



The Children's Aid Society of Brant

INCORPORATED

Quality social services are not a liability . . . they are a public utility . . .

31 July, 1985

Mr. Bryan Shields
Program Supervisor,
Ministry of Community and
Social Services,
P.O. Box 2112
119 King Street West,
HAMILTON, Ontario
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**Tentative Policies for Indian Provisions
of the Child and Family Services Act**

Dear Mr. Shields:

Enclosed please find our Society's responses to
the issues and proposals put forth in the referenced
document.

Yours very truly,

R.A. Mullen M.S.W.
Interim Local Director

RM/sb
Enc.



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RESPONSE TO TENTATIVE POLICIES FOR INDIAN PROVISIONS OF THE CHILD AND FAMILY SERVICES ACT

MEMBERSHIP ON APPROVED AGENCY BOARDS

1. We recommend representation by band membership as determined by the band membership records of the DIAND.
2. We recommend one band representative for up to 2,000 band members. In this way, smaller and less populated bands will be represented. Two thousand can serve as a limit and as a point where additional band representatives can be appointed for the larger bands.
3. Band representatives should be appointed by bands or their councils. Bands should be encouraged to consult with each other regarding joint band representation.
4. We recommend that the Ministry develop an implementation program whereby native people would contact various bands/band councils to educate, advocate and assist in setting up the initial stages of representation. Joint representation could be encouraged in areas where bands are small provided these bands are in agreement to joint representation.
5. Where there is an agency that is band operated, band representation would not be an issue.
6. Agencies and service providers which serve bands should be aware of the elective and hereditary factions. Band representatives must be aware that they are also representing hereditary families and that by their choice, may reject the elective system of band government. Guidelines for band reps should instruct consultation with longhouse chiefs and/or clan mothers for families within the hereditary system in recognition of their cultural lifestyle and religious beliefs.

MEMBERSHIP ON RESIDENTIAL PLACEMENT ADVISORY COMMITTEES (RPAC)

7. Where an RPAC services a band/native community, there is a native representative on the committee who is a permanent member of the committee. Band input will be required in determining an appropriate candidate.
8. Continuity of band representation will ensure that the best interests of a native child are being met. Given the degree of mobility of native people today, networking between native representatives in all areas, (e.g. court, RPACs, etc.) is necessary to provide that continuity.

2.

DETERMINING WHETHER A CHILD IS AN INDIAN PERSON AND TO WHAT BAND THE CHILD BELONGS, IF ANY

9. Where service providers are non-native, there is a need for training and education regarding entitlement for native status and the process of band registration through the DIAND.

CHILD PROTECTION: PARTIES TO PROCEEDINGS AND NOTICE TO BANDS

10. It will be necessary for the Ministry to provide funding to assist in obtaining the necessary training of band representatives who will be required to attend court proceedings. To ensure meaningful party status at all court proceedings it may be necessary for some band representatives to receive paralegal training in order to cross examine witnesses, for example.

11. Networking of band representatives in all areas could provide for representation by proxy at the discretion of the local bands. When a band feels it is in the best interests of the child for the child's own band representative to attend at a hearing, the Ministry may need to assist with funding for the costs of travel, accommodations and meals for that purpose.

12. Court service should be personal. Notices of Hearing should be served on band court representatives.

13. ISSUE: In the matter of consent of the child or the child's parent, it is required to give full party status to the band rep. Questions were raised with regard to the Human Rights Legislation where representation may restrict the rights of the individual. For instance, if the individual does not want band representation. This conflicts with the recognition of the rights of the collective values of the native culture.

14. ISSUE: To ensure useful implementation there needs to be a training program for native representatives (RPACs, court, board and band). We recommend that the Ministry consider sponsoring this training and approach recognized native political organizations as a vehicle for organizing and providing this training.

PARTY STATUS IN SECURE TREATMENT HEARINGS

15. Where the secure treatment hearing is not of an emergency nature, the band representative should be of full party status to all proceedings in order to be consistent with the rights of the native child to native representation.

16. Where the secure treatment hearing is of an emergency nature and the time frame does not allow for the band representative to be present, that full disclosure be provided within five days. The time frame for the written response from the band rep should be set at 10 days. If the written response does not concur with the court findings, a final decision by the court should be stayed to permit a full personal presentation by the band representative.

3.

APPLICATIONS FOR STATUS REVIEWS

17. Upon implementation and in the initial stages some bands will have a large number of cases to review. In order to facilitate implementation, we propose that local agencies designate an informed service provider, possibly on a contractual basis, to assist and familiarize the band representative in dealing with the cases.

18. Band representatives need to be present at all status review hearings where a native child is under a supervision order, society wardship or crown wardship order rather than informing the band after the fact. The representative will have full party status for all status review hearings.

NOTICE TO BANDS OF INTENTION TO PLACE A CHILD FOR ADOPTION

19. The "consent of the birth parent" is a non-issue as regards the confidentiality provisions of the CFSA since the band registration of a native child automatically provides the band with identifying information. Consent does not apply as the registration procedure gives this information to the band.

20. To prepare implementation, bands will require the assistance of a native adoption worker or a designated person with specific training in native adoption and an understanding of the procedures for native band registration. For instance, the preparation of a written placement plan within 60 days will require the availability of such expertise.

ROLES, RIGHTS AND RESPONSIBILITIES OF BAND REPRESENTATIVES UNDER THE CFSA

21. Some Ministry funding will be required to set up necessary training as previously described in this commentary. In addition to a training program for implementation, the Ministry will need to consult with bands to formulate guidelines for the relationship between band representatives and the bands they represent.

22. There need to be mechanisms for recording and documenting. There must be accountability to the band with the provision for the band's ability to direct the band representatives in the required roles, rights and responsibilities.

MINISTRY FUNDING POLICY

23. In order to implement the provisions of the CFSA which apply to the tentative policies for native services, it will likely be necessary for the Ministry to provide funding for training, for the development of the training program with band input, and for travel and accommodation costs especially where distances are great.