



OFIFC

Ontario Federation of
Indigenous Friendship Centres

Submission to the Standing Committee on Justice
Policy of the Legislative Assembly:
*Bill 89 – Supporting Children, Youth and Families
Act, 2017*

April 2017

About the Ontario Federation of Indigenous Friendship Centres

The Ontario Federation of Indigenous Friendship Centres (OFIFC) represents the collective interests of the 28-member Friendship Centres located throughout towns and cities in Ontario. The vision of the OFIFC is to improve the quality of life for urban Indigenous people by supporting self-determined activities which encourage equal access to and participation in Canadian society and which respect Indigenous cultural distinctiveness. As a result of being the largest off-reserve Indigenous service provider in Ontario, the OFIFC manages \$45 million yearly in direct delivery funding.

The Friendship Centres represent the most significant off-reserve Indigenous service infrastructure across Ontario and are dedicated to achieving greater participation of all urban Indigenous people in all facets of society. Friendship Centres receive their mandate from their communities, and they are inclusive of all Indigenous peoples: First Nation, Status/Non-Status, Métis, Inuit, and those who self-identify as Indigenous.

Recognized as hubs of the urban Indigenous community in Ontario, a province in which 84 percent of Indigenous people live off-reserve, the Friendship Centres respond to the needs of tens of thousands of community members requiring culture-based and culturally-appropriate services every day.



Introduction

For over four decades, Friendship Centres in Ontario have been gathering places for Indigenous people who live off-reserve in urban areas, community-driven, and focused on the wellbeing of everyone who walks through their doors.

Urban Indigenous children and youth have always been the central foundation of our communities. This means that all processes, relationships, and decision-making is intrinsically tied to the promotion of well-being and development of children and youth. It is with this understanding that the Ontario Federation of Indigenous Friendship Centres respectfully provides recommendations to the Standing Committee on Justice Policy of the Legislative Assembly on the proposed *Bill 89, Supporting Children, Youth and Families Act, 2017*.

Supporting Urban Indigenous Children, Youth and Family Wellbeing

The OFIFC believes that the Standing Committee on Justice Policy of the Legislative Assembly has a once-in-a-generation opportunity to directly respond to the Truth and Reconciliation Commission of Canada's (TRC) Final Report and Calls to Action in its review of Bill 89. We urge the Committee to recommend the necessary legislative amendments and bold policy transformation required to adequately address what the TRC acknowledges:

the disproportionate apprehension of Aboriginal children by child welfare agencies and the disproportionate imprisonment and victimization of Aboriginal people [that] are all part of the legacy of the way that Aboriginal children were treated in residential schools.¹

Across Canada today, 48 percent of all children in child welfare systems are Indigenous and in Ontario, where Indigenous children make up 3 percent of the child population, they represent 21 percent of children in care.² In a post-Truth and Reconciliation Commission society, the systems that apprehend Indigenous children at such an egregious rate must be censured and a wholesale transformation is required through the prioritization of Indigenous child, youth and family wellbeing.

Foundational to Indigenous wellbeing is a strong and thriving cultural identity. By multiple accounts, culture is vital to the very lives of Indigenous children and youth. Studies have shown in communities where Indigenous cultural continuity factors such as self-governance and access to culturally-relevant services flourish, youth suicide rates are vastly lower than in those communities where these factors have been

¹ Truth and Reconciliation Commission of Canada. Final Report. 'Volume 5: The Legacy.' 3. Retrieved from: <http://www.trc.ca/websites/trcinstitution/index.php?p=890>

² Council of the Federations. 'Aboriginal Children in Care: Report to Canada's Premiers.' (July 2015). 9. Retrieved from: http://canadaspremiers.ca/phocadownload/publications/aboriginal_children_in_care_report_july2015.pdf

undermined.³ This demonstrates how important Indigenous control and practices grounded Indigenous cultures are to the very lives of Indigenous children and youth. Thus, children and youth need access to Indigenous community-controlled, culturally-relevant services.

Friendship Centres in Ontario know this and have been providing culturally relevant services for over 40 years in response to the needs of urban Indigenous communities, well before the enactment of the 1984 *Child and Family Services Act* (CFSA). In fact, in 1983, the OFIFC's provincial legislative submission entitled 'Remove the Child and the Circle Is Broken' proposed that any new law pertaining to children must support and acknowledge the role and contribution of urban Indigenous service providers.⁴ This recommendation remains a key component of prioritizing Indigenous child, youth and family wellbeing.

Friendship Centres have continuously maintained that the health and wellbeing of urban Indigenous children, youth, and families must be supported by service delivery infrastructure that is designed by and for urban Indigenous communities, who represent 84.1% of the Indigenous population in Ontario.⁵ Friendship Centres support and enhance resiliency, positive self-identity, constructive relationships and healthy choices by focusing on the provision of culture-based prevention supports. In Friendship Centre communities today, several OFIFC programs specifically target the cultural and educational needs of urban Indigenous children and youth including Aboriginal Healthy Babies, Healthy Children (0-6), Akwe:go (7-12), Wasa-Nabin (13-18), and the Alternative Secondary School Program (ASSP). These culture-based programs provide a strengths-based approach, supporting and enhancing resiliency, positive self-identity, constructive relationships and healthy choices, concepts which are founded upon the physical, mental, emotional, and spiritual needs of wellness.

We present our vision of wholistic Indigenous children, youth and family wellbeing in contrast to state systems of child apprehension which focus on interventions and protection which produce increased youth justice and child welfare involvement and contributes toward lower educational attainment. Meanwhile, state systems such as children aids societies situate themselves at the deficit end of the spectrum.

Response to *Bill 89: Supporting Children, Youth and Families Act, 2017*

³ Chandler, Michael J. and Christopher Lalonde. (2008). 'Cultural Continuity as a Hedge Against Suicide in Canada's First Nations.' *Horizons – A Special Issue on Aboriginal Youth, Hope or Heartbreak: Aboriginal Youth and Canada's Future*. 10(1), 68-72.

⁴ Ontario Native Women's Association, Ontario Federation of Indian Friendship Centres, Ontario and Non-Status Indian Association. (1983). "Remove the Child and the Circle is Broken: A Response to the Proposed Children's Act Consultation Paper. Pg. 8.

⁵ Statistics Canada, 2011 National Household Survey: Data tables – Aboriginal Identity, selected for Ontario, Off-Reserve Population

Our submission follows from the *Collaborative Submission Regarding the Child and Family Services Act*, jointly submitted in 2014 by the Métis Nation of Ontario, the Ontario Federation of Indigenous Friendship Centres, and the Ontario Native Women's Association to the Minister of Children and Youth Services for the 2015 Review of the *Child and Family Services Act* (CFSA).

The OFIFC acknowledges that Bill 89 goes some way to modernize and reflect the needs of children, youth, families, and communities. The Bill's new Preamble outlines the need for child-centred, strengths-based, and prevention-focused supports which respond to concerns that Friendship Centre communities have raised for decades. This points to a positive departure from the current legislation, but ultimately falls short of a meaningful response to the Truth and Reconciliation Commission's (TRC) Calls to Action, *The Journey Together: Ontario's Commitment to Reconciliation with Indigenous Peoples* and the Ontario Indigenous Children and Youth Strategy. Of serious concern are 7 key issues, outlined below with an analysis that follows.

1. Urban Indigenous Communities and Organizations Are Not Acknowledged

Bill 89 proposes a nondescript definition of "First Nations, Métis, and Inuit communities" and identifies "First Nations, Inuit, Métis" as categories of Indigeneity throughout its entirety in an attempt to replace and expand upon the current CFSA's "Indian and Native" provisions.

This is an imposed, colonial framework that will create exclusion and is counter to an inclusive approach that reflects the contemporary needs and identities of Indigenous children in Ontario. As proposed, an Indigenous child is defined through their First Nations, Inuit, and Métis community. It is unclear who and what is considered as "First Nations, Inuit, and Métis" other than the establishment of a designated list by the Minister. This is of paramount concern to urban Indigenous organizations whose very existence is owed to the collective acts of self-determination by Indigenous people living in urban settings. Our networks exist because they have been created by Indigenous people living in urban and rural areas and continue to be chosen by them. Further, as Friendship Centres provide services on a status-blind basis, many Indigenous people who have been stripped of their legal identity through colonial legislation (see: Indian Act) rely on Friendship Centres as critical community hubs for the maintenance and flourishing of Indigenous cultures.

The OFIFC remains committed to the legislated inclusion of a broadened definition of Indigenous children and youth that responds to the needs of urban Indigenous children and youth, allows for self-determined identification, recognizes children's urban communities, and supports the provision of culturally-relevant services. The overwhelming majority of Indigenous peoples live in urban environments and in order for the proposed legislation to achieve its purposes, it must explicitly acknowledge and set out provisions to recognize and account for this reality.

Without a broadened definition, self-identifying urban Indigenous children will be forced to negotiate the socio-political history of colonial identification regimes in order to qualify for culturally-specific and -relevant services. Such services that are legal entitlements include customary care, Indigenous-specific alternative dispute resolution processes, Indigenous residential placements, and all other preventative and intervention services. Furthermore, there is a serious danger that the limitations of the “First Nations, Metis, Inuit designation will empower the reach of children’s aids societies over Indigenous children and families who may not legally categorize as FNMI thereby allowing continued lack of accountability to urban Indigenous communities, an erosion of Indigenous cultures and identities in Ontario.

Recommendations: The CYFSA must explicitly recognize urban Indigenous communities and organizations.

Self-determined Indigenous identification must be included in the legislation under the definition of what a First Nations, Métis, and Inuit child is in order to ensure that self-identifying Indigenous children have access to the full-range of programs and services.

2. Underlying Issues are not Addressed

The proposed CYFSA’s Preamble does not adequately address nor contextualize the underlying issues of systemic racism, poverty, and cultural disintegration that spur urban Indigenous involvement with this legislation.

While the Preamble states that systemic racism and its barriers should be addressed for children and families receiving services, corollary provisions are not reflected in the actual legislation. Outside of Bill 89’s Preamble, the intent of addressing systemic racism and the barriers it creates is not sufficiently addressed nor laid out in a systematic, provisional manner. Additionally, there is no direction for the forthcoming regulatory provisions that would indicate from an operational perspective that systemic racism and its barriers will be addressed. Any legislation addressing anti-racism and discrimination must provide a mechanism to ensure services for urban Indigenous children and youth are delivered in a manner consistent with Indigenous children and youth’s cultural needs.

The effect of poverty on family wellbeing is altogether ignored within the proposed legislation. While the Preamble states that the government believes that happy, healthy, and resilient Indigenous children should thrive as individuals and as members of their families, communities, and nations, Bill 89 does not address issues of poverty that inhibit basic social determinants of health and wellbeing. Overwhelmingly, it is understood that poverty is a key factor leading to the disproportionate overrepresentation of Indigenous children in child welfare systems and yet this legislation does nothing to acknowledge or address this. The proposed CYFSA and its ensuing regulations must provide policy directives that separate

neglect from poverty and disallow poverty-related issues as sufficient excuse to apprehend Indigenous children and youth based on maltreatment.

Recommendations: Any legislation addressing anti-racism and discrimination must provide a mechanism to ensure services for urban Indigenous children and youth are delivered in a manner consistent with Indigenous children and youth's cultural needs.

Bill 89 and its ensuing regulations must provide policy directives that separate neglect from poverty and disallow poverty-related issues as sufficient excuse to apprehend Indigenous children and youth based on maltreatment.

3. UNDRIP is Insufficiently Incorporated

There is a narrow focus on the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) within Bill 89 that only recognizes the need for Indigenous people to have belonging to community, as per UNDRIP's Article 9. In order to incorporate a more wholistic understanding of belonging for urban Indigenous people, UNDRIP's Article 33 should also be embedded into Bill 89. Article 33 provides the right of self-identity formation as it relates to customs and traditions, the foundation of culture, and thus the practice of belonging.

Urban Indigenous community-based organisations like Friendship Centres are testimonies to an expression of Indigenous self-determination. Foundational to the service delivery model of Friendship Centres is the provision of status-blind services to the communities they serve based on the principle of recognizing one's right to belong. To this point, the proposed *CYFSA* does not explicitly allow for an urban Indigenous child to determine their self-identity, which is out of step with UNDRIP's Article 33:

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.”⁶

In addition to advancing urban Indigenous self-identity formation and its relation to the proposed *CYFSA*'s purpose which states that FNMI peoples should be entitled to provide their own child and family services, it would be prudent to embed Article 20 of UNDRIP within the proposed *CYFSA*'s Preamble, which states:

⁶ United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from: https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjwktuR04zTAhXI6YMKHWyMD88QFggkMAI&url=http%3A%2F%2Fwww.un.org%2Fesa%2Fsocdev%2Funpfii%2Fdocuments%2FDRIPI_en.pdf&usq=AFQjCNFsAoTgiIMEVUHfEXbBn_03AJhJTg&sig2=6fvtRuZ1-uX3dWtnHQ6QcQ

Indigenous peoples have the right to maintain and develop their political, economic, and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.⁷

Recommendation: The CYFSA should embed UNDRIP Articles 33 and 20 to incorporate a more wholistic understanding of belonging and self-determination for urban Indigenous people, and their institutions.

4. Substantive Service Delivery Change is Indiscernible

The proposed CYFSA fails to create any substantive service delivery changes within the current child welfare system. Specifically, there is no increase in urban Indigenous authority to provide culturally-relevant, preventive services that would increase and enhance resiliency and wellbeing. This fails at the *Journey Together's* attempted reconciliation efforts to improve relationships and share responsibilities with Indigenous peoples. The TRC Calls to Action states that support is required by governments in order to address child welfare concerns by adequately resourcing communities in order to enable them to keep families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless where they reside.

The OFIFC believes that it has been demonstrated that it is functionally impossible to provide effective prevention and protection services simultaneously. Based on years of experience, we know at-risk families are highly apprehensive about gaining access to prevention supports from children's aid societies, given the approach is perceived as a fast track to irreversible state intrusion. At-risk urban Indigenous families are much more likely to reach out to Indigenous service providers to support positive outcomes, especially because they know programs will be conducted in a culturally safe manner that mainstream organizations and societies are unable to provide.

Friendship Centres' culturally-relevant preventative services mitigate risk to Indigenous children, youth, and families through solutions-oriented, strengths-based, cultural approaches to addressing wellness needs. As a result of 40 years of developing community infrastructure that extends across the province in an off-reserve context, where the majority of Indigenous children and youth reside, Friendship Centres represent an unmatched, tested, province-wide service delivery network to this day. Friendship Centres are prevention-focused Indigenous community hubs, offering excellent social planning, community-based partnerships and coordination, and multi-service programming in the cities and towns in which they are located. Given their expertise and community-driven mandates, Friendship

⁷ Ibid.

Centres should be afforded legislative authority to provide preventative services to urban Indigenous families across the province.

Recommendation: Increase urban Indigenous organizations' authority to provide culturally-relevant, preventive services that increase and enhance resiliency and wellbeing.

5. Disaggregated Race-Based Data Collection Must be Mandated

Bill 89 fails to introduce new mechanisms for data collection that would help to inform positive outcomes for Indigenous children, youth, and families. The OFIFC has advocated for the standardized collection and disclosure of disaggregated, Indigenous-specific data for many years. We have also volunteered to help inform standardized collection processes to ensure that front-line workers are trained and confident in their abilities to collect Indigenous-specific data and knowledgeable about the importance of the practice in measuring outcomes and providing families with appropriate programs, services, and referrals.

The Ontario Human Rights Commission (OHRC) has instructed organizations and institutions that data collection and analysis of data identifying people based on race and other Code grounds "is necessary for effectively monitoring discrimination, identifying and removing systemic barriers, ameliorating historical disadvantage and promoting substantive equality."⁸ In December 2016, the OHRC used its mandate to respond to the Truth and Reconciliation's Call to Action to reduce the number of Indigenous children in the child and welfare system through a direct request for Indigenous-specific data and collection processes from children's aid societies. Bill 89 must ensure alignment with these efforts and respond to the TRC.

Recommendation: Disaggregated race-based data collection by all agencies bound by the legislation is mandated and monitored for quality and compliance.

6. Supportive Transitions out of Care are Required

The proposed legislation lacks obligations for children's aid societies to ensure that young people leaving care are adequately supported in their transition to independence. We know that this legislative gap has disproportionately affected Indigenous young people who leave or age out of care without adequate community-based supports. In British Columbia's *Child, Family and Community Services Act*,

⁸ Ontario Human Rights Commission. (2005). "Policy and guidelines on racism and racial discrimination – Part 3. Guidelines for implementation: monitoring and combating racism and racial discrimination – 6. Collection and analysis of numerical data." 42. Retrieved from: http://www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf

the legislation requires an entire system of supports called “Youth Transitional Support Services and Agreements,” in which youth are supported in their transition into independence, thereby working towards improved medium and long-term outcomes.

Unsupportive transitions from care to independent living can have lasting effects on young peoples’ lives. Studies have shown the high correlation between child welfare involvement and youth homelessness, justice involvement, unemployment, and low educational achievement. The Friendship Centres are well-positioned to provide supportive transitions to young people with experience in the child welfare system. Culture-based programming, life skills training, and planning supports are essential for young urban Indigenous people transitioning out of care.

Recommendation: Provisions for urban Indigenous culture-based transitions out of care are required.

7. Lack of Accountability to Urban Indigenous Communities

The legislation’s new ministerial provisions that seek to increase compliance do not increase accountability to urban Indigenous communities. It is the OFIFC’s expectation that Bill 89 would include accountability measures that track, monitor, and report on the provision of service and the overrepresentation of urban Indigenous children and youth within the child welfare system, in alignment with the TRC Calls to Action.

In addition, Bill 89 provides no provisions to protect trafficked Indigenous children against their perpetrators within court proceedings. The proposed legislation should provide protections for children from being compelled to testify against their perpetrators. There are jurisdictions in Canada that have legislated protections against this reality for children, such as Manitoba’s *Family Preservation Act*, which exists alongside the province’s *Child and Family Services Act*. This Act contains a Practice and Procedure Part which allows for an *ex parte* interim order. The application of the order is intended to ensure access to victims of trafficking have limited exposure to their abuser within court proceedings, as contained within Sections 43-45. It would be considered an order to protect or limit access to a child. This type of provision should be set out within Ontario’s laws, whether in anti-trafficking or child welfare laws, in order to protect and limit exposure for children.

Recommendation: Accountability measures that track, monitor, and report on the overrepresentation of urban Indigenous children and youth within the child welfare system are required.

Provisions that protect and limit exposure of children from their child trafficking perpetrators within court proceedings are required.

Summary of Recommendations

The OFIFC recommends that the Standing Committee on Justice Policy of the Legislative Assembly implement the following legislative amendments to ensure that Bill 89 is in alignment with government priorities including the *Ontario Indigenous Children and Youth Strategy* and *The Journey Together*.

1. The explicit recognition of urban Indigenous communities and organisations.
2. The inclusion of self-determined Indigenous identification under the definition of what a First Nations, Métis, and Inuit child is in order to ensure that self-identifying Indigenous children have access to the full-range of programs and services.
3. The provisions for anti-racism and anti-discrimination mechanisms to ensure services for urban Indigenous children and youth are delivered in a manner consistent with Indigenous children and youth's cultural needs.
4. Explicit directives that separate neglect from poverty and disallow poverty-related issues as sufficient excuse to apprehend Indigenous children and youth based on maltreatment.
5. The embedding of UNDRIP Articles 33 and 20 to incorporate a more wholistic understanding of belonging and self-determination for urban Indigenous people, and their institutions.
6. Urban Indigenous organizations' authority to provide culturally-relevant, preventive services that increase and enhance resiliency and wellbeing.
7. The mandating of disaggregated race-based data collection by all agencies bound by the legislation is mandated and monitored for quality and compliance.
8. The provisions for urban Indigenous culture-based transitions out of care are required.
9. Accountability measures that track, monitor, and report on the overrepresentation of urban Indigenous children and youth within the child welfare system are required.
10. Provisions that protect and limit exposure of children from their child trafficking perpetrators within court proceedings are required.

Conclusion

The Province of Ontario has committed to both the *Ontario Indigenous Children and Youth Strategy* (OICYS) and *The Journey Together: Ontario's Commitment to*

Reconciliation with Indigenous Peoples; and Bill 89 has the opportunity to build upon the good work underway in Ontario. The OFIFC remains committed to the legislated inclusion of definitions, in the broadest sense possible, that can respond to the needs of urban Indigenous children that includes and allows for self-identification, that recognizes their urban Indigenous communities, and supports the provision of culturally-relevant services by urban Indigenous service providers.

There is a real opportunity, a once in a lifetime for urban Indigenous children, for Ontario to enact a transformative legislation that will set out provisions that will support the promotion of wellbeing for urban Indigenous children, their communities, and their service system, and be of benefit to all people of Ontario. The OFIFC looks forward to receiving positive responses on our recommendations from members of the Standing Committee on Justice Policy.