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**IMPROVING ACCESS TO JUSTICE
FOR WOMEN IN THE NWT**
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CHILD WELFARE



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CHILD WELFARE AND CHILD PROTECTION

All children have a right to live free from abuse and are entitled to protection from abuse, harm and neglect.

Children depend on their parents to love, nurture and protect them.

Parents have a duty to provide for the emotional and physical well-being of their children.

All of us have a special duty to keep children safe.

We all play a role in ensuring that children and young people are free from harm, and to ensure their wellbeing and quality of life.

THE CHILD AND FAMILY SERVICES ACT

The Child and Family Services Act recognizes that each of us and our communities has a role in supporting and promoting the best interests of children and the well-being of families in the community.

The Act provides for the provision of supports and services to families who request help through voluntary support service agreements with the local Health and Social Services Authority representatives of the Director of Child and Family Services.

VOLUNTARY ASSISTANCE

Services under a “voluntary support services agreement” may include counselling, in home support, respite care, parenting programs, drug and alcohol treatment and services to the family to deal with the illness of a child.

Voluntary support services agreement – services at the request of the family: may be counselling, in-home support, respite care, services to improve the family’s financial situation, family’s housing, drug or alcohol treatment and rehabilitation, mediation of disputes, services to assist in illnesses of child or family member, or any other services agreed to.

CHILD ABUSE

You as a parent or family can ask for help when struggling with caring for your children.

The child protection worker can help you care for your child if the child is not in need of protection.

Child abuse is the mistreatment of a child or adolescent or a disregard for the developmental needs of the child/adolescent by a parent or caregiver resulting in injury, emotional/psychological harm or threat of harm. (When a child is hurt on purpose, or when a parent or caregiver does not provide care.) There are different forms of abuse: physical abuse, sexual abuse, emotional abuse, neglect and witnessing family violence.

PHYSICAL ABUSE

The child has suffered, or is at threat of suffering physical harm at the hands of their parent or caregiver or because they did not act or provide for the child's safety. Physical abuse includes beating, hitting or shaking. It also includes any other dangerous or harmful use of force or restraint. Physical abuse is often said to be discipline. Research states physical discipline is not a helpful method to positively influence your child's behaviour and the use of physical force as a means of discipline is much more likely to move to more and more violent beating. Physical force even as a form of discipline may be against the law.

SEXUAL ABUSE

Sexual abuse refers to the inappropriate touching, abuse or exploitation of children for sexual purposes. A key consideration in determining child sexual abuse is the age of the participants involved. Child sexual abuse is not meant to include sexual activity between consenting teenagers who are old enough to give consent.

NEGLECT

The child has suffered harm or their safety or their development has suffered because of the failure by the parent (caregiver) to provide for them or protect them. Examples of neglect include not providing the right food, clothing and/or shelter for a child, ignoring the child's medical, physical needs or not providing age appropriate levels of supervision. Neglect also includes permitting or encouraging criminal behaviour, abandonment and educational neglect where the parent knowingly allows chronic truancy or fails to enrol their child or repeatedly keeps the child at home.

Neglect has been shown to have a more devastating effect on children than other forms of maltreatment because it is often an ongoing pattern of parenting.

EMOTIONAL ABUSE

The emotional abuse of a child often does not involve a specific event or visible injury. Rather, it is a form of repeated and sustained "mental violence". Such parental behaviour as rejecting, degrading, terrorizing, isolating, corrupting/exploiting and withholding positive emotional responses are considered forms of emotional abuse of a child.

EXPOSURE TO DOMESTIC (FAMILY) VIOLENCE

This is when a child has been exposed directly or indirectly to violence between their parents or caregivers. Children may be physically present and see the violence or they may be in another room and able to hear the violence.

Children may not see or hear anything but notice the result, such as smashed furniture, physical injuries to their parent or the emotional tension between their parents. The majority of children who witness family violence see and listen to the assault on their mother.

CONSEQUENCES?

Child abuse is not a short-term crisis in a child's life. Although children may be removed from violent homes or leave violent parents to live on their own, the effects of experiencing abuse in their childhood follow them through life. Abuse may affect every part of a child's life; it may have consequences that are physical, physiological, behavioural, academic, sexual, interpersonal, self-perceptual or spiritual. The effects of abuse may appear right away, or not be seen until adolescence or adulthood.

We know that girls and boys are affected differently by abuse. Girls are more likely to internalize their response to abuse, resulting in suicidal ideation, eating disorders, low-self-esteem and psychological disorders.

Boys are more likely to externalize their response, displaying increased aggression, delinquency and spousal abuse. Boys who have been exposed to violence in their homes are more likely to be violent in their adolescent and adult relationships.

CHILD PROTECTION SERVICES

The *Child and Family Services Act* recognizes that each of us has a responsibility for the well-being of children. It sets out that a person who has information of the need of a child for protection shall, without delay, report the matter to a child protection worker or a police officer.

WHO IS A CHILD?

In the Northwest Territories anyone under the age of 16 years is a child.
If a youth looks about this age but you are not sure, be cautious and assume that he or she is a child

SIGNS OF ABUSE

- Unexplained bruises, welts, bite marks, burns, fractures or head injuries
- A number of injuries or repetitive injuries
- Cannot remember how injuries occurred or the story does not match the injury
- May cringe or jump if touched unexpectedly, cautious of adults
- Infants may stare vacantly
- Very aggressive or very withdrawn
- Seeks affection from inappropriate people
- Very obedient and eager to please

SIGNS OF SEXUAL ABUSE

- Sexualized play with toys, self or others and/or sexualized drawings
- Bizarre or unusual sexual knowledge
- Prostitution, seductive behaviour
- Unusual or excessive itching in the genital or anal area
- Injuries to the genital or anal area: bruising, swelling or infection, sexually-transmitted infections

SIGNS OF EMOTIONAL ABUSE

- Severe depression, extreme withdrawal or aggressiveness
- Very agreeable, too well mannered, too neat or clean
- Extreme attention seeking
- Bed wetting that is non-medical
- Frequent psychosomatic complaints: headaches, tummy aches, nausea
- Child fails to thrive

SIGNS OF NEGLECT

It is important to know that most parents do not intend to neglect their children. It usually comes from not understanding how to care for their children or an inability to plan ahead.

- Pale, listless, scruffy, poor personal body care
- Frequently absent from school or falling asleep in school
- Wrong clothing for the weather, dirty clothing
- Involved in high-risk behaviour, criminal acts, alcohol/drug abuse
- Frequently forgets a lunch
- Unattended physical problems or medical needs (dental work, glasses)
- Consistent lack of supervision

REPORTING ABUSE AND NEGLECT

If you have information that a child is a victim of abuse or neglect, you must report your concerns to child protection at your local Health and Social Services Authority.

When a report is received, the Director must investigate the report and take any steps needed to protect the child. That means a child protection worker must investigate every report. He may investigate by going to your home and interviewing you and your child.

A child may need protection if:

- the child has suffered physical harm at the hands of parent or by another person because the parent was unable to protect the child,
- or there is a risk that the child will suffer physical harm;
- the child has been sexually molested by a parent or by another person because the parent was unable to protect the child, or there is a real risk that the child may be sexually molested;
- the child is showing signs of severe anxiety, depression, self destructive behaviour, aggressive behaviour toward others or other severe behaviour that suggests that the child has suffered emotional abuse;

REPORTING ABUSE AND NEGLECT

- the child appears to have been neglected;
- the child has witnessed repeated domestic abuse;
- the child's health is threatened by his use of alcohol, drugs, solvents or other similar substances the child does not get enough to eat; or
- the child's parents have died and there does not appear to be any other family to care for the child.

CHILD PROTECTION INVESTIGATION- TIPS

The child protection worker will talk with the woman and will talk with your children. The child Protection worker can talk with her child without telling her first, but parents have a right to know what the report is about. Some examples of why a child protection worker would investigate:

- you are not providing reasonable care or supervision of your child;
- your house is unhealthy or unsafe for your child;
- you are not feeding your child;
- you are not giving your child the medical attention they need;
- you are having problems with drugs, alcohol or gambling and it is affecting your child;
- your child is being abused physically or sexually;
- your child is being exposed to family violence;
- your child is being left alone.

INVESTIGATION - RESULTS

What happens once the investigation is over?

If the child protection worker does not find a problem in the woman's home, then nothing will happen unless she wants assistance.

If there are problems and the child is NOT in need of protection then the child protection worker can still work with the family under a voluntary support services agreement to address the problem.

IF THERE ARE PROBLEMS...

What happens if there is a problem?

If upon investigation the child protection worker has reasonable grounds to believe the child needs protection and the child's health and safety is in danger, he can immediately remove the child from the parent's care.

1: Return of the Child

After apprehending a child, the child protection worker may discover information that makes him believe that the child does not need protection. When this happens, the child is returned to the care of the family, usually within three days (72 hours) of the apprehension.

2: Plan of Care

If the child has not been returned to the care of her parents within three days (72 hours) of being apprehended, the child protection worker must establish a Plan of Care Committee. This is a group of people made up of the child's parent or parents, the child (if she is 12 years of age or older), a member of the community, and the child protection worker.

It will also sometimes include another member of the child's extended family or other people who may be able to help the family. This committee's job is to try to develop a plan of care for the child and to get agreement from everyone to follow the plan.

PLAN OF CARE – LEGAL ISSUES

One of the problems, (as I see it)in the Legislation, is the point of entry into the system.

While I am not opposed to parents entering into voluntary support services agreements, I am very concerned about how “voluntary” these agreements actually are.

Plans of care are legally binding contracts. The parents are in essence signing a contract whereby they acknowledge that if they do not comply with the contract, their child can be apprehended without a formal apprehension taking place and the Director could proceed directly to a custody hearing.

This can happen at any time during the term of the plan of care, which is usually six months in length upon 10 days notice in writing to the parents.

PLAN OF CARE AGREEMENT OR POCA

A plan of care may include such things as:

- where the child will live, and who she will live with;
- what support services might be needed to make the child's home safe;
- counselling for the child or for the parents;
- how much time each parent will be able to spend with the child;
- what kind of things the child will do for fun;
- whether a parent should help to pay the costs of raising the child while they are in care.

The plan of care committee must make a plan within 15 days of the time the child was removed from her home. If the committee can not make a decision, the child protection worker must ask the court to make an order for the protection of the child.

SCENARIO

Let us look at a basic scenario:

Child protection worker A receives a report from a Community Informant that drinking and partying is going on in a certain residence in the community and that there are small children in the residence. This could also be a case where police respond to a disturbance complaint in a residence, show up and find much intoxication and small children running around. This could result in an apprehension right then and there, but let's look at it from the perspective that there was no apprehension.

In this scenario, let's just say that Child protection worker A upon investigation, finds serious issues but not serious enough to apprehend and convenes mom and dad to a meeting at her office to sign a voluntary plan of care agreement.

LEGAL ISSUES

Right from the start, there is a power imbalance. The parents probably think that if they don't sign this, the social worker will take their kids away. So, even though the parents enter into a voluntary agreement, they are doing so, under a certain level of duress in order that the social worker does not take their children.

These parents have not obtained legal advice at this stage. It might save further action if independent legal advice was given before the matter ends up in court and before any kind of agreement is signed.

From my experience, too many parents are signing agreements or contracts with the Child welfare worker without a clear understanding of what they are getting into. In other words they are not making clear and informed decisions.

NOTIFYING THE CHILD'S NATIVE BAND

It would make sense that a Band should be notified sooner than the current legislation now requires. More questions arise at this point: Just what does "Give notice" mean? And once a Band gets "Notice", what do they do with it? What are their rights? What about the duty to consult with them under section 35 of the Charter on matters affecting their members? Is the "giving notice" provision, a contradiction to the Charter's duty to consult? These are but some of the questions I put to you for reflection.

The Law is silent on what the actual rights and responsibilities of a "Band" are. What actual substantive powers do they have? Can they actually intervene and become parties? Or is the "giving notice" more of a token gesture? The relative silence of the Act, seems to suggest that they could only observe. Bands should be allowed to intervene directly, become a party to the proceedings and be able to take charge of a situation that involves children of it's Band members.

CHILD IN NEED OF PROTECTION

The relevant section of the legislation that defines what is meant by "child in need of protection" is set out in s. 7(3) of the Child and Family Services Act. There are 19 expressly stated scenarios that could result in a child being in need of protection. More often than not, the main argument is that there is a substantial risk that the child will suffer physical or other harm inflicted by the child's parents or caused by the parent's inability or unwillingness to care and provide for, or supervise the child adequately, if the child is left or returned to the parent.

OBSERVATION

As interveners in the child welfare field, we need to be culture – minded and advocate, mediate, negotiate and collaborate for a win-win resolution to as many of the Child Welfare matters as possible.

“It takes a village to raise a child”, is more than just a “catch phrase”, it is a fundamental concept at the very heart of aboriginal culture, so kinship care and plan of care agreements that include large numbers of the extended family should be encouraged rather than fought against.

OBSERVATION

“Time is of the essence”: Too many months between Court appearances and the delays for children and families who are separated can be devastating in small communities. Small communities are also faced with the added challenge surrounding the lack of community members stepping up to be foster parents. Why is this happening or not happening?

It makes no more sense to place aboriginal children in non aboriginal foster homes than it would to place non aboriginal children in aboriginal foster homes.

HOW IT ALL STARTS

Child Protection involvement with families usually starts in one of two ways: (1) someone sees or hears something and then files a report directly to the social worker and after investigation she/he determines that intervention is needed or (2) a peace officer in the line of duty, notices that children are in danger, apprehends children and contacts the Social worker.

Prior to the amendments of 2008, when a child was apprehended, the next step was for the Director to ask the Court for either a custody order or a supervision order if they suspected that the child was in need of protection.

CONFIRMATION OF APPREHENSION HEARING

Since 2008, another shorter two step process, is found in section 10 of the Act:

(1) This process is to be applied in order to confirm that the apprehension was legal. At the time of the apprehension, did the worker have reasonable grounds to believe that the child was in need of protection?

(2) At the time of the apprehension hearing, is the child in need of protection?

If the two parts to the test are met, the Court must confirm the apprehension.

If both parts, (usually part 2 is dealt with first), are not met on the date of the apprehension, the child must be returned to the parents

A confirmed apprehension order is valid for 45 days and allows corrective measures, plans of care and other such assistance to be put in place to assist the family, so that at the end of the 45 days or sooner, the child can be returned without further intervention.

EVIDENCE REQUIRED TO MAKE ORDER

I have noticed that "reasonable grounds to believe that a child would be in danger if he were left with the parent having lawful custody", carries a very low threshold of proof in the context of a child protection setting. The Social worker must be able to articulate what the exact result grounds are, for this particular apprehension are, and this must be set in the mind of the social worker, before the actual act of apprehending takes place.

While hearsay can be considered by the Courts in making its findings, it is very difficult to assess the credibility of hearsay due to the privacy protection that the Legislation affords an informant coupled with the obligation that the legislation requires of a person who witnesses abuse.

COURT ORDER

In order for a Court to make a finding as to the legality of an apprehension, the hearsay or other evidence must relate to the actual event that lead to the apprehension.

Other evidence relating to other apprehensions or other interventions by the department, should not be factors, generally considered, at this stage .

If the Court finds that that the Social worker had reasonable grounds to believe that the children are in danger, at the time of the apprehension and still at the date of the hearing, a Court must grant the order sought.

If not, the Court must return the child to the parent who had lawful custody when the child was apprehended.

LEGAL ISSUES

Another important point is that since the last amendment to the Act in 2008, Social workers have an obligation to canvass extended families before getting into the court process.

There currently exists a contradiction in the Act, when it comes to applying this principle. While the Act says that there is an obligation to canvass extended family, the Act also says that the Department can only return the child to the parent who has lawful custody.

Is the other parent not part of the extended family? It may well be that the decision for one parent to have legal custody of the child, upon separation, was a decision achieved by consensus of the parents and not a court ordered decision, following a bitter battle. So, why can this other parent not be part of the "consultation"?

THE COURT CONFIRMS THAT THE APPREHENSION WAS LEGAL - THEN WHAT?

The Apprehension Order granted on a specific day is valid for 45 days from the date of the Confirmation Order without further court applications.

During that 45 day period, the Director through the Social Workers must enter into a plan of care agreement with the parents.

There is also a provision in the new amendments to the legislation for the appointment of a Plan of Care committee.

The frame work to allow First Nations people to own their child welfare programs is already included in the Child and Family Services Act (sections 57 to 59 of the Act and the regulations) but is also a clause included in the various land claims agreements that have been negotiated between First Nations and the Federal Government.

What happens if family placement or return of the child is not possible...

GOING BACK TO COURT FOR A DISPOSITION HEARING

- If a family placement is not possible and return of the child to the parent is not possible, the social worker must apply for a custody order:
- Supervision order (up to a year) return the child to the parents with stricter conditions, or
- a custody order varying from 1 month to 12 months, up to a maximum of 24 months
- Permanent custody order - severs the parental rights
- Usually a departmental adoption follows
- _____
- Voluntary Permanent guardianship or custom adoption are often engaged by parents when they are not able to parent but that a family member wishes to take the children permanently without severing the family ties.

COURT HEARING

3: Court Hearing

The child protection worker must go to the court for a dispositional order if:

- the person from whom a child is apprehended decides that he does not want to participate in a Plan of Care Committee and elects to go to court; or
- the child (ONLY if she is over the age of 12 years) decides she does not want to participate in the Plan of Care Committee process and elects to go to court.
- no plan of care agreement is reached.

PLAN OF CARE

A plan of care can last up to twelve months, but it can be renewed for up to another twelve months.

Typically a plan of care committee is made up of the parents, social worker and the child, if over the age of 12.

This application to the court must be made within 45 days of the day the child was apprehended or made an election. The following people must be notified and given copies of the court application: the parents, the child (if over 12 years of age) and, if the child is of Aboriginal descent, her aboriginal organization(Band).

If there has been a Plan of Care Committee or a Child and Family Services Committee, the chairperson of each committee will also be notified of the court application. At the hearing, a judge will decide whether a child is in need of protection and, if so, what order should be made to protect the child.

COURT

In court, the worker, through the Director's lawyer will give reasons why the child was removed from the home, and must provide a plan of care to the court including provisions for:

- where the child will live;
- who the child will live with;
- support services to make the child's home safe for the child;
- counselling;
- visits with the child by a parent (if necessary);
- child's education;
- the child's social and recreational activities and
- any other matter the judge thinks is necessary for the best interests of the child.

HEARING

Parents and guardians have the right to be represented by a lawyer, give evidence, and call witnesses to give evidence for them. Because court proceedings are very serious, you should always seek legal advice. (child protection hearings are held in camera)

Children who are 12 years old and older may also take part in the proceedings. The Court may sometimes appoint a lawyer for the child, in this case the lawyer will be provided by the Office of the Children's Lawyer. After hearing all the evidence and submissions, a Judge may:

- order that the child be returned to her home;
- order that the child be returned home under the supervision of Child and Family Services, with conditions set by the Judge, for as long as the Judge feels is necessary;
- order that the child be placed in the temporary custody of the Director of Child and Family Services for up to 12 months; or
- order that the child be placed in the permanent custody of the Director of Child and Family Services.

2007 AMENDMENTS

In 2007 amendments to the Child and Family Services Act were approved but are not expected to come into effect until 2008. These amendments require that an application must be made to the court within four days of a child being apprehended. The court will hold a hearing within nine days to decide if the apprehension was justified.

A court order confirming an apprehension expires in 45 days unless the Department, believing the child is still in need of protection, applies for and receives another court order.

ORDERS – TEMPORARY CUSTODY

Under a temporary custody order, the Director of Child and Family Services becomes the child's guardian and is responsible for her.

A temporary custody order can last up to twelve months. It can be extended, but it cannot continue for more than a total of 24 months.

While a temporary custody order is in effect, the child protection worker and the family can work together to resolve the problems that required the child to be removed from the care of her parents.

If they are able to resolve these problems before the court order ends, the parents or the worker may ask the court to end the order and allow the child to return home.

However, if after trying to work with the family, the worker does not think the child should return home, he might ask the court to make the order permanent.

ORDERS – PERMANENT CUSTODY

Where a judge makes a permanent custody order, the Director of Child and Family Services becomes the child's permanent guardian, taking the place of the parents.

The Director, through the community social service worker, will make all decisions about the child's care and may place the child for adoption.

The parents no longer have rights and responsibilities for the child. The Director shall give them information about the placement, education or health of the child if it is in the best interests of the child.

The court may order that the parents be allowed to have ongoing contact with the child up to the time of adoption.

except in rare cases, post adoption contact is at the discretion of the adoptive parents.

VSSA – VOLUNTARY SUPPORT SERVICES AGREEMENT

Sometimes parents need help raising their children. Child and Family Services' role is to help children and families. Child protection workers work with children and families to find solutions and arrange services that the family might need.

Voluntary Support Services Agreements (Mature Teens) Young people between the ages of 16 and 19 can also enter into an agreement with the Director to get help caring for themselves for up to six months at a time when they are not receiving the care they need from their parents.

PERMANENT CUSTODY FOR ADOPTION(ON CONSENT)

Sometimes a parent may want to place the child in the care of the Department of Health and Social Services in order to find a family for the child.

When this happens, the parent will have to sign a consent form giving the Director of Child and Family Services permanent care of the child. Once a parent has placed her child into permanent care of the Director, there is a ten-day waiting period before the parent can give final consent for adoption. This is to allow a parent time to think over the decision, and make sure her decision is final.

Once a parent has agreed to give the Director permanent care of a child, the Director of Child and Family Services becomes the legal guardian of the child. That means the Director takes the place of the child's parents and makes decisions about the child's care. This includes placing the child up for adoption. A parent can withdraw her consent any time before a court actually makes the permanent care order.

PERMANENT CUSTODY (VOLUNTARY ADOPTION)

The consent must be withdrawn in writing. Both parents of a child must consent to an order to give up care of their child. In some cases, if only one parent has provided consent, the Director must get the consent of the other parent or ask the court to make an order that says that the other parent's consent is not needed. The parent who has not consented should receive notice of the court application so that he can go to court and explain why he does not want to give consent.

Adoption is final; once completed, the adoption cannot be reversed. Once the adoption process has been completed, birth parents may no longer have any rights to see their child.

PERMANENT CUSTODY (VOLUNTARY ADOPTION)

This decision is very serious. If a woman is thinking about placing a child for adoption make sure she has thought about all options. Before the Director of Child and Family Services can accept her consent for adoption, the Director must be sure that she has been provided with information about all the alternatives and services available to assist her and her child.

She should talk with a lawyer before making a final decision for her and her child.

SUMMARY OF CHILD PROTECTION PROCESS

Day 1 – apprehension by social worker or peace officer

If child returned to parent within 72 hours, there is no need to go to court.

If child is not returned to parent within 72 hours, an application to confirm the apprehension must be filed in Territorial Court (sec. 12.1(1) of the Act)

After the application is filed, if a Plan of care agreement is signed before the date of the hearing, the parties must still go to court to have the apprehension application withdrawn (between day 4 and 45)

Parents and children over 12 must be served. The Bands are not served at this stage. The court will usually order that children over 12 be given legal counsel through the office of the children's lawyer if they wish.

SUMMARY OF THE CHILD PROTECTION PROCESS

- From the date of the filing of the court documents, the social worker has 9 days to set the matter down for an apprehension hearing (s. 12.1(2))
- The very last day on which a first appearance on an apprehension may occur is day 14 (since the day the child was apprehended)
- Apprehension hearing itself can be as late as day 44.

APPREHENSION HEARING

Test : (part 2 and then 1)both parts must be met at the date of the hearing

(2) Is the child in need of protection today (date of hearing)

(1) If part 2 is met, than the court can look at whether on the day of the apprehension, the social worker had reasonable grounds to believe that the child was in need of protection

If both parts of the test are met, the judge will confirm the apprehension, which runs out on day 46 (since the apprehension)

If both parts or either part of the 2 part tests is not met, than the judge will dismiss the order and the children must be returned to the parents.

If the Director still feels that the children are in need of protection, they would have to return the children and then re-apprehend the children

AFTER THE APPREHENSION IS CONFIRMED UP TO DAY 45

If the plan of care agreement is signed by the parents no later than day 24 after the apprehension, the apprehension order is left to expire and there is no need to go back to court. (s. 12.5(a))

If a plan of care agreement is not signed by day 24:

- Social worker must apply for a protection order (s. 28)
- Supervision, or
- Custody
- Last day for the first appearance on an application for a custody order is Day 46
- (Bands, the parties, children over 12 are served)
- * the law only requires that Bands be served with permanent custody applications not with an application to confirm an apprehension



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