Memo

To: Roy Walsh, Executive Director
Children's Aid Society of Brant

From: Audrey Hill, Supervisor
Native Services Branch

Date: 20 April, 1998

Re: Repatriation – Six Nations of the Grand River

In June 1997 Chief Wellington Staats, Chief of the Six Nations of the Grand River invited the Children's Aid Society of Brant to attend a meeting of the Native American Family Services Commission. The Commission is mandated to secure recognition of Six Nations' right to representation, should Six Nations children become involved in child welfare proceedings in New York State. The Six Nations Band has been involved with the Commission for the past three years and believes some progress in securing this right has been achieved. The Band was requesting Brant CAS to attend and provide technical information regarding the transfer of Six Nations children from New York State to Six Nations Territory.

On 10 September, 1997 Roy Walsh, Executive Director and Marg Barr, Director of Services, Brant CAS, attended a meeting with the Commission and Six Nations to discuss the above matters. Kim Thomas, Indian Affairs Specialist, New York State Children and Family Services opened the meeting with a brief history of the Commission and the Indian Child Welfare Act of 1978. The CWA is federal law which enables First Nations in New York State to enter into State Tribal Agreements for direct service delivery without a third party. Kim Thomas addressed the issue that Six Nations children entering the child welfare system in New York State are being prohibited repatriation to Six Nations Territory through stipulations on jurisdiction. Further discussion identified additional issues such as cross-border jurisdiction, services and legal provisions. Roy Walsh outlined the role of Brant CAS under the Child and Family Services Act of Ontario and legislative provisions for the transfer of children on a provincial, inter-provincial and international basis. The next meeting was scheduled for further discussion.

On 2 October, 1997 Audrey Hill, Supervisor, Native Services Branch attended a meeting with the Commission, Six Nations representatives and other groups interested in the cross-border child welfare issues. Terry Cross, was introduced as an Indian Child Welfare National expert and presented three models of international child welfare used in the United States. Briefly these models are:

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– REPLY ATTENTION OF –

Native Services Branch
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1. State Tribal Agreement Between New York State and Seneca Nation
2. Inter-Tribal Agreement Between Seneca Nation and Six Nations
3. Memorandum of Understanding Between All Iroquois Nations

Terry Cross emphasized the agreements would require recognition of the transfer of jurisdiction by State to Tribal, etc., the consideration of expenses involved, including support services and jurisdictional issues surrounding international transfer of Six Nations children. Audrey Hill restated the role and responsibility of Brant CAS and the Native Services Branch in the repatriation of Six Nations children according to legislative provisions for international transfer.

Native Services Branch staff continue to respond to requests from Six Nations Social Services for assistance in their plans for repatriation of Six Nations children under CFSA and existing legislative provisions. Recently, Six Nations Child & Family Services and the Native Services Branch were collaborating on a case involving a Six Nations child in foster care in New York State. International transfer and cross-border issues were resolved when a family member presented the New York State Family Court with a plan of care and the child was subsequently repatriated to the Six Nations Territory by the family member. The next meeting has been scheduled for April 1998.

Audrey Hill

Audrey Hill

cc: Marg Barr

Briefing Notes for:
Six Nations Meeting re: Repatriation of Six Nations Children

The Children's Aid Society of Brant is the designated Society responsible for the Protection of children with the County of Brant and the communities of Six Nations and New Credit Reserves pursuant to the Child and Family Services Act legislation in Ontario.

Flowing from this legislation, the Society is compelled to consult with first nations' bands regularly regarding matters of protection of children who are members of these communities.

This is clearly stated in Part X of the Act, Section 213. It is further explicated by Section 39 (1) 4 which gives party status to a representative chosen by the child's band, enabling bands to receive notice of hearings, be present at hearings, have representation by solicitors and make submissions to the court.

These legislative provisions are routinely pursued in child protection applications within our jurisdiction. Plans of care regarding the disposition of child protection applications are shared with Band representatives and plans either concurring with the recommendations or differing are placed before the court.

The matters before us today are somewhat more complicated in that we are attempting to administer a similar process in different jurisdictions with different and sometimes non-existent provisions for band representation or party status that exist currently in Ontario.

Notwithstanding these differences we are in support of, as our mandate permits, and are committed to working with you in your attempts to repatriate your children to your community when you decide this is the course of action that you wish to pursue.

I have attached for you guidelines published by the Ministry of Community and Social Services regarding the transfer of children into our jurisdiction from outside Ontario and outside the County.

What would characterize the effectiveness of our mutual efforts is first and foremost, close consultation with the staff prior to your decision being formally presented in another jurisdiction. By that I mean it is essential when planning family reunification, temporary care or permanent adoption, to consult with our staff regarding the needs of the children, their placement options and the supports necessary to maintain a healthy environment for the children in your community. The same conditions would hold true for jurisdictions outside ours when they initiate a request to repatriate children to you from their jurisdictions.

It would serve all parties better if when plans for repatriation are presented in Court anywhere, that the plan is founded upon a solid basis with the appropriate resources necessary to meet the best interests of the children, as well as recognize the principle behind the repatriation requirement.

Let me attempt to give some examples:

If a child is in the care of an agency in New York State, the legislative provisions in that state must be met to determine if the parents regain custody in that jurisdiction. If the parents are living on Six Nations and the request by New York is to repatriate them to Six Nations, then they are obligated to maintain responsibility for the child's care including financial provisions until such time as the local Society here assesses the family's ability to care for the child or alternatively whether extended family have come forward to care for the child.

While this assessment is being conducted, the child may be repatriated to foster care. However, financial obligations rest with the originating jurisdiction until the process is completed. Alternatively, we could enter into an agreement with the family who had original custody if they are currently residing in our jurisdiction to care for the children until the assessment is complete. That would only work, however, if the family was in agreement.

Now let us take another Canadian jurisdiction wherein no provisions for party status apply and children from your band are before the family court.

These options present:

1. A negotiated representative for input with the local child welfare jurisdiction or its authority at the province level.

2. A request on the basis of our inter-provincial child welfare transfer provisions.

3. An injunction by you in that jurisdiction to stay the child protection hearing until the local court in that jurisdiction rules on a motion to grant you party status.

In any of the above, we would also encourage you to have consulted around the plan you wish to propose in that jurisdiction so that it is feasible and meets the children's best interest to pursue the plan.

I use the above only to illustrate that for the most part, repatriation plans if devised carefully and presented, will usually be respected by most courts as there is a sufficient body of case law in Canada respecting the rights of bands to present on behalf of its members, irrespective of and quite independent of the individual parent's representations.

Roy A. Walsh
Executive Director
The Children's Aid Society of Brant

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