



# PERMANENCY BEYOND FOSTER CARE

The Office of the Children's Advocate  
Manitoba  
2015



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A Special Report by  
The Office of the Children's Advocate  
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## Introduction

Foster parents have been, and continue to be a much needed and valued resource for children in care. Foster care provides vulnerable children with a safe place in times of need; foster parents provide care, nurturing, and support to children in care while child welfare agencies work with parents to support their capacities to provide safe home environments, with the goal of reuniting families. For children who cannot be reunified with their parents, maintaining them in foster care often becomes the goal. These children often remain in care until they age out of the child welfare system, and too often this time is not spent in a single placement or foster home.

Increasingly there has been recognition that we need to look beyond long term government care for children and youth. In looking at children in long term care and those ageing out of the child welfare system, social determinant outcomes indicate that these youth may be in a disadvantageous position:

Research indicates that children in foster care who do not return home or get adopted and “age out” of the child welfare system without a permanent family have poor life outcomes. They are less likely to obtain a high school diploma or GED and more likely to be unemployed, experience economic hardship, receive government benefits, receive medical care through emergency room visits, develop mental health problems, have children as teenagers and be victims or perpetrators of violent crime. (Children’s Rights, 2006, p.2)

As society continues to move forward, so must the public systems that are in place to protect and assist those who are vulnerable in our society.

Currently in the province of Manitoba, there are over 5,800 children and youth who are in permanent care of the government. Addressing this fully requires a multi-faceted approach; one that includes not only prevention and family preservation and reunification, but also one that seeks to address the needs and rights of the growing number of children and youth who are in permanent care of the government.

The legacy of the Indian Residential School system and the ‘60s scoop, which is inextricably linked with the evolution of the Manitoba child welfare system, coupled with the overrepresentation of indigenous children and youth amongst children in care, dictates that indigenous youth, Elders, leadership, and communities must be included in a meaningful way in developing a path forward.

Children and youth in permanent care of the government deserve realistic opportunities at finding lifelong families, and the government of Manitoba, as their legal guardian, has an obligation to reduce barriers and facilitate permanency beyond foster care.

## United Nations Convention on the Rights of the Child

*The United Nations Convention on the Rights of the Child* (UNCRC) is an international treaty that sets out children's human rights. The treaty was adopted by the General Assembly of the United Nations in November 1989. In 1991, the government of Canada ratified the UNCRC; this means that the federal and provincial governments have a responsibility to ensure that all laws, policies, programs, and practices are consistent with the UNCRC and that consideration of the best interests of the child is a priority. The convention, comprised of various Articles that spell out the rights of children, is in keeping with the United Nations *Universal Declaration of Human Rights*. The UNCRC recognizes, as set out in the *Universal Declaration*, that "childhood is entitled to special care and assistance (UNCRC, Preamble, para 4)."

In its opening pages, the UNCRC speaks to the importance of family to a child and in their growth and development:

... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. (Preamble, para 5, & 6)

The UNCRC, Article 19, recognizes that sometimes children may not be able to live with their parents, and that governments should ensure that children are properly cared for and shall take all appropriate measures to protect them from all forms of violence, abuse, maltreatment and exploitation. Article 9 sets out conditions where a child's ties with their parents may be severed:

State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Seeking family based solutions for children who cannot live with their parents is a fully accepted policy, and is implicitly suggested in Article 20.3, which references foster care as an example of alternate care (Cantwell, 2014).

Articles 5, 18.2, 25, 39 speak to family and to alternate care. Article 5 calls on governments to respect the responsibilities of families to direct and guide their children so that as they grow they learn to use their rights properly, and Article 18.2 informs that governments should help families by providing services that support them in performing child-rearing responsibilities.

Article 25 involves reviewing all circumstances relevant to a child's placement. This would include foster home placements and reviewing if there are other placement options for children in permanent care, such as adoptive or legal guardianship opportunities. Children who are looked after by the government have the right to have their situation reviewed regularly.

Children also have a right to participation: their views and voices must be heard. In exploring placement and legal options for children, the state has an obligation to include the child in this process. The child has a right to have their views and opinions heard and considered, as per Article 12. Children have the right to express their views on matters affecting them and adults should take their opinions into account.

Meaningful participation is difficult if an individual is not informed. As set out in Article 13, children have a right to information; they have a right to freedom of expression, which includes the right to receive and impart information.

Defining best interests is a difficult task, and one in which there is little guidance on how to apply the principle in actual practice. This may create environments where the principle is applied inconsistently across individuals, organizations, and jurisdictions. In the absence of defined criteria, the manner in which best interests is operationalized is highly subject to the world view of those charged with making decisions affecting the lives and well-being of children and youth.

The United Nations' Committee on the Rights of the Child (*Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September -5 October 2012)*, 2012), has provided suggestions to Canada pertaining to the UNCRC. In relation to the principle of the best interests of the child:

The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interest of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programs and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to the public or private social welfare institutions, courts of

law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle, specifying the criteria used in the individual assessment of the best interests of the child. (para. 35)

*General comment no.11: Indigenous children and their rights under the Convention* (Committee on the Rights of the Child, 2009), links the importance of collective cultural rights to children's rights and the principle of best interests:

In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child. (para. 33)

## Indian Residential Schools and the '60s Scoop

Canada's destructive history of aboriginal policy, in which Indian residential schools played a central role, has been increasingly acknowledged over the last decade. In 2008, the Prime Minister of Canada issued an official apology, and the national Truth and Reconciliation Commission began its work. Through this process, the general public has become more aware of this long and troubled period of our history as a nation. The public have come to hear of the breadth of the detrimental policies and the effects they have had on indigenous individuals, families, and communities. The aboriginal policy that the Canadian government employed for generations has been described as cultural genocide.

*Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), describes cultural genocide as "the destruction of those structures and practices that allow the group to continue as a group... families are disrupted to prevent the transmission of cultural values and identity from one generation to the next (p.1)."

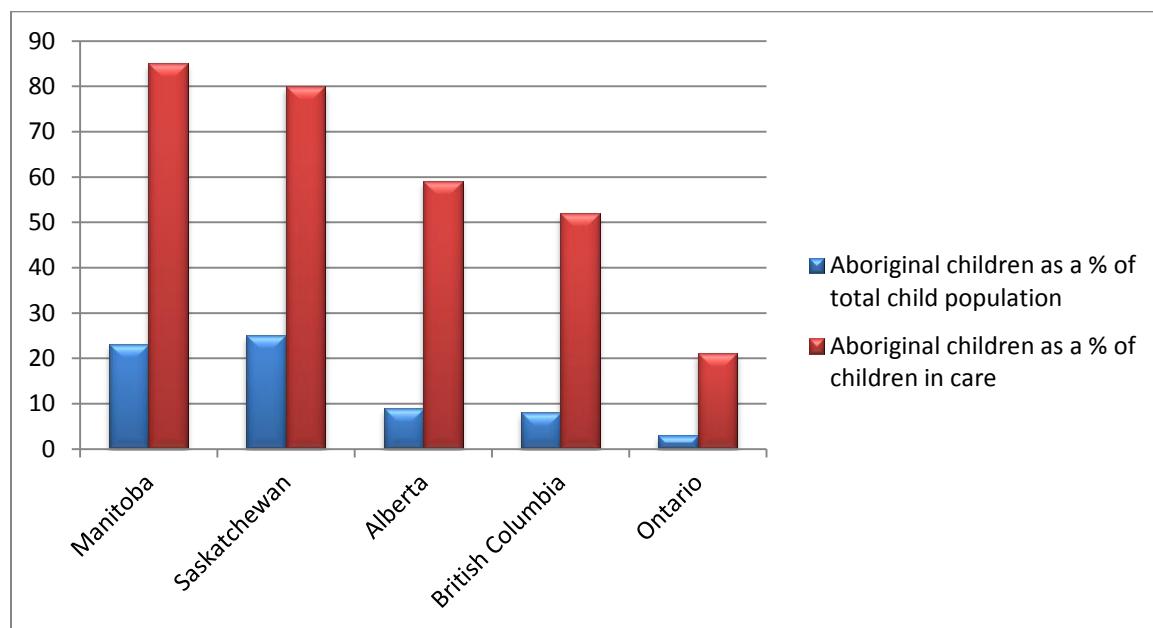
As the residential school system, which had begun in the 1870s, was phased out in the mid-20<sup>th</sup> century, the responsibility for aboriginal child welfare in Canada shifted to the child welfare system. This was followed by an era in Canadian child welfare in which thousands of indigenous children were removed from their homes and adopted to non-indigenous homes, often far away from their family and community. This period is often referred to as the '60s scoop.

As noted by Premier Greg Selinger in his June 18, 2015, Ministerial Statement, "Apology to First Nations, Métis, and Inuit Survivors of the'60s Scoop," the '60s scoop has been recognized as a practice of forced assimilation, that extended well beyond the 1960s, in which in excess of 20,000 Canadian First Nations, Métis, and Inuit children were removed from their families and communities and adopted to non-

indigenous homes across Canada, the United States and abroad (Selinger, 2015). Premier Selinger further stated:

Judge Edwin Kimelman and the author of the 1985 report *No Quiet Place* on the child-welfare system and how it affected Aboriginal people, described the '60s scoop as cultural genocide, the very term that Chief Justice Beverly McLachlin and Commissioner Murray Sinclair used to describe the residential school system. It is important that we acknowledge and appreciate the meaning of that description. (p.1993)

This history is inextricably linked to the Manitoba child welfare system, and cannot be separated from any dialogue on moving forward to better meet the needs and rights of indigenous children and youth. As indigenous children are vastly overrepresented in Manitoba's child welfare system, First Nations and Métis communities, Elders, and leadership must be included in directing a path forward.



**Table 1. Aboriginal Children in Out-of-Home care**

*Note. Age of children covered in provincial child welfare legislation varied from 0-16 in Ontario and Saskatchewan to 0-19 in British Columbia. Table information from Sinha & Kozlowski, 2013, p.3, as adapted from Sinha et al., 2011; Trocmé et al., 2005.*

## Permanency in Manitoba

### Statistics on Children in Care and Adoption

In the 2013/2014 fiscal year, there were 10,293 children in care of the state (*Manitoba Family Services*

*Annual Report 2013-2014*, p.88). The number of children in care in the province of Manitoba has been steadily increasing over the past ten years, from 5,782 children in care a decade ago, to over 10,000 today. Not only has the *number* of children in care increased, but so too has the *percentage* of Manitoba's total child population who are in government care.

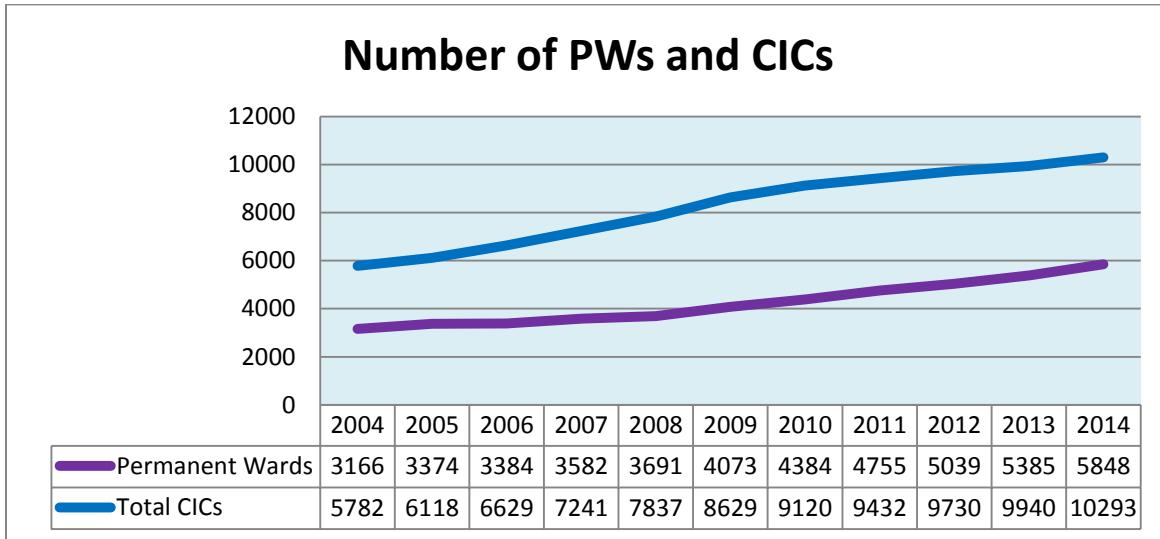
Manitoba Child Population and Children in Care											
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
MB child pop	286,408	284,653	283,316	283,172	284,157	285,544	286,938	290,298	292,410	293,900	295,804
CIC	5,782	6,118	6,629	7,241	7,837	8,629	9,120	9,432	9,730	9,940	10,293
% Pop	2.02	2.15	2.34	2.56	2.76	3.02	3.18	3.25	3.33	3.38	3.48

**Note:** CIC numbers are from information reported in Family Services Annual Reports. MB child population is reported in the Manitoba Health Population Report.

Of the 10,293 children in care in the fiscal year ending March 2014, 5,848 were in care under a permanent status, either through permanent order by the court or through a voluntary surrender of guardianship. This translates to 57% of the total number of children in care, or 2% of the total child population. In addition, there were 542 youth who had aged out of care, but who continued to receive supports beyond the age of 18 (*Manitoba Family Services Annual Report 2013 – 2014*). During the previous year (2012/2013), permanent wards represented 54% of the total number of children in care and 1.8% of the total Manitoba child population. In looking back over the past 10 years, the number of children in care under a permanent status has increased alongside the total number of children in care.

For those children and youth who are in agency care under a permanent status, achieving permanency with their parents has been deemed not possible or not in the child's best interest. This may be for a multitude of reasons, from pervasive child safety concerns to complex medical needs of the child or parent. For this subset of children in care, the system must invest in options, other than resigning children to long term foster care until they age-out of the child welfare system. While serving a key function, foster care may not be an ideal alternative to a family of one's own. Many youth require on-going emotional and financial support well into adulthood. All individuals require a sense of belonging, culture, love, and connectedness during childhood and adolescence.

During the 2013/2014 fiscal year, 2% of our province's children were permanently in the care of Manitoba's child welfare system.



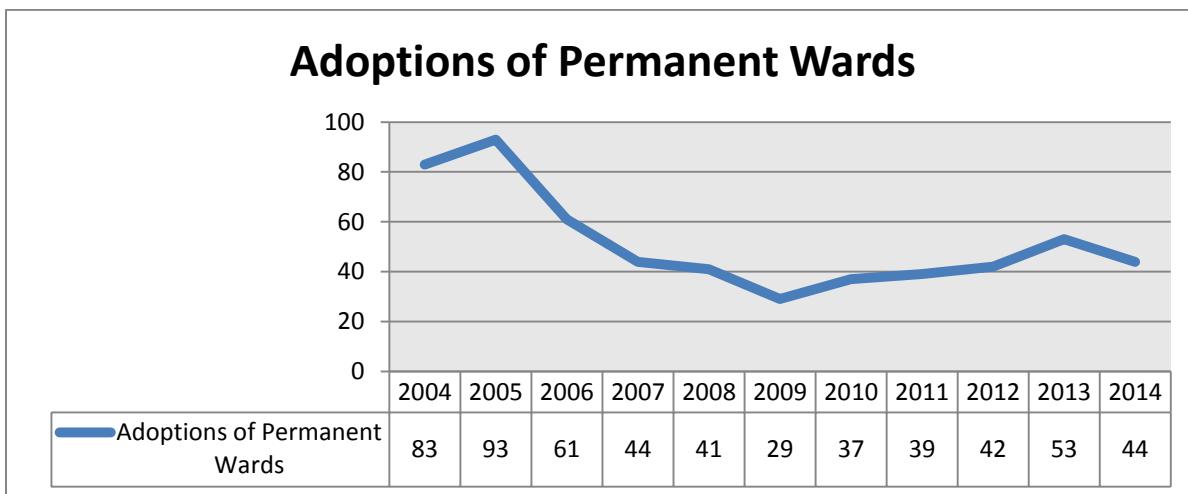
**Note:** All years indicated are fiscal, running from April 1 until March 31, and ending in the year indicated. CIC numbers are from information reported in Family Services Annual Reports. Permanent ward numbers were provided by the Government of Manitoba.

In 2013/2014, there were 5,848 children and youth permanently in the care of the province of

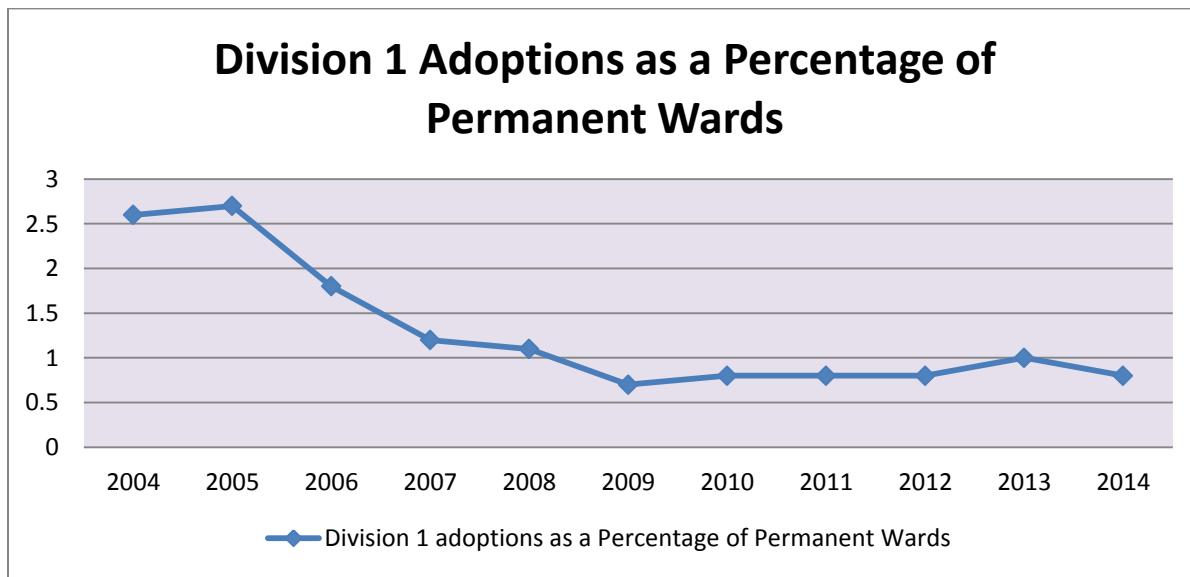
*The Adoption Act defines several categories of adoption. **Division 1** applies to the adoption of permanent wards. This includes children and youth in care permanently by court order or a voluntary surrender of guardianship.*

Manitoba. In the same year there were 44 Division 1 adoptions, representing less than 1% of children for whom the province is their permanent guardian. The number of Division 1 adoptions taking place today is lower than 10 years ago, despite the reality that the number of children in permanent care has increased by almost 85%. Adoption

rates for this group of children and youth have consistently hovered around 1% for the last eight years.



**Note:** All years indicated are fiscal, running from April 1 until March 31, and ending in the year indicated.



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## Legislation, Regulations, and Policies

In Manitoba, adoptions are governed by *The Adoption Act*, which was enacted in 1997. Prior to this, adoptions fell under *The Child and Family Services Act*. Manitoba's adoption legislation is in line with the modern conceptualization of adoption, which began in Canada in the late 19<sup>th</sup> century with the passing of adoption legislation in New Brunswick.

The status of an adopted child is outlined in Section 31(1) of *The Adoption Act*:

For all purposes of the law of Manitoba, as of the date of the making of an adoption order,

(a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and

(b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child;

as if the adopted child had been born to the adoptive parent.

*The Adoption Act*, Section 31(2), further informs how relationships are to be determined following an adoption:

The relationship to one another of all persons, including the adopted child, the adoptive

parent, the kindred of the adoptive parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (1).

These definitions are absolute in redefining a child and their kin relationships. Families may be hesitant to legally adopt children of their kin or community due to the harsh severing of ties. The loss of identity may also raise concerns related to perpetuating the harms of the 60s scoop, an era that had a profound impact on indigenous children, families, and communities.

Kin can be defined along a spectrum and may include not only family, but also friends, or members of one's community.

Under current adoption legislation (*The Adoption Act*, S.34), financial assistance is available for those adopting a child in circumstances where the child to be adopted has a physical or mental condition which would make caring for the child "far more expensive than the care usually provided to a child," or the adoption of a sibling group. The specifics are outlined in the provincial *Financial Assistance for Adoption of Permanent Ward Regulation*. Adoptive parents of permanent wards may be eligible to receive financial assistance paid in the form of start-up assistance, special services assistance, or ongoing assistance; specific timelines regarding the application are set out, and on-going assistance is income based. Applications for financial assistance must be submitted to the provincial director of child welfare prior to the placement of the child in the adoptive home. In circumstances where there has been a change to diagnosis, prognosis, or treatment, an application may be submitted following the placement of the child, but must be submitted prior to the granting of an adoption order. This timeline is restrictive and does not reflect later manifestations of pre-existing conditions, pre-adoption exposure to adverse child experiences, or the impact on the development of one's identify and sense of self throughout childhood, adolescence, and transition into adulthood.

Where financial assistance has been approved, clause 5(6) of the regulation specifies that;

If the required good or service is available at a reduced cost to the applicant from another source such as insurance coverage or another government program, financial assistance available under this regulation must not exceed the amount of the reduced cost.

While clauses such as these, commonly found in insurance policies, are often in place to avoid unnecessary payments, they can lead to confusion or inaccessibility of services over a dispute of responsibility. The funding of respite services has been raised as one area in which there is a lack of clarity regarding which government program, the Child and Family Services Division or Children's disABILITY Services, is responsible.

The ongoing assistance subsidy, relating to the care of the adopted permanent ward, is a maximum of half the basic provincial foster care rate that would have been payable on behalf of the child had they been in the care of a foster parent. The provincial basic foster care rate varies depending on the age of the child and the geographic location. As an example, the basic foster care rate is \$21.79 for a foster child age 0-10 years residing in the south.

The actual amount of the ongoing subsidy an adoptive parent is eligible to receive is calculated based on family size and income. For those families whose income is above the basic exemption level set out, a benefit reduction rate is used to determine the allowable amount of on-going assistance. If the allowable amount is less than 5% of the maximum benefit, than the adoptive family would receive 5%. Eligibility is reviewed annually. The subsidy terminates at age 18, which is not reflective of the extended support many youth would benefit from, and which has increasingly become the norm in society. Manitoba has previously recognized that youth may require additional support as they transition to adulthood, amending *The Child and Family Services Act* to allow for the provision for supports to permanent wards beyond termination of guardianship, up to age 21. Ontario has just announced an expansion of their targeted subsidies program, which includes extending the maximum age of eligibility from 18 to 21 (Ministry of Children and Youth Services, 2015).

Current legislation and regulations regarding financial subsidies present challenges to achieving permanency for foster children through adoption. They may be a barrier for some foster parents, including kin, to adopt children in their care, even in circumstances where they have committed to the children long term.

Clause 13 of the *Financial Assistance for Adoption of Permanent Ward Regulation* states that no later than March 2004 the Minister shall review the operation of the regulation, including consultation with affected individuals as the minister deems appropriate, and, if considered advisable, recommend to the Lieutenant Governor in council that the regulation be amended or repealed.

**The Children's Advocate recommends that the Minister of Family Services conducts and concludes a review of the *Financial Assistance for Adoption of Permanent Ward Regulation*, and that the review include consultation with affected individuals as well as child rights impact assessment on the current regulation and any proposed amendments.**

## Why Investing in Subsidies makes Fiscal Sense

Investing in subsidies for legal guardianship and adoption is not only important for children and youth, it

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is a sound fiscal decision. Adoption and guardianship subsidies are fiscally advantageous as they are less expensive than long term foster care and may mitigate the youth's need for public services through adulthood, including public housing, employment and income assistance, health care costs including repeat emergency room visits, and costs associated with involvement with the law and incarceration.

In the late 1990s, the United States made strides to increase the number of adoptions from foster care, setting baseline targets for states, enacting legislation and policies that supported adoption and legal guardianship, and providing financial incentives for those states who met the established targets.

Resistance of care providers to the idea of legally adopting their own family members was thought to have contributed to the backlog of children in long term foster care. As a response, many child welfare

Legal guardianship is a means of transferring legal responsibility of a minor that does not require the termination of all birth parent rights and does not create new parent-child legal bonds.

agencies have rediscovered the utility of legal guardianship: making kinship care arrangements legally lasting and providing continued financial support to kin caregivers (Testa, 2004).

Legal guardianship provides legal certainty and stability in the caregiving relationship for children. Other potential beneficial outcomes of legal guardianship may include: lessening the separation trauma, sense of loss, and identity conflict that may develop when children are adopted; is less expensive than foster

care as many administrative and case worker costs are not incurred; and is more congruent with the custom of informal adoption by extended family members (Testa, 2004). Any cost saving incurred could be redirected to such areas as early intervention and support activities, programs addressing systemic causes of family break down, and post-guardianship/ post-discharge services. Research on the stability of kinship care in states without subsidized guardianship programs highlight the importance of these two components on disruption rates, suggesting that rates are sensitive to both the level of financial support and availability of post-discharge services.

In Canada, where the '60s scoop has had a profound impact on many First Nations, Inuit, and Métis communities, options such as legal guardianship may take on a greater role than legal adoption, though the premise of permanency for the child remains.

In the 2013-2014 fiscal year, twice as many days were billed at a rate higher than the basic foster care rate.

An increase in subsidies as a strategy to enable family and community to consider adoption or legal guardianship as a viable option would support overall cost savings. According to Manitoba Family Services (*Annual Report 2013-2014*), for the 2013-2014 fiscal year there were 841,759 days of care billed at the basic rate and 1,780,749 billed at a rate higher than the basic rate. Residential days of care are

recorded separately. For those children who are permanently in care of a child welfare agency, on-going costs include not only payments made to the foster parents or child and youth care workers, but also agency staffing and administrative costs. These resources, human and fiscal, could be relocated to prevention services geared towards maintaining children safely in their family home by supporting parents to preserve families and prevent admissions into agency care.

## Custom Adoption in Canada

### Indigenous communities

The effects of customary adoption on a child's parental affiliation and contact with their birth family vary from region to region, as well as community to community. One definition, from the *Report of the Working Group on Custom Adoption in Aboriginal communities* (Government of Québec, 2012) provides:

...customary adoption has the effect of transferring parental authority to the adoptive parents. It can also create a new bond of filiation that replaces or is added to the previous filiation without, however, in the latter case, necessarily extinguishing previous rights and obligations. Lastly, it is not secret and sometimes it is even open in order to maintain emotional ties with the original family. And, in principle, the child is informed of the reasons for his adoption, according to custom. (p. 34)

In British Columbia, Lalum'utul' Smun'eeem Child & Family Services of Cowichan Tribes developed their own adoption program, "from a desire to avoid leaving a legacy of children remaining in care and to move toward an inherent right to plan" for their children's permanency (Representative for Children and Youth, 2014, p.31). Since signing an Adoption Enabling Agreement with the British Columbia government in 2008, Cowichan Tribes reported having completed 14 adoptions in the community. The Cowichan Tribes adoption program was highlighted in the British Colombia's Representative for Children and Youth's 2014 report, *Finding Forever Families: A Review of the Provincial Adoption System*.

### Legislative recognition of custom adoption

Federally, the *Indian Act*, Section 2(1), sets out that, for the purposes of the Act, a child "includes a legally adopted child and a child adopted in accordance with Indian custom." However, in order for custom adoption to be fully recognized in a manner that affords children adopted in this manner the same rights as other children, further legislative recognition at the federal and provincial levels must also be in place. British Columbia, the Northwest Territories, the Yukon, and Nunavut have each given general recognition to aboriginal customary adoption (Government of Québec, 2012). Custom adoptions differ across individuals and communities; some argue that custom adoption is more akin to

guardianship than to adoption in common civil law.

The lack of express recognition of custom adoption in provincial adoption legislation can create administrative and legal difficulties for the children involved. Consequences may include difficulties with the child's school registration, receiving medical services requiring parental consent, and participating in extra-curricular or school activities requiring parent or guardian permission. Not recognizing custom adoption also has implications on the high number of children and youth in permanent government care, as it is not a legally available option in seeking permanency and lasting bonds of filiation for children languishing in the child welfare system.

Uncertainty surrounding the weight placed on the best interests of the child in making customary adoption decisions has been raised as an area that requires particular attention when considering the issue of custom adoption. This consideration, among others, has been explored and reported on in jurisdictions that have recognized the practice (Baldassi, 2006; Gallagher-Mackay, 2003; Government of Québec, 2012).

In addition to provincial and territorial initiatives, the First Nations Child and Family Caring Society of Canada (Supporting First Nations Adoption, 2010) highlights the need for increased acknowledgment of custom adoption at the federal level:

...it is imperative that the Federal Government provide proper financial resources in order to actualize the custom adoption statutes in ways that meaningfully support First Nations children, birth families/birth extended families and adoptive families/adoptive extended families. (p.4)

## Child Rights Impact Assessment

A child rights impact assessment (CRIA) is an assessment that looks at the impact legislation, regulations, and policies have on the needs and rights of children and youth. Proposals for legislation, policy, service provision, and administrative decisions ought to be examined for their potential impact on children and youth (UNICEF Canada, 2012). The impacts that such regulations could have on children and youth is not always straightforward or apparent. Conducting a CRIA assists in ensuring questions are asked and that children's rights, and well-being, are given due consideration. Additional benefits include maximizing positive impact on children and being alerted to harmful or unintended effects. As noted by the Scottish Commissioner for Children and Young People in *Children's Rights Impact Assessment: The SCCYP Model* (2006):

A children's rights impact assessment is a tool for looking at policy, law or decision and assessing its impact on children and young people and their rights. It allows the impact to be predicted,

monitored and, if necessary, avoided or mitigated. (p. 5)

Closer to home, New Brunswick and most recently Saskatchewan, have developed CRIA tools. In addition, government child welfare officials Alberta and Ontario have engaged in exploratory discussions with UNICEF Canada regarding CRIA implementation (UNICEF Canada, 2014). In New Brunswick, CRIA assessments are not limited to child specific departments, but are required to be completed by any provincial department when a proposed law, regulation, or policy is being considered by Cabinet (UNICEF Canada, 2014).

We all have a role, as Manitobans, to push the dialogue forward and make it a priority for government.

Manitoba's Healthy Child Committee of Cabinet, comprised of departmental ministers, is the table where various government departments come together to discuss provincial programs impacting children.

**The Children's Advocate recommends that the Healthy Child Committee of Cabinet explore developing and implementing child rights impact assessment tools, including use across the provincial government departments.**

### Closing Thoughts and a Call for Action

As noted in the Office of the Children's Advocate's *Strengthening Our Youth 2012 Progress Report* (p.108), since 2008 there has been additional money allotted to the child welfare system specifically for enhancing services and sources available to youth aging out of care. A number of positive initiatives, such as the development of specialized casework teams to work with youth ageing out, a move to youth led transition planning, and matching adult mentors with youth living independently, were also noted. In addition to the positive forward movement in this area, we need to be looking at providing children with roots and lifelong relationships.

For many young people the transition into independence is sudden and they often enter adult life with little or no connection to community or family, little or no financial support and few skills to master the challenges of life independently. (Office of the Children's Advocate, 2002, p.111-112)

We, the broad and collective term, is intentionally used here; it is inclusive of elected officials, government, stakeholders, and the public. As Manitobans, we can all put our voices forward and demand better for our province's vulnerable children and youth. For those children and youth who

have been made permanent wards of the state, they deserve better than being left to grow up in government care.

There is a need to find alternate permanency options for youth in permanent care of the child welfare system, and in particular for indigenous children and youth who are vastly overrepresented. Inaction is leading unnecessarily to another generation of indigenous children growing up being denied family and community. Given past adoption policies that have had immeasurable devastating effects on indigenous children, youth, families, and communities, it is essential that careful consideration be given in the development and implementation of system changes to promote permanency options beyond foster care. Writing has been done on theory and considerations related to customary care, and practices exist in other jurisdictions. Manitoba is not alone: the need for attention and action is being recognized across the country. In April 2015 a forum was held in British Columbia with participation from Elders, indigenous leadership, and provincial entities to advance the dialogue for change, with a second forum planned to develop concrete action plans (Representative for Children and Youth, 2015). There are also Manitoba examples to be found; in 1983 one of the first indigenous child welfare agencies in the province conducted an intensive recruitment campaign for adoptive homes in their First Nation communities that resulted in the placement of 31 children (Kimelman, 1985). While Canada has not ratified the United Nations *Declaration on the Rights of Indigenous People*, it has been strongly endorsed as a framework for reconciliation by the Truth and Reconciliation Committee and demands consideration. Existing provincial, national, and international ideas should be examined to build a made-in-Manitoba approach.

**The Children's Advocate recommends that the Department of Family Services ensures any proposed new legislation, regulations, policies, and provincially funded programs undergo a thorough assessment process by the provincial government in order to assess the potential impact on the rights of the child and on the rights of indigenous people. Meaningful consultation and engagement with youth as well as indigenous communities, leadership, and stakeholders, should also occur to ensure their participation on decisions impacting their children, youth, and families.**

## Appendix A

### Glossary

**Customary Care:** The province of Ontario's *Child and Family Services Act* defines customary care to mean "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 208)."

Customary Care has historically been practiced and continues to be practiced in many First Nations communities. Customary Care may occur in any number of circumstances, not just in relations to children and youth in need of protection. (ON Customary Care doc p.18)

**Custom Adoption:** Custom adoption is a process that has been recognized by the court systems in British Columbia, the Northwest Territories, Nunavut, and the Yukon. The province of Quebec has also studied custom adoption practices within their province with an eye to arrive at a solution that meets the needs of Aboriginal people and that takes into account legal and political issues.

**Division 1 Adoptions:** *The Adoption Act* defines several categories of adoption. Division 1 applies to the adoption of permanent wards.

**Kinship Care:** Kinship care refers to the children being cared for by relatives, in other words by their kin. Kinship care may also refer to alternate care arrangements with family friends or members of the child's community. Jurisdictions may have more detailed definition for policy and legislative purposes.

**Legal Adoption:** An adoption that occurs under *The Adoption Act*, which is subject to the terms prescribed in the legislation and related regulations.

**Legal Guardian:** *The Child and Family Services Act* defines "guardian" to mean a person, other than a parent, who has been appointed guardian by the court, or to whom guardianship has been surrendered under Section 16 of the Act.

**Legal Guardianship:** Legal guardianship is a means of transferring legal responsibility of a minor that does not require the termination of all birth parent rights and does not create new parent-child legal bonds. In the case of permanent wards, the transfer would be from the government to the caregiver or guardian.

**Order of Adoption/Statutory Adoption:** Following an application to the provincial courts, a judge may make an order of adoption under *The Adoption Act*.

**Permanent Ward:** A child who is in care by way of a permanent order through the court or by a voluntary surrender of guardianship.

## Appendix B

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