's band or native community in matters affecting their members. Again, in Part III for example, clause 39(1)(4) permits a representative chosen by a child's band or native community to be a full party to any protection proceedings involving a member of the band or community. A representative chosen by the child's band or native community has other rights under Part III, for example to request status reviews and to receive copies of assessment reports, etc.

Again, these same considerations and provisions for involving the child's band or native community were intended to apply even where a native agency was providing the services in a catchment area. The existing native agencies and the communities they serve however, do not wish to operate in exactly the same manner as other children's aid societies and are proposing what they feel is a more culturally appropriate service that respects the decision-making structure of their communities.

Issues

The models that have been proposed by the new Indian child and family service agencies raise a number of issues in light of the many other provisions and requirements under the Act and regulations. Briefly, these issues pertain to:

- . the use of customary care agreements under the CFSA;
- . the subsidy;
- . the care and supervision of a child in care, and the role of the agency;
- . time and age considerations;
- . placement requirements;
- . the use of customary care agreements by non-native agencies.

This section of the paper examines these issues in the context of the other provisions in the Act, and current Ministry policies with respect to those provisions.

- a careful evaluation of the causes, seriousness and impact of the abuse indicates that the child's continuing safety is not in doubt;
- the agreement is used as a cooling-off period, for example, when the parents do not want to repeat the abusive act, but may not be able to control their actions toward the adolescent without a period of respite from him or her; and,
- all family members concerned are committed to resolving the circumstances which contributed to the abuse.
- termination of the agreement would not cause the child to be in need of protection.

Special needs agreements are used where the child has a special need and residential care is required to meet this need. These agreements are usually made with the Minister of Community and Social Services under subsection 30(2) of the Act. They are like Temporary care agreements in that they are not used when protection of the child is an issue.

It is Ministry's policy that voluntary care agreements may not under any circumstances be used where the issue is abuse or neglect and the child is 12 years old or younger, or the child is developmentally or physically handicapped.

Child in Need of Protection is Defined and Procedures to Be Followed Are Set Out in Part III of the CFSA

Subsection 37(2) in Part III of the CFSA defines a child in need of protection. This includes situations where a child has suffered or will likely suffer physical harm, sexual abuse or exploitation, or emotional abuse inflicted by the person having charge of the child or caused by that person's failure to care and provide for or supervise and protect the child adequately. Part III requires these matters to be brought before the court to determine whether the child is in need of protection and how the matter should be dealt with.

Standards and Guidelines for the Management of Child Abuse

The Ministry's Standards and Guidelines for the Management of Child Abuse (1981) set out procedures that must and should be followed in child abuse investigation so that children are not removed from their homes without thorough investigation of the circumstances and reasonable assurance that removal is necessary to ensure the child's safety. These procedures are also intended to provide sufficient information to ensure that children in circumstances that place them at risk are protected.

The Standards and Guidelines include procedures concerning the investigation process, the verification of the information of alleged child abuse, case management, supervision, and review, police and court involvement, removal and return of a child, a lost child or missing family; deaths of children,

reporting serious occurrences to the Ministry, the termination of child abuse cases, transfers, and record keeping.

Child Abuse Register

The Ministry's Guidelines for Reporting to the Child Abuse Register (1987) must be followed as required by sections 71 and 72 of the CFSA, in cases of abuse. The Registry is intended to assist in tracing abused children, their families, and suspected abusers so that protection efforts may continue uninterrupted, and monitor child abuse case management and programs of children's aid societies.

Consent

Section 249 of the Criminal Code makes it an offence for a person without lawful authority to take or cause to be taken an unmarried person under the age of 16 years out of the possession of and against the will or the parent or guardian of that person who has the lawful care and charge of that child. Where child abuse is suspected or has occurred and the parents refuse to act, the agency is required to initiate protection proceedings under Part III.

The use of voluntary agreements under Part II requires the parent's consent, and where the child is 12 or older, the child's consent is also required.

Discussion

The proposal to use customary care in cases that would normally require intervention under Part III of the CFSA represents a fundamentally different approach to child welfare matters, and has raised concerns in light of subsection 15(1) of the Constitution Act, 1982 which guarantees that "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability".

The Children's Services Branch anticipates this concern but believes that the emerging model of customary care does ensure the protection of Indian and native children, but provides for an alternative and more culturally appropriate way to do so, in recognition of the uniqueness of Indian and native culture, heritage and traditions, and the concept of the extended family. The native agencies have agreed that where a child cannot be protected through customary care, the matter will be brought before the court pursuant to Part III of the CFSA.

The Children's Services Branch agrees that differential treatment is also appropriate on the grounds that Indian and native children and bands and native communities are already singled out for special treatment and considerations under the CFSA and there are no statutory limitations

prescribed with respect to customary care under Part X. Furthermore, differential treatment is allowed under the Charter notwithstanding the equality provision. Subsection 15(2) of the Charter provides that the subsection 15(1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability".

It could be argued that a unique form of care should be available to Indian and native children and their communities in recognition of the uniqueness of their culture, heritage and traditions, and the concept of the extended family.

The emerging model is consistent with the Declaration of Principles set out at the beginning of the CFSA as it applies to all children in general, and specifically as it relates to bands and native communities, and Indian and native children and families. The model is also consistent with Ontario's Native Affairs Policy of 1985.

The Children's Services Branch is presently working on a position paper to examine new directions for residential family resources for all children. Preliminary research for input into this paper shows that the recent emphasis on parental rights and children's rights, including the right to due process of law, have resulted in an increase in the influence of the legal system on child welfare practice. This influence is not always in the best interests of the child. The paper (still in draft form) states that clients are increasingly pursuing their rights in a legal context, and this often places them at odds with agency workers whose mandate requires them to take legal action. "Conflicts which occur in this context promote stand-offs and confrontation rather than cooperative compromise. Such conflicts are often not in the best interest of the child who remains in limbo and caught between conflicting parties".

The draft paper on residential family resources also suggests that mediation should be offered as an option to parents whose children are apprehended by a child welfare agency. Mediation is defined as a resource for handling conflict, by providing a neutral forum in which disputants are encouraged to find mutually satisfactory resolution to their problems". There have been experiments with mediation programs and evaluations show positive results. One evaluation found, for example, that there appeared to be an increased satisfaction with the outcome of the intervention process, a higher level of commitment to intervention plans, a greater sense of alliance among workers and parents, and a decreased necessity for court imposed plans.

The negotiations leading to the placement of a child in customary care may be regarded as a unique, community based and culturally appropriate model or form of mediation.

This paper does not include a list of statistics that one normally sees in reports concerning socio-economic conditions in Indian and native communities. However, there is no question that every social indicator affirms that this population is the most disadvantaged in the country. The problems that they face stem in part from poor socio-economic conditions but are also

attributed to low individual and cultural esteem which is produced when individuals and communities are unable to control their lives and their future.

A wide range of studies in the United States and Canada demonstrate that there exists a uniquely native pattern of mental health problems. Psychologists explain these cultural differences in terms of concepts such as 'learned helplessness' and 'acculturative stress'. Native professionals explain that these psychological conditions result from 'internalized oppression'; a psycho-social process whereby the collective experience of colonization and feelings of powerlessness, low cultural esteem and poor self-image are internalized.

The community control aspect of customary care as proposed by the native agencies and their communities is regarded as essential to improve the social, physical, and mental health of native individuals and their communities.

Recommendations

While it may be possible to defend the use of customary care as proposed the requirements of the CFSA still apply. The definition of a child in need of protection pertains to any child, including an Indian or native child. This means for example that abuse or suspected abuse must be investigated, that abuse must be reported to the Child Abuse Register, and the agency must ensure the safety and protection of children in its jurisdiction.

It is recommended therefore that customary care may be used as an alternative to protection proceedings under Part III, provided that where there are allegations or evidence that a child under the age of 16 is or may be in need of protection as defined under subsection 37(2) of the CFSA:

• the agency:

- undertakes investigations as required under the Act, and the investigation indicates that the child's continuing safety is not in doubt, and that the child is not at risk in his or her own home or in any outside placement that is arranged;
- develops policies and procedures consistent with the Ministry's Standards and Guidelines for the Management of Child Abuse;
- follows the reporting requirements under the Act, and the Ministry's Guidelines for Reporting to the Child Abuse Register;

• the family recognizes there is a problem and agrees to accept the help that is offered by the agency (i.e. the family is committed to resolving the circumstances which contributed to the abuse); and,

• the older child (12 or over) agrees to the placement, and the terms and conditions of the agreement.

The Standards and Guidelines for the Management of Abuse and Ministry policy on care under the CESA emphasize the importance of choosing the least restrictive and least disruptive option for the child, initial planning for a child to receive care outside his/her own home, whether or not abuse is the issue. The agency and bands should consider all possible options for a child from the time placement in customary care is first considered until the child is returned home or finally and completely independent. The agency and band family service workers would be expected to determine whether out-of-home care is required and the best choice for the child, and should establish criteria to consider, for example:

- . whether the child is at risk in his/her present circumstances;
- . whether the child's circumstances and the family's circumstances could be modified in such a way as to eliminate or substantially reduce the risk;
- . whether there is the potential for positive change, and if so, whether the family can best achieve that potential with the child at home, or temporarily outside;
- . whether the alternative placement under consideration for the child would have distinct and substantial advantages over the child's current situation;
- . how the separation from the child's own family would likely affect the child;
- . if placement outside the home is necessary, what type of placement would be best for the child; and,
- . how long is the child likely to require placement outside the home, and what would be the plan for termination of care;

If the parents are having difficulties caring for the child in meeting his/her basic daily needs (i.e. shelter and/or food) placement outside the home is not necessarily the most appropriate response; assistance and resources may be required and should be obtained, to keep the child at home, in these circumstances.

Where there is evidence that a child is at immediate risk, it may be necessary to place the child in a temporary situation until a thorough assessment can be undertaken. Procedures and guidelines should also be established to include guidelines that would assist in determining the need for emergency care and, establish how long emergency residential care can be provided.

B. THE USE OF CUSTOMARY CARE TO PROVIDE FINANCIAL ASSISTANCE

As noted earlier, there are some cases where customary care is used primarily to provide financial assistance to extended family already caring for a child or willing to care for a child, for some time or indefinitely. These do not necessarily involve protection matters.

May/should customary care be used as a means of providing financial assistance for the purpose of family support?

The use of customary care strictly to provide financial assistance appears to duplicate a program that already exists for this purpose.

GWA/FBA "foster allowance" Program vs. CFSA Care

The GWA/FBA foster allowance program is intended to provide for financial assistance to relatives and friends who voluntarily assume responsibility for the care of children whose parents are unable or unwilling to provide care and support themselves. The arrangement is a private, family matter. Children in this type of arrangement are deemed to be receiving appropriate care and not at risk, and therefore not in need of protection under the CFSA.

Care under the CFSA, on the other hand, has the primary objective of providing safety and protection for children whose parents are unable to care for them adequately at home. Removing a child from his or her own home under the CFSA (under either Part II or Part III) is undertaken only in specified circumstances, where the child is at risk of needing protection or is at risk of becoming in need of protection unless he or she is removed from home.

Recommendations

It is recommended that customary care not be used or subsidized under the CFSA for private arrangements worked out between families unless there are protection concerns and intervention by the band or native community and mandated agency is required. This is consistent with the recommendations of Tikinagan and Payukotayno, and the practice guidelines of Weechi-it-te-win.

Having recommended this however, the Children's Services Branch recognizes that the GWA/FBA program requires a more defined policy focus than exists at present. There has been considerable confusion about the intent of that program and there is little in the way of explanatory guidelines. The Children's Services Branch will continue to seek clarification regarding the intent and appropriate use of the GWA/FBA foster allowance program.

C. THE TRANSFER OF CUSTODY OR GUARDIANSHIP and the RESPONSIBILITIES OF THE PARTIES INVOLVED IN CUSTOMARY CARE

As noted earlier, at present, child comes into care under the CFSA either by means of a voluntary agreement under Part II, or as a result of a protection hearing under Part III. In either instance, care and custody is legally transferred to the society or to the Crown, in which case the society is responsible to the Crown.

The native agencies and the communities they serve agree that it is not appropriate to transfer care and custody to the agency, not even temporarily, except in exceptional circumstances, if care can be arranged on a voluntary basis with extended family members or other members of the child's community. Tikinagan and Payukotayno are therefore proposing to transfer custody to the co-parent. Weechi-it-te-win is transferring "guardianship" to the caregiver by means of a written agreement.

May/should customary care involve the transfer of custody?

May/should customary care involve the transfer of guardianship?

What is the role of the agency in relation to the child's placement?

Custody

Under the CFSA, custodial rights may be transferred in three ways: a person having custody of a child may transfer care and custody to a children's aid society pursuant to a temporary care agreement or a special needs agreement; a court may make an order of society wardship or Crown wardship in child protection proceedings; or a child may be adopted under Part VII of the Act. Custody may not be transferred by means of a customary care agreement at present under the CFSA.

"Guardianship"

There is no provision anywhere in the CFSA for the transfer of guardianship. Strictly speaking, the concept of guardianship has been removed from Ontario law and replaced by concepts of custody and access. While Ontario legislation does not expressly provide for guardianship however, the transfer of guardianship is not prohibited. In practice, some parents do enter into agreements with third parties whereby they delegate their custodial responsibilities. Such agreements may be entered into in order to allow a third party who is caring for the child on a temporary basis to attend to the child's medical, educational or other special needs.

Roles and Responsibilities

Where a child is made a society ward, the society has the rights and responsibilities of a parent for the purposes of the child's care, custody and

control. Where a child is made a Crown ward, the Crown has these rights and responsibilities, and they are exercised by the society caring for the child.

Where a society has care and custody under the CESA whether by means of a voluntary agreement under Part II or by a court order under Part III, the duties and responsibilities of the society with respect to the child, the parents, and the foster parents are clearly prescribed. There are provisions concerning important matters such as medical consents, the child's right to an appropriate education, and the child's right to a plan of care. Unless the child is a Crown ward, the society must involve the child's parents in matters and decisions affecting them and the child. The society is responsible for providing on-going support and supervision of the placement.

There is a need to clarify the roles and responsibilities of the parties involved in customary care.

Recommendations

Since there does not appear to be any legal impediment then to the practice of delegating responsibility to the caregiver for the day to day care and supervision of a child, it is recommended that the practice of transferring responsibility for the day to day care and supervision of a child be accepted as a legitimate alternative to the agency having legal care and custody of a child in customary care arrangements. (It must be recognized however, that the terms of these agreements would be subject to the court's jurisdiction to scrutinize any matters pertaining to children. Section 55(1) of the Family Law Reform Act allows the court to disregard any term of a domestic contract "respecting the support, education, moral training or custody of or access to a child").

Even in these customary care arrangements the agency would still have the responsibility of any other agency under the Act with respect to the child, the child's parents, and the caregivers. It is therefore recommended that there be a written agreement for each child in customary care, and the agreement should specify the roles and responsibilities of all the parties involved. A plan of care should also be prepared for each child in customary care, and guidelines should be established to identify when the agency expects the initial plan of care from the band family service workers, and what should be included in the plan. It is suggested that:

- . a plan be completed by the agency within 30 days of the placement; and,
- . the plan identify any special needs of the child, the level of care required, how those needs will be met, the circumstances necessitating the need for out of home care, all available identifying information about the child, and the terms of the agreement between the parents, child, agency, the caregivers, the band.

The issue of medical consents should be considered since the need for emergency care cannot be anticipated. It is recommended that in preparing

the plan of care, parental authorization be obtained for the caregivers to obtain emergency medical treatment, if necessary.

Where a child is in customary care on a long-term, indefinite basis, the agency should ensure that the child receives an education that corresponds to his or her aptitudes and abilities.

It is important that the plan be reviewed regularly and amended as the child's needs or situation changes. Written procedures and guidelines should be developed to ensure that the plan of care is reviewed regularly during the child's placement, and to check on the child's progress and ensure that the plan of care continues to meet his/her needs. Updates and revisions should be made as required, and input from the child, the co-parents or caregivers, the natural parents, and other designated community members should be obtained. (Other specialists may be involved in the review as appropriate. It is suggested that the plan be reviewed by the agency at least every 3 months).

D. LENGTH OF AGREEMENTS

One of the principles of service delivery established by native agencies and the communities they serve is that admission to care and placement should be on a temporary basis, wherever possible. While it is hoped that a placement outside the child's home would be on a temporary basis, however, there will be some children who require care outside their own home on an on-going and possibly indefinite basis.

Should customary care agreements be open-ended?

There are time limitations imposed under the CFSA for the use of Voluntary Care Agreements. No agreement may be made for a term exceeding six months. The agreement may be extended, with a Director's written approval, for a further period or periods, but the total term of the agreement may not exceed an aggregate of 12 months. The intent is to return the child to the person who had charge of the child prior to the agreement, but if the society has reason to believe that the child would be in need of protection if returned to that person upon termination or expiry of the agreement, the society is required to bring the matter before the court under Part III to make a determination.

As well, there are time limitations imposed on supervision orders and society wardship under Part III. A supervision order cannot continue for more than 12 months. Similarly, society wardship cannot continue for more than 12 months. On the other hand, Crown wardship may continue until the child turns 18 or marries, whichever comes first.

The time limitations on voluntary care agreements are intended to ensure that a permanent plan can be made for the child if the child cannot be returned home within the specified time. The time limitations on supervision and

society wardship are intended to ensure that the state is involved only for as long as necessary.

As noted earlier, the CFSA does not set any -time limitations with respect to customary care.

Recommendations

It is recommended that each customary care agreement be for a specified period of time, for example, for six months or one year, depending on the circumstances. While each agreement would be for a specified time, customary care arrangements should continue to be provided on an ongoing and indefinite basis as long as the child's needs cannot be met in his/her own home. However, where the child cannot be returned home at least within the foreseeable future, the co-parent or caregiver is prepared to continue caring for the child, there are no continuing protection concerns, and the agency's ongoing involvement is no longer required, the agreement for purposes of the Act should be terminated. It is reasonable to expect such arrangements under normal circumstances to become stabilized within 2 to 3 years.

If financial assistance is required by the caregivers in order to continue caring for the child, the agency should seek assistance through the GWA/FBA foster allowance program before terminating the agreement. If that program cannot be accessed or the allowance would not meet the needs of the child the agency's the customary care agreement may be continued. In these circumstances, the agency would be expected to continue their involvement but to a lesser degree than during the first two years. It is suggested that the agency monitor these longer-term arrangements at least twice a year.

Some may argue against these recommendations on the grounds that other children do not have this option. The option of long-term customary care and the payment of a subsidy based on the needs of a child, should not be denied on the these grounds. As noted earlier, reserve communities are the most disadvantaged in the country, and customary care is already a distinct option available only to Indian and native children under the Act.

E. PLACEMENT REQUIREMENTS

Section 14 of the CFSA requires that "no approved agency shall place a child in a residential placement except in accordance with this Act and the regulations". Paragraph 176(1)(b) prohibits a person to establish, operate or maintain a children's residence, or provide directly or indirectly, residential care for three or more children not of common parentage in places that are not children's residences except under the authority of a license issued by a Director under Part IX of the CFSA. A "children's residence" may be a parent model residence where five or more children not of common parentage, live and receive residential care, or a staff model residence where three or more children not of common parentage live and receive residential care.

Foster homes or other homes or institutions that are supervised or operated by a society are considered to be a children's residence under the Act.

Must/should customary care placements comply with the requirements of the Act and regulations?

A parent-model foster home where fewer than five children live and receive residential care is not a children's residence. A home that provides customary care to fewer than five children would not fall within the definition of a children's residence either. Thus, the requirements that pertain to children's residences under the Act and regulations would not apply to these homes in any event. (These requirements would pertain to matters such as accommodation, programming, and management practices).

On the other hand, the agency itself, and any agency it contracts with to provide residential care, must be licensed, even with respect to customary care. These requirements pertain to the agency however, and not to the caregivers.

The only requirements under the Regulations that apply to parent model foster homes with four or fewer children would be the foster care requirements under O.Reg. 550/85, sections 104 - 114. These requirements have to do with admission, programming, plan of care, placement reviews, etc.. These particular regulations are based on good practice and allow within them a fair degree of flexibility. While the native agencies would likely not have much difficulty in meeting many of these regulations there are some sections which are of concern to them. (for example, requirements to: get the names of at least three persons in the community as references; get a written statement from a physician regarding the health and illnesses of the potential or proposed caregiver; and to carry out an inspection of the home as prescribed.)

The Ministry's Policy Statement on Standards for Foster Care (1985) recognized the need for native defined foster care standards and made a commitment to support the development of both native child and family services and native foster care within those services.

Recommendation

It is therefore recommended that native child and family service agencies and their communities develop their own guidelines and standards for the placement of children in customary care.

F. AGE CONSIDERATIONS

Although the Act does not set out any limitations with respect to age and customary care, the Ministry examined issues relating to age and care under the CFSA to determine whether agencies would be expected to develop guidelines addressing matters relating to age.

May/should customary care be used for 16 and 17 year olds?

Under the CFSA, Temporary Care Agreements may be used only for children 15 and younger. Similarly, protection proceedings under Part III apply only to children 15 and younger.

Special Needs Agreements may be made with 16 and 17 year olds but only where the youth has a special need which must be established by means of documentation within the last year from the child's medical history or through an assessment by a psychiatrist, school psychologist, psychometrist or other person qualified to do assessments (as long as that person is not an employee of the agency providing the service).

The Act authorizes the Minister to extend services to persons over 18 and to their families, in order to ensure that a person is not barred from service by reason of age alone. Extension of service is intended for persons who were in receipt of a children's service when they reached the age of 18. The extension of the service beyond the maximum age of 18 allows young persons to remain in the children's services system if there are no appropriate adult services available. Provision for extended service is selective (i.e. not automatic) and is subject to certain criteria. (see Ministry Family Services Manual for detail).

Recommendation

It is recommended that customary care be used for any person 18 years of age or younger, but where the person is 16 or 17 year old, the agency should ensure that the arrangement for care outside the child's home is related to special needs of the young person. The Ministry would expect documentation on the child's special needs to be included in the child's file.

It is also recommended that guidelines be established for the extension of services to children when they are over the age of 18. It would be expected that these guidelines be consistent with the Ministry's policy on the extension of services to persons over 18 years of age under Part II of the CFSA.

G. THE DIRECTORS REVIEW

For Crown wards under the Act, there is a provision (section 62) which requires a review each calendar year of every child who has been a Crown ward for the preceding 24 months and whose status was not reviewed in that period. The goal of the Crown ward review is to determine that an adequate plan of care is developed for each Crown ward (i.e. whether the placement, services, planning, and Crown wardship itself are meeting the emotional, educational and social needs of the Crown ward). An additional goal of these reviews is to stimulate improvement in the overall service delivery to children.

Must/should customary care placements be subject to this type of review?

The Directors Review would not apply legally to customary care placements. The Children's Services Branch considered the need for a policy to have a Ministry review mechanism for long-term customary care placements under the CFSA. Since the arrangements are voluntary however, and if the agencies work out their own review guidelines as recommended elsewhere in this paper, a review at the Directors level is regarded as unnecessary. There is no recommendation therefore to require such a review.

H. RATE OF SUBSIDY

Customary care arrangements are usually made with members of the child's extended family or other families in the child's own community, and at present, these arrangements are normally subsidized at a rate comparable to regular CAS foster care rates. As noted at the beginning of this paper, the Ministry originally proposed that customary care should be subsidized at a rate comparable to the GWA/FBA foster allowance rates.

What rate of subsidy should apply to customary care?

GWA/FBA foster allowance vs. CFSA foster rates

The standard GWA/FBA foster allowance rate (as of January 1989) is \$181.00 per month for the first foster child, \$148.00 for the second foster child, and \$122.00 for the third and each additional child. Regular CAS foster care rates are considerably higher, and are sensitive to age and regional variations. In 1987, the Ministry's recommended foster care rates ranged from approximately \$422.00 - \$584.00 per month in the North Region to \$460.00 - \$612.00 per month in the Central Region. (This includes the base rate plus reimbursables such as baby formula, diapers, and spending allowance).

The Ministry's original position on rates was based on the view that customary care would be used only for very informal arrangements of care. The Ministry's view was also based on the view that provincial expectations of foster parents are formalized through licensing requirements, including the expectation for screening, training and monitoring by the children's aid society. Children are placed through court interventions or formal agreements with the parents, and foster parents accept responsibility through service agreements and pre-placement discussions.

As noted elsewhere in this paper, the native agencies are using and wish to continue using customary care agreements primarily for protection purposes or to prevent the need for protection services in the future. The agencies undertake regular reviews and case conferences, develop plans of care in consultation with the bands and band family service workers, and monitor the arrangements. These arrangements are much more formalized than originally

anticipated by the Ministry and are used for circumstances that normally require intervention whether under Part II or Part III of the CFSA.

The agencies will be expected to develop their own placement standards.

Normally under the CFSA, the child's parent is expected to contribute towards the cost of the child's care, wherever possible, whether that care is provided under the terms of a Voluntary Care Agreement under Part II, or under a Court Order pursuant to Part III.

Expectation that Parent Will Contribute to Costs of a Child in Care, Where Possible

Under Part III of the CFSA, the court may order a parent or a parent's estate to pay a society a specified amount at specified intervals for each day the child is in the society's care or supervision. Sub-section 56(2) states that the court shall consider those of the following circumstances of the case that the court considers relevant: the assets and means of the child and of the child's parent or the parent's estate; the child's capacity to provide for his or her own support; the capacity of the parent or the parent's estate to provide support; the child's mental, emotional and physical needs; any legal obligation of the parent or the parent's estate to provide support for another person; the child's aptitude for and reasonable prospects of obtaining an education; and any legal right of the child to obtain support from another source, other than of public monies.

For voluntary agreements under Part II, the society is expected to determine whether the parents can contribute to the cost of their child's care.

Similarly, with respect to the GWA/FBA foster allowances, the allowance is in part determined by the child's assets and income, the ability of the natural parents to support the child, the efforts made to secure such available support, either by the child or on behalf of the child by the foster parent, and any assignment or transfer of liquid assets or real property in the three years preceding the date of application or at any subsequent time, made by the person who has control over the transfer or assignment of the property of the foster child.

Recommendation

The child's parent or person in charge of the child should be expected to contribute towards the costs of a child in customary care, where possible. Where it is determined that a subsidy is required, the needs of the child should be assessed on an individual basis. The rate of subsidy on average should be no more than regular CAS foster care rates, except in unusual circumstances.

I. NON-NATIVE CHILDREN'S AID SOCIETIES

The principles for service delivery in Indian and native communities and the emerging model of customary care that is being developed under the CFSA may at first appear to be difficult to apply for Indian and native children in the catchment area of non-native Societies.

May/should non-native agencies provide customary care as proposed?

As noted, at the beginning of this paper, the Ministry consulted with agencies and societies about the implementation of customary care in the summer and fall of 1986. At that time, representatives of non-native societies indicated that customary care should be the responsibility of the band and not societies. They were concerned about issues of liability and responsibility, and did not want to provide financial assistance to support arrangements they would not otherwise be involved in, and over which they would have no control. Some felt that bands should be given responsibility for customary care and should be funded directly by the Ministry for this purpose.

There does not appear to be any legal or policy reasons for the reluctance of non-native children's aid societies to using customary care in the manner proposed by native children's aid societies. Under the proposed model, the agency would be involved in approving the arrangement and placement, and in providing on-going support and supervision. It is the Ministry's understanding that the primary concern of non-native children's aid societies about customary care is that it would not provide for any involvement on their part but would require them to fund these arrangements.

Customary care is a legitimate option under the CFSA and the Act does not limit the payment of subsidies to native agencies. Section 195 which authorizes agencies and societies to pay customary care subsidies applies to any agency or society operating under the Act.

The CFSA permits children's aid societies to transfer placements, or care and supervision, from one society to another. At present, non-native children's aid societies are not agreeing to supervise customary care placements for the native children's aid societies, when requested. There does not appear to be any policy or legal rationale for not accepting to supervise customary care placements under similar circumstances.

Recommendations

It is recommended that customary care be implemented as proposed by every child and family service agency in Ontario, where the agency has a band in its geographical territory. (This would apply to members of native communities if such a community is designated by the Minister of Community and Social Services under section 192 in Part X of the Act).

Non-native societies that presently have band members in care, either under voluntary agreements, supervision, or society wardship, should explore the possibility of entering into a customary care arrangement for the child as an alternative to Crown wardship, if the child cannot be returned home.

It is also recommended that non-native societies agree to supervise customary care placements if requested by a native agency, in circumstances under which they normally informally supervise society wards or Crown wards another agency.

4. RECOMMENDATIONS

This section of the paper presents all of the recommendations identified throughout the section on issues. Numbers are provided for easy reference by readers.

Many of these recommendations reflect either the current practice or the proposals existing native child and family service agencies. The purpose of formulating the recommendations in the manner presented in this paper is to set out a provincial framework for the implementation of customary care under the CFSA.

#1. It is recommended that customary care be used as an alternative to protection proceedings under Part III, provided that where there are allegations or evidence that a child under the age of 16 is or may be in need of protection as defined under subsection 37(2) of the CFSA:

the agency

- undertakes investigations as required under the Act, and the investigation indicates that the child's continuing safety is not in doubt, and that the child is not at risk in his or her own home or in any outside placement that is arranged;
- develops policies and procedures consistent with the Ministry's Standards and Guidelines for the Management of Child Abuse;
- follows the reporting requirements under the Act, and the Ministry's Guidelines for Reporting to the Child Abuse Register;

the family recognizes there is a problem and agrees to accept the help that is offered by the agency (i.e. the family is committed to resolving the circumstances which contributed to the abuse); and,

the older child (12 or over) agrees to the placement, and the terms and conditions of the agreement.

#2. The agency and bands should consider all possible options for a child from the time placement in customary care is first considered until the child is returned home or finally and completely independent. The agency and band family service workers would be expected to determine whether out-of-home care is required and the best choice for the child, and should establish criteria to consider, for example:

- whether the child is at risk in his/her present circumstances;
- whether the child's circumstances and the family's circumstances could be modified in such a way as to eliminate or substantially reduce the risk;

- whether there is the potential for positive change, and if so, whether the family can best achieve that potential with the child at home, or temporarily outside;
 - whether the alternative placement under consideration for the child would have distinct and substantial advantages over the child's current situation;
 - how the separation from the child's own family would likely affect the child;
 - if placement outside the home is necessary, what type of placement would be best for the child; and,
 - how long is the child likely to require placement outside the home, and what would be the plan for termination of care.
- #3. If the parents are having difficulties caring for the child in meeting his/her basic daily needs (i.e. shelter and/or food) placement outside the home is not necessarily the most appropriate response; assistance and resources may be required and should be obtained, to keep the child at home, in these circumstances.
- #4. Where there is evidence that a child is at immediate risk, it may be necessary to place the child in a temporary situation until a thorough assessment can be undertaken. Procedures and guidelines should be established to include guidelines that would assist in determining the need for emergency care and, establish how long emergency residential care can be provided.
- #5. Customary care should not be used or subsidized under the CFSA for private arrangements worked out between families unless there are protection concerns and intervention by the band or native community, and mandated agency is required.
- #6. There should be a written agreement for each child in customary care, and the agreement should specify the roles and responsibilities of all the parties involved. A plan of care should also be prepared for each child in customary care, and guidelines should be established to identify when the agency expects the initial plan of care from the band family service workers, and what should be included in the plan. It is suggested that
- . the plan of care be completed by the agency within 30 days of the placement; and,
 - . the plan identify any special needs of the child, the level of care required, how those needs will be met, the circumstances necessitating the need for out of home care, all available identifying information about the child, and the terms of the

agreement between the parents, child, agency, the caregivers, the band.

- #7. In preparing the plan of care, parental authorization should be obtained for the caregivers to obtain emergency medical treatment, if necessary.
- #8. Where a child is in customary care on a long-term, indefinite basis, the agency and band or native community should ensure that the child receives an education that corresponds to his or her aptitudes and abilities.
- #9. Written procedures and guidelines should be developed to ensure that the plan of care is reviewed regularly during the child's placement, and to check on the child's progress and ensure that the plan of care continues to meet his/her needs. Updates and revisions should be made as required, and input from the child, the co-parents or caregivers, the natural parents, and other designated community members should be obtained. (Other specialists may be involved in the review as appropriate. It is suggested that the plan be reviewed by the agency at least every 3 months).
- #10. Each customary care agreement should be for a specified period of time, for example, for six months or one year, depending on the circumstances. While each agreement would be for a specified time, customary care arrangements should continue to be provided on an ongoing and indefinite basis as long as the child's needs cannot be met in his/her own home. However, where the child cannot be returned home at least within the foreseeable future, the co-parent or caregiver is prepared to continue caring for the child, there are no continuing protection concerns, and the agency's ongoing involvement is no longer required, the agreement for purposes of the Act should be terminated. It is reasonable to expect such arrangements under normal circumstances to become stabilized within 2 to 3 years.
- #11. If financial assistance is required by the caregivers in order to continue caring for the child, the agency and band family service worker should seek assistance through the GWA/FBA foster allowance program before terminating the agreement. If that program cannot be accessed or the allowance would not meet the needs of the child the agency's the customary care agreement may be continued. In these circumstances, the agency would be expected to continue their involvement but to a lesser degree than during the first two years. It is suggested that the agency monitor these longer term arrangements at least twice a year.
- #12. Native child and family service agencies and their communities should develop their own guidelines and standards for the placement of children in care.

- #13. Customary care should be available to persons 18 years of age or younger, but where the person is 16 or 17 year old, the agency should ensure that the arrangement for care outside the child's home is related to special needs of the young person. The Ministry would expect documentation on the child's special needs to be included in the child's file.
- #14. Guidelines should be established for the extension of services to children when they are over the age of 18. It would be expected that these guidelines be consistent with the Ministry's policy on the extension of services to persons over 18 years of age under Part II of the CESA.
- #15. The child's parent or person in charge of the child should be expected to contribute towards the costs of a child in customary care, where possible. Where it is determined that a subsidy is required, the needs of the child should be assessed on an individual basis. The rate of subsidy on average should be no more than regular CAS foster care rates, except in unusual circumstances.
- #16. Customary care should be implemented as proposed by every child and family service agency in Ontario, where the agency has a band in its geographical territory. (This would apply to members of native communities if such a community is designated by the Minister of Community and Social Services under section 192 in Part X of the Act).
- #17. Non-native societies that presently have band members in care, either under voluntary agreements, supervision, or society wardship, should explore the possibility of entering into a customary care arrangement for the child as an alternative to Crown wardship, if the child cannot be returned home.
- #18. Non-native children's aid societies should agree to supervise customary care placements, if requested by a native society, in circumstances under which they normally informally supervise society wards or Crown wards another agency.