

Technical Briefing on Delegated Aboriginal Agencies and Children in Their Care

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In this edited transcript of a briefing for reporters, Jeremy Berland, B.C.'s Director of Child Welfare, discusses the history, delegation and other aspects of delegated aboriginal agencies in British Columbia.

Historical Development

In 1980, the Spalumcheen people signed an agreement with the province that was unique at the time – the first of its kind in Canada. It provided for the Spalumcheen to run their own child welfare system, on Spalumcheen land, for Spalumcheen people.

This was quite unusual, because the federal government usually has the authority to allow or disallow programs on reserve lands. Although child welfare is a provincial responsibility, the federal government is responsible for service to status Indians on reserve lands. But a band council resolution was passed supporting this approach, and the federal government allowed this resolution to stand.

The existence of this 1980 agreement led to the federal government to develop a program that provides for child welfare services on reserve lands across the country. It operates in slightly different ways in different provinces. It's mostly a western-Canadian phenomenon, because the further east you go, the more treaties there are.

Over the last 25 years, many individual bands, intertribal councils, and bands that have formed a society have, through a tripartite agreement with the federal and provincial governments, created child welfare systems to provide services to band members living on reserves. Today, 156 of the approximately 200 First Nation bands in B.C. are represented by agencies that either have, or are actively planning toward, delegation agreements to manage their own child and family services.

At the moment, there are about 9,000 children in care in the province. About half are aboriginal. So it's more or less 4,500 kids to 5,000 kids who are of aboriginal ancestry, and 1,340 of them are in the care of the agencies.

Building Capacity in Aboriginal Communities

The ministry is working with Aboriginal communities to develop their capacity to carry out these responsibilities. For the most part, their child-welfare systems are limited to providing on-reserve services.

Under these agreements, the federal government funds agencies according to their policy guidelines. The province delegates authority to the individual staff

of the agency and enters into a delegation agreement with the organization. The delegation agreement flows the authority from the province to the organization to provide the service.

The delegation to individual workers is their authority to act. Once delegated, a person has provincewide authority to protect children.

Creation and Funding of Delegated Aboriginal Agencies

The band, council or society instigates the process with the federal government. Federal guidelines used to say that you had to have a thousand children on reserve – or within a collection of bands, because it might not just be one continuous area – in order to qualify for funding. Over time, that was modified down to 500 children. Today, some bands have fewer than 500 kids on reserve, and the federal government has modified its policy, yet again, to allow for even smaller groups to assume responsibility.

Incidentally, the federal government funds all agency operations and administration, at which point the province stops receiving money for them from the federal government. With delegation to date, the provinces have seen a considerable decrease in the funding they receive for services to status Indians living on reserve, as defined in the Indian Act and by agreement between the province and the federal government.

The province has limited involvement in the planning phase. Once the band and federal government have started the process, we join in to look at issues like agency size, viability, governance, security of files and connection to other agencies. Our operational standards include a set of start-up criteria that have to be in place before the provincial Director of Child Welfare will sign a delegation agreement with an organization.

Once they've met these basic standards, we have a graduated process for delegation. There used to be multiple levels of delegation in the provincial scheme. For example, I, as the provincial director, can perform all functions under the Child, Family and Community Service Act. If you're an individual social worker, you can do certain things but not other things. The act's responsibilities are divided up that way.

Using Funding to Keep Children Safe

The federal formula funds the vast majority of the services that are provided by the agencies – not all, because the province transfers some kids and the funding attached to those kids to children who are already in care. But the federal formula is based on the basic amount, based on the child population in the community and then an additional amount based on per child in care, so the formula is driven by having a high in-care population, which is somewhat counterproductive.

What we're trying to do is reduce the number of children in care, so that the funding is based.... You might say that the funding is roughly equivalent to the funding that the province provides for the similar kinds of services in terms of just the basic rate that's paid for foster care. But the province has a great deal more flexibility in our own services in terms of how to move money around.

Levels of Delegation and Responsibility

Delegated agencies start off at a level of delegation that allows them to find and study resources like foster homes, and to provide support services to families. As they demonstrate competence and readiness to move on to the next level, they receive more responsibilities.

At the next level, they assume responsibility for the guardianship of children in care. In law, the Director of Child Welfare remains the "super-guardian" of about 1,340 aboriginal kids who are in the care of the agencies – but in practice, guardianship is handled locally.

The final level of delegation gives an agency all the duties and powers that a ministry social worker would have. These include full authority to receive reports of children who are in need of protection, investigate reports, take children into care, make placements, and proceed to court.

It can take considerable time to move from start-up through to full delegation. Currently, there are 23 delegated agencies in start-up or operating with one of three levels of delegation in B.C. Only seven are fully delegated. The amount of responsibility undertaken by each agency is the result of negotiations between the ministry and the aboriginal community served by the agency. Some agencies may never move to full delegation. They may not have the sufficient size in their community or the interest from their members to take it all on.

Hiring, Supervision and Audits

Agencies are responsible for the hiring and supervision of staff. My responsibility as provincial director is the oversight of this whole network. And we have staff who report to the Director of Aboriginal Services who are in contact with the agencies and monitor their activities.

We recently started a joint program with the federal government, using a common audit tool to audit the agencies. Previously, the federal government's oversight responsibilities were restricted, mostly, to a review of band financial statements. Up to about three years ago, the province's oversight mostly involved day-to-day contact with agencies and supervision of review of the readiness criteria.

Today, with the federal government, we do a joint audit, looking at practice and money hand in hand to see that things are working as they should. Our staff review agency staff qualifications according to requirements under the legislation. As the provincial director, I have to be satisfied the staff have met the minimum qualifications established in the joint operational policy standards that we have with the agencies.

As Director of Child Welfare, in consultation with the delegated agency directors, I've implemented a three-year practice audit schedule for the agencies. The practice of eight agencies has been audited to date.

We also meet with agency directors four times a year to review priorities, developments, issues and new practice findings or developments. If an issue comes up, we'll organize conference calls with directors so they get the same kind of information as ministry staff does. Through Aboriginal Services Branch, the ministry also provides practice consultation and support to each agency for complex, unusual and difficult cases, and may complete an analysis of an incident.

Regional Directors and Reporting

Along with the provincial director, there's a director of child welfare for each region. I oversee them. The directors in regions and I, as director for the aboriginal agencies, have staff who then are consulted on critical cases or cases that have some complication about them or something that's unusual about them. The expert staff in the regions supervise that.

Beyond their regular contact, agencies and our staff are required to produce a report to us on all critical incidents involving children they may have served or previously served. In the case of any child who runs away, a child who's got a serious medical condition, a child fatality, a child who's missing from home, the director gets copies of a report from staff and delegated agencies. Then, there's a follow-up: that kicks off a whole process around what are you doing on this, how are you dealing with this case? Some levels of supervision come into play if there's a concern that's not being handled appropriately.

Practice Standards and Training for Workers

Services provided by Aboriginal delegated agencies are guided by the Aboriginal Operational Practice Standards and Indicators (AOPSI) and the Child, Family and Community Service Act. The practice standards were revised in 2004/05.

The Aboriginal Social Worker Training program is based on the AOPSI and the Director has approved all training programs. The training has been delivered by Caring for First Nations Children Society since 1999. The agencies tell us when they have hired staff, and we pay for those staff to receive an additional level of training through the Caring for First Nations Children's

Society. The society provides training for each of the levels of delegation, from basic, core training through support to foster homes all the way through to intake and investigation. This training is provided continuously throughout the year for staff of the agencies.

The basic training requirements are exactly the same for the staff of delegated agencies as in the ministry. In keeping with the AOPSI Standards, in order for a social worker to obtain delegation, they must have a degree in a related human services field plus basic training, or a recognized diploma in the human services field plus three years experience in child and family services. As the Director of Child Welfare, I must approve any exception to the standards.

We also make training opportunities available for agency staff in positions similar to ministry staff. In regions where we have ministry training events going on, we're trying to involve and invite agency staff as much as possible.

The society is working on a new curriculum for two areas that are pretty important: one on training for supervisors; the other, a training module they're going to develop for board directors. The society already delivers the board training and is piloting the supervisory training. The curriculum development is for training for Executive Directors.

Operational Standards and Policies for Agencies

In the 1990s, the ministry and the agencies jointly developed a set of operational standards and policies for the agencies. The agencies can accept the province's standards and deliver services entirely according to provincial policy. They can use the aboriginal policy standards – a jointly developed set of standards that was revised last year – or they can have their own set of standards, as long as they meet or exceed the other standards that have been developed, and in this case, the Director of Child Welfare must approve the proposed standards.

It isn't the norm that we would send out policy guidelines that weren't in effect, and we certainly wouldn't do that again. Some agencies were interested in trying to match some of the practice shifts the Ministry was doing around moving into different ways of keeping kids safe, other than simply removing them. This is generally a trend all across the western jurisdictions around trying to find alternatives to the removal of children.

I think if you had representatives of the agencies here they would say that their approach to keeping kids safe is preferable to the ministry's approach, because they're able to do that in the context of the whole community and take a look at all of the services or needs that a person might have, rather than just the child welfare needs alone. So I think that the standards are certainly the match.

Interaction of Agency Workers With Children

One of the things that we were just talking about on the way over here is the amount of time that agency workers can spend with kids in care. For instance, for children who are in foster homes, they can spend a much greater amount of time than ministry staff can spend – because you're dealing with much smaller communities, less travel, and more natural opportunities, like cultural events and family gatherings. So you have more informal ways of seeing kids than strictly doing it through the relationship of social workers visiting a child in a foster home.

I'd have to say that, on balance, it's at least the equal of what the ministry may do. Some agencies clearly are more effective than others, and some ministry offices are more effective than others: that's what you'd expect in any kind of system.

Fostering by Workers

In the ministry, generally speaking, we're not usually in favour of staff fostering in their own offices. Sometimes we allow staff to foster, depending on what they do. It's quite different having an administrative support person as a foster parent, versus a social worker - for obvious reasons. If you go out into community areas where people live far away from where they work, different things are possible.

Investigations and Court Activity

We're conducting somewhere in the neighbourhood of 27,000 investigations a year. We're appearing in hundreds of court cases a year. So I wouldn't expect, either, me as provincial director or the directors in the regions to really have detailed information on each one of those transactions that are occurring. There are literally hundreds and hundreds of different things that are going on in terms of movements, changes in status, applications to court.

We appear in court virtually every day somewhere in the province. Every one of those court appearances is listed as the director under the Child, Family and Community Service Act, versus somebody. So you might think, on reading that, that's me versus all of those people. In fact, the way the delegation scheme works is once delegated, a social worker acts in the name or in the place of the director. So when we go to court, each time out - whether it's our staff or agency staff who are in court - it's the director making the application, and it's the directors.... The lawyer, who's representing the social worker, says the director is seeking application of this kind of order, or the director has this kind of evidence to put in - because, of course, it's not the person who's making the application. We're asking under the authority of the act: it's a kind of technical thing. But it would always appear as the director. So we have, literally, hundreds of court applications a week going on across the province.

Progress in Relations Between Aboriginal Communities and the Ministry

There isn't a place now in the province where there is a band council resolution prohibiting the ministry from going on reserve. That was the case not very long ago.

Probably even within the last decade there were all kinds of places where people would not allow us to go on reserve, places where people weren't interested in delegated agencies - just no interest at all. We would have to go with the police to try to conduct child welfare investigations. It was a terrible way to try to protect a child and a family and try to build some confidence and faith with a family.

Still, I think there's evidence that it's a huge improvement over where we were sometime ago. We've got more aboriginal kids in the care of aboriginal families. We've got more agreement from aboriginal people around the direction we should be going. We've got some true partnerships going on in terms of the work that has to be done.

If a child can't be placed permanently in an aboriginal home within their extended family, we now have a working relationship that allows us to have a conversation with communities around what we're going to do instead: "This child should not languish in foster care for the rest of their childhood; let's try to find a home." We actually have ways, now, to enter into that discussion with communities.

And that discussion can't wait. We have 3,000 aboriginal kids in the care of the province – kids who will remain in the care of the province until they age out. That's not a very good place for them to be. Outcomes are not good for those kids.

Our discussions with communities can be pretty intense, about what ought to happen on cases. But we actually can have that dialogue today, and have another kind of conversation tomorrow around partnership on another case. That's pretty positive. We absolutely weren't there when I started doing this kind of work in 1999 or 2000. I think there's been big progress. My relations with the heads of the agencies are pretty strong.

We learned through the Chassidy Whitford review about the level of training that additionally was needed for agency staff around physical abuse questions and then stepped that up. So I think that with each one of these cases, as they happen, we gain more experience, and we gain a better understanding of where to go next.