The Child and Family Services Authorities Act

B R E N D A S M I C H U R A - J E R O M E

I. INTRODUCTION

In August of 2002, The Manitoba Legislative Assembly enacted Bill 35, *The Child and Family Services Authorities Act*.[1] It is enabling legislation created to provide for the administration of child and family services throughout Manitoba. This *Act* was introduced as Bill 35 in the Manitoba Legislature on 10 June 2002 and received general support from all the members of the Legislature. It passed and received Royal Assent on 8 August 2002.

Bill 35 has been heralded as "a tremendous moment in Manitoba's history."[2] According to Tim Sale, Minister of Family Services, "This legislation will make Manitoba the first province in Canada to give First Nations and Métis people responsibility for child and family services wherever they reside in Manitoba."[3] Bill 35 restructures the governance and delivery of child welfare services across the province of Manitoba by creating four new authorities. Two of the new authorities will serve First Nations, both Northern and Southern, a third authority will serve Métis people, and the fourth will serve all other residents of the province. The stated purpose of the legislation is to ensure that the development and delivery of programs and services to First Nations and Métis people respects their values, beliefs, customs and traditional communities.[4]

In just 32 pages of concise and plain language, Bill 35 lays the foundation for "broad and systemic change"[5]—change undoubtedly triggered by the report and recommendations of the Aboriginal Justice

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1 S.M. 2002, c. 35 [Bill 35] (not yet proclaimed).

2 Mia Rabson "Natives, Métis to get own agencies. NDP legislation would create four child, family service organizations" Winnipeg Free Press (12 June 2002) A13.

3 Manitoba, Legislative Assembly, *Hansard*, (26 June 2002) (Hon. T. Sale).

4 *Ibid*.

5 *Ibid*.

Inquiry (AJI) in 1991, and made possible through the hard work and dedication of many people. The genesis of this *Act* has a very long history and is best described as a "Promise of Hope: Commitment to Change."[6]

II. HISTORICAL BACKGROUND

The history of Aboriginal child welfare in Manitoba parallels that of the rest of Canada—it has been a disgrace. It began with culture clashes and power imbalances that ultimately led to a process known as the 'scooping' of Aboriginal children. According to an inquiry done in the early 1980s by Chief Judge Kimelman of the Provincial Court Family Division, it was nothing less than "cultural genocide."[7]

In his report, entitled *No Quiet Place*,[8] Judge Kimelman identified that one of the main mechanisms of apprehending Aboriginal children was to deem Aboriginal homes as unsuitable for raising children, thereby justifying the process of 'scooping' and placement within foster homes. The options of counselling or consultation were never offered. Historically, this systematic process was interpreted and justified by the child welfare system under the guise of protection. However, the Aboriginal community interpreted it as "the brutalization of families,"[9] with Aboriginal children simply being the victims of "kidnapping."[10]

Although the most well known period of apprehension is known as the Sixties Scoop, this process was not contained to the 1960s. According to Minister Sale, the process continued well into the 1980s, where it is estimated that in just one decade, between 1971–1981, "[M]ore than 3 400 Aboriginal children were shipped away to adoptive parents in other cultures and sometimes even in other countries."[11] In just one decade, 3 400 children simply disappeared from their homes and communities, seemingly under the guise of protection. However, and to quote the words of Minister Sale at second reading, "3 400 children can never be erased from their families' memories." He continued by stating,

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6 "Promise of Hope: Commitment to Change" Aboriginal Justice Inquiry-Child Welfare Initiative (August 2001), online: AJI-CWI <http://www.aji-cwi.mb.ca/eng/Phase3/promiseofhope.htm>.

7 *Hansard* (26 June 2002), *supra* note 3.

8 Manitoba, Department of Community Services, "No Quiet Place: Report of the Review Committee on Indian and Métis Adoptions and Placements" (Winnipeg: 1985).

9 *Hansard* (26 June 2002), *supra* note 3.

10 *Ibid.*

11 *Ibid.*

"[A]nd we wonder why those same children have trouble parenting and we wonder why the communities are still in distress?"[12]

Why the need for change now? Apparently, present-day statistics reveal that history continues to repeat itself and this is made evident by the numbers of Aboriginal children in care. Currently, Aboriginal children make up about 21 per cent of Manitoba's population under the age of 15,[13] but they account for 78 per cent of children currently in care.[14] According to Dennis White Bird, Grand Chief of the Assembly of Manitoba Chiefs, "The loss of our children has been a very traumatic experience ... [therefore we] are here to assume our rightful place in decision-making for our people."[15]

III. ORIGIN OR INSPIRATION OF THE STATUTE

Though the need for Bill 35 has arguably been present for many years, the spark that ultimately led to the enactment of the statute occurred in 1988. In 1988 the Government of Manitoba commissioned the AJI to examine the relationship between Aboriginal peoples of Manitoba and the justice system. Two specific incidents triggered this inquiry: the 1987 trial of two men for the 1971 murder of Helen Betty Osborne; and the 1988 shooting of J.J. Harper by a Winnipeg police officer. These two events raised serious questions as to whether the justice system was failing Aboriginal people.

In 1991 these questions were answered in the final report of the AJI. The AJI was confirmed by statute with Bill 28—*An Act to Establish and Validate the Public Inquiry into the Administration of Justice and Aboriginal* People.[16] The inquiry's findings were the result of 123 days of hearings, over 1 200 presentations and exhibits, more than 18 000 kilometres of travel and 21 000 pages of transcripts. The final report filled three volumes and contained 296 recommendations.[17] Part of the examination of the justice system included the historical treatment of Aboriginal people by the child welfare system. Throughout the course of

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12 *Ibid.*

13 The 1996 Census of Canada, cited in "Promise of Hope: Commitment to Change," *supra* note 6.

14 Data for the year 2000 from Manitoba Family Services and Housing, cited in "Promise of Hope: Commitment to Change," *supra* note 6.

15 Rabson, *supra* note 2.

16 S.M. 1989–90, c. 1.

17 Aboriginal Justice Inquiry, Report of the Aboriginal Justice Inquiry of Manitoba, (Winnipeg: 1991) (Co-Chairs: Justice Al Hamilton and Judge Murray Sinclair), online: The Aboriginal Justice Implementation Commission <http://www.ajic.mb.ca/volume.html>.

the inquiry, a consistent theme and message was heard by the AJI; the justice system and the child welfare system are interwoven and interconnected.

A. Justice & Child Welfare Systems are Interwoven and Interconnected

It is a well-known fact that Aboriginal people are overrepresented in the criminal justice system. According to the AJI, "While Aboriginal people comprise 11.8 per cent of Manitoba's population, they represent at least 50 per cent of the province's prison population."[18] Apparently, these statistics have been studied and debated for the past 30 years by various tasks forces and inquiries, basically all noting the same thing; the problem of overrepresentation would not and could not be solved by the justice system alone.

It is also a fact that 70 to 78 per cent of children currently in the care of the child welfare system are Aboriginal—clearly, they are overrepresented. At second reading of Bill 35, Minister Sale reiterated the concerns expressed by Aboriginal people throughout the AJI inquiry:

> The child welfare system as it now exists is yet another outside institution that disrupts their lives and societies. It is akin to the justice system, in that both systems are historically based upon a belief of assimilation. Beginning with the residential school system, continuing with the period of time known as the Sixties Scoop and resulting in overrepresentation in both systems. Arguably, if we look at the young people and adults involved in the criminal justice system, we will also find that a large number of them have been through the child welfare system. The current child welfare system is a key in the disproportionate number of Aboriginal people found in the correctional facilities.[19]

According to the final report of the AJI, the problems within the current child welfare system were so serious, that the inquiry concluded that the non-Aboriginal system did not serve Aboriginal people well. Although the AJI recognized that tremendous advances had been made by the establishment of First Nation agencies currently delivering child welfare services to Aboriginal people living on-reserve, the same was not true for Aboriginal peoples off-reserve. The AJI recommended the following changes:

- Establish the office of the Child Protector, as recommended by Judge Kimelman, to protect the interests of children, to

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18 *Ibid*. –Chapter 1 – the Inquiry & the Issues, under the Sub-heading The Creation of the Inquiry.

19 *Hansard* (26 June 2002), *supra* note 3.

investigate any complaint into the practices of any child welfare agency and to be responsible to the Legislature.

- Provide Aboriginal and non-Aboriginal child and family services agencies with sufficient resources to enable them to provide a full range of direct and preventive services mandated by *The Child and Family Services Act*.[20]
- That the federal and provincial governments provide resources to Aboriginal agencies to develop policies, standards, protocols and procedures, and to develop computer systems that will permit them to communicate effectively, track cases and share information.
- That Principle 11 of *The Child and Family Services Act* be amended to read:

  > Aboriginal people are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage.

- Establish a mandated province-wide Métis agency.
- Expand the authority of existing Indian agencies to enable them to offer services to band members living off reserve.
- Establish an Aboriginal child and family services agency in the city of Winnipeg to handle all Aboriginal cases. [21]

IV. IMPLEMENTATION OF THE RECOMMENDATIONS

In 1999, the Government of Manitoba made a commitment to address the recommendations of the AJI. It began by establishing the Aboriginal Justice Implementation Commission (AJIC), whose purpose was to review the AJI report, identify areas of priority, and then advise the government on methods of implementation. In total, the AJIC made four recommendations, including one on child and family services; recommending that the Government of Manitoba enter into agreements with the Assembly of Manitoba Chiefs and the Manitoba Métis Federation. The purpose of these agreements was to formulate plans that would result in Aboriginal communities having the ability to develop and deliver Aboriginal child welfare services.

In 2000, the Government of Manitoba responded to the recommendations of the AJIC by signing three separate, three-year agreements:

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[20] C.C.S.M. c. C80.

[21] General Background, Proposed Legislation to Restructure Child and Family Services System, online: General Background <http://www.aji-cwi.mb.ca/eng/generalbackground.html> [emphasis added].

- On 22 February 2000 with the Métis Federation
- On 27 April 2000 with the Assembly of Manitoba Chiefs, representing southern First Nations
- On 20 July 2000 with the Manitoba Keewatinowi Okimakanak, representing northern First Nations

Subsequently, all four parties signed the *Child and Family Services Protocol.*[22] It was through these agreements that a joint initiative was established, which ultimately led to the restructuring of the existing child welfare system. Legislative change occurred in the form of Bill 35—*The Child and Family Services Authorities Act*. According to Trudy Lavallee, a policy analyst and advisor with the Assembly of Manitoba Chiefs, "this legislation validates the priority of child welfare in Manitoba, particularly as it pertains to First Nations children."[23] She further stated that, "the nature in which it has progressed thus far, can be attributed to the government of the day and to the personal support of Minister Sale."[24]

V. MEDIA

The news coverage of Bill 35 began in February of 2000 when the first agreement was signed between the Métis Federation and the Manitoba government. By April of 2000, the tone and substance of the media coverage focused upon the message within the bill: it is a new beginning, a sign of hope. Coverage of Bill 35 included the fact that Bill 35 was the first of its kind in Canada. The Manitoba government had recognized the fact that Aboriginal people had an inherent right to govern the welfare of their children and had also honoured its commitment to Manitobans by implementing the recommendations of the AJI.

Two years later, in June of 2002, the media coverage of Bill 35 echoed similar messages. Although the sources of coverage varied as between government News Releases and Aboriginal news, the overall message remained consistent—Manitoba Aboriginals were going to take control of social services in own communities. Because of this legislation, Aboriginal people in Manitoba will govern how their children are handled in the child welfare system, thereby maintaining the continuity of their culture.

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22 Child and Family Services Protocol between The Assembly of First Nation Chiefs and The Manitoba Métis Federation, Inc. and Manitoba Keewatinowi Okimakanak and The Province of Manitoba, online: Protocol <http://www.aji-cwi.mb.ca/eng/protocol_agreement.html>.

23 Interview of Trudy Lavallee (15 November 2002).

24 *Ibid*.

VI. PUBLIC CONSULTATIONS

It is right and just to involve the public in the making of history. Therefore, public consultations, input into, and scrutiny of Bill 35 occurred on a massive scale. The public feedback process, also known as Phase 3, built upon the foundation of findings already gathered by the AJI in 1988, at which time the inquiry had held 72 days of public hearings in more than 45 communities across Manitoba.

On 9 August 2001, a booklet entitled *Promise of Hope: Commitment to Change* was publicly released at a media conference. Its purpose was to "set out a vision for a restructured child and family service system in Manitoba."[25] The media conference also launched the public feedback process through which all Manitobans were asked to participate in a public review of the booklet and the vision described within. The public had until 20 September 2001 to make inquiries, access information and respond in a variety of ways, which included:

- Access to copies of the booklet [8 000 copies were available]
- Access to copies of brochures [15 000 available copies]
- Attend town hall meetings [12 town hall meeting were held in Manitoba]
- Participation in focus groups [15 focus group sessions were organized]
- Access to central information line [which operated throughout the feedback process and a toll-free number was available for callers outside of Winnipeg]
- Access to a web page [which went live on 9 August 2001]
- Submission of written comments [either by mail or e-mail]
- Exposure to promotions [media conference on 9 August 2001; copies of the booklet and brochure were sent to over 2 000 collateral agencies; in addition to numerous posters and paid advertisements.[26]

According to the Summary Report on the Public Feedback Process, although the time period between the official launch and the end date was relatively short—seven weeks—"over 1 000 individuals took the time required to either attend one of the town hall meetings or to participate in one of the focus groups."[27]

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25 Manitoba, Aboriginal Justice Inquiry – Child Welfare Initiative, Summary Report on the AJI-CWI Phase 3 Public Feedback Process (January 2002) at 1, online: <http://www.aji-cwi.mb.ca/pdfs/feedbacksummaryreport.pdf>.

26 *Ibid*.

27 Summary Report (January 2002), *supra* note 25 at 12.

VII. DEBATES AT THE LEGISLATURE

Right from the onset, *The Child and Family Services Authorities Act* was subject to wide approval from all parties. It was introduced to the Legislative Assembly on 10 June 2002 for first reading. Minister Sale began by tabling a copy of the message from the Lieutenant Governor, which stated:

> This historic bill builds upon on the work that began in 1976, with the creation of Sagkeeng Child and Family Services as the first Aboriginal Child and Family Services agency in Manitoba... This historic bill creates the ability for First Nations and Métis people to provide child and family services to all of their people in Manitoba.[28]

Second reading of Bill 35 was on 26 June 2002. What is clearly evident from second reading is that the government did not 'fast track' this bill against the will of the opposition. In fact, it is clear that all parties were in total agreement with both the principles and the spirit of this *Act*. The nature and quality of the debate at second reading also provides greater insight into the character of the parties. For example, although the debate began by Minister Sale emphasizing the principles and purpose of Bill 35, he included a historical account of why the legislation was so important to Manitobans. Debate at second reading is akin to a history lesson; a lesson based upon fact, laden with human tragedy and yet delivered by the present-day speaker with passionate hope.

Opposition member Mr. Glen Cummings brought forth the only concern raised at second reading; the age-old issue of 'accountability.' His main concern was that "there needs to be appropriate delivery of services ... [made possible by ensuring] that the *Act* allows appropriate actions to be taken and allows for appropriate management."[29]

On 31 July 2002, Bill 35 went to the committee stage before the Standing Committee on Law Amendments. In total, the committee heard 13 presentations on Bill 35, and on 6 August 2002, the Standing Committee agreed to report the bill without amendments.

On 8 August 2002, Bill 35 went before the Legislative Assembly for third and final reading. At this time, the opposition made three amendments to the bill. It is worthy of noting that all three of these amendments were supported and seconded by Minister Sale. Clearly, Bill 35 was unique in process, wherein both the Minister and the official Opposition shared not only information and effort, but also a common vision; a vision that is apparently shared by numerous other parties, including the Minister of Aboriginal and Northern Affairs, the Honourable Eric Robinson. At third reading he spoke briefly about Bill 35 and stated that this bill "will

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28 Manitoba, Legislative Assembly, *Hansard*, (10 June 2002) (Hon. Tim Sale).

29 Manitoba, Legislative Assembly, *Hansard*, (26 June 2002) (Mr. Glen Cummings).

provide long-term benefits for literally hundreds of children and their families ... [while also restoring] self-government to Aboriginal people that was taken away by past governments."[30]

VIII. THE *ACT*

The Child and Family Services Authorities Act creates four new authorities that will deliver child welfare services under the direction of the primary legislation: *The Child and Family Services Act* and *The Adoption Act*.[31] The four authorities are as follows:

- The First Nations of Northern Manitoba Child and Family Services Authority
- The First Nations of Southern Manitoba Child and Family Services Authority
- The Métis Child and Family Services Authority
- The General Child and Family Services Authority

Although Bill 35 includes consequential amendments to *The Child and Family Services Act* and *The Adoption Act*, these amendments may best be described as administrative in nature. The most significant amendment is made evident by the clear shift of responsibility. For example, prior to the enactment of bill 35, the Director of Child and Family Services was responsible for the administration and enforcement of the provisions of *The Child and Family Services Act*. With the coming into force of Bill 35, this responsibility will shift to each of the new authorities. Pursuant to s. 18 of Bill 35, the director's role will *cease* in respect of mandated agencies and each authority will have the same power and duties as the Director once had. Part of these duties, pursuant to s. 19(d), includes ensuring that culturally appropriate standards for services, practices and procedures are developed. These culturally appropriate standards must however, be consistent with provincial standards; in accordance with the guiding legislation; and under the direction of the Minister.

Arguably, the most controversial and sensitive area of child welfare is the removal and placement of children in need of protection. The underlying and foundational principle that guides this process is called 'the best interest of the child.' This principle is deemed to be of such importance that it is not only enunciated within the Declaration of Principles in *The Child and Family Services Act*, it is reiterated in s. 2, which reads:

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30 Manitoba, Legislative Assembly, *Hansard*, (08 August 2002) (Hon. Eric Robinson).

31 C.C.S.M. c. A2.

> the best interests of the child shall be the paramount consideration of the director ... an agency and a court.

It is also emphasized within the stated purpose of *The Adoptions Act*.

Bill 35 does not alter this principle. According to Trudy Lavallee, "Directive 18 within the CFS (Child and Family Services) Program Standards Manual already emphasizes a priority method of placement with foster parents."[32] It states that priority will be given in the following order: family, extended family, community and then other Aboriginal families. This priority method has always been based upon "the best interests of the child." Therefore, it may be argued that Bill 35 only validates the fact that 'the best interests of Aboriginal children' are in fact, of paramount consideration. Although it is true that each authority will continue to operate under the provincial legislation, Trudy Lavallee states that:

> First Nations Authority offices will be instrumental in establishing standards and policies that ensures case planning includes mechanisms to ensure that children maintain family, community, and cultural connectedness if for some reason they are not placed with a family of their cultural origin.[33]

Are the perceptions of Aboriginal and non-Aboriginal people different when it comes to defining 'the best interests of an Aboriginal child?' Clearly, the answer to this question is yes and is made evident by the birth of Bill 35. It may be argued that from an Aboriginal perspective 'the best interests of the child' includes a sense of community, while the non-Aboriginal perspective does not. It may also be argued that the front-line workers within an Aboriginal agency will react, assess and initiate placement of Aboriginal children differently than non-Aboriginal workers. However, what we do know for a fact is that the child welfare system will remain consistent by reacting when a child is at risk. The subsequent removal and placement of that child, whether temporarily or permanently, should always be in 'the best interests of the child.' If reintegration is in fact the goal, placement will parallel as close as possible the home that the child came out of, absent the risk factor.

Bill 35 not only enables Aboriginal authorities and agencies the ability to deliver services based upon their values, beliefs and cultural perspectives, it ensures that "First Nations partners will sit at a common table that will revamp the current *Child and Family Services Act* and the *Adoption Act*."[34] Arguably, it is at this table that change will occur.

Bill 35 does not alter in any way the issue of liability. All CFS agencies must have liability insurance, and any liability for actions against an

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32 Interview of Trudy Lavallee (3 December 2002).

33 *Ibid*.

34 Lavallee (3 December 2002), *supra* note 32.

authority or agency will continue to be governed by s. 6(11) of *The Child and Family Services Act*. It reads:

> Neither the president, nor any officer or director of an agency, nor any person acting under the instructions of any of them or under the authority of this *Act* or *The Adoption Act* is personally liable or answerable for any
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> (a) debt, liability or obligation of an agency or in respect of any act, error or omission of an agency or any of its officers, employees or agents; or
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> (b) loss or damage suffered by any person by reason of anything in good faith and without negligence, done or omitted to be done, or caused, permitted, or authorized to be done or omitted to be done, pursuant to, or in exercise of, or supposed exercise of, the powers given by this or any other Act of the Legislature.

The only inclusion within Bill 35 pertaining to liability is s. 10. It protects a director of a board from liability. That being said, ultimate liability continues to lie with the Government of Manitoba.

Bill 35 does give each authority the power to enter into agreements or arrangements for the purpose of administering the delivery of service. Where an authority is asked to provide services to a resident of an Indian reserve, the authority, according to s. 23(2);

> must enter into a written agreement ... with either the individual First Nation or with the authority responsible for providing for the delivery of child and family services to that First Nation.

Based upon the clear shift of authority and the fact that it is a delegated authority, Bill 35 may best be described as a mechanism of implementation, rather than a reflection of policy. According to Minister Sale, "it is often difficult to distinguish between policy and implementation, however, if Bill 35 did reflect policy, the policy would be to turn over authority to the First Nations and Métis authorities."[35] He continued by stating:

> [T]his bill is unique, not only in fact, but also in process: unique in fact because it is the first time that responsibility for child welfare has been delegated to First Nation and Métis people; and unique in process based on the fact that the government committed to a genuine partnership right from the onset. All parties really did work collaboratively.[36]

There were however, two criteria that the government would not negotiate on: firstly, the ability to preserve choice, and secondly, the unified intake. The ability to preserve choice ensures that a client has the ability to access service outside of an authority's jurisdictional boundary; and the unified intake is necessary in order to maintain consistency and ensure accountability.

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35 Interview of Minister Sale (18 October 2002).

36 *Ibid*.

Does it go far enough? According to Trudy Lavallee, "Bill 35 does not go far enough ... First Nations are working to restoring full jurisdiction entirely under First Nations control, however, this requires federal collaboration."[37] It is important to note however, that "First Nations were a part of the development process, thus, it is fair to say that Bill 35 can better accommodate a more cultural influence by its content."[38] Bill 35 is indeed a step in the right direction.

IX. FRENCH AND ENGLISH VERSIONS

Generally speaking, the English and French versions of Bill 35 are consistent with each other.[39] However, the word 'must' is absent from the French version in at least two of the sections, specifically in ss. 9 and 13(1). Section 9, which deals with the Duties of directors, in English reads, "The directors of a board *must,*" and then the duties are set forth. Conversely, in French, s. 9 reads, "The directors that are part of the board" and then the duties are set forth.

Similarly, the word 'must' is absent within the French version of s. 13(1), which deals with appointing a senior executive officer. In English, s. 13(1) reads, "A board must appoint a senior executive officer for the authority and determine the terms and conditions of his or her employment." Conversely, the French version reads, "The board names the senior executive of the board and sets the conditions of the employment of him."

Whether or not the absence of the word 'must' is of any significance is not the focus of this paper. However, it should be noted that English and French versions are deemed to be equally authoritative. Therefore, the absence of the word 'must' within the French version, wherein a duty is imposed, is worthy of noting, especially in light of the fact that "judicial statements to date all support the view that "must" is to be read as mandatory."[40] According to the French version of ss. 9 and 13(1), the duties of the directors or of the board are not mandatory.

X. PERSONAL VIEWS ON THE MERITS OF BILL 35

There can be no debate of the fact that child welfare is a necessary service. Sadly enough, human nature is such that there will always be

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37 *Supra* note 23.

38 *Supra* note 23.

39 The author is indebted to Nadine Barbanchon for providing the French translation on 16 November 2002.

40 Peter Butt and Richard Castle, Modern Legal Drafting (New York: Cambridge University Press, 2001) at 151.

occasions where children are in need of protection. Generally speaking, it was pleasing to witness and discover not only the birth of Bill 35, but also the magnitude of collaborative work and effort that went into the process of enacting Bill 35.

A main concern with Bill 35 lies with the fact that it is the non-Aboriginal culture that created the original child welfare system. As such, the primary and guiding legislation, specifically, *The Child and Family Services Act* and *The Adoptions Act*, are reflective of non-Aboriginal values and beliefs. Thus, one may ask how the bill will address or respect the beliefs, customs and traditions of Aboriginal people. According to Minister Sale, "[A]t some point both of these *Act*s will need significant amendments, however, Manitoba is unique in the sense that there is 20 years of experience to draw from."[41] This premise is based on the fact that Aboriginal agencies have existed in Manitoba for the past 20 years. While such experience is invaluable, it cannot be disputed that Bill 35 merely delegates the authority of child welfare to the First Nations and Métis peoples of Manitoba. It is a delegation of responsibility under existing policies and legislation. Thus, Bill 35 falls short of real and substantial systemic change. Possibly, this change will occur with the passage of time; when both the primary legislation and delegated responsibilities are reflective of Aboriginal and non-Aboriginal values.

Another concern is with the larger issues, such as the dismal picture of the socio-economic status of Aboriginal peoples in Manitoba. The final report of the AJI states that, "In Manitoba, Aboriginal people undoubtedly are the poorest of the poor. Low incomes, unemployment, poor health care, inadequate levels of education, crowded and substandard housing conditions—all are characteristic of Aboriginal life in Canada.[42] That being the case, it is hard to see how the delegation of child welfare services will have any positive effect on the larger issues of socio-economic status. According to Minister Sale, although "Bill 35 will create about 600 to 700 jobs," he also acknowledged that Bill 35 "is just a piece of the puzzle."[43]

The enactment of Bill 35 does not mean that Aboriginal children will no longer be in need of protection. It does not necessarily mean that Aboriginal agencies will react any differently to 'protection needs', as they are still guided by the same policies. Nor, does it mean that there is a different standard or level of risk for Aboriginal children. What it does mean is that Aboriginal people will be able to access service through

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41 *Supra* note 35.

42 *Supra* note 17. Found in Chapter 4 – Aboriginal Overrepresentation; subtitle: The Socio-Economic Situation of Aboriginal People.

43 *Supra* note 28.

their own agencies. However, the fact remains that Aboriginal people will still have to access service within the reality of their current socio-economic status. Arguably, if the socio-economic status of Aboriginal people in Manitoba remains the same, so too will the numbers of Aboriginal children in care. Bill 35 would thus become just another mechanism of shifting numbers: number of children in care decreased from the General Authority to that of the others—First Nations and Métis.

Finally, there are concerns arising from the level of financial support and assistance that will be provided to the new authorities. According to Minister Sale, "the current budget for child welfare is approximately $130 million a year and during the implementation stage an additional $3 million a year will be spent."[44] While the Minister may be correct by stating that Bill 35 is about the delegation of responsibility and not about the transfer of money per se, it is a well-known fact that systems do not function well without financial support. Furthermore, it is also a fact that sometimes even the best of intentions fail if they are not properly supported.

XI. CONCLUSION

The fact that this *Act* was passed speaks well of both the Government of Manitoba and the people within the geographical boundaries. Very often, legislative issues are presented, private discussions are held and then a bill appears. The result is that the public is none the wiser, but legally bound nonetheless. However, such was not the case with this *Act*. Its gestation was long, the issues lingered and countless numbers of people forged ahead with their vision. To the credit of Manitobans, a common vision manifested itself in the form of Bill 35.

It goes without saying that Bill 35 is a step in the right direction—that being forward. Does it go far enough? Why delegation and not devolution? What about financial constraints? Arguably, these questions and countless others will continue to be posed well into the future. However, whether one phrases it as the 'giving back' or 'taking back' of an inherent right, the end result is the same—Aboriginal people in Manitoba now have the legal right to affect the lives of Aboriginal children in need of care. According to Trudy Lavallee:

> Bill 35 should be seen as an interim step towards full jurisdiction. It is a bill that was established by First Nations, Métis and the Province jointly; this is very new. The work thus far is a concrete example of First Nations' people exercising their inherent sovereign right to self-determination.[45]

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44 *Supra* note 28.

45 *Supra* note 23.

Bill 35 is indeed a symbol of hope. Is the hope comprised of empty promises and underlying purposes? Again, only time will tell. However, what is clear from this examination of Bill 35 is that both the words and actions of all parties have been viewed as honourable and collaborative. This fact alone is ground breaking and should be celebrated. Aboriginal people are clearly capable of and ready to handle the responsibility. Arguably, they have a historical template to reflect back upon; it is indicative of what *not* to do. That template is none other than the history of the child welfare system.