

# Child Protection Law

YWCA Training

Iqaluit 2013

**CONTEXT**

## Historical Factors Contributing to Inuit Children in Need of Support

- Imposition of non-Inuit values on Inuit communities
- Imposition of the Canadian justice system
- Introduction of the wage economy
- Mandatory schooling of Inuit children and the residential school system
- Erection of southern bureaucratic governance over Inuit way of life
- Assimilationist government policies
- Loss of Inuit self-reliance, culture and way of life

Government of Nunavut, Nunvaut Tunngavik Inc., Embrace Life Council & the Royal Canadian Mounted Police, 2010; see also Inuit, Tuttarvingat, National Aboriginal Health Organisation *Inuit Child Welfare and Family Support: Policies, Programs and Strategies* (2011, NAHO)

The prevalence of poverty and inadequate housing in [Aboriginal] communities is associated with higher rates of child neglect. Parents with fewer resources experience more difficulty housing children, providing them with proper clothing and nutrition, and securing adequate childcare. Some research suggests lower-income parents may also have more negative life experiences and fewer coping resources, which could lead to low self-esteem, depression, and substance abuse.

Vandna Sinha, Nico Trocmé, Barbara Fallon, Bruce MacLaurin, Elizabeth Fast, Shelley Thomas Prokop, et al (2011). Kiskisik Awasisak: Remember the Children. Understanding the Overrepresentation of First Nations Children in the Child Welfare System. Ontario: Assembly of First Nations. [AFN 2011].

Inuit child-rearing practices differ significantly  
from non-Inuit practices.

For example, Inuit parents are less disciplinary  
than non-Inuit parents,  
and Inuit children are granted a higher  
Degree of freedom compared to  
Western culture

# Systemic Issues in the Area of Child Welfare

- Gaps in services for Inuit families and children in need of support
- High numbers of child protection cases
- Tension between Inuit culture and values and service agencies' mandates and approaches
- Need for more prevention services in the home and in the community
- Difficulties with custom (extended family) adoption and foster care, including recruitment, training and support

Key Issues Identified by *Inuit Children and Social Services Reference Group* to Improve Family Support and Child Welfare:

1. Address Child And Family Poverty
2. Foster More Community Involvement in Supporting Families and Children
3. Take an Inuit-Specific Approach to Child Welfare
4. Develop More Culturally Appropriate Services

5. Focus on Supporting Families and Preventing Child Welfare Crises
6. Improve Supports in the Home
7. Support Traditional Inuit Practices
8. Ensure Inuit Have Access to Legal Services
9. Get More Inuit Knowledge in Child Welfare and Family Support
10. Maintain Cultural Ties and Community Connections for Adopted Children
11. Involve Families and Communities in Decision-Making
12. Build Capacity in Inuit Communities

# **THE LEGISLATION**

## **CHILD AND FAMILY SERVICES ACT**

### **Key Sections**

# CHILD AND FAMILY SERVICES ACT

Principles include [s.2(a) and (f)]:

- Paramount objective of act is to promote the best interests, protection and well-being of children
- Measures taken for the protection and well-being of children should, as far as possible, promote family and community integrity and continuity

# Act requires respect for Inuit Social Values

- (a) Inuuqatigiitsiarniq (respecting others, relationships and caring for people);
- (b) Tunnganarniq (fostering good spirit by being open, welcoming and inclusive);
- (c) Pijitsirniq (serving and providing for family or community, or both);
- (d) Aajiiqatigiinni (decision making through discussion and consensus);
- (e) Piliriqatigiinni or Ikajuqtigiinni (working together for a common cause); and
- (f) Qanuqtuurniq (being innovative and resourceful).

The following Inuit Social values may also be used to administer or interpret the Act:

- (a) Inunguqsainiq (nurturing or raising an individual to be a productive member of society);
- (b) Inuttiavaunasuaqniq (working towards a good or problem-free life);

[as of January 2014]

In making a decision about the “best interests” of a child, what factors must be considered?

# Definition of Best Interests of the Child

## s.3 Child and Family Services Act

- (a) the child's safety;
- (b) the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the importance for the child's development of a positive relationship with his or her parent, a secure place as a wanted and needed member of the family, and a stable environment;

# Definition of Best Interests of the Child

## s.3 Child and Family Services Act

- (e) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- (f) the risk that the child may suffer harm through being removed from, kept away from, returned to, or allowed to remain in, the care of a parent;
- (g) the merits of any proposed plan of care for the child;

# Definition of Best Interests of the Child

## s.3 Child and Family Services Act

- (h) the child's relationship by blood or through adoption;
- (i) the child's views and preferences, if they can be reasonably ascertained; and
- (j) the effects on the child of a delay in making a decision.

# *The Child and Family Services Act*

When is a Child “In Need of Protection”?

# s. 7 Child and Family Services Act

## A Child is Need of Protection Where:

- Physical harm or risk of physical harm (whether directly or because of inadequate supervision)
- Sexual abuse or risk of sexual abuse [including exposure to pornography]
- Emotional or mental well-being harmed or risk of harm [including because of child's use of alcohol, parent refuses consent to treatment or healing processes]

## s. 7 Child and Family Services Act A Child is Need of Protection Where:

- Child has demonstrated anxiety, depression, self-destructive behaviour, withdrawal consistent with emotional harm and child's parent doesn't provide treatment
- Malnutrition
- Abandonment by parent without adequate provision made for care by extended family

s. 7 Child and Family Services Act  
A Child is Need of Protection Where:

**Repeated exposure to family violence and  
child's parent is unwilling or unable  
to stop such exposure**

(as of Jan 2014)

# Duty to Report (s.8 CFSA)

A person who has information or reasonable grounds to believe that a child needs protection, SHALL, WITHOUT DELAY, report the matter:

- (a) To a Child Protection Worker; or
- (b) If a Child Protection Worker is not available, to a peace officer or authorized person

Malicious Reports are Prohibited.

## **DUTY TO REPORT:**

### **What if the woman has left her abuser?**

- Where a woman has taken or is taking steps to protect the children from exposure to woman abuse, reporting to child protection authorities is not required.

This could include a woman who has:

- realistic plans to seek custody of her children
  - come to a shelter with her children to live
  - taken steps to find housing for herself and her children
  - reported the abuse to the police so her abuser can be charged
  - hired a family law lawyer
- 
- Source: Springtide Resources Child Protection Fact Sheet (2011)

# Duty to Investigate (s.9 CFSA)

- Investigation required if “advisable”
- Investigation undertaken in most cases
- Where no investigation is conducted in response to a report, the worker “must prepare a report setting out the reason for not investigating the child’s needs and provide a copy to the Director”.

# What is the Role of the Social Worker?

- Is there to support and work with the family
- Has a legal duty to the child and ensuring the child's safety
- Is **not** the mother/parent's counsellor or social worker
- Is not the mother/parent's friend
- Ultimately work with mothers in the context of a power imbalance – can apprehend the child

# What the statute says about the “Plan of Care”

19. (1) A plan of care agreement for a child may include provision for

(a) where and with whom the child will live;

(b) support services to make the child's home safe for the child;

(c) counselling;

d) access to the child by a parent where the child will not be living with the parent;

(e) the child's education;

(f) the child's social and recreational activities;

(g) the responsibilities of any of the persons

(h) a person named in the agreement to have the rights and responsibilities of a parent in respect of the person of the child that are set out in the agreement during

the term of the agreement;

(i) support for the child by a parent under the Children's Law Act during the term of the agreement; and

(j) any other matter or thing that the plan of care committee considers necessary and in the best interests of the child.

# Action by Child Protection Worker During or After Investigation (s.10 CFSA)

May:

- Apprehend the child
- Offer voluntary support services [including counselling, in-home support, respite care, parenting programs, assistance with finances and housing, drug/alcohol treatment, etc.]
- Establish a Plan of Care

# **STEPS IN THE CHILD WELFARE PROCESS**

## Steps in the Child Welfare Process

1. Report made to Agency
2. Investigation by Agency
3. Family Services & Support

Ideally resolved here without apprehension

Often Plan of Care Agreement signed

4. Apprehension
5. Voluntary Plan of Care or Placement Agreement may be signed

6. If child is not returned and POCA not signed, the Child Protection agency must go to Court for a declaration that the child is in need of protection within 4 days of apprehension.
  
7. A hearing to confirm the apprehension (eg confirming that there are reasonable grounds to believe that there is a risk to the child's health or safety if returned) must be completed within 20 days of apprehension.

8. Extended family guardianship applications are sometimes made at this stage
  
9. Consent order for Supervision, Temporary Order or Permanent Order (will include parental expectations and access) OR

- 10 Within 30 days of order confirming apprehension, child welfare agency will prepare a new set of court documents (application and affidavit) to obtain an temporary or permanent order.
  
11. Pre-trial conference with a Judge scheduled (anywhere from 1 – 3 months in future)
  
12. If no resolution, a trial will be scheduled. The wait for trial dates is several months.

# KEY POINTS

- Woman should apply for a legal aid lawyer as soon as possible:
  - if she is being asked to sign a voluntary agreement (including in cases where she still has custody of her children)
  - after apprehension
- Legal information and/or advice can also be obtained over the phone

# KEY POINTS

- It is essential for women to have support and information/advice as early as possible in the process
- Once a “status quo” is established (eg. Children removed and living with extended family in another community) it is often very hard to change
- See “Strategies and Ideas” Tip Sheet for suggestions for how front line workers can support women

# KEY POINTS

- Parents must do everything they can to either attend court appearances or let the Court know they are trying to attend or obtain legal representation
- If parents do not show up at court, their consent to what the Agency is seeking will eventually be “deemed”

# KEY POINTS

- Even where a Permanent Order is made, women should not give up all hope. They can continue to heal and re-apply to the Court for increased access and opportunities to reconnect with their child(ren), even possibly for the return of their children

# Voluntary Agreements

What Many Women Experience/Front Line Workers May See

- Pressure on women to sign if it means they will get their kids back or if it means their kids won't be apprehended
- Traumatized, terrified, can't "hear", don't always know or fully understand what they're agreeing to
- Boilerplate, often not tailored to the specific needs and circumstances of the woman

# Legal Status

## Voluntary

- Temporary Care Agreements
- Voluntary Support Services

## Involuntary

- Interim Care
- Temporary Custody
- Permanent Custody

# Involuntary Process

- Grounds for Protection
- Duty to Report
- Apprehension
- Court Application
- Court Proceedings

# Court Forms

- Application (originating document)
- Notice of Motion
- Supporting Affidavit
- Answer
- Filing, serving and timeframes

# Complaints of CFS

Should your client have a question or concern about the services, your client should:

1. Speak directly to the assigned worker;
2. Go to the worker's supervisor or Director;
3. CFS Authority;

Other options?

# What does woman abuse have to do with child protection?

- Children who are exposed to their mothers being abused can experience negative impacts, especially when that exposure is over a long period of time and or the abuse is severe.
- Since the 1990s, child protection legislation has required professionals to report situations of woman abuse where they believe children have been exposed.
- Unfortunately, this has not always worked in the interest of abused women and their children.
- Criticism of Child Welfare Policy that once involved, child protection authorities have often focused on holding the abused woman accountable for "failing to protect" her children while largely ignoring the perpetrator.

Source: Springtide Resources Child Protection Fact Sheet (2011)

- Interventions have often disempowered women and reinforced the belief that women are responsible for the violence. Common approaches have included:
  - telling the woman that her children will be removed if she does not leave the abuser
  - requiring her to get a restraining order
  - requiring her to attend violence against women services, which are intended to be voluntary
- This added to women's fears of using any services at all because they were afraid of Child Welfare taking their children away.

Source: Springtide Resources Child Protection Fact Sheet (2011)

# Revised Approaches

- Exposure to woman abuse alone should not be defined as requiring a child protection response, but rather that the presence of woman abuse in the home should be considered one risk factor among others.
- Should include an increased focus on holding the perpetrator rather than the mother, responsible and accountable.

Source: Springtide Resources Child Protection Fact Sheet (2011)