

**PERSPECTIVES ON ENGAGING THE PARTICIPATION OF FIRST  
NATIONS PEOPLES IN THE DEVELOPMENT OF CHILD  
WELFARE UNDER SELF-GOVERNMENT**

By Marlyn L. Bennett

A Thesis submitted to the Faculty of Graduate Studies of the University of Manitoba  
In partial fulfillment of the requirements for the degree of

Master of Arts

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## ***Abstract***

Community consultation with the First Nations communities was envisioned in the 1994 Manitoba Framework Agreement Initiative and reflects an understanding of the importance of including First Nations communities and citizens in decision-making processes under self-government. Consultation is an important aspect to establishing self-governments for First Nations peoples and communities not only in Manitoba but also across Canada. The consultation process as envisaged by the authors of the Manitoba Framework Agreement Initiative sought to honour the spirit of First Nation traditions by including First Nations citizens in a consensus building process that would build upon the values, customs and principles of First Nations cultures whose participation in turn would form the foundations of independent governing structures with supporting legislation. How consultations have been conducted in relation to child welfare initiatives needs also to be examined, documented, perceptions shared and supported as a modern day process that reflects how decision-making is being conducted by the First Nations within Manitoba on their path toward self-determination. This research is one attempt to understand the consultation process. It focuses on some of the experiences and challenges on how First Nations citizens have been engaged in public discussions that will inform the development of contemporary First Nations governing institutions.

This research combines an overview of the literature focusing specifically on self-government in relation to child welfare and First Nations people. The literature review also looks at the role First Nations peoples have played in community consultations concentrating specifically on the ways First Nations peoples and communities have been

engaged to participate in other consultation initiatives carried out by Aboriginal and non-Aboriginal governments and/or non-government organizations. The review of the literature is supplemented by an examination of two very specific child welfare initiatives currently underway in the Province of Manitoba, with more attention paid primarily to the Manitoba Framework Agreement Initiative. The examination of these two initiatives is then followed by an in-depth data analysis of interviews carried out with a select group of child welfare professionals from within and outside Manitoba who shared their perspectives on aspects of engaging First Nations people's participation in shaping the future of child welfare under self-government. This research will be of particular importance to First Nations communities, governments and child welfare authorities who are interested in engaging and empowering First Nations peoples' to participate in public discussions on the decision making process that might be instrumental for informing the vision, philosophy, structure and the consultation aspects of self-determining efforts of First Nations peoples.

## ***In my Circle of Support***

No one is an island unto himself or herself. No one knows that better than I, and so, therefore, there are many people inside my circle of support that I would like to thank, many of whom helped by encouraging me, either by participating in this research or by way of valuable contributions to my learning journey. First and foremost, a great deal of gratitude goes to my thesis committee members, Dr. Denis Bracken, Dr. Paul Thomas, Anne McGillivray who have all been immensely helpful. Thank you especially to Dr. Denis Bracken for sharing your expertise and knowledge. I am especially grateful your patience and your thoughtful comments and advice have helped me build upon my circle of knowledge and my grammar. I would like also to thank my mentor and community committee member, Elsie Flette for not only agreeing to be involved in this research, especially given your tremendous workload but also for believing in me. Elsie's contributions to the First Nations child welfare field are enormous. Elsie, you truly are an inspiration to many people including me! Thank you also for providing me with many wonderful opportunities to hone my abilities as a budding First Nations researcher in the child welfare field. There is one other person that I would also like to acknowledge on the academic front – James Dean, the Associate Dean of Arts, to whom I owe a great deal of credit for gracefully agreeing to let me drop my original research topic so that I could pursue this one.

I would also like to thank Cindy Blackstock of the First Nations Child & Family Caring Society of Canada Inc. for allowing me some time off on complete this research which ultimately benefits not only this organization but will be valuable addition to the emerging body of modern Indigenous knowledge that exists on all aspects of Aboriginal/First Nations Child Welfare in Canada. Thank you Cindy for your new found friendship and your ongoing support and interest in my research. Special recognition is due Elder Anne Callahan – you are a wonderful example of the strength and knowledge that exists in Aboriginal people. You truly exude kindness,

wisdom, gentleness, knowledge, love and courage from which we all can learn. Thank you for the wisdom you imparted to me. I would also like to especially thank those who participated in this research – you know who you are! Your willingness to share your experiences and knowledge makes this research all that much richer because of your expertise and involvement. I hope that I have done justice to voicing your perspectives.

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## ***Acronyms***

**AIP** – Agreement-in-Principle

**AFN** – Assembly of First Nations

**AJIC** – Aboriginal Justice Inquiry Commission

**AJI-CWI** – Aboriginal Justice Inquiry – Child Welfare Initiative

**AMC** – Assembly of Manitoba Chiefs

**FNCFS** – First Nations Child & Family Services

**CCCFS** – Chiefs Committee on Child & Family Services

**CCOD** – Chief Committee on Dismantling

**CFS** – Child & Family Services

**CFS/FAI** – Child & Family Services / Framework Agreement Initiative

**DIAND** – Department of Indian and Northern Development

**FAI** – Framework Agreement Initiative

**MFAI** – Manitoba Framework Agreement Initiative

**MKO** – Manitoba Keewatinowi Okimakanak

**NDP** – New Democratic Party

**NGO** – Non-Governmental Organization

**SCO** – Southern Chiefs Organization

**SFNCFS** – Southern First Nations Child & Family Services

**PATH** – Planning Alternative Tomorrows with Hope



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## CHAPTER ONE: AN OVERVIEW

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### Introduction

In the early 1980s, the First Nations communities within Manitoba were the first to change the locus of control over child and family services for First Nation communities within Canada. Manitoba First Nations were instrumental in negotiating a Tripartite Agreement that led to a number of Subsidiary Agreements with both the Federal and Provincial governments for the administration and delivery of child welfare related services to First Nations citizens living on reserve only. This early event saw the establishment of a number of First Nation child and family service agencies mandated to carry out the provisions of Manitoba's Child and Family Services legislation under delegated authority from the Province of Manitoba (McKenzie and Hudson, 1985). Dakota Ojibway Child and Family Services within Manitoba became one of the first mandated First Nations child welfare agencies in the history of Canada (de Montigny, 1993; Teichroeb, 1997). A part of these historical events was an underlying premise that this tripartite process would eventually lead to the creation of a separate First Nations Child Welfare system with full jurisdiction and sustaining legislation created specifically by, with and for First Nations peoples equally applicable to members on and off reserve (First Nations Child & Family Services Task Force, 1993). To date, this premise has not yet been achieved. First Nations leaders and First Nations child welfare professionals in Manitoba are of the opinion that the current child welfare system with its provincial Child and Family Services law is operating on an interim basis only until full jurisdiction over

child welfare is restored to First Nations peoples (First Nations Child & Family Services Task Force, 1993; AMC, no date; AMC, 1996; Bennett, 2001).

In 1997, the executive directors of the First Nation child welfare agencies in Manitoba embarked upon an initiative to create that much hoped for system with their own supporting legislation through the innovative provisions of the Manitoba Framework Agreement Initiative signed in 1994 between the Assembly of Manitoba Chiefs on behalf of sixty First Nations and the federal government through its Department of Indian and Northern Affairs Development (AMC, no date). The Manitoba Framework Agreement Initiative (hereafter referred to as “FAI” or “MFAI”) called for the participation of First Nations peoples in the development, creation and subsequent ratification of new governing structures at every stage of its development through a community consultation process built into the terms of the agreement, which reads as follows:

It is recognized that the first and foremost requirement of this Project and its outcomes is for the people of the First Nations of Manitoba to be fully informed, and to give informed consent, to the Project and its outcomes at every stage of its development. Outcomes must grow out of a consensus of the people of the First Nations and out of their history, culture and institutions. Outcomes cannot be imposed. Moreover, consultation and communications throughout the Project must be focused on, and delivered primarily by, individual First Nations communities and tribal councils in order to ensure the widest possible support and maximum absorption of information and decision making (p.4).

Many First Nations leaders have highlighted community consultation with First Nations citizens as an important element in the establishment of self-government occurring in many First Nations communities across Canada today. But what exactly is community consultation and what significance does this process play in the development of self-governing institutions for First Nations? Furthermore, is consultation with community members important to the development of these new governing institutions

and laws? More specifically, are community consultations and the participation of First Nations people's imperative to the development of a First Nations child welfare institution and law as part of the self-government activities set out under the Manitoba Framework Agreement Initiative? Has the spirit of community consultation as set forth in the Manitoba Framework Agreement been honoured in the work carried out thus far in relation to its self-government child welfare initiatives?

Funding for the activities set out under the Manitoba Framework Agreement Initiative are set to expire in 2004, however the First Nations in Manitoba are still in the process of designing what the restorations of their jurisdictions, including child welfare, will look like under self-government in Manitoba. According to the self-governing process in Manitoba, developing independent child welfare jurisdiction with a law that supports this institution requires the participation and engagement of First Nations citizens. First Nations peoples have not had the opportunity to participate in the development of the structures that currently govern them (Cardinal, 1969) nor have First Nations peoples had the opportunity to participate in the development of their own modern laws (Cardinal, 1995). The governing structures and laws currently in place have been created outside of First Nations cultures and natural law systems.

This research focuses on the role of First Nations people in taking steps toward developing new governing systems and supporting legislation specifically in relation to child and family within the Province. The child welfare participations specifically consulted for this research hold a common belief that participation of First Nations peoples in community consultations respecting self-government is too significant to ignore. As this research will show the process (community consultation) behind the

product (self-governing structures such as child welfare) is crucial, if not more important than the outcome (self-government). Consultation is an important element of self-government. Furthermore, participation of First Nations peoples is an integral component to the success of self-government consultations. Among those that participated in this research was a conviction that the majority of First Nations communities in Manitoba are ready to undertake full jurisdiction and responsibility over child welfare as part of the self-government developments. This perception of readiness comes from over twenty years of capacity building through the provision of culturally appropriate child welfare services by various First Nations child welfare agencies created in the early 1980s to serve the First Nation peoples and communities of Manitoba. However this readiness requires Canadian governments to step back and enable First Nations peoples to work toward restoring their child welfare jurisdiction through the community consultation processes set out under self-government. People do not necessarily have to be educated to participate in self-government consultations. A balance between experience and educated people should also include the participation of urban First Nations peoples as they too are integral to the jurisdiction of child welfare because First Nations families do end at but extend beyond reserve boundaries. Consultation efforts to date have not been viewed as involving enough First Nations peoples, communities or First Nations child welfare agencies in the consultation discussions envisioned by FAI in Manitoba. The participants in this study stated that more consultations and opportunities to engage First Nations peoples in the discussions, debates and developments are required to restore the child welfare jurisdiction under FAI. Consultation cannot be viewed as a one time event; it is an ongoing endeavour that

requires courageous commitment to an enduring and evolving dialogue between First Nations peoples, communities and their governments and service providers. As this research will highlight there are impediments to obtaining the participation of First Nations peoples in community consultations processes. Many of these impediments are related to the toll of colonization and its legacy of dependency. Intertwined with self-government and participation is the issue of healing which needs to be addressed in First Nation communities. Healing and self-government are intrinsically linked (Warry, 1998). Healing in the community was identified as a first step required for engaging the participation of First Nations peoples in self-government discussions and developments. The ability and the right of First Nations peoples to participate in discussions on developing new governing structures is in itself a self-governing exercise that is a necessary and crucial component in navigating the road toward self-government.

## **Purpose**

The Manitoba Framework Agreement Initiative builds upon a foundation of development that envisioned the participation of First Nations people in the creation of new governing institutions and legislation which were to be based upon the values and cultures of its First Nations constituents. The purpose of this research project is to look at participation as a process that encourages First Nations people to become engaged in public discussions centering on self-government by focusing specifically on child welfare consultations. As such, this thesis explores perceptions of how First Nations peoples have or haven't been engaged and involved in the decision-making process pertaining to the development of child welfare under the Manitoba Framework Agreement Initiative. This research offers an opportunity to review the consultation process and to document

perceptions about the successes and/or challenges in trying to engage First Nations people to participate in the development of self-governing structures and legislative developments.

### **Justification/Rationale**

The justification and rationale for conducting this study is connected to my personal experiences working in the child welfare field specifically as a researcher with the Southern First Nations Child and Family Services Framework Agreement Initiative Research Project. (Hereafter referred to as the “southern First Nations CFS/FAI Research Project”). In 1997, I was hired by the Executive Directors of the southern First Nations Child Welfare agencies to assist in carrying out research that would support the creation of a First Nations child welfare system with full jurisdiction and supporting legislation in the Province of Manitoba. Child Welfare was identified as an expedited area of self-government development through the Manitoba Framework Agreement Initiative. Consultation with First Nations communities was also recognized as a significant activity that would build on the research and assist in creating the foundations of a law that would inform and support the new First Nations child and family jurisdiction envisioned earlier in the 1980s. The research and consultation aspects of this expedited project were exciting but fraught with many challenges and barriers that did not lead to the type of achievement that the child welfare directors, First Nations Leaders and governments or I had hoped for. In June 2000 funding negotiations between the Department of Indian Affairs and Northern Development and the Assembly of Manitoba Chiefs regarding the future of the Manitoba Framework Agreement Initiative was at a standstill and many researchers, all 60 community coordinators, including myself, were laid off as a result of



this uncertainty. This was particularly frustrating for those of us involved in the southern First Nations CFS/FAI Research Project under FAI, as the Project was about to embark upon its own extensive consultations to assist the 36 First Nations communities in southern Manitoba with envisioning their own child welfare system. The core values and principles to be gleaned from that process, it was hoped, would help in building the framework for First Nations child welfare jurisdiction and legislation. The stall in funding negotiations between AMC and DIAND left the southern First Nations CFS/FAI Research Project without an opportunity to be enriched by the input and involvement that would come from consulting with First Nations citizens. Leaving the southern First Nations CFS/FAI Research Project left me in particular with an unsettling consciousness that I had not completed what I had been hired to do under the Framework Agreement Initiative. I saw this research as an opportunity to bring some understanding and closure to the research and consultation efforts that had been left unfinished.

## **Objectives**

The objectives of this research are:

1. To document the perceptions of the role of engaging First Nations people in the consultation processes as it relates to child welfare under the Manitoba Framework Agreement Initiative;
2. To obtain an understanding of the child welfare expert's opinions of the importance of First Nations' participation in the development of a child welfare governing structure and legislation as part of the self-governing process in Manitoba;
3. To obtain opinions about the readiness of First Nations peoples and communities toward the goal of developing their own child welfare governing systems and supporting legislation;
4. To determine if there is a perception of hesitation in the participation of First Nations peoples toward the creation of new governing structures and supporting legislation for a child welfare system geared specifically for First Nations peoples;

5. To obtain an understanding of the most effective and respectful means of engaging First Nations peoples' to become involved in creating new child welfare structures and laws under the Manitoba Framework Agreement Initiative;
6. To ascertain if education of First Nations peoples is necessary in order to participate in the development of their own child welfare governing structures and laws as part of the self-government process;
7. To identify the role of urban First Nations peoples and whether if so, how they too should be involved in child welfare development and self-government consultations;
8. To gauge opinions on whether the Manitoba Framework Agreement Initiative's consultation process was operational in engaging the participation and involvement of First Nations peoples on and off reserve in the discussion on the new child welfare system and legislation envisioned under the Agreement; and
9. To informally determine whether more consultation with community members is needed and/or required.

## **Limitations**

Currently there are two child welfare jurisdiction projects operating under the MFAI in Manitoba. Manitoba Keewatinowi Okimakanak (MKO), which represents the interests of 26 northern First Nations communities, oversees their own child and family services jurisdiction project. In the south, the interest of 36 First Nations communities in child and family matters under FAI is represented by the Southern Chiefs' Organization (SCO). Given that my involvement in CFS matters is rooted in the south, this research and the perspectives within are not inclusive of the northern perspective.

Another limitation is related to recent consultation activities on child and family services in the south. From December 2001 to March 2002, the Southern Chiefs' Organization embarked upon a consultation process with members in 32 of the 36 southern First Nations communities in Manitoba (SCO, 2002). These consultation efforts focused on information sessions devoted to explaining the MFAI, the objectives of the

southern First Nations CFS/FAI Research Project and to conducting focus group sessions and obtaining views and opinions from Elders, youth and other community members through interviews and the distribution of a quantitative survey. The information gathered from these consultation efforts are to be organized and compiled into separate reports highlighting what was shared in the consultations by the 32 participating First Nations communities (SCO, 2002, p. 58). Unfortunately, the analysis on the results of these consultations was neither complete nor available to the public at the time this research was initiated. Therefore my research does not take into account what the Southern Chiefs Organization might have learned in conducting consultations on child welfare with these First Nations communities. This information no doubt would have made a valuable contribution to an understanding of the challenges as well as a discovery of best practices, which could be emulated by others in planning for community consultations with First Nations.

One other limitation which constrains a more thorough understanding of the research in this area are related to the fact that I am not involved with the southern First Nations CFS/FAI Research Project under the MFAI and therefore am not privy to discussions, developments or negotiations that would lend to a more accurate picture of current child welfare affairs as it relates to the MFAI.

## **Terminology**

Throughout this document I have used the terms “First Nations,” “Indigenous” and/or “Aboriginal” peoples interchangeably. While these terms can include all peoples of Aboriginal ancestry, it should be noted that First Nations are identifiable as a distinct

group with a unique legal status<sup>1</sup>. Within Canada, Aboriginal peoples are constitutionally recognized as being Inuit, Métis and First Nations (or Indian) people. In addition and for the purposes of this study, the term “child and family services” has been used interchangeably with the term “child welfare.”

The word “respect” as it appears in this research also requires special attention at this time as it is a word that is commonly repeated throughout this thesis and is a concept reflected in many of the participants’ responses on how to respectfully approach and engage First Nations peoples to participate in consultations about either child welfare or self-government. The word “respect” can be understood differently depending on how it is used and who uses it and whether it has cultural connotations attached to its use.

From a non-Aboriginal perspective “respect” can be a characteristic of a point, it can be tied to esteem, or it could be a state of being admired or based on thoughtfulness (Gage Canadian Dictionary). Aboriginal peoples also understand these definitions similarly however “respect” is also viewed as a cultural concept rooted in the seven Aboriginal teachings of love, bravery, wisdom, honesty, humility, faith and respect (Benton-Benai, 1981; Bopp et al, 1984). Respect is based on holistic ways of seeing the world. It involves not just the perspectives and characteristics noted above but it includes respect for creation, respect for the dignity and freedom of others, respect for the quality of life and spirit in all things, and respect for the mysterious (Newhouse, 2000). For Aboriginal people showing respect is a basic law of life (Benton-Benai, 1981; Bopp et al,

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<sup>1</sup> “First Nations” refers to those persons identified and registered as “Indians” within the meaning of the federal *Indian Act* legislation (Isaac, 1999). The term “First Nations” came into common usage in the 1970s to replace the word “Indian,” which some people found offensive. Although the term “First Nations” is widely used throughout this research, no legal definition of it exists. Among its uses, the term “First Nations peoples” refers to the Indian peoples in Canada, both Status and Non-status. Some Indian peoples have also adopted the term “First Nation” to replace the word “band” in the name of their community (Words First, Communications Branch, Indian and Northern Affairs Canada, 2002).

1984). Every person from the tiniest child to the oldest Elder is to be respected at all times and special respect should be given to elders, parents, teachers and community leaders; no person should be made to feel “put down”; it is about not touching items that do not belong to you (especially sacred objects) without permission or an understanding between you and the rightful owner; respect regards the privacy of every person; it is about not walking between or interrupting people who are conversing; respect requires that one speak in a soft voice especially when in the presence of Elders, strangers or others to whom special respect is due; respect demands that you do not speak unless invited to do so at gatherings where Elders are present; it requires that you not speak in negatives ways whether people are present or not; respect stresses respect for the earth and all of her aspects and respecting her as if she were your mother; respect commands deference to mineral, plant, and animal worlds; it necessitates that one rise up to defend mother earth if others move to destroy her; respect is also about respecting the beliefs and religions of others and to listening with courtesy to what others have to say, even if you do not agree with what is being said or if what you feel that what they are saying is worthless (adapted from Bopp et al, 1984, p. 76). Respect requires that one listen with the heart and respect other peoples’ personal space. In addition, Bopp et al (1984) note that the wisdom of people in council must be respected. This means that once you give an idea to a council or a meeting, it no longer belongs to you, it belongs to the people but it also means that you listen intently to the ideas of others and not insist that your ideas prevail (p. 78).

The term “respect” is consistently used by many First Nations peoples to underscore the significance of our relationships and humanity (Tuhiwai Smith, 1999).

Through respect the place of everyone and everything in the universe is kept in balance and harmony. Respect is a reciprocal, shared, constantly interchanging principle, which is expressed through all aspects of social conduct (Tuhiwai Smith, 1999). Respect as a cultural concept has undergone a great deal of change through the imposition of Euro-Canadian world views which has led to a juxtaposition of perspectives and views on its meaning. This in turn has led to a great deal of confusion. For example, in Western-centric schools respect is taught very differently. Those in positions of authority demand respect and others hold esteemed positions only because they hold the power to control others. Respect in this case is externally forced. In the past, Elders and others often emulated and modeled respect in First Nation communities. Learning respect was based on peaceful means that were internal and personal to the individual learning this principle. Respect was modeled early in life such that children were seen and treated as adults and as a result developed socially very quickly. First Nations and Euro-Canadian cultures readily agree on much of what respect means, the problem occurs when the two worldviews look at how respect is taught and the philosophy behind the concept of respect (Rattray, no date). Today, healthy and dysfunctional perspectives on the concept of respect co-exist in First Nations communities largely because Canada has consistently denied First Nations peoples their humanity, citizenship, human rights and the right to be self-determining people. How can communities incorporate this important concept into consultations on self-government if these divergent views exist and they have not learned to respect himself or herself or anyone else?

## **Conceptual Design**

The methodology throughout this research centers on qualitative based research, utilizing an Indigenous framework that values the use of oral interviews. As oral interviews are an important aspect underlying this research, the literature review also briefly covers the importance of oral history in the interview process. Interviews were conducted with fourteen individuals who have experience and expertise in First Nations child welfare issues in the Province of Manitoba and elsewhere in Canada. The interview subjects were contacted initially by phone to inquire verbally if they were willing to participate in this research project. Consent for the subject's participation was obtained verbally over the phone followed by identification of a mutual date when the interview would take place. A letter confirming the interview date was sent to the interview subject. This letter summarized the research and included a copy of the questionnaire and a consent form. The oral interviews took place on a date, place and time mutually identified by the key participants and principal researcher. The interviews took place from November 2002 to January 2003. All key participants agreed to have the conversation recorded with a digital recorder. None of the interview participants were paid for their participation. As is the custom with the oral interview framework, the participants including the Elder were provided with a gift for agreeing to participate in an interview as a show of appreciation for their intellectual contributions to this research project.

## **Framework of Thesis**

The framework of this thesis is set out in six chapters including this introductory chapter. Chapter two primarily focuses on the methodology and the data collection

method adopted in carrying out this research. As interviews are an important aspect of this research, Chapter two also briefly covers the importance of oral history in the interview process. Chapter three begins with an examination of the literature in three broad areas: (1) the role of consultations, citizen engagement and voluntary sector initiatives in the self-determining endeavours of First Nations peoples; (2) the jurisdictional disparity which precipitates the need to restore child welfare jurisdiction to First Nations peoples; and (3) a review of the academic sources which address the self-governing aspects of child welfare for First Nations peoples in Canada. The review of the literature is supplemented by an examination of two very specific child welfare initiatives currently underway in Manitoba and Chapter four focuses on some of the changes that will likely occur in Manitoba as a result of these initiatives. Chapter five is dedicated to reviewing and analyzing the opinions, perceptions and “voices” of the participants who were interviewed for this research. Ten questions were developed that explored their perceptions about the role, importance, and readiness of First Nations peoples to become involved in public discussions; the role and importance of education in the consultation process and how to engage not just on-reserve First Nations citizens but how to respectfully include First Nations who reside in urban constituencies in any child welfare consultations related to self-government. Chapter six wraps up with my conclusions and afterthoughts respecting what was learned in the process of conducting this research. A reference list of sources as well as appendices of the research tools (introduction letter, consent forms, and questionnaire) used to conduct this research can be found at the end of this thesis.



## CHAPTER TWO: METHODOLOGY

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### **Overview**

The purpose of this chapter is to provide an overview of the methodology and method utilized throughout the course of this research. The methodology employed was based primarily within the qualitative research realm with specific adherence to conducting qualitative interviews incorporating an Indigenous framework similar to the oral traditions of Indigenous peoples, communities and the organizations that service them. This chapter also identifies how participants were identified and came to be invited to participate in this research. The principle research tool used in gathering data is then discussed along with a brief overview of the contact and interview process, identification of risks and benefits to the participants, how issues of confidentiality were addressed, the data analysis process and the role of the researcher in conducting this study.

### **Methodology and Method**

This research is grounded in qualitative methodology. Qualitative research broadly defined means “any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification” (Strauss and Corbin, 1990, p. 17). Qualitative research, unlike quantitative research, yields data that allows the researcher to seek illumination, understanding, and extrapolation through the data collection process, whereas quantitative researchers seek causal determination,

prediction, and generalization of findings (Hoepfl, 1997). Definitions of qualitative research however depend on the philosophical and theoretical approach of the researcher. Qualitative research provides in depth investigation of the nature of social and organizational behaviours. It uses exploratory and interactive methods of data collection in order to capture the form, complexity or origins of the phenomena under review. It offers an understanding of the social world, and how it operates, directly from the perspectives of those who live within it. For the purposes of this research, it refers to research that focuses on the meaning of lived experiences of various child welfare experts and their perceptions about events unfolding in the drive toward self-government.

Qualitative analysis results in a different type of knowledge than does quantitative inquiry. Although qualitative research cannot be cast as a unitary field, the goal of most qualitative research is to understand phenomena or processes that cannot be easily broken down or de-contextualized (Wright & McKeever, 2002). Qualitative based research also does not remove or minimize the researcher's subjectivity by way of rigorous controls; rather qualitative methods actually foregrounds the subjectivity of the researcher as someone with an active, questioning mind, someone who makes informed decisions throughout the whole process of gathering and interpreting data (Hansen 1998). Strauss and Corbin (1990) state that qualitative methods are better at understanding phenomenon about which little is known and that further, it can be used to gain new perspectives on things about which much is already known, or to gain more in-depth information that may be difficult to convey quantitatively. Thus qualitative methods are appropriate where the researcher has determined that quantitative measures cannot adequately describe or interpret a situation.

Hoepfl (1997) identified some of the prominent characteristics of qualitative research, which she culled from a synthesis of other authors' various descriptions of qualitative research:

- “1. Qualitative research uses the natural setting as the source of data. The researcher attempts to observe, describe and interpret settings as they are, maintaining what Patton calls an “empathic neutrality” (1990, p. 55);
2. The researcher acts as the “human instrument” of data collection;
3. Qualitative researchers predominantly use inductive data analysis;
4. Qualitative research reports are described, incorporating expressive language and the “presence of voices in the text” (Eisner, 1991, p. 36);
5. Qualitative research has an interpretive character, aimed at discovering the meaning events have for the individuals who experience them and the interpretations of those meanings by the researcher;
6. Qualitative researchers pay attention to the idiosyncratic as well as the pervasive, seeking the uniqueness of each case;
7. Qualitative research has an emergent (as opposed to pre-determined) design, and researchers focus on this emerging process as well as the outcomes or product of the research;
8. Qualitative research is judged using special criteria for trustworthiness”.

Others (Patton, 1990) point out that these are not the “absolute characteristics of qualitative inquiry, but rather strategic ideals that provide a direction and a framework for developing specific designs and concrete data collection tactics” (p. 59). These characteristics are also considered to be interconnected and mutually reinforcing (Hoepfl, 1997). Hoepfl also notes that the particular design of a qualitative study depends on the purpose of the inquiry, what information will be most useful, and what information will have the most credibility. There are no strict criteria for sample size (Patton, 1990) and “qualitative studies typically employ multiple forms of evidence ... [and] there is no

statistical test of significance to determine if results 'count' (Eisner, 1991, p. 39). The usefulness and credibility of qualitative research designs are left to the researcher and the reader (Hoepfl, 1997).

The research method employed throughout the data gathering stages of this research relied primarily upon qualitative interviewing. Qualitative interviewing is a widely used qualitative method of data gathering in social sciences and is considered to be an extremely versatile approach to doing research (Rubin & Rubin 1995). Interviewing is the primary method of anthropologists, folklorists, and some sociologists; it is also commonly used by political scientists, psychologists, and linguists. By way of other examples, both print and broadcast journalists rely on interviewing as their main way of gathering information for news stories (Rubin & Rubin 1995; Hanson 1998). Qualitative interviewing can be used to explore specific topics, events, or happenings. Interviews can solicit personal histories to examine social and political phenomena or economic changes or used to examine and evaluate all kinds of programs and projects. Qualitative interviewing allows one to share the world of others to find out what is going on, why people do what they do and/or how they understand their worlds and the events that unfold around them (Rubin & Rubin, 1995).

The data gathering process required very specific information from key participants and thus the format of the qualitative interviews undertaken with the individuals who took part in these interviews reflects a *semi-structured* format. By using this format I introduced the topic and then guided the discussion with each of the informants. By asking specific questions I was able to obtain details, examples and context in relation to the role of civic engagement of First Nations peoples in child

welfare development and community consultations in establishing self-government in Manitoba.

Qualitative interviews also differ in style and how aggressive they are. There are four different styles of interviews highlighted by Rubin & Rubin (1995). These are “topical oral histories,” “life histories”, “Evaluation Interviews,” and “Focus Group Interviews.” The style of qualitative interviewing reflected in this research is “topical oral histories” where the interviewer seeks out conversational partners who have experienced a particular event. The interviewer in this particular situation is looking for detailed factual information or narratives that explain what happened, when and why. Oral history interviews can also be done on culturally important concerns, such as documenting a way of life that is fading out or a skill that is becoming rare (Rubin & Rubin 1995). Rubin & Rubin also note that with topic oral interviewing, the research and data obtained is often based on the interpretations of the researcher. The researcher may sort out and balance what different people say and then creates his or her own narrative based on this analysis. The words and evidence are those of the people interviewed, but the interpretations are those of the researcher.

Although various types of interviews exist, the “*topical oral history*” approach is very similar to the “oral history” and “oral traditions” of Aboriginal peoples of North America. The definitions of oral history and oral traditions vary depending on the disciplinary affiliation and problem orientation of the researcher. Some scholars reject any and all formal definitions, while others have constructed elaborate taxonomies with dozens of subdivisions. Although there is no universally accepted set of meanings, they

are defined and expressed by von Gernet (1996) in his interdisciplinary literature on oral narratives of the past as:

*Oral traditions are narratives transmitted by word of mouth over at least a generation. Oral histories are recollections of individuals who were eyewitnesses or had personal experience with events occurring within their lifetime<sup>2</sup>.*

Oral history as an organized academic activity dates back only to 1948 (Dunaway & Baum, Montell 1970; Yow 1994). Oral history attempts “to give social history a human face” (Tosh 1984, p. 176) and “through oral work the community [may] discover its own history and develop its own social identity, free from the patronizing assumptions of conventional historical wisdom” (Tosh, 1984, p. 177). One of the main strengths of oral history is that it relies on speech and not on the restricted skills of writing (Dunaway & Baum, 1984, p. 48). Ultimately, definitions and distinctions only become important if and when particular accounts are assessed and weighed as possible evidence of past events. Until careful analysis is completed, it may be more appropriate to use general terms like "oral narratives," "oral communications," "orally communicated information," or "oral performances" (von Gernet, 1996).

### **Why This Methodology is Important to This Research**

It is for those reasons above that I chose to use qualitative methodology as the basis of my research. The ability of qualitative data to more fully describe a phenomenon was not only an important consideration from my perspective as a

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<sup>2</sup> Quote taken from *Oral Narratives and Aboriginal Pasts: An Interdisciplinary Review of the Literatures on Oral Traditions and Oral Histories* by Von Gernet (1996). Available online at: [http://anc-inac.gc.ca/pr/pub/orl/index\\_e.html](http://anc-inac.gc.ca/pr/pub/orl/index_e.html).

researcher but from the reader's perspective I gathered as well. Lincoln and Guba (1985) note "if you want people to understand better than they otherwise might, provide them information in the form in which they usually experience it" (p. 120). Qualitative based research is more accessible to non-specialists and thus Qualitative studies can more readily contribute to public understanding (Hakim, 2000).

I also chose this methodology and method of data gathering largely because the qualitative process of interviewing more closely resembled aspects of the Indigenous framework of oral traditions that are still reflected in First Nations communities. The research conducted begins with the voices of First Nations individuals, in a series of dialogues with child welfare professionals who have knowledge, experience and expertise about child welfare issues in relation to the self-government aspirations of First Nations within the province. Pueblo psychologist Terry Tafoya states, "The concept of using one's own voice is a critical issue in understanding [our] issues" (1998, p.192). Sandra Kirby and Kate McKenna also note "researching from the margins is a continuous process that begins with a concern that is rooted in experience" (1984, p. 44). By interviewing and recording the perceptions of those in leadership positions within the First Nations child welfare arena, I believe this research attempts to give "voices" to real concerns and experiences that have not been respectfully included in the community consultation process involving child welfare as it relates to the civic engagement of community members in the self-determining methodologies. These individuals represent key child welfare representatives, who for some unknown reason or political oversight were not part of the consultations undertaken by SCO during December 2001 and March 2002 (SCO, 2002). As such they did not have an opportunity to participate in any

meaningful way in shaping an important arm of First Nations self-government, which is the cornerstone of First Nations communities (de Montigny, 1993).

## **The Participants**

The aim of this study was to get a fuller understanding of child welfare professional's perspectives on the civic engagement of First Nations people in child welfare development and community consultation activities under self-government underway in Manitoba. Consequently, the participants for this research project were drawn from a distinct group of individuals with a range of experience, knowledge and expertise in child welfare matters respecting First Nations peoples both on and off reserve, and inside and outside the Province of Manitoba.

Fourteen individuals were interviewed for this research. All of the individuals recruited for this research self-identified as First Nations members, with the exception of one who is, nevertheless, committed to First Nations peoples, families and communities. These individuals were recruited from a circle of First Nations child welfare professionals with whom I have worked locally, regionally and nationally on child welfare issues pertinent to First Nations communities and governments. These working relationships, coupled with exposure to other First Nations child welfare professionals, provided me with a natural pool of accessible informants who were able to shed light on local, regional and national concerns about engaging First Nations people's participation in child welfare development and community consultations procedures to establish self-government.

All fourteen individuals recruited for this research collectively combined have over 220+ years of knowledge, experience and expertise working in child welfare,



specifically with First Nations children, families and communities. The majority (12) of these fourteen individuals was recruited locally from within Manitoba while two (2) were recruited from outside the province. Of those individuals recruited locally, seven (7) are considered to have intimate knowledge of First Nations issues as it pertains to child welfare within Manitoba. These specific participants have a greater understanding of how child welfare currently operates in 27 of the 36 southern First Nations communities in Manitoba by virtue of the fact that they have worked and lived in these communities for over 20+ years providing a wide range of child welfare services. This experience and understanding was thus an attractive reason why these persons were recruited for this study. Plus this research provided an opportunity to engage community professionals in conversations reflective of what they witnessed in relation to the consultation practices carried out by the Manitoba Framework Agreement. These seven individuals are identified in this thesis as “**Internal Informants.**” The other five individuals from Manitoba who participated in this research are acknowledged as being “**Regional Informants**” as these individuals have central involvement in child welfare issues at a political and/or provincial level. A local Elder from within Manitoba was also recruited as a fifth “Regional Informant” who also brings a perspective on the impact the residential school system may have in First Nations peoples’ ability to participate in community consultations. The two individuals recruited from outside the province also both have significant knowledge, experience and expertise in the First Nations child welfare matters at a national level. Throughout the remainder of this research those individuals from outside the Province of Manitoba are collectively referred to as

**“External Informants.”** At times, these three different sets of participants are collectively referred throughout the research as **“Key Informants.”**

Each of the Key Informants was initially contacted by phone to obtain their verbal consent to participate in this research. A follow up letter mailed to each of the Key Informants outlined the purpose of the research, confirmed the agreed upon interview date, the possible length of the interview, confidentiality issues and included contact numbers as well as a copy of the interview questionnaire and consent form (which can be found at Appendices C, D and E).

I have chosen to keep the Key Informant’s identities anonymous for two reasons: firstly, their field is highly politicized (de Montigny, 1993; Black, 2001) and the observations and comments that they shared could be misconstrued and result in a backlash from either the grassroots level or the First Nations political governments and organizations; and two, I promised to keep the identity of all fourteen individuals anonymous and this commitment is acknowledged and reflected in the consent forms found in Appendix C to this research.

### **Structured Interview Questionnaire**

Perspectives regarding the responsiveness of First Nations people to become involved in child welfare consultations under self-government was sought through a number of questions; what is the role of community members in community consultations; how important is the involvement of the First Nations public; whether First Nations in Manitoba and elsewhere are ready to take on the self-governing aspects of child welfare; identification of respectful ways of engaging that participation from the community level; identifying the necessity or level of importance given to education and

urban civic involvement in child welfare development through community consultations; and whether there is a perception that enough adequate consultation has been conducted to date on child welfare structural developmental needs through the MFAI or other self-government initiatives.

Ten open ended questions were designed to measure the understanding of each of the “Internal, Regional and External informants” knowledge of the consultation components of the Manitoba Framework Agreement as well as obtain their perspectives on the importance of engaging First Nations peoples to participate in child welfare consultations under the MFAI and/or other self-governing initiatives occurring elsewhere across Canada. The questions were framed as opened ended so as to support the discovery of new information (Hoepfl, 1997). Responses to these ten open-ended questions were obtained from the fourteen Key Informants. As mentioned previously, it must be stressed that these responses are reflective of professional points of view from individuals with extensive experience and expertise working with First Nations peoples and communities in providing child welfare services in Manitoba and elsewhere in Canada.

A note of caution with respect to the questions needs to be highlighted here. The purpose behind the ten questions was not to evaluate the effectiveness of the Manitoba Framework Agreement Initiative or any consultation endeavours conducted in the past or at present as this has been done elsewhere (see McCaskill et al, 1999). The purpose is primarily to look at the role of participation by First Nations peoples in the debate, discussions and consultations on child welfare as part of the self-determining efforts of the First Nations in Manitoba or elsewhere. This was accomplished by talking to the

child welfare experts who work with First Nations peoples on child welfare issues and who therefore are closer to the child welfare/self-government issues confronting community members within the province. They have been at the forefront of these initiatives and have watched from the margins how consultations under self-government have unfolded. However it is recognized by this researcher that much of what was shared by the individuals who participated in this research contained reflections and criticisms of the consultation processes undertaken by FAI. These criticisms come from individuals who may be impacted by self-government activities, which may, at some point, either jeopardize or enhance the future of First Nations child welfare services in Manitoba. Research Ethics are about how to acquire and disseminate trustworthy information in ways that cause no harm to those being studied (Neuman 1994; Rubin 1983). It is for this reason that I have chosen not to identify by name those individuals who participated this study. The extensive quotations relied upon only identify that the response came from an Internal, Regional or External Informant.

### **One-On-One Interviews**

One-on-one interviews accommodated the interactive and dialogic nature of knowing and understanding; one-on-one interviews also minimizes the researcher's control over the participant's definitions of their experiences; and, by producing detailed data, interviewing is better able to tease out complex or delicate issues, which other methods may overlook. The growing body of literature on interviewing recognizes this (Herod 1993, 1999; McDowell 1992, 1992b; and Schoenberger 1991). The interviews provide not only rich, thick description but they necessitated spending extended periods

of time with the participants. As such, they enhance the dependability and credibility of the data (Cresswell, 1998).

Interviews were conducted on a one-on-one basis so as to ensure trust and ease between the participant and myself during the process. Interviews very much depend upon conversation and the relationship between the interviewer and informants (Rubin & Rubin, 1995). These interviews were usually conducted within the offices of the Key Informants and in one occasion at a participant's home. With the participant's permission, all of the interviews were recorded on a digital recorder. The interviews were conducted over a three month period from November 2002 to January 2003. The one-on-one interviews took on average approximately 45 minutes to complete. The lengthiest interview was 1.45 hours in duration while the shortest was 22 minutes. Once the interviews were conducted, I transcribed the recordings. All identifying information on the transcription of the digital recording was removed and coded specifically to keep the identity of the Key Informant anonymous and to respect the confidentiality of the comments provided therein. The Key Informants were notified verbally and by mail that specific quotes would be taken from their conversation and injected into sections of my thesis but it was further clarified that at no point would they be identified as the source which imparted the information. Each of the Key Informants was provided with two printed copies of their transcribed interview. The second copy of the transcript was provided specifically for marking any revisions, additions and/or deletions to the digital conversation, which the Key Informants may have respecting the original transcript. The conversation was strictly adhered to in the transcription to maintain the integrity of the Key Informants' responses. Only slight editing to the digital recordings were done to edit

out the “ums” and “ahs,” the pauses, the laughter, and the incomplete or convoluted sentences that can be part of any conversation (Hansen 1998). Follow up contact was then made by email, personal conversation or phone calls where necessary to clarify responses or changes to the transcripts.

## **Risks**

There is a growing recognition that research involving Aboriginal individuals should also involve the community or groups (or organizations) to which they belong and that Aboriginal people have rights and interests which deserve recognition and respect by the research community (Tuhiwai Smith 1999). The risks associated with this research were determined to be minimal according to the University of Manitoba’s Joint-Faculty Research Ethics Board. Authorization to conduct this research was granted in October 2002 (see Appendix A). As noted, the data collection process was primarily in the form of one-on-one interviews. Given this type of interaction, the most likely risk identified was that some participants might have concerns regarding any negative consequences arising out of their participation and the comments attributable to them. There are certain risks (i.e. noted previously as either a grassroots or political backlash) but it was felt that these would be minimized as much as possible through the confidentiality of the participant’s identities and that any risks which did exist were be ultimately outweighed by the benefits of participation. For these reasons, the participants were assured that their comments would not be attributable to them by either their name or identified by their organization and further, that their identity would remain anonymous throughout the text of the research.

## **Benefits**

The benefits to the participants in this research study are direct and indirect as well as individual and collective. The individuals who participated in this study benefit directly from their role in this research in that it has provided them with an opportunity to share – and validate – their own personal knowledge, experiences and observations of First Nations peoples’ civic engagement in child welfare development and self-government processes underway either in Manitoba or elsewhere. For the First Nations community as a whole, the primary benefit emanating from this study is that it will help fill a void in policy knowledge on civic engagement; specifically about how to engage more community involvement and participation from First Nations people in child welfare or self-government initiatives.

## **Compensation**

None of the participants were monetarily compensated for participating in this research. However each participant was given a gift acknowledging his or her intellectual contributions to this study. The gifts ranged from a copy of a publication entitled “*A Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada*” completed by the researcher in November 2002 to other traditional gifts such as sweet grass or tobacco. All of these gifts acknowledge and reflect the concept of reciprocity and are based on the Aboriginal teachings of the local First Nations in Manitoba. Also, Aboriginal teachings on reciprocity within modern context demands recognition in situations when intellectual information is extracted from specific members of the community (Cajete, 2000). There must be some reciprocal measures in place that recognizes the intellectual rights and significant contributions of

these individuals to this research (Tuhiwai Smith 1999; Cajete, 2000). This recognition took the form of a commitment by this researcher to provide each participant with a final copy of the thesis upon completion of the analysis, writing and eventual oral defense.

## **Data Analysis**

The responses from each of the informants to the ten questions were grouped together to obtain a collective understanding of the perspectives on the key aspects of the ten questions. Each of the informant's responses were analyzed collectively with the most salient of responses highlighted in the analysis on each of the questions. This question-by-question analysis is followed by a summation of the ideas, which by themselves shed important light on issues that impact on the participation of First Nations people when it comes to community consultations, child welfare and self-government. Where possible I have elected to position the voices of the informants by including select passages from my conversations with the Key Informants throughout my analyses. The reasons for doing this are based on traditional concepts of learning which respects the way stories are told and the learning process of the individuals reading the stories. A variation on that teaching goes something like this "when a perspective is shared, the interpretation of that perspective is left up to the listener (reader) to ponder the meaning of what was told in order to arrive at an understanding of what was shared" (Callahan, 2002; Van Manen, 1997; and Frank, 1995). This also follows closely what McPherson and Rabb (2001) called the Aboriginal way of learning, which is often reflected in the way stories are told. For example, in story telling, Elders give their listeners the autonomy to discover the relevance of the story for themselves rather than explaining it to them. This is a learning style that respects the independence and autonomy of individuals



(Cajete, 2000). It is a method of instruction that fosters independent thinking and self-reliance (McPherson & Rabb, 2001, 63). I think that it is absolutely essential that those reading this study draw their own interpretation and analysis from the responses highlighted. The Key Informants' own words offer a richer context to a multitude of perspectives than I could ever be able to draw through my analysis alone. The analyses of the responses are set out in the same numerical sequence as they appeared in the questionnaire provided in advance to the Key Informants who participated in this research. Again, I was sensitive to the fact that my analysis should not identify or inadvertently identify any of the individuals who participated in this research and so names that identified individuals or specific communities were also removed from the text relied on in the analysis section of this thesis.

### **Role of the Researcher**

My role in this research has been primarily to act as a *narrator* of sorts, entrusted with bringing to life the voices and experiential knowledge imparted by the participants through their interviews on the issue of civic engagement of First Nations peoples in child welfare consultations and development under self-government. As a budding First Nations researcher having worked in the First Nations child welfare field for a relatively short period of time, I am aware that I have been placed in a trusted position, which I take very seriously. Through the course of conducting this research, I encouraged the participants in this study to talk openly and frankly about public participation by First Nations in self-government consultations and as a result, I have incurred serious ethical obligations to them (Tuhiwai Smith, 1999). I hope that I have done justice to this ethical responsibility in narrating their voices and perspectives in the way they see these issues.

By conducting this research I have also, to some extent, brought some closure to the research that I was originally hired to conduct when I first became involved in the Manitoba Framework Agreement Initiative.

## CHAPTER THREE: LITERATURE REVIEW

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### Overview

This section of the thesis focuses on the literature that exists on three broad topics touched upon in this research. This literature review is therefore organized into three parts: Part I highlights the literature on public consultations, citizen engagement or citizen involvement and voluntary sector initiatives and the application of these efforts in First Nations communities respecting self-government; the jurisdictional implications inherent in the First Nations child welfare field are the focus of Part II; and finally, Part III highlights the efforts being made by First Nations elsewhere in Canada to negotiate new jurisdictional arrangements over child welfare for First Nations communities in an effort to establish self-government.

### **PART I: Involvement of First Nations Peoples in Community Consultations, Citizen Engagement and Voluntary Sector Initiatives**

Very few resources exist in the literature that articulate precisely on the public participation of First Nations peoples in community consultation activities respecting child welfare under self-government. Furthermore, very few resources exist in the literature which is written from the First Nation perspective on their experiences conducting community consultations or even what First Nations might consider to be the best practices emulating from conducting consultations in their own communities (Institute on Governance, 1999). Given the scarcity of First Nations literature on this subject it was necessary to turn to other academic sources. Other sources considered

come from literature produced by the Canadian federal and provincial governments, which reflect numerous inquiries, studies and royal commissions conducted in First Nations communities across Canada. Examples in the literature where government consultations with Indigenous peoples has occurred, include landmark studies such as the *Hawthorn Report* (1966), the *Penner Report* (1985), the *Nielson Report on Indians and Natives* (1985), the *Aboriginal Justice Inquiry* (1991) and most recently, the *Royal Commission on Aboriginal Peoples* (1996) to name a few. Literature from a variety of public policy “think tank” sources (e.g. Institute on Governance, Canadian Policy Research Networks and the Canadian Council on Social Development) were also consulted in pulling this part of the literature review together. This literature review accentuates the role of public consultations, citizenship engagement and involvement in policy-making processes, and to a lesser extent participation of First Nations people in the voluntary sector. These sources provide some insight into how First Nations peoples are beginning to participate in public debates that will strengthen, promote, and encourage a catalyst of actions towards implementing self-government in Canada through consultations, public engagement and voluntary initiatives. Another source of information relied on relate to what LaRocque (2002) and others (Harlow, 1987) have deemed “resistance” literature. Sources from political organizations such as the Assembly of First Nations (AFN) and the Southern Chiefs’ Organization (SCO) also round out the sources of literature consulted. These literature source set out the responses and positions of First Nations peoples and their political organizations to the political events that impact them.

Discussions on definitions can be tedious but in the case of public consultations (the kind which both First Nations and the general public engage in), there can be numerous definitions as well as different ways and purposes for conducting public consultations (Institute on Governance, 1999; Sterne, 1997). The definitions in this section of the literature review come from various individuals and groups that have considered public consultation and its uses. Sterne (1997) highlighted the comprehensive definition on consultation held by the *International Association for Public Participation* as being: (1) a process and a result; (2) an exchange of information, discussion and decision making; (3) an investment in time, energy and resources; (4) a tool for achieving an end; (5) a recognition of the legitimacy of public concerns and input; (6) an understanding that public participation results in greater effectiveness and legitimacy in decision making; (7) a recognition of the values and cultures of others; (8) an act of sharing power; (9) an opportunity for innovation, creativity, improved services and conflict resolution; (10) a consensus-seeking process; (11) an act of relationship building; and (12) a learning experience (p. 5). Other ranges of definitions accentuated by Sterne (1997) in explaining the concept of consultation were:

- To consult means to seek the advice or opinion of someone. It is a two way process. In the public policy context, consultation refers to deliberations between government and citizen (*Service to the Public Task Force Report, Public Service 2000*);
- Consultation is the direct exchange of ideas, perceptions and advice among and between people (*Industry, Science and Technology Canada, Consultation Guide, Our Knowledge Builds Competitiveness*);
- An interactive and iterative process in which the attitudes, ideas and involvement of stakeholders are encouraged and seriously considered, in the development of policy and the design and delivery of government programs (*Paul Tellier, Former Clerk of the Privy Council and Secretary to Cabinet*);
- Public Consultation is a process involving interactive or two-way communication between the ministry and the public, through which both

become informed about different perspectives on issues and proposals, providing the public with the opportunity to *influence decisions* to be made by the ministry ... [it is] an ongoing process involving communication and interaction between government and the public (*Ontario Ministry of Environment and Energy, 1994*) (p. 6); and

- Good consultations walk a fine line between having a clear sense of direction and being open to the views and information brought by an interested public. The purpose of consultations is rarely to achieve consensus, but it is often to help test and refine options as part of determining how to go forward (*Task Force on Strengthening the Policy Capacity of the Federal Government, 1995*) (pg. 8).

There are many definitions and perceptions of consultation, all of which may be valid for the individuals or organizations that adopt them as well as the circumstances they reflect (Sterne, 1997). Given the difficulty in gaining a common understanding of consultation, the Department of Indian Affairs and Northern Development (DIAND) undertook to review all of its consultation activities with First Nations communities during 1995-1996. Clarkson and Rigon (1998) remarked that consultations with First Nations peoples is part of the Government of Canada's attempt to find ways to meet the *Liberal Red Book's* (Liberal Party of Canada, 1993) commitment to develop a comprehensive process toward consultation and to build new partnerships with Aboriginal peoples. The other driving factors for consulting with Aboriginal people that placed consultation at the forefront are two landmark Supreme Court decisions (specifically *Sparrow* and *Delgamuukw* discussed further on in the text of this review) and "the recognition that Aboriginal peoples should have substantial involvement in the making of decisions on issues that directly affect them" (Bell, 1998; Clarkson and Rigon, 1998, p. 25).

Clarkson and Rigon (1998) highlighted six consultation models and practices, which the Department of Indian Affairs currently engages in which are “loosely categorized by the purpose each initiative was intended to serve” (p. 27). They include:

- **Devolution-type Consultations:** which provide for effective transfer of former DIAND programs and responsibilities to First Nations authority or Territorial governments. Pre-existing conditions include statutory, fiduciary and other requirements such as infrastructure support which may limit the scope of shared decision-making (an example of this type of consultation can be found in the Manitoba Framework Agreement signed in 1994);
- **Policy-Type Consultations:** may be undertaken where existing policies are ineffective or detrimental to Aboriginal peoples, where conflicting interpretations exist, or where new approaches are required to existing policies (Examples include a review of the Specific Claims Policy and the funding policies to First Nations child welfare agencies under Directive 20-1);
- **Consultation on New Strategies:** where the department has the opportunity to introduce new strategies without pre-existing limitations, are expected to be full and open and to involve First Nations, Inuit and Northerners from the very beginning (an example is the Sustainable Development Strategy which has employed a partnership approach between the Department and First Nations);
- **Fact Finding Consultations:** may be undertaken when there are requirements for collection and reporting of information that is acceptable and credible to all affected parties, despite contentious concerns or any previous conditions of mistrust (an example of fact finding consultations involved Bill C-31, which was an amendment to bring the *Indian Act* into line with the *Canadian Charter of Rights and Freedoms*, by removing the discriminatory clauses, restoring status and membership rights and to increase the control of Indian Bands over membership and community life, enabling Indian people to take an important step toward self-government);
- **Corporate-type Consultations:** where it is becoming more common for some corporate departmental entities to engage in consultation as a way of doing business, even through they are not part of the readily identifiable groups for First Nations contact (i.e. independent quasi-judicial tribunals of the federal government such as the National Energy Board); and
- **Miscellaneous or Problem-Solving Consultations:** are generally *ad hoc* and require participative solutions to problematic situations (p. 27-28).

These categorizations are by no means meant to be comprehensive. The Departmental Overview of DIAND’s consultation practices merely provide a basis for

viewing where the Department has conducted effective and successful consultations (Clarkson and Rigon, 1998). Again, as generally found with the majority of the literature on consultations, Clarkson and Rigon's 1995-1996 review on consultations did not deal with the perspectives of First Nations or northerners on consultation practices (p. 3). Clarkson and Rigon found that a majority of federal representatives consulted with First Nations and that consultation with First Nations increased significantly over the past five years. This increase can be attributed to greater activity in the departments and due to two Supreme Court decisions: *Sparrow*<sup>3</sup> in 1990 and *Delgamuukw*<sup>4</sup> 1997 on certain rights-based issues. These cases have established that the Crown has a fiduciary obligation to Aboriginal peoples when a government decision or action has the effect of interfering with Aboriginal or Treaty rights, which obligation typically requires Crown consultation with the affected Aboriginal peoples (Bell, 1998). Two recent BC Court of Appeal decisions also appear to extend the duty to consult to both Provinces and third parties without forcing First Nations to go to court to prove the existence of their Aboriginal rights even before a court of competent jurisdiction has ruled on the validity

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<sup>3</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075. The *Sparrow* decision essentially established the basis in which governments can interfere with and infringe on Aboriginal and Treaty rights. *Sparrow* states that a challenger of government actions must first demonstrate that a right has been interfered with; and secondly, that such interference was unreasonable or imposed undue hardship on Aboriginal peoples. If the challenger can demonstrate interference then the Crown must prove that such interference was justified by legislative objective and done in good faith given the fiduciary duty of the Crown to Aboriginal peoples. The Crown must also demonstrate that it has properly and fairly consulted with Aboriginal people and that the interference is justified.

<sup>4</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. *Delgamuukw* further clarified that the requirements for consultation setting forth guidelines that appear to follow many of the principles of Administrative Law. These guidelines recognize that the requirement for consultation varies with circumstances but affirm that this requirement must be taken seriously by governments. These principles include fairness in process of consultation and the decisions of government and conversely for First Nations to cooperate and not frustrate the consultation process.



of their claims<sup>5</sup> (interim protection of unproven rights). Both cases are being appealed as the appellants contend that only the federal government is legally required to consult with Aboriginal peoples when Aboriginal rights are potentially infringed upon<sup>6</sup>. First Nations peoples have consistently been included in federal initiatives where consultations respecting changes to proposed legislation and policies that can affect First Nations rights and title have taken place. The involvement of First Nations peoples in consultation initiatives by the federal government occurred numerous times throughout Canada's history starting with the Hawthorn Report (1966) and to the more recent proposed consultation process on the First Nations Governance Act proposed by Minister Nault. The purpose here is only to recognize the fact that consultations have occurred primarily at the whim of the federal government and that it is often done only because governments now have a legal duty to consult.

In earlier times, Aboriginal voices were simply silenced (Cairns, 2000) and until recently, rarely were Aboriginal people invited or asked by either the federal or provincial governments to participate in events or discussions that would ultimately impact on them politically, economically, socially, culturally or spiritually. A case in point is the *Indian Act*, which in 1876 was unilaterally created without consultation with the people against whom it was directed (Cardinal, 1977; Boyko, 1995; Di Gangi and Jones, 1998). This Act has intruded on the lives, cultures and spirits of Aboriginal peoples more than any other laws subsequently created by the Canadian governments.

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<sup>5</sup> *Council of the Haida Nation v. Minister of Forests and Weyerhaeuser Company Limited* (B.C. Court of Appeal, February 27, 2002) and *Taku River Tlingit First Nation v. Tulsequah Chief Mine Project* (B.C. Court of Appeal, January 31, 2002).

<sup>6</sup> See commentary by the *British Columbia & Yukon Chamber of Mines*, available at [www.bc-mining-house.com/aborig/consult02.html](http://www.bc-mining-house.com/aborig/consult02.html).

Another well-known incident in Canadian history also instructive of the federal government's lax efforts at consulting Aboriginal peoples on proposed changes to policies and legislation that impact them was the 1969 federal government White Paper on Indian policy. This pivotal point in the history of Aboriginal-Government relations is discussed more fully in the paragraphs below.

The 1960s was the beginning of Native activism in both Canada and the United States (Gibbins, 1997; Di Gangi and Jones, 1998). The legal segregation of Canadian First Nations through the *Indian Act* was called into question and as a result, activists in Canada began to pay increased attention to the conditions of First Nations peoples. Pierre Elliot Trudeau was elected in 1968 and he promised a "just society" for all Canadians including First Nations. As noted, the political mobilization of First Nations peoples began in the 1960s but it was the Federal Government's 1969 White Paper that saw a rapid change in government-Indian relations and the increased involvement of First Nations peoples in political issues. The Trudeau government issued a statement on a new Indian Policy that was designed to increase the participation of First Nations people in Canadian society (Indian Affairs and Northern Development, 1969, p. 5). Jean Chrétien, then Minister of Indian Affairs and Northern Development tabled this statement in 1969 to the House of Commons. This statement came to be known as the "*1969 White Paper*" (Cassidy and Bish, 1989; Gibbins, 1997). This new policy emphasized individual equality and de-emphasized collective ethnic survival (Gibbins, 1997). A few passages convey its meaning and implications:

... The separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from and behind the Canadians. The Indian people have not been full citizens of the communities and provinces in which

they live and have not enjoyed the equality and benefits that such participation offers.

... The road of different status ... has led to a blind alley of deprivation and frustration ...

... The Government ... will offer another road for Indians .... Indian people must be persuaded, must persuade themselves, that this path will lead them to a fuller and richer life (as quoted in Cassidy and Bish, 1989; p. 8).

The White paper proposed that the legislative and constitutional bases of discrimination be removed and the *Indian Act* repealed and all programs administered under it dismantled within five years with all residual responsibilities transferred to provincial and territorial governments (Gibbins, 1997; Di Gangi and Jones, 1998). Rather than being legislatively set apart, First Nations peoples were to receive the same services as other Canadians and these services were to be delivered to First Nations individuals through the same channels and from the same governmental agencies that served other Canadians. All federal responsibility for First Nations were to end with the exception of the federal government retaining trusteeship functions only for Indian lands which were to be administered through the Indian Lands Act (Gibbins, 1997).

For the first time First Nations across Canada politically and collectively mobilized against the 1969 White Paper. The hostility toward this statement was crystallized in a number of different documents created by Aboriginal people and their burgeoning organizations, one of which was Harold Cardinal's book *The Unjust Society: The Tragedy of Canada's Indians* (1969). Cardinal was vehemently opposed to turning responsibility over First Nations matters to provincial governments in which he saw the policy as "... a thinly disguised programme of extermination through assimilation" (quoted in Gibbins, 1997, p. 34) and that the White Paper postulated that "the only good

Indian is a non-Indian” (Cardinal, 1969, p. 1). Cardinal was the leading voice in opposition to the White Paper.

“His emphasis on culture mirrored and reinforced the personal and social consciousness among the First Nations people that would gradually become incorporated as a key aspect of the emerging organizational cultures of the First Nations governments beginning to evolve at the community level during the 1970s and 1980s” (Cassidy and Bish, 1989, p. 9).

A second document in opposition to the White Paper was the Chiefs of Alberta’s document entitled *Citizens Plus* which opened with the following excerpt that reflected on the Hawthorn Report of 1966: Indians should be regarded as “Citizens Plus”; in addition to the normal rights and duties of citizenship, Indians possess certain additional rights as charter members of the Canadian community (quoted in Gibbins, 1997, p. 34). Through these and other documents, as well as through statements in the press, First Nations peoples and their emerging political organizations unequivocally opposed the 1969 White Paper.

Lack of consultation in the goals of the White Paper was part of its demise; however for some of the key federal players, consultation with the First Nations peoples and their political associations was to have played an important and major role in the changes proposed under the 1969 White Paper. As noted in the statement below the implementation of the new policy was to take effect within 5 years utilizing the political Indian organizations to help bring about the federal changes required under the policy:

... To this end the Government proposes to invite the executives of the National Indian Brotherhood and the various provincial associations to discuss the role they might play in the implementation of the new policy, and the financial resources they may require.

... The Government proposes to ask that the associations act as the principal agencies through which consultation and negotiations would be conducted, but each band would be consulted about gaining ownership of its land holdings. Bands would be asked to designate the association through which their broad interests would be represented (p. 13).

Robert Andras, a Minister without portfolio had, in addition to Chrétien, been involved in the process leading up to the White paper. Di Gangi and Jones (1998) in quoting Weaver (1981) say that Andras was apparently more committed to consultation than his colleagues within the Department and the Privy Council Office. However Andras' interest in consulting with First Nations extended only to the fact that he felt consultation would be the most successful vehicle for getting First Nations to buy into the termination of their rights:

[...] Indian consultation was basic to his scheme, for it was through this process that he envisioned Indians negotiating an end to all special rights with the government.

[Andras'] conditions for a successful termination plan were social development and Indian participation. The common theme of all these approaches was not obvious: equality was a goal they could all accepted for the new policy (Weaver, 1981, p. 196; cited in Di Gangi and Jones, 1998, pg 21).

The response to the White Paper on the part of First Nations peoples was quick and unanticipated by the Trudeau Government (Cassidy and Bish, 1989). Trudeau was forced to retract the statement in March 1971 (Gibbins, 1997). The 1969 White paper is noted by Gibbins (1998) and others (Di Gangi and Jones, 1998; Cairn, 2000) as a "watershed in the evolution of First Nations affairs in Canada" and "assimilation was at least officially placed aside as an explicit policy goal, although it continues as ... a hidden agenda behind federal government action" (Gibbins, 1997, p. 32) even today as shall be later explained. Opposition to the White Paper was the beginning of First

Nations peoples' political mobilization (Cardinal, 1969, p. 11) and the retraction of the policy by the federal government was seen as a positive response that empowered the involvement and participation of First Nations peoples in government policy making processes especially when it has the potential to impact politically, socially, culturally, economically and spiritually. The political strength of Aboriginal groups working together eventually led to the successful efforts to ensure that the Canadian Constitution recognized Aboriginal rights, when the Constitution was repatriated from England<sup>7</sup>. But the federal government's goal of terminating its special relations with Aboriginal peoples continues to exist along side these constitutional recognitions even today.

The lack of consultation and unilateral design of both the *Indian Act* and the 1969 *White Paper* of the past still continues today as can be seen with Indian Affairs' Minister Robert Nault's announcement in March 2001, of a new federal legislative initiative on First Nations Governance, often referred to as the "*First Nations Governance Act*" (hereafter "FNGA"). Under this initiative, DIAND commenced consultations with First Nations' citizens on a number of issues identified by the Department. The ultimate goal of DIAND's initiative is to amend or revise the *Indian Act*. The Minister stated that this new legislation will not be optional - it will be imposed on First Nations (AFN, 2002)<sup>8</sup>. As with the 1969 *White Paper* many First Nations have once again mobilized to express concerns over DIAND's unilateral process to eliminate its Nation-to-Nation relationship with First Nations. Many of the concerns revolve around the limited and narrow issues

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<sup>7</sup> When the new *Constitution Act* was passed in 1982, it guaranteed in section 35 that "existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed" (Isaac, 1999, p. 394).

<sup>8</sup> More detailed information on the proposed process for consultations, the topics that are up for discussion and the approach to developing and putting in place new legislation can be found on the Indian Affairs website [http://www.fng-gpn.gc.ca/FNGA\\_e.asp](http://www.fng-gpn.gc.ca/FNGA_e.asp).

being examined, the mandatory nature of the changes and the short time frame for the consultations and review (AFN, 2002). In a nutshell, the First Nations Governance Act proposes to reduce First Nations into entities akin to municipalities and corporations; increase the fiscal and political accountability of First Nations leaders to the department, not to their own communities; decrease the federal government's accountability to First Nations; abolish the right of First Nations to choose customary forms of governance; tinker with the *Indian Act* by changing archaic sections while ignoring other necessary changes; and shifts federal responsibility for programs and funding to First Nations, without providing compensation or structures that enable First Nations to cover these costs (Lands, 2002).

Aboriginal leaders have said that they are not opposed to amending or abolishing the *Indian Act* but what they are opposed to is the unilateral nature of any process and the threat that it poses to Aboriginal and Treaty rights (Land, 2002; AFN, 2002). "This is the same process that resulted in the original *Indian Act*. It is a form of insanity to continue the same behaviour and expect different results," noted Matthew Coon-Come, National Chief of the Assembly of First Nations (AFN, 2002). Chief Stewart Phillip responded to the proposed FNGA stating "Bob Nault's consultation process is just another elaborate federal con game to "off-load federal responsibilities onto the Bands themselves ... with this process, if you combine con and insult you get "consult" (Union of BC Chiefs, 2001 Press Release). Other Aboriginal groups and leaders, and groups supporting Aboriginal rights quickly mobilized to respond to the FNGA. Many Aboriginal organizations

launched educational campaigns to alert people to the proposed changes<sup>9</sup>. Other groups have considered legal action to stop the proposed legislation in its tracks<sup>10</sup>. Lands (2002) also noted that where Aboriginal leaders or organizations disagreed or have express concerns with the FNGA, contact with the Minister was cut off. Opposition by the AFN in particular, led to a growing political discord with Minister Nault who responded to AFN's opposition by cutting their budget by roughly 60 per cent, effectively reducing AFN's ability to respond to the FNGA (p. 6). Nault's FNGA does however have some First Nations supporters. Chiefs such as Ted Quasantz from Saskatchewan are willing to accept the changes, as long as it's done their way. "We can talk about governance all we want, but if [we] do not deal with those social issues at the community level right across the country, we are badly mistaken," said Quasantz (Loewen, 2002). Leona Freed, a Manitoba Native activist welcomes and supports most of the changes proposed in the Act (2002). Other Supporters have stated that

"It's rather sad to see so many of Canada's aboriginal leaders complaining about the contents of the new Aboriginal Governance Act after they boycotted the entire year-long consultation process. The federal government was eager to hear from the Assembly of First Nations. It might come as a surprise to the AFN, but non-aboriginal Canadians aren't too thrilled with the old Indian Act either. Despite government spending of more than \$4 billion a year, poverty, unemployment, violence, alcohol and drug abuse and a high educational dropout rate persist among First Nations people. Fixing the flaws isn't just a matter of rewriting the act but following it up with a road map to a better future for First Nations people. Rather than sitting on the sidelines protesting, the AFN should have been at the consultations. It is still not too late."<sup>11</sup>

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<sup>9</sup> For instance see the quarterly newsletter of Manitoba's Southern Chiefs' Organization Inc., vol. 1, issue 3, Winter 2002.

<sup>10</sup> For instance, the Federation of Saskatchewan Indian Nations has already commenced a court action to declare the proposed legislation unconstitutional (Land, 2002).

<sup>11</sup> Quotes taken from Indian and Northern Affairs Canada website at: [http://www.fng-gpn.gc.ca/NR\\_Quo\\_e.asp](http://www.fng-gpn.gc.ca/NR_Quo_e.asp).



Turning to the consultation aspects of the Governance Act, AFN has heavily criticized DIAND's approach to consulting First Nations people as well as the summation of reports on DIAND's findings respecting its consultations. AFN in particular has questioned whether the consultation approach is effective. AFN notes:

“If government was really interested in involving First Nations communities in the amendment process, it would not have relied on meeting in central cities, using 1-800 numbers or web-sites, given that the targeted audience and intended participants live in sub-standard housing on reserves and do not have access to these types of amenities” (2002, p. 3).

Furthermore, AFN reiterated that the government:

“[s]hould have included information sessions in the communities as part of the consultation process and worked with communities to determine their priorities in regard to the *Indian Act*. It should have initiated a process to develop effective participation that worked towards real consensus. Without this the government has no basis on which to claim consent” (2002, p. 3).

SCO in their winter 2002 newsletter explained that the consultation aspects of the FNGA were flawed in that the process violated and undermined the Nation-to-Nation relationship between the First Nations and the Crown. The consultation strategies purposely bypassed the elected leadership and pointed out that attendance at FNGA information sessions, largely held off reserve, were alarmingly low (p. 3). SCO also noted that what was discussed did not reflect what the people identified as important nor did the consultation focus on the intent of the Governance Act. First Nations People attending these sessions wanted to address other issues like housing, education, membership and Bill C-31 and Treaty implementation (p. 3). AFN backs up these accusations in their summary analysis on the validity of DIAND's consultation process on the FNGA (AFN, January 2002). AFN's summary analysis focused exclusively on

the consultation process itself and is based on the findings set out in DIAND's consultation reports<sup>12</sup>. This analysis states that the consultation findings show that the FNGA is not about governance, that it is narrow and limited in scope and that the consultation reports distort the true findings. AFN outlines the facts ignored by DIAND in its consultations with First Nations:

DIAND's Overview and Regional Summaries do not reflect the fact that many participants:

- Expressed opposition to the process during the consultation;
- Stated that they did not feel they had enough information about the process or subject matter to offer informed consent;
- Did not discuss the questions discussed in the preliminary findings, or;
- That in many cases, the bulk of the comments – which reflect First Nations real priorities – are lumped together under the “other” category (p. 2).

As a result of difficulties set out in the FNGA, the Assembly of First Nations developed a Nations to Nation process whereby 9 principles of consultation were drafted. The preamble to this section states “if any lessons can be taken from previous failed attempts at reform, it is that change cannot be imposed. Change must result from First Nations direction, involvement and consent” (AFN, 2002, p. 21). The following consultation principles were adopted by AFN in January 2001:

1. That there will be no pre-determined agenda (The parties shall together fashion the agenda);
2. That the parties comprise the federal and First Nations governments or their duly authorized representatives (Government-to-Government talks);
3. That the parties exchange information, views and comment as equals and conduct their business with mutual respect and in good faith;
4. That discussions be open and agreements be openly arrived at (there shall be no “selective” or private discussions);

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<sup>12</sup> DIAND's initial findings on its consultation with First Nations can be found on the web at [http://www.fng-gpn.gc.ca/cnsltn\\_e.asp](http://www.fng-gpn.gc.ca/cnsltn_e.asp).

5. That First Nations obtain and be given the fullest information to enable them to make sound and reasoned judgements;
6. That First Nations views be fully discussed and due weight accorded to them;
7. That every possible attempt is made to harmonize differing views among First Nations and the federal government aimed at positions that all sides can accept and implement;
8. That, where all sincere attempts at reaching consensus have failed, the dissenting views be appropriately recorded and respected; and no party shall unilaterally proceed against the interests of any other; and
9. That where the proposal (in this case, the legislative changes) may impact on the fiduciary relationship or Aboriginal and treaty rights, it shall be approved by the members through a referendum before it is applied to First Nations.

Another significant government initiative previous to the FNGA aimed at obtaining the participation of First Nations peoples was the Royal Commission on Aboriginal Peoples, which relied significantly on consultations with rural and urban Aboriginal peoples across Canada. The Royal Commission heard testimony during four rounds of public consultations across Canada, which began in April 1992 and ended in December 1993. The mandate conferred on the Royal Commission on Aboriginal Peoples on 26 August 1991 was extremely broad — possibly the broadest in the history of Canadian royal commissions. RCAP was asked to look at virtually every aspect of the lives of First Nations, Inuit and Métis peoples of Canada — their history, health and education; their aspirations for self-government and relations with Canadian governments; their land claims, treaties, economies and cultures; their living conditions in the North as well as in cities; their relationship with the justice system; the state of their languages; their spiritual well-being and, more generally, their situation in Canada relative to that of non-Aboriginal Canadians. By the end of the fourth round RCAP had visited 96 communities (some of them more than once), held 178 days of hearings, heard briefs or statements from some 2,067 people representing organizations, communities or

associations or from individuals who spoke on their own behalf, and generated 75,000 pages of transcribed testimony. At the conclusion of each round of hearings RCAP published overviews that were widely circulated to Aboriginal communities. RCAP received close to 1,000 written submissions from presenters and other members of the public by the time it ended in December 1993. As at this date its recommendations have largely been ignored the federal government who commissioned it (Warry, 1998).

The literature discussed next now turns to a relatively new idea called “Citizen Involvement” or Citizen Engagement” (O’Hara, 1998; Institute on Governance, 1998) which has a direct connection to the area of study in this research. Citizen engagement involves the development of a new “mental map” for modernizing the relationship between the governed and the governing. Not long ago, the federal and provincial governments managed public affairs that required little input and involvement of mainstream or marginalized citizens and they did so with public agreement and acquiescence (Sterne, 1997). Many authors have alluded to the low levels of trust towards government in the last fifteen years, which appears to be a trend occurring not just in Canada but globally as well (Institute on Governance, October 1998; Phillips and Orsini, 2002). Wyman, Shulman and Ham (2000) expressed this view succinctly in the opening of their research document “*Learning to Engage: Experiences with Civic Engagement in Canada*”:

Over the last decade it has become clear that there is a growing risk of “disconnection” between government and citizens. Research tells us that citizens are increasingly concerned that their democratic institutions are out of sync with their values and interests. Moreover, citizens strongly believe that there is a growing gap between their actual and desired level of influence in government decision-making. As one citizen stated, “I don’t think unless you work trying to get your government to be democratic and to work with you ... that you discover

the kind of pain you feel when you find out you're invisible." (As quoted in Bourgon, 1998).

Many authors note that the relationships between governments and Canadians are rapidly changing as a result of this mistrust (Sterne, 1997; O'Hara, 1998; Institute on Governance, 1998, 1999, 2002; Wyman, Shulman and Ham, 1999; Phillips and Orsini, 2002). Today people want to become more involved because dealing with public issues requires a more integrated and holistic approach than had been applied in the past. According to O'Hara (1998) citizen engagement is about:

... Engaging citizens requires politicians and officials to 'let go' of the process and enter into a partnership and shared ownership governance relationship with citizens. Policies are developed through a process of shared learning and identification of common ground, and political leadership is redefined as the capacity to work with citizens to rigorously examine public policy options and make different choices and tradeoffs (p. 79-80).

The Institute for Governance (1999) summarized Dukes' (1996) characteristics of an "engaged community" as being one that:

- Empowers people to establish and maintain a high standard of public discourse;
- Modulates powerlessness and alienation;
- Opposes polarization and demonization;
- Encourages individuals to transcend self-interest in search of common goals;
- Encourages active, lasting and meaningful participation, especially by marginalized citizens; and
- Develops a capacity for solving problems and resolving conflicts among citizens (p. 52).

One of the earliest examples of citizen engagement with First Nations peoples actively occurred during the Mackenzie Valley Pipeline Inquiry. In Canada, the oil and

gas industry began to look north, eager to develop natural gas from reserves in the Arctic. Plans were launched to build a giant pipeline from the Beaufort Sea down the length of the huge Mackenzie River valley. The federal government wanted to study the issue before giving its approval for a northern pipeline. This Inquiry was set to consider the social, environmental and economic impact of a gas pipeline and an energy corridor across the northern territories, across a land where four races of people – Indian, Inuit, Métis and White – live, and where seven languages were spoken. The Inquiry was also empowered to recommend terms and conditions that ought to be imposed to protect the people of the North, their environment, and their economy, if the pipeline were to be built (Berger, 1977, p. 1). Jean Chrétien, who in 1974 was Minister of Indian Affairs and Northern Development, met with Mr Justice Thomas Berger, a judge on the Supreme Court of British Columbia. Chrétien asked Berger to head an inquiry into the Mackenzie Valley pipeline proposal. From 1974 to 1977 Thomas R Berger served as the commissioner of the Mackenzie Valley Pipeline Inquiry in which he produced a report entitled “*Northern Frontier, Northern Homeland*” (1977) recommending a ten-year moratorium on the building of a pipeline so that native land claims could be settled in the interim.

Berger interviewed more than 1,000 northern Natives during the three-year course of his inquiry. He also heard testimony from pipeline companies, public interest groups, native organizations, and the territorial council and other interested groups (Berger, 1977). He discovered that people in the North had strong feelings about the pipeline and large-scale frontier development. Businessmen in Yellowknife favoured a pipeline through the North. Later, in a First Nation village, the whole community expressed

vehement opposition to such a pipeline. Both were talking about the same pipeline; both were talking about the same region - but for one group it is a frontier, for the other a homeland. The Aboriginal organizations claiming to speak for the Aboriginal people opposed the pipeline without a settlement of land claims. The Territorial Council claiming to speak for all northerners supported the pipeline. Wally Firth, then Member of Parliament for the Northwest Territories, opposed the pipeline. Because of these conflicting views, Judge Berger decided to give northerners an opportunity to speak for themselves. At the formal hearings of the Inquiry in Yellowknife, Judge Berger heard the evidence of 300 experts on northern conditions, environments and peoples. He also took the Inquiry to 35 communities - from Sachs Harbour to Fort Smith, from Old Crow to Fort Franklin - to every city and town, village and settlement in the Mackenzie Valley and the Western Arctic. He held hearings in all northern communities, where the people could speak directly to the Inquiry.

Berger compiled 281 volumes from 40,000 pages of testimony during the course of that Inquiry. The consultation aspects of the Berger Inquiry were considered unusual for its time and many who favoured the pipeline did their best to limit the scope of the Inquiry (Puxley, 2002). In light of the Inquiry's recommendation, it also became imperative for the Federal government to determine the extent of the Dene people's land claims and un-extinguished rights. In order to prepare for this claim, the Dene declared that they would need their own researchers and lawyers to prepare and Puxley (2002) noted that to their credit, the federal government of the day accepted and allowed the Dene to obtain their own researchers and lawyers. Puxley later was appointed the research advisor to the Indian Brotherhood of the NWT to the assist the Dene in their

research. Puxley (2002) further observed that at that time, the Department of Indian Affairs of the day had been very reluctant to see research defined, conducted and controlled specifically by the Dene people themselves. The act of having the Dene people involved in researching the history of their own land constituted a political act that changed the nature of the relationship between Aboriginal and non-Aboriginal peoples and presented a new way and opportunity for redistributing political power (Puxley, 2002).

Today the Berger Inquiry is often touted as a model of citizen participation and engagement (Puxley, 2002). Others (i.e. Patten, 2000) have hailed the Berger Inquiry as a major innovation in creating a new kind of public space for hearing from individual citizens and particularly from marginalized peoples. Puxley notes that some of the reasons why the Berger Inquiry is frequently referred as the earliest model of engagement was because

“It was a genuine effort to engage citizens in making critical decisions about their future; It provided the resources to ensure that their views were heard; it provided the resources to research and prepare community evidence; It strengthened the communities that took part and contributed to their political empowerment; Its conclusions were not predetermined; the government of the day, for whatever reason, accepted the political risks of an open-ended process; and the evidence provided to the Inquiry by the people of the North and others clearly influenced the government’s eventual decision” (Puxley, 2002, p. 10-11).

The early 70s were also considered the days of “action research” and the idea that a community researching its own situation could possibly become empowered by that experience, with a better sense of where it had come from and where it wanted to go, was as a result, also better able to fend for itself politically (Puxley, 2002, p. 5).



Understanding the public participation and the civic engagement of First Nations peoples specifically in self-government discussions also points to the literature on voluntarism. Many authors note that interest in public issues is not limited to just government. Other actors share an interest and sometimes a role in addressing public issues. This list of other actors can include the non-profit sector (sometimes referred to as the third sector), which encompasses voluntary agencies as well as non-governmental organizations (NGOs). Plumptre and Graham (1999) note that the academic interest in civic engagement has been largely enhanced thanks in part to the work of Robert Putnam, an American academic who, based on extensive research in Italy, advanced the idea that sound government is due in large measure to a healthy voluntary sector. Some of the important conclusions his research highlighted included the following facts:

- Citizens, acting in a voluntary capacity as members of church groups, sports, clubs, neighbourhood associations, union, political parties and political action groups, encourage social trust and co-operation – what he calls social capital. Norms of generalized reciprocity also contribute to the creation of social capital (i.e. I'll rake my leaves knowing that my neighbours will do the same);
- Trust and co-operation tend to be self-reinforcing and cumulative. A 'virtuous' circle results in higher levels of co-operation, trust, reciprocity, civic engagement and collective well-being;
- Conversely, the absence of these traits is also self-reinforcing: "defection, distrust, shirking, exploitation, isolation, and stagnation intensify one another in a suffocating miasma of vicious circles;
- Higher levels of trust and co-operation lead to better government. On the demand side, citizens in communities with such traits expect better government. On the supply side, the performance of representative government is facilitated by the social infrastructure of civil society and the democratic values of citizens and officials;
- Similarly, the performance of market economies improves in societies with high levels of co-operation and trust;
- Over the past several decades, voluntarism and other forms of civic engagement have declined significantly in the United States and other Western countries. This decline has been accompanied by the lowering of trust levels of government (quoted in the Institute on Governance, 1998 at 38).

The call for a renewed spirit of voluntarism, implicit in the Putnam thesis, appears to have resonance among many Aboriginal peoples in Canada. For example, at a conference in 1998 on Aboriginal governance in urban settings, speaker after speaker called for a return to voluntary activity in order to strength Aboriginal communities<sup>13</sup>. Plumptre and Graham (1999) also pointed to other empirical studies, which seemed to support the Putnam thesis. They highlighted Lisa Young's data (1999), which found that the relationship between civic engagement and higher levels of trust in government led to better governance. Plumptre and Graham also pointed out similar findings in data produced by Helliwell and Robert (1995) that support the Putnam theory that civic engagement led to higher economic performance (1999, p. 39). These conclusions can also be drawn from research conducted by The World Development Bank (1998) which noted that over the course of recent decades there had been a depressingly negative correlation between aid and growth for some countries the receive substantial foreign aid yet their incomes fell while other countries who received little assistance but their incomes rose. Plumptre and Graham (1999) note that this study raised the possibility that factors other than money play an important, if not a determining role, in the development of communities in the world of international aid (p. 9). In other words, money is not the always answer to development in poor countries – it is the lack of capacity by the local people to become involved in local institutions and in the policy making process which appears to hold back significant social and economic development in developing countries.

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<sup>13</sup> See Conference Summary and Conclusions on “Aboriginal Governance in Urban Setting: Completing the Circle,” November 19, 1998. This report was prepared by the Aboriginal Council of Winnipeg, the Institute on Governance, and the Centre for Municipal-Aboriginal Relations.

In *Phase One: Principles and Best Practices from the Literature: Understanding Governance in Strong Aboriginal Communities*, the authors (Institute on Governance in collaboration with York University, CESO Aboriginal Services and SFIC, 1999) point out that the “value placed by many Aboriginal groups on consensus-style decision-making suggests that citizen participation is an important issue for many of their communities” (p. 48). Renewed voluntarism in the Aboriginal community was seen as a necessary building block in moving towards durable self-government (Institute on Governance, 2002). Underlying any sound governance system is an ethic that “we all need one another” as each person contributes a little and then ... “receives the vast benefits of society’s achievement” (Institute on Governance, 1998).

The most significant development in the area of Aboriginal involvement in the voluntary sector can be found in the establishment of the Aboriginal Reference Group for the Voluntary Sector Initiative (Voluntary Sector Initiative, 2001). Their strategic plan stressed that Aboriginal input at the grassroots level must be as expansive as possible and should include the importance of engaging the diversity of Aboriginal peoples within Canada through a national consultation process to determine Aboriginal concepts of volunteerism, voluntary activity and unearthing means of supporting the Aboriginal voluntary sector (Blackstock, 2003).

Blackstock (2003) notes that the voluntary sector is considered to have an important role in Canadian society. This is also reflected in the *Accord Between the Government of Canada and the Voluntary Sector*, which notes that every day in Canada, volunteers and staff working in thousands of voluntary sector organizations are actively involved in making a difference in improving their communities. This is the Canadian

way. The voluntary sector<sup>14</sup> is one of three pillars that constitute Canadian society, together with the public<sup>15</sup> and private sectors. The quality of life, economic strength and Canada's democratic institutions depend on the vibrancy of these interdependent sectors and the support that they provide to one another. Voluntary sector groups touch virtually every aspect of our society from social justice, human rights, environment, health and faith to arts and culture, sports and recreation. The voluntary sector also delivers services critical to Canadians, they advocate for common causes, support economic and community development in Canada and worldwide, and raise funds. This sector has also been instrumental in the development of most of the public services that Canadians rely on today as essential aspects of a caring society – schools, hospitals, assistance to the disadvantaged, and care for children in need. All of these begin as voluntary initiatives. Today, both the public and voluntary sectors are involved in the delivery of these services. Voluntary sector organizations bring their knowledge, expertise and compassion in working with communities and individuals to public policy debates and identify priorities to the governments. By encouraging people to participate and work together for common causes, the sector strengthens citizen engagement, gives voice to the voiceless, allows for multiple perspectives to be heard on a variety of issues, and provides opportunities for people to practice the skills of democratic life (Voluntary Sector Initiative, 2001). The voluntary sector provides opportunities for millions of volunteers to contribute to the life of their communities. The term “volunteer” refers to all who work by choice, without remuneration, on causes or for people outside their personal

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<sup>14</sup> The voluntary sector is also described as non-profit, third sector, non-governmental, community-based, and charitable sector (Voluntary Sector Initiative Secretariate, 2001).

<sup>15</sup> The public sector includes all levels of government – federal, provincial, territorial, regional and local (Voluntary Sector Initiative Secretariate, 2001).

sphere. People volunteer formally, through organizations, or informally by participating and helping others. Volunteering takes different forms in different cultures and different regions of the country. According to the Voluntary Sector Initiative, people work and volunteer because they are committed to making a difference and believe deeply in the work they are doing. Blackstock (2003) in quoting Turner (2001) notes that

There are currently 75,000 registered charities, 100,000 non-profit organizations and 1.3 million employed in the voluntary sector. 6.5 million people are involved as volunteers, contributing approximately 1 billion hours each year. The organizations, some of which were run by a mixture of volunteer and paid staff, varied in size from very small to very large. They are involved in a wide range of activities and services, including social services, health, sports, international cooperation and aid and faith based organizations. ... [t]he economic impact of the sector is tremendous with 90 billion dollars in annual revenues, 109 billion dollars in assets and 22 million people making in-kind or financial donations to the sector.

But given these collective efforts, Blackstock (2003) notes that the sector's influence on Canadian public policy increases its responsibility to ensure that the voices of First Nations people are included in reshaping Canada (p. 36). This view has been acknowledge by several non-profit organizations but Blackstock observed that there is virtually no Canadian studies which explored the nature and extent, if any, of engagement between the voluntary sector and First Nations people resident on reserve (p. 39). This obvious gap inspired Blackstock to conduct research into assessing the current engagement between the voluntary sector and First Nations child and family service agencies specifically in British Columbia so as to inform and promote collaborative relationships between First Nations child and family service agencies and the voluntary sector in the future.

The next part of this review looks more specifically at the role of self-government in the collective child welfare aspirations of First Nations peoples and communities in restoration of a jurisdiction that once belonged to them. The next section highlights literature and experiences where First Nations have attempted to obtain increased recognition, restoration and full responsibility and control over not just child welfare service delivery but over the development and creation of legislative, executive and administrative functions that might be characteristic of future First Nations child welfare governing institutions and jurisdictions emerging out of self-government developments.

## **PART II: The Jurisdictional Disparity Regarding Responsibility\***

*Over the years, I watched the pain and suffering that resulted as non-Indian law came to control more and more of our lives and our traditional lands. I have watched my people struggle to survive in the face of this foreign law.*

*Nowhere has this pain been more difficult to experience than in the area of family life. I and all other Anishinaabe people of my generation have seen the pain and humiliation created by non-Indian child welfare agencies in removing hundreds of children from our communities in the fifties, sixties and the seventies. My people were suffering immensely as we had our way of life in our lands suppressed by the white man's law.*

*This suffering was only made worse as we endured the heartbreak of having our families torn apart by non-Indian organizations created under this same white man's law.*

*People like myself vowed that we would do something about this. We had to take control of healing the wounds inflicted on us in this tragedy.*

Josephine Sandy, Chair, Ojibway Tribal Family Services  
Kenora, Ontario, 28 October 1992 (quoted in RCAP, 1996)

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\* Portions of this literature review appeared in a previous publication which I prepared for the First Nations Child & Family Caring Society of Canada as part of a work plan deliverable for the First Nations Research Site to the Centre of Excellence for Child Welfare (see Bennett, M. and Blackstock, C. November 2002. "A Literature Review and Annotated Bibliography Focusing on Aspects of Aboriginal Child Welfare in Canada").

Aboriginal child welfare in Canada is delivered through jurisdictional arrangements that have for many years complicated the issue of providing culturally appropriate child welfare services for First Nations children, families, and communities. According to the *Constitution Act, 1867, 1982*, coupled with Section 88 of the *Indian Act*, laws of general application such as child welfare fall under the jurisdiction of the provinces, while “Indians and lands reserved for Indians” fall under the jurisdiction of the Federal *Indian Act* (Morse, 1984; Timpson, 1990; Little Bear, 1992; Taylor-Henley and Hudson, 1992; and Union of BC Indian Chiefs, 2001). Before 1951, the jurisdictional set up impacted Aboriginal child welfare in that services were oftentimes not extended to Native children, families and communities because federal and provincial governments could not decide who had the authority to provide the services (Johnston, 1983; McKenzie, 1989; Little Bear, 1992). The federal government has consistently denied responsibility for services to Indians off-reserve, although post-secondary education assistance and non-insured health benefits have been available to some registered Indians off-reserve and Inuit living outside their traditional territory. Provincial governments historically maintained that funding of all services for Indian people, regardless of where they lived, was a federal responsibility (RCAP, 1996). A major review of government policy on First Nations, led by Harry Hawthorn and published in 1966, criticized both orders of government for their hands-off policy and argued that Indian people were eligible to receive services from both levels of government (RCAP, 1996).

In 1951, a number of revisions were made to the federal *Indian Act*, including the addition of Section 88, which enabled the extension of provincial child welfare services to First Nations people living on reserve (Hudson 1987; Little Bear, 1992; Timpson,

1993; First Nations Task Force on CFS, 1993; Bennett, 2001). Section 88 reads as follows:

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

After 1951, provincial social services for Aboriginal populations were phased in, with some variation over the years and across provinces as to the extent of services offered (Johnston, 1983; Timpson, 1995). Up to this day, provisions in both federal and provincial legislation dictate how child welfare will be governed, administered, and, often, delivered by the over 120+ Aboriginal Child and Family Service Agencies in Canada (Taylor-Henley and Hudson, 1992; McDonald et al, 2000). This would not be so controversial if the provincial and federal systems were meeting the needs of Aboriginal children and youth but the evidence overwhelmingly indicates that the current legislation, policy, practice and funding of child welfare are not making meaningful differences in supporting the well-being of Aboriginal children and youth (McDonald et al, 2000). The question is thus raised why Canadian governments have not recognized tribal authority that sustained child well being for millennia? Aboriginal agencies continue to operate in a multifaceted authority environment (Hudson, 1987; Taylor-Henley and Hudson, 1992; First Nations Task Force on CFS, 1993), but at the same time they must first and foremost be accountable to the tribal governments and communities they serve (Association of Native Child and Family Services Agencies of Ontario, 2001, hereafter “ANCFSAO, 2001”). What this means is that First Nations agencies must operate



according to the direction given by Chief and Council, Elders, community leaders, and others that have received sanction through tribal authority. What the non-Native governing authorities oftentimes do not understand is that the Aboriginal agencies must find a method of putting in place programs as well as conducting operations in a manner that meet tribal requirements, above and beyond federal and/or provincial standards (ANCFSAO, 2001). The impact of non-recognition of tribal authority is often felt by agencies when they are being reviewed for “compliance rates” by provincial and/or federal review teams – the agencies may be meeting provincial/federal requirements, but doing so at increased financial costs and often fewer resources than provincial counterparts (because they are also having to meet additional tribal requirements). Or, the agencies may be meeting provincial/federal standards, but may be achieving these using methods outside of the federal/provincial paradigms. Aboriginal agencies are constantly forced to defend the manners in which they operate – attempting to explain our cultural and tribally sanctioned ways to non-Native authorities whose conceptual understandings of how to provide child welfare services are vastly dissimilar (Timpson, 1990; McDonald et al, 2000; ANCFSAO, 2001).

When Section 88 of the *Indian Act* was put in place in 1951, it did not specify which level of government would be responsible for funding the newly extended services. Throughout the provinces, jurisdictional disputes in terms of funding of services led to varying levels of service delivery for Native children, families, and communities and the denial of services pending resolution of the dispute between the governments (McDonald, 2000). Under the current system, First Nations agencies are obligated to continue using non-First Nations courts. Denial of jurisdiction to registered

members residing off reserve also constrains the ability of agencies to halt the loss of First Nation children to outside agencies and other jurisdictions (Bennett, 2001). Hudson (1987) notes that on reserve resources are often exhausted requiring a necessity to acquire alternative substitute care for children off reserve. Many of these necessities are related to medical, educational or social reasons. Many authors (Hudson, 1987; Timpson, 1993; Task Force on First Nations CFS, 1993; ANCFCSAO, 2001; and Bennett 2001) also highlight the conflicting ideology regarding the type of services that First Nations agencies ought to provide on reserve. Currently, Canadian legislation and policy right across the country appears to favour the removal of children over the healing and prevention aspects required and envisioned by First Nations child welfare agencies. Justification for removing children is often couched in legal concepts and doctrines such as that found in “the best interests of the child” test (McGillivray, 1997; Hamilton, 2001). And until recently, the deep personal, psychological and developmental problems that are caused by removing children from their parents were usually not addressed (Hamilton, 2001).

At the time of first European contact, Aboriginal peoples had a long history of established methods of caring for and protecting their children dating back millennia. The diverse cultural groups across Canada often shared very similar methods of passing along the lessons and morals to their children that would help them grow into conscientious and contributing adult members of the communities (McPherson and Rabb, 2001; Miller 1996, p.15-38). Parents, Grandparents, extended family, and community shared the responsibility for raising and protecting children (Task Force on First Nations CFS, 1993; de Montigny, 1993; Young, 1996; Bennett, 2001). Family also encompasses an extended

network of grandparents, aunts, uncles and cousins. In many First Nations communities, members of the same clan are considered family, linked through kinship ties that may not be clearly traceable, but stretch back to a common ancestor in mythical time (RCAP, 1996). The role of parents was honoured and they were assisted in their role when they were unable to care for their children through a number of customary arrangements (Task Force on First Nations CFS, 1993; Grand Council Treaty #3, 1992, p.43). Such placements ensured a continuity of family connection and family culture for the child (de Montigny, 1993). In effect, ‘child welfare’ within Aboriginal communities was firmly established well before the arrival of Europeans on this continent, in forms appropriate for the community and the cultural contexts of that community (Grand Council Treaty #3, 1992; Miller, 1996, ANCFSAO, 2001).

Upon the arrival of European newcomers to Canada, alternate child welfare policies, programs, and delivery systems were phased in over decades of colonization and forced assimilation. From the Missionaries and residential school policies, to the implementation of ill-fitting mainstream child welfare programs and the “Sixties Scoop,” Aboriginal peoples lost generations of their children to the colonial systems (McKenzie and Hudson, 1985; Falconer and Swift, 1983; Miller 1996, Armitage, 1993; Bennett 2001). First Nations in Canada have never surrendered their rights to care for their children — not during the time of residential schools, nor during the imposition of non-Native child welfare programs in the communities. As stated by the Association of Native Child and Family Services Agencies of Ontario (2001):

The responsibility for the safety and security of the next generations was bestowed upon First Nations by the Creator—it is an inalienable and inherent

right that has not, and could never be, extinguished by any agreement, Treaty or otherwise (p. 4).

It is clear in the literature that the First Nations political mandate has been to reclaim full jurisdiction over matters relating to their children and families, and remains a primary goal of First Nations in Canada today. Child & Family services along with land claims, justice, economic development, health care and education is often identified as an area of expedited concern under self-government (Cassidy and Bish, 1989; Royal Commission on Aboriginal Peoples (hereafter "RCAP"), 1996, Bennett, 2001). This is also affirmed in the recommendations of the National Policy Review on First Nations Child and Family Services, which suggested that any new funding regime be responsive to First Nations aspirations to assume full jurisdiction and governance over child welfare (McDonald et al, 2000, p. 14). Examples of First Nations assertion over jurisdiction include the Nisga'a Final Agreement that allows for Nisga'a to develop child welfare laws (Union of BC Indian Chiefs, 2002), the drafting of Indian child welfare legislation by First Nations child and family service agencies in Saskatchewan, Mi'kmaw Child and Family Services research on family justice models and the Spallumcheen band by-law in British Columbia among others (Union of BC Indian Chiefs, 2002).

Despite the inherent right to care for our children, First Nation authority has not yet been fully recognized in practice by the federal or provincial/territorial governments of Canada. Thus, child welfare services delivered to Aboriginal peoples by Aboriginal controlled child welfare agencies continue to be predominantly mandated through federal funding and provincial statutes (ANCFSAO, 2001; Union of BC Indian Chiefs, 2002).

A great deal of healing is needed to heal the colonial wounds of culture loss, paternalistic and racist treatment, and official policies of assimilation through forced education and abduction of children which First Nations peoples have experienced in both the past and current present. First Nations' self-governing institutions face the dual task of healing the wounds of the past and building appropriate systems to deal with the future (Timpson, 1993; Krawll, 1994). Stokes and Ternowetsky (1997) note that there has been a return to traditional healing methods and the shift to First Nation's control of human services in various social related areas has emerged as a central element in their efforts at redressing the problems stemming from First Nations peoples' unique historical experiences (Weaver, 1999). Such healing must be accompanied by self-government (Durst, 1996; Union of BC Chiefs, 2002). RCAP also recommended that the government of Canada acknowledge a fiduciary responsibility to support Aboriginal nations and their communities in restoring Aboriginal families to a state of health and wholeness and recommended that the Aboriginal, provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Aboriginal nations can undertake self-starting initiatives (RCAP, 1996).

### **PART III: Self-Government and Aboriginal Child Welfare**

For thousands of years Indigenous peoples within North America lived as sovereign nations. Their right to self-determination was never conceded to the European settlers, or their right to control affairs affecting their children and families (First Nation's Child and Family Task Force, 1993: 47) despite the subsequent policies and actions of the Canadian government. This is considered fact by First Nations people, and yet never fully refuted by the judicial systems within Canada however it is not a position easily

shared by mainstream Canadians, most politicians or public officials generally (Durst, 1996a).

Self-government has many meanings and there remains considerable confusion as to its meaning. Even among Aboriginal communities, the concept has a variety of meanings (Hylton, 1994; RCAP, 1996). There is not one "Aboriginal People" in Canada, but some six hundred Aboriginal communities, many with distinct cultures, traditions, and languages. Each has different needs, different wants, different capacities, different resources and different priorities. As a consequence, there are many different ideas about what self-government should accomplish in practice. The Royal Commission describes the variations on self-government in this way:

Self-government means different things to different Aboriginal groups. For some, it may mean reviving traditional governmental structures or adapting them for modern purposes. For others, it may mean creating entirely new structures of participating more actively in new or existing institutions of public government at the federal, provincial, regional or territorial levels. For certain groups, it may involve developing structures of public government that would include all the residents of a particular region or territory. For still other groups, it may mean greater control over the provision of governmental services such as education and health care. In discussing the implementation of self-government, it is important to remember that there is more than one way for Aboriginal peoples to achieve the goal of greater autonomy and control over their lives. No single pattern or model can be adequate, given the great variety of aspirations and circumstances among Aboriginal peoples (Brascoupé, 1993).

A comprehensive analysis of self-government is beyond the scope of this research. Suffice it to say that Aboriginal peoples have been instrumental in the advancement toward redevelopment of their own governments and in the process they will learn what is possible for their own governing structures. In the process of moving toward the development of government structures and corresponding fiscal foundations, Aboriginal

people will need new systems and leaders who can instill both a sense of ownership and responsibility for each other and the emerging institutions.

A state based on ideas should be no more and no less than a guarantee of freedom and security for people who know that the state and its institutions can stand behind them only if they themselves take responsibility for the state – that is, if they see it as their own project and their own home, as something they need not fear, as something they can have without shame – love, because they have built it for themselves (Brascoupe, 1998).

Furthermore, self-government can only be defined within the context of each First Nation or other Aboriginal groups. Self-governance definitions as defined by First Nations people is a process that seeks to reaffirm and restore traditional forms of government while accounting for the contemporary issues of communities in light of the regional, national and global contexts. The impact of self-government on child and family services needs to be contextualized within the self-government frameworks of each Aboriginal community as well. The complexity of modern day treaty negotiations and self-government discussions makes understanding the myriad of efforts to attain self-government confusing and frustrating, both to those in the social services field and to those in leadership positions striving for increased self-government for their communities (Durst, 1996b). Self-government conjures up strong feelings and deep aspirations among various cultural groups across Canada. According to Durst (1996) there is a mistaken tendency to use the concepts of “self-government” and “self-determination” interchangeably (4). He stresses that there are subtle differences between the two. Durst describes *self-determination* as

... The right and ability of a people or a group of peoples to determine their own destiny. Self-determination is both a principle and a practice. First, there must

be the legal, political or structural framework to be “sovereign” and operate as a supreme authority within a defined geographic area. Second, the self-determining body must have sufficient financial resources, and third, the body must have an adequate “social infrastructure,” the knowledge, skills and values (competencies) required to make self-determination happen (p. 4).

*Self-government* on the other hand is defined by Durst as referring to

... The decision-making directly affecting a people. It encompasses political, cultural, economic and social affairs. Therefore, people can exercise self-government in making decisions regarding the welfare of their people without exercising self-determination (p. 4).

The above definitions clearly show that there is a distinction between the two. However to First Nations people, self-government is not something that can be given from one government to another. As a First Nations person, Elijah Harper expressed succinctly what self-government means from his perspective:

*Self-government is not [something] that can be given away by any government, but rather ... it flows from [the] Creator. Self-government ... is taking control and managing our own affairs, being able to determine our own future and destiny. ... It has never been up to the governments to give self-government. It has never been theirs to give (as cited in Fleras, 1996 at p. 160).*

Keeping Durst’s distinctions between self-determination and self-government above in mind, First Nations governments’ today do practice elements of self-government but they do not operate in the same self-determining conduct that was characteristic of their nations’ past or as characterized in the definition of self-determination noted above. Today, the goals of self-government need to be understood and shared by Aboriginal leaders and public officials before negotiations can take place and agreements developed (Durst, 1996b). Increased awareness and education on Aboriginal peoples, cultures and histories need to be developed among provincial and federal officials before significant



progress can be made. Community workshops need to be designed and implemented to prepare local leadership for increased control (Durst, 1996b: 5) as well as an opportunity for meaningful input and participation by community members who will be subjected to any new self-government initiatives (Cyr, 2001). The development of self-government must proceed at the pace of the people (Cyr, 2001) and their communities as well as recognition given to the fact that many Aboriginal communities are at different levels of readiness (McCaskill et al, 1999), which must be respected by not only the federal, provincial governments but also by the Aboriginal leadership entrusted with moving self-government ahead. All of this must be done in a climate of collaboration and partnership as absolute self-determination does not exist for any government nor can it act in total isolation from the larger society (Durst 1996).

The topic of self-government is indeed very complex and there are a variety of approaches to self-government being pursued by First Nations across the country. Those pursuing comprehensive land claims are attempting to negotiate self-government within the overall claim agreement (for example, British Columbia's Treaty Process). Other First Nations communities with long-standing Treaties are attempting to develop self-government activities within their existing Treaties (i.e. Manitoba, Saskatchewan and Alberta). Some leaders at the national level are fighting for constitutional change while other communities are achieving greater local control through community-based initiatives or administrative change. However, in all of these efforts, Aboriginal leaders are working with limited and insufficient financial and human resources. Leaders are placed in the difficult position of deploying scarce resources all of which Durst (1996) notes inhibit the movement toward self-government. The lack of resources for

Aboriginal participation in self-government processes is particularly significant when contrasted with the significant resources allocated by provincial/territorial and federal governments to cover the participation of mainstream society members in similar processes. Self-government involves a major change and for some First Nations communities this change is both welcomed and perceived as a serious risk at the same time (McCaskill et al 1999).

Many Aboriginal and First Nations governments are including child welfare in self government agreements with the federal and provincial/territorial governments in order to validate Aboriginal laws and systems of caring for children thereby creating coherence between the cultural ways of knowing and being of community members and the laws and practices that shape their caring of children. The research of Stephen Cornell and Joseph Kalt of the John F Kennedy School of Government outlines the correlation between self determination and positive community outcomes in the following statement:

We believe that the available evidence clearly demonstrates that tribal sovereignty is a necessary prerequisite of reservation economic development. Each present instance of substantial and sustained economic development in Indian Country is accompanied by a transfer of primary decision making control to tribal hands and away from federal and state authorities. Sovereignty brings accountability and allows “success” to be properly defined to include Indians’ goals of political and social well-being along with economic well being. Decades of control over reservation economic resources and affairs by federal state authorities did not work to put reservation economies on their feet.<sup>16</sup>

Best outcomes for Aboriginal children means recognizing and validating the laws that ensured their well being for millennia and employing the commitment and skills of

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<sup>16</sup> Cornell, S and Kalt, J. (2002). *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations*, p. 44.

all community members to build on the traditions to respond to the contemporary challenges and opportunities.

Given the complexity of these processes and in the attempts to define self-government, there are relatively few academic sources upon which to obtain a greater understanding of what is needed in order to obtain full control, ownership and responsibility over child welfare for First Nations as one of many competing goals identified under self-governance initiatives. There are however, many First Nations examples and negotiations being undertaken with both the federal and provincial governments where the jurisdiction of child welfare for First Nations in Canada is being challenged to expand within constitutional limitations. Some of these examples, briefly touched upon below, show that First Nations governments have been proactive in negotiating partial or full jurisdiction, not just service delivery over child welfare services, but full control includes the development of specific legislation with supporting systems that take into account the administrative and executive functions of Aboriginal child welfare governing structures. The following four examples look at the number of ways in which various First Nations in Canada have sought responsibility for child welfare.

**(a) *British Columbia – Spallumcheen By-law***

Spallumcheen perhaps is one of the earliest examples of innovative ways initiated by First Nations peoples in dealing with the jurisdictional question surrounding child welfare and Aboriginal peoples. Spallumcheen was the first to assert its right to control its children's destiny in a 1979 Band council resolution made under the provisions of the *Indian Act* (Fournier & Crey, 1997). The by-law created as a result of the resolution

authorized the band to conduct its own child welfare program and it did this within the mandate of the *Indian Act*. The by-law was passed in both English and in the Secwepemc language of the community. Chief Christian organized a protest on the front lawn of the then minister of social services' home in Vancouver, refusing to move until the Band's right to operate its child welfare program was recognized. During the early eighties, public sympathy was with the band and the minister of the day conceded (Armitage, 1995; MacDonald, 1985). The by-law recognizes the Band's authority over all Spallumcheen children, living both on and off reserve. The by-law makes the chief and council guardian of Spallumcheen children deemed in need of protection and contains provisions setting out the process which the Band must follow in determining a placement of a child apprehended under the law. The by-law contains strong provisions intended to maintain Spallumcheen children's connection to their families and community, including preferences for placements within extended families within the community as well as a requirement to keep the child connected with the community (MacDonald, 1985; de Montigny, 1993). The Union of BC Chiefs in their publication *Calling Forth Our Future* (2002) points out that the Spallumcheen by-law has been challenged numerous times before the Canadian Courts. As a general rule, the Courts have upheld the jurisdiction of the Band and confirmed that the by-law operates to the exclusion of the provincial jurisdiction. To date, the Spallumcheen by-law is the only First Nations community to have this degree of autonomy in child welfare administration which has not been disallowed by the Minister of Indian Affairs. However, subsequent attempts by other First Nations in Canada to enact child welfare laws similarly through the *Indian Act* have been unsuccessful (MacDonald, 1985).

**(b) British Columbia - Nisga'a Final Agreement**

The Nisga'a Agreement<sup>17</sup> contains numerous provisions on child welfare. Nisga'a Lisims Government is granted exclusive authority over child welfare matters on Nisga'a lands. Any laws passed by Nisga'a nation must be "comparable to provincial standards." Provided that the Nisga'a laws meet or beat provincial standards they have precedence over Provincial laws (Union of BC Chiefs, 2002). Despite Nisga'a authority over child welfare on Nisga'a lands, the province has jurisdiction if the province determines that there is an emergency and a child is at risk. However, Nisga'a will resume jurisdiction over that child once the province has determined that the emergency is over. The agreement provides for negotiations to occur between the Nisga'a and the province over the children who do not live on treaty lands and is reflected in provincial legislation, which calls for the notification of the Nisga'a Government on a basis similar to other "Aboriginal organizations." This means that ultimate decision-making power regarding Nisga'a children living off of treaty settlement lands remains with the province. The Agreement contains provisions, which recognize automatic standing of the Nisga'a Government in all child custody proceedings involving a Nisga'a child. The Nisga'a can also make laws for the adoption of their children however those laws only apply outside of the treaty settlement lands with the consent of the parent(s), or where a court has dispensed with the requirement that parent(s) consent to the application of Nisga'a laws. The Agreement also provides that provinces recognize the authority of their laws where the province has a child who may be subject to adoption but the provincial Director can refuse to acknowledge Nisga'a laws for the adoption of a child if "it is determined that under provincial law that there are no good reasons to believe that it is in the best

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<sup>17</sup> The full agreement can be viewed on the DIAND's website at: [http://www.ainc-inac.gc.ca/pr/agr/nsqa/index\\_e.html](http://www.ainc-inac.gc.ca/pr/agr/nsqa/index_e.html).

interests of the child to withhold consent.” The positive features touted pertaining to child welfare matters include the ability of the Nisga’a to make their own child welfare laws and to have standing in any judicial proceedings involving a Nisga’a child. It is clear that the Province has jurisdiction of child welfare outside of Nisga’a lands (Union of B.C. Indian Chiefs, 2002: 61-62).

**(c) Alberta**

In Alberta, the Blood Tribe/Kainaiwa and Canada Framework Agreement sets out a process the parties agreed to following in negotiating “the exercise of jurisdiction over child welfare by the Blood Tribe/Kainaiwa.” This framework agreement was signed in April 2000. The agreement is limited to the reserve lands of the Blood Tribe, and Canada’s negotiating mandate. The agreement is limited to the reserve lands of the Blood Tribe, and Canada’s negotiating mandate flows from their inherent rights policy, as set out in Canada’s *Approach to Implementation of the Inherent Right and Negotiation of Self Government* (Source????).

Article 3.1 of the Framework Agreement provides that:

The Blood Tribe considers children vital to the continued existence and integrity of the Blood Tribe and wishes to protect Blood Tribe children by exercising jurisdiction on child welfare matters which affect Blood Tribe children on the Blood Indian Reserve by establishing a child welfare system for the efficient administration of child welfare matters on the Blood Indian Reserve pursuant to the customs and traditions of the Blood Tribe, while providing child welfare services that are equal to, or which exceed, standards in Alberta.

In addition to being bound to meet provincial standards, the parties have also agreed to involve the province of Alberta in the negotiations to the extent necessary in order to “harmonize” the operation of Blood jurisdiction over child welfare matters on

their reserve lands, with Alberta's child welfare system. Section 4.3 contains the following statement on the Blood Tribe's recognition of the jurisdiction of the province of Alberta:

The Blood Tribe recognizes the prevailing policies and procedures of the Province of Alberta on child welfare matters, pursuant to the Child Welfare Act and the Blood Tribe affirms that it is prepared to enter into discussions with the Province of Alberta with respect to matters involving provincial jurisdiction, responsibilities and service delivery arrangements in the area of child welfare.

The Agreement negotiated by the Blood Tribe is limited to Indigenous children living on reserve, and requires that the Blood Tribe agree to meet provincial standards in delivering child welfare services. The province maintains exclusive jurisdiction for all children who do not reside on the reserve. The fact that the Agreement is limited to reserve lands greatly limits the scope of the jurisdiction recognized because of the fact that the majority of Indigenous Peoples live off reserve (The Union of BC Indian Chiefs, 2002: 60-61).

**(d) Manitoba**

Since the early 1980s the First Nations child and family service agencies in Manitoba were the first to influence the development of independent Aboriginal run child welfare organizations in Canada (RCAP, 1996). Since then Aboriginal communities in every region of Canada have sought and gained varying degrees of community control over child welfare services (Durst, 1995). As of May 2001 there are now twelve mandated First Nation child and Family Services (FNCFS) Agencies in Manitoba who continually set the pace for other First Nations child welfare organizations in Canada. These agencies are currently involved in two very important initiatives child welfare

initiatives in the province right now, both of which are driven in part by the aspirations of First Nations peoples in their quest for self determination and a commitment to be more involved in policies and the decision-making which affects their communities, families and children. Both processes involve ongoing negotiations with the federal and provincial governments. These two important initiatives are very separate from one another, however, they impact upon one another and each in their own way, paves a different path towards enabling First Nations peoples' greater autonomy over the future of their children, families and communities (AMC)<sup>18</sup>. The 1994 Manitoba Framework Agreement is a federal initiative that involves dismantling Indian Affairs and developing various areas of self-governance including child welfare (Bennett, 2002). The Aboriginal Justice Inquiry – Child Welfare Initiative is reflective of the Manitoba NDP government's negotiations with not just the First Nations peoples but with the Métis people of Manitoba as well, in a provincial process that will see aspects of the province's child welfare system restructured. Characteristics of the child welfare jurisdiction will be shared concurrently across the province with Aboriginal peoples regarding the delivery of child welfare services. Neither initiative would be possible without the cooperation or the participation of the Aboriginal peoples, the Provincial and the Federal governments, as each initiative is premised upon notions of collaboration, participation and concessions towards righting wrongs from the past. Ultimately, both will change the relationships that currently exist between the Aboriginal peoples and the governments of Manitoba and Canada. Both initiatives have been instrumental in creating new and formidable approaches by Aboriginal peoples within Manitoba in an effort to influence the direction

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<sup>18</sup> More information about child and family endeavours can be obtained from the Assembly of Manitoba Chiefs' website at <http://www.manitobachiefs.com/cfs/cfs.html>.



of their interests in the decision making process of these new emerging governing structures regarding child welfare (Bennett, 2002). The next chapter (four) of this research focuses specifically on two initiatives while providing an outline of their similarities and where they diverge from one another.

## **Conclusion**

The literature reveals that First Nations have been consistently excluded from government discussions on issues that affect their rights. Their voices until recently were silenced respecting changes unilaterally imposed by the government in the past. Rarely were First Nations people ever invited to be involved in meaningful ways in decision or policy making processes. Examples of where this was so can be found in the development of the *Indian Act*, the *1969 White Paper* and most recently the *First Nations Governance Act*. The political mobilization of First Nations peoples in response to the *1969 White Paper* created a profound change both politically and ideologically. First Nations no longer passively stand by while the government tries to impose changes. First Nations peoples have demanded that full consent and consultation on all matters that impact on the rights of First Nations peoples must be obtained from them first. A whole body of case law now exists on the government's duty to consult with Aboriginal people when their rights might be potentially impacted. However very few resources exist in the literature which documents the experiences of First Nations peoples with conducting community consultations or engaging citizens in their own communities to take part in the development, creation and implementation of child welfare or self-government. There is however a growing body of literature that has begun to document how First Nations peoples are getting involved in citizen engagement a process which offers more

participatory opportunities for First Nations peoples to become involved in the decision making processes of mainstream society and government which can be emulated in establishing self-government for First Nations. There is a critical need for more empirical and primary research that advances the experiences of Indigenous peoples in consulting and engaging Aboriginal peoples to participate in not just self-government but in all Canadian affairs as well (Burrows, 2000).

The literature consulted for this research also revealed the jurisdictional vacuum in which First Nations child welfare agencies and communities exist and operate within. This jurisdictional confusion is just one of many factors which influence the need for developing a new child welfare system that is predicated on the values and principles of First Nations cultures, which might be possible under self-government. There are many examples of First Nation initiative where First Nations are negotiating new structural arrangements that lead to increased responsibility over child welfare but sadly, even though they are optimistic, they are not based on the full jurisdiction that First Nations seek. First Nations are increasingly promoting a return to self-governing ways and believe that through this process will be opportunities for healing (Krawll, 1994). Canada is perched on a threshold of an Aboriginal paradigm shift as more and more Aboriginal peoples move toward self-government in redefining their political, legal, social and economic relationships with Canada (Fleras, 1996; Borrows, 2000). The next chapter contemplates two specific child welfare initiatives referred to earlier which are occurring in Manitoba that may move First Nations child welfare closer to obtaining full jurisdiction over child welfare.

## CHAPTER FOUR: BACKGROUND ON FIRST NATIONS CHILD WELFARE IN MANITOBA

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### Introduction

The Province of Manitoba is at the center of profound change with respect to the way child and family services will be delivered to the Aboriginal peoples within its borders. This chapter looks at two child welfare initiatives driven in part by the aspirations of First Nations peoples in their quest for self determination and decolonization from the historical injustices that have denied First Nations their rightful jurisdiction. These two important initiatives are very separate from one another, however, they impact upon one another and each in their own way, paves a different path towards enabling First Nations peoples' greater autonomy over the future of their children, families and communities. The two initiatives which this research highlights, involve the federal negotiation toward self-governance, which the First Nations citizens of Manitoba have been engaged in since 1994 through the Manitoba Framework Agreement. The other focus of this research is on the Aboriginal Justice Inquiry – Child Welfare Initiative, seen by many as assisting, although be it in an interim way, in the self-governing aspirations of First Nations peoples (AMC, no date). The Aboriginal Justice Inquiry – Child Welfare Initiative is lauded as a partial step toward full jurisdiction over child and family matters for First Nations in the Province but it is the Manitoba Framework Agreement Initiative that is viewed as eventually picking up where the AJI-CWI might fall short.

I have had the privilege of playing the part of a researcher, a coordinator, negotiator and policy analyst in addition to being an interested First Nations citizen, who could also be possibly affected (negatively and/or positively) by both of these initiatives. I have gained immeasurable awareness, knowledge and insight because of this involvement and as a result, have been privy to profound and influential decisions made by many First Nations child welfare directors and other First Nations leaders, participants, and political actors who have collectively shaped the emerging climate of First Nations child welfare within the Province of Manitoba.

Both of these initiatives are discussed as concisely as possible under separate headings noted below. I then have attempted to contrast and compare very briefly where there are points of divergence or comparability between the two processes. Where possible, I have incorporated primary and secondary sources of information from a wide variety of disciplines to corroborate my limited understanding of the two initiatives. I say limited because I am no longer involved in either initiative but watch from the margins with great interest. The views presented in this chapter are entirely my own and in no way reflect the views of any individuals currently involved in these two important yet complex events. The following sections are based on subjective observations culled while involved briefly in the two processes between 1997 and 2001. The Métis people are not a party to the Child & Family Services – Framework Agreement Initiative (CFS-FAI), which AMC negotiated with DIAND. However they do play a significantly role in the Provincial Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI), but for the record, the focus throughout this thesis is primarily on the two initiatives which the

First Nations have been instrumental in negotiating. This chapter leaves unfortunately leaves out the Métis perspective.

### **Child & Family Services – Framework Agreement Initiative**

Before examining the Federal First Nations child welfare initiative currently underway in Manitoba, it necessary to step back and review briefly, an unprecedented occasion that stimulated the First Nations peoples' wishes to be self-governing. The First Nations people within Manitoba, through their political authority, the Assembly of Manitoba Chiefs (AMC), created an ambitious self-governing process through the Framework Agreement Initiative (often referred to as "FAI" or the "FAI Process"). This historic agreement outlines the rules and the framework for the transfer of Federal jurisdiction from Indian Affairs to First Nations governments. The Manitoba Framework Agreement (FAI) took advantage of the Liberal party's platform on Aboriginal issues in the 1993 federal election. The Liberal Party announced its intentions to change the direction of Aboriginal policy in *Creating Opportunity: The Liberal Plan for Canada*, a document more popularly called the "Red Book" (Brock, 1997). Kathy Brock, a political academic commentator from Kingston University noted three aspects of the Liberal stance that offered some hope to the First Nations communities across Canada.

First, the Red Book explicitly acknowledged that past policies had failed to rectify the socio-economic conditions in Aboriginal communities. The Red Book acknowledged the problems facing Aboriginal communities, including the "absence of meaningful employment and economic opportunities, unequal educational opportunity and results, poor housing, unsafe drinking water, and lack of health services. They suffer also from the destruction and lack of respect for Aboriginal languages, values, and culture" (quote

from Brock, 1997: 198). The Liberal Party offered to extend to First Nations an opportunity to “define and undertake together creative initiatives designed to achieve fairness, mutual respect, and recognition of rights” (quote from Brock, 1997: 198). The second significant position taken by the Liberal government was embracing the notion that “the inherent right of self-government is an existing Aboriginal and treaty right” (Brock, 1997: 198). This statement was interpreted by many First Nations (particularly Phil Fontaine, the previous Grand Chief of the Assembly of Manitoba Chiefs) as being the most important statement to come out of the Red Book, because it set the stage for First Nations peoples to begin taking control of their own lives and communities.

Third, Brock (1997) noted that the principle behind the recognition of Aboriginal self-government was coupled with concrete promises to improve the status and living conditions according to the different needs of various segments of the Aboriginal population. For First Nations peoples, the Liberal plan promised a continuation of the community-based self-government negotiations started by the previous Conservative government, recognition of the original spirit and intent of treaties, respect for fiduciary obligation of the Crown to First Nations and, as Brock (1997) notes, most significantly, the “dismantling of Indian Affairs” (199). The Liberal Plan pledged that

The Liberal government will be committed to gradually winding down the Department of Indian Affairs at a pace agreed upon by First Nations, while maintaining the federal fiduciary responsibility (199).

Brock (1997) observed that through this initiative, although built upon the past Conservative federal government’s agenda, the Liberal approach exceeded the scope of past policies and would, as a result, assist in hastening the progress towards realizing self-

government for First Nations in Canada. The Manitoba Chiefs acted quickly and effectively in responding to this opportunity by preparing a detailed outline for the transfer of control from Indian Affairs to the First Nations governments in Manitoba and equipped themselves to enter into negotiations with the Minister immediately after the Liberals assumed federal office (Brock, 1995).

Negotiations on the dismantling process in Manitoba began in October of 1993 and lasted approximately six months before culminating in a series of formal events. In March 1994, then Minister Ronald A. Irwin introduced the concept of the Manitoba Framework Agreement Initiative to the House of Commons. The next month, on April 20, 1994, at a General Assembly of the Manitoba Chiefs, Minister Irwin and Grand Chief Phil Fontaine signed a Memorandum of Agreement, giving general endorsement to the initiative and committing both parties to negotiate a Framework Agreement that would guide the dismantling process (AMC, 2002 and Fontaine, 1996). The Federal Cabinet approved the Framework Agreement and Work Plan on November 22, 1994 despite cautions expressed by the Departments of Justice and Finance. The December 7, 1994 official signing ceremony marked the successful conclusion of negotiations and the start of the dismantling process (Brock, 1995b; Fontaine, 1996).

Under FAI, Manitoba First Nations will eventually assume executive, legislative, judicial, and administrative powers over their communities (Brock, 1995b). FAI is based upon three primary objectives:

- To dismantle the existing departmental structures of the Department of Indian Affairs and Northern Development as they affect First Nations in Manitoba;
- To develop and recognize First Nations governments in Manitoba legally empowered to exercise the authorities required to meet the needs of the peoples of the First Nations; and

- To restore to First Nations governments the jurisdiction (including those of other Federal departments) to implement their own governing structures (AMC and DIAND, 1994).

All three objectives are to be consistent with the Inherent Right to Self-Government, coupled with 18 principles which that are to guide the process in achieving the above three objectives (AMC and DIAND, 1994). The 18 principles were included to allay the concerns expressed by some Chiefs and community members and to respect the autonomy of individual First Nations. These principles were also designed to ensure that the initiative did not diminish or adversely affect the Treaties or release the federal government from either its fiduciary obligations to First Nations or its liability for past actions. The principles rendered the FAI agreement consistent with constitutional and Aboriginal rights by acknowledging that the inherent right formed the basis of the agreement and that First Nation governments' and their powers will be consistent with section 35 of the *Constitution Act, 1982* (Brock, 1995b).

The full transfer of powers from DIAND to First Nations was expected to occur over ten years but it was agreed that the time frame would vary according to the needs of the communities and as mutually agreed to by the federal government and AMC. Progress reviews are to occur at the end of the third, sixth and tenth years (as of 1999 one review has already taken place). Flexibility is to be achieved by the Agreement. The plan to work on the takeover "will proceed in a timely manner and at a pace that conforms to the needs of First Nations for consultation, deliberation and decision-making" (quoted in Brock, 1995b).

The FAI process developed a comprehensive Work plan, which sets out activities, expected outputs and timelines for the achievement of First Nations self-government in



Manitoba. Key activities toward self-determination are consultation, communications, research, analysis, option development and negotiations. Under the FAI process there are also three programs, which were expedited (meaning these areas received first order of development) to provide progress in the short term: (1) Education program; (2) Fire Safety program and (3) Capital program (AMC and DIAND, 1994; Fontaine, 1996; Brock, 1995b). In the long term, more complicated areas of jurisdiction such as natural resources and the environment are to be examined (Brock, 1995b). Child and family services was earmarked as a mid term activity but eventually was identified as an important area requiring immediate attention and development under the FAI process and was eventually included as an fourth expedited item under FAI. The following section discusses in more detail the First Nations approach to child and family services under FAI.

In response to the inadequacies of the child and family services system and its failure to meet the needs of First Nations children, the Manitoba Chiefs made a decision to seek full legislative, administrative and executive control over child and family matters in addition to the other expedited areas. In September of 1995, the Assembly of Manitoba Chiefs passed a resolution to expedite child and family as an item of first priority and development under the Framework Agreement Initiative. A subsequent meeting of the Chiefs Committee on Child and Family Services (hereafter "CCCFS") and the Chiefs Committee on Dismantling (CCOD) met in November of 1995 and jointly passed a motion to secure funding for child and family to be developed in concert with FAI (Bennett, 2000). Further discussions were held with the Chiefs in Assembly and with First Nations communities resulting in the emergence of two Manitoba child and

family projects - the *MKO Child and Family Jurisdiction Project* (the Northern CFS Jurisdiction Project) and the *Southern First Nations Child and Family/FAI Research Project* (the southern First Nations CFS/FAI Research Project). The Northern CFS Jurisdiction Project was mandated to compile research on codes and standards regarding child welfare. It was mandated to oversee among other things a community consultation process with 26 northern communities. The Northern CFS Jurisdiction Project is located in Thompson, Manitoba and is carried out through Manitoba Keewatinowi Okimakanak Inc. (MKO). The southern First Nations CFS/FAI Research Project was originally mandated to develop legislation in conjunction with the northern project and oversee a consultation process with 36 southern communities (Bennett, 2000).

Although both of these initiatives were undertaken at different times, both projects ultimately aimed to restore full power and authority over child and family matters to First Nations communities in Manitoba and culminate in the development of legislation, which would govern the full jurisdiction over child welfare affairs. And, like the FAI process, First Nations were to have an opportunity to be involved in the development and decision making process of the two-CFS initiatives.

In December 1995, a Task Group was formulated by the CCCFS consisting of southern First Nations CFS agency directors. A Task Group of agency directors from the seven Southern First Nations child welfare agencies originally governed the southern First Nations CFS/FAI Research Project. This early Task Group was comprised of following agencies:

- Anishinaabe Child & Family Services,
- Dakota Ojibway Child & Family Services
- Intertribal Child and Family Services

- Peguis Intertribal Child & Family Services
- Southeast Child & Family Services
- West Region Child & Family Services
- Sagkeeng Child & Family Services

The Chiefs' Committee on Child & Family Services (CCCFS) provides additional support when necessary and makes formal decisions in conjunction with recommendations from the Task Group members. The Task Group developed a work plan setting out the desired areas of development with strong emphasis towards the creation of a First Nations Act governing child and family matters. The Task Group provided direction and expertise to researchers who were hired to carry out the work plan activities. In addition, the Child & Family Advisor of the Assembly of Manitoba Chiefs provided ex-officio advice to the Task Group and researchers. The Board of Directors from each of the respective seven First Nations Agencies extended full support to this FAI project since its inception in 1996.

The southern First Nations CFS/FAI Research Project has gone through numerous changes since it officially started its work in 1997. However, the southern First Nations CFS/FAI Research Project recently started operating from the Southern Chiefs Organization as at April 2001. Prior to this, the southern First Nations CFS/FAI Research Project was originally housed and administered by West Region Child & Family Services from 1997 to 2000 but this arrangement was dissolved in June 2000 when funding negotiations between AMC and DIAND stalled. All staff associated with this Project had been laid off as a result of the stalled negotiations but this decision was also influenced by the findings found in the first of three evaluations conducted on the FAI Process by Maang Associates between June and November of 1998 (McCaskill et al, 1999).

Eventually, discussions resumed between AMC and DIAND<sup>19</sup>. The Maang Associates' evaluation of FAI identified Manitoba Keewatinowi Okimakanak (MKO) as being the political organization in the best position to take the lead on child and family matters as part of the restructuring of FAI and the resumed negotiations with DIAND. It was recognized that southern representation on all child and family matters under FAI was absolutely necessary. The Grand Chief of the Southern Chiefs Organization (SCO) held discussions with some of the Child & Family Agency Directors and it was agreed that the southern First Nations CFS/FAI Research Project would be resurrected; moved, housed and all operating funds would be administered by SCO. The original project manager was seconded from West Region and resumed coordination of the Project from the SCO office. It was informally agreed that all activities undertaken by the Southern CFS/FAI Project would continue to be overseen by the executive directors (Task Group) of the southern CFS agencies. New additional responsibilities included reporting to the Grand Chief of SCO and reporting to the SCO Director responsible for supervising all southern activities associated with the Manitoba Framework Agreement Initiative (SFNCFS Project, July 2001).

Under SCO, the southern First Nations CFS/FAI Research Project became involved in two primary activities that were occurring simultaneously from one another. On one hand, the southern First Nations CFS/FAI Research Project together with MKO became involved in negotiating discussions with the federal government on developing an Agreement in Principle (AIP) that would eventually lead to a Sectoral Agreement on Child and Family Services as part of the self-government initiatives under the Manitoba

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<sup>19</sup> For brevity, I have chosen to simplify an otherwise complex development here.

Framework Agreement. The other significant activity, which the southern First Nations CFS/FAI Research Project became involved in, is an activity that was held over from the time when it was housed with West Region CFS. Consultation with the southern communities was a residual activity that the Project was just about to undertake when the negotiations between AMC and DIAND stalled in June 2000. The consultation process with the southern communities focused on collecting information, views, and advice from community members, elders and youth as to what they envision in creating their own law with respect to First Nations child welfare. A community participatory action research plan was created with an emphasis on oral interviews with elders and youth, conducting focus groups (or vision circles) using the P.A.T.H. (Planning Alternative Tomorrows with Hope) as a tool to draw out information (Falvey, Forest, Pearpoint and Rosenberg, 1997). A general survey was also to be distributed during information session designed to introduce First Nations citizens to the purpose of the southern First Nations CFS/FAI Research Project. Participation of the people from each First Nations community was seen as being necessary for ensuring the development of community-based First Nations child welfare legislation that would be both culturally relevant and meet the needs of Southern First Nations communities (SFNCFS Project, July 2001; SCO 2002).

Negotiations on a Child and Family Agreement-in-Principle were initiated by DIAND in January of 2001. Simultaneous negotiations were also taking place on substantial issues related to governance, fiscal relations and jurisdiction (which make up the Comprehensive table) and Education (AMC, April 2002). MKO took the lead on child and family discussions by establishing a Joint CFS Working Group and

coordinating its activities. This Joint CFS Working Group consisted of individuals representing MKO, SCO, AMC and senior negotiators from DIAND headquarters. The initial mandate of the Joint CFS Working Group is to serve as a technical table to discuss jurisdictional and governance issues arising from the Manitoba Framework Agreement relation to child and family services. The members of this group report to the FAI main table (more known as the Comprehensive Table) and their respective leadership (See Appendix A). The individuals who previously staffed both the Northern CFS Jurisdiction and Southern CFS Projects provided the majority of the technical and research required for the Joint CFS negotiation table.

The federal negotiating team consisting of DIAND representatives from Headquarters and Manitoba Region also worked jointly with the First Nations members in establishing a working group process on Child and Family Services under the Manitoba FAI. The Federal/First Nation Working Group is to recommend options on a Manitoba First Nations Jurisdiction and Governance model in relation to the care and well being of First Nations families and their communities in Manitoba. Further, it was agreed that the Joint CFS Working Group would recommend practical First Nations initiatives that will complement the self-government discussions being held by the Comprehensive Table. This approach would assist in strengthening the relationship between First Nations Governments, Canada and DIAND (MKO, August 2001).

Before funding could flow to undertake this work and before the Joint CFS Working Group could proceed with negotiations, the Federal government stipulated that

there would have to be an Agreement-in-Principle<sup>20</sup> negotiated between all the parties on CFS (MKO, August 2001). The AIP is to address, in detail, the full range of issues to be covered by the Final Sectoral Agreement (MKO, August 2001). The Joint CFS Working Group has been in discussions with the Federal government on negotiating this AIP with a view toward the eventual negotiation of a Sectoral Agreement-in-Principle on CFS. The Federal negotiating team outlined the work required by the Joint CFS Working Group members by introducing a one-page work plan. This work plan required the production of rolling drafts of concept papers on jurisdiction, governance, programming, fiscal relations and the eventual implementation of child and family matters under self-government. This work is to be conducted and written jointly by all the members who sit on the Joint CFS Working Group. To the date, the Joint CFS Working Group has produced rolling concept papers regarding jurisdiction and a circular governance model had been introduced by MKO, SCO and FAI for further discussion at the Joint CFS Working Group table (SCO, 2002).

The following additional issues were raised by the First Nations members on the Joint CFS Working Group as being important matters that could impede upon the success of AIP negotiations with the federal government regarding full jurisdiction over child and family matters:

- The CFS Provincial MOU (AJI-CWI) and the CFS/FAI process are two separate and distinct initiatives. The AJI-CWI is not to be confused or linked with the goals under FAI. The AJI-CWI is seen as an interim step toward the restoration of First Nations jurisdiction over CFS. AJI-CWI is not a prerequisite to restoring full jurisdiction to CFS and FAI funds are not to be used to support the AJI-CWI process.

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<sup>20</sup> An Agreement-in-Principle (AIP) is not legally binding but is a step to proceed to the next stage in negotiations. An AIP sets out the framework for negotiation of a proposed agreement and confirms the parties are prepared to continue negotiations for a final agreement based on the Agreement-in-Principle (AMC, April 2002).

- The negotiations on CFS cannot be based on the existing federal policy regarding administrative and funding arrangements with CFS (i.e. Directive 20-1, the administrative and funding policies of this directive cannot be devolved to CFS under FAI).
- Child welfare services are considered by First Nations under the same category as social services. These services are protected and recognized as treaty rights. CFS should be considered as part of social services. First Nations should have the authority to delivery services to First Nations members wherever they reside as treaties are portable and not bound by the Indian Act or by ordinarily resident on reserve definitions as imposed by DIAND policy.
- More discussions on federal off-reserve policies are required in consideration of the implications of the Corbriere decision (this 1999 Supreme Court decision dealt primarily with the democratic right of off-reserve residents to participate in the election process on reserve).
- Further clarification as to the mandates of all parties sitting on the Joint CFS Working Group is required
- The role of the province needs clarification from DIAND and First Nations leaders. AMC is of the opinion that FAI and the negotiations towards the various AIPs are a bi-lateral process and that the Province will be invited into discussions, but not negotiations, on issues the may deal with provincial jurisdiction. Canada on the other hand is of the opinion that the Province must be one of the parties to any agreements negotiated because of the division of powers set out in the *Constitution Act, 1982* (AMC, April 2002).
- The First Nations Members of the Joint CFS Working Group must be in control of the time frames allotted to complete each of the concept papers as outlined in the Joint CFS Work Plan as the time frames identified to generate an Agreement-in-Principle are considered to be unrealistic (MKO, August 2001).
- The other significant issue deal with the First Nations Inherent right of self-government. First Nations are of the opinion that rights flow from the Creator and that these rights exist and have not been extinguished. Canada's position is that inherent right is protected by section 35 of the Constitution Act to the extent that that the right has not been extinguished and to the extent that it can be proven to exist by specific First Nations (AMC, April 2002).

As at this date, consultations with the 27 northern communities are complete and the information obtained from these communities compiled by Manitoba Keewatinowi Okimakanak (MKO, 2001). Consultations in southern Manitoba have also been conducted by the Southern Chiefs' Organization and a detailed analysis of that information is currently underway (SCO, 2002). There is no indication from SCO how the information taken from the southern CFS consultation, once analyzed, will be shared



with the citizens of the southern First Nations communities and across the province. The negotiations on the Agreement-in-Principle (AIP) regarding child and family services have not yet produced agreement and negotiations continue. AMC indicates in its most recent publication “once the AIPs are ratified by the leadership and signed between AMC and Canada, consultation forums will proceed in communities for the development of a Final Agreement” on each of the matters it is currently negotiating (AMC, April 2002). On November 27-29, 2001, the Assembly of Manitoba Chiefs passed a resolution whereby, “the sectoral child and family table is progressing rapidly, and sectoral Agreements-in-Principle have been well received by Canada and have stated that they are very pleased with the quality of work by the MKO and SCO Child and Family Jurisdiction Projects” (SCO, 2002, p. 55).

### **The Aboriginal Justice Inquiry – Child Welfare Initiative**

The Memorandum of Understanding (more commonly known as the “MOU”) is the focal point of negotiations between the First Nations, the Métis and the government of Manitoba to agree on restructuring the current child and family services system within the Province of Manitoba. The negotiation toward this unprecedented agreement has its roots in the child welfare recommendations outlined in the Aboriginal Justice Inquiry, which was commissioned in 1988 to examine the relationship between the Aboriginal peoples of Manitoba and the justice system (hereafter referred to as the “AJI Report”) (Greyeyes, 2001). The AJI report was finalized and tabled with the Manitoba government in 1991. The AJI report includes an analysis and observations on the historical treatment of Aboriginal peoples by the social service system and, in particular, the child welfare system of the province. The inquiry reiterated what Aboriginal peoples

have long known: they have not been well served by the current child welfare system.

The recommendations set out in the AJI Report include (Hamilton & Sinclair, 1991):

- Establishing the office of Child Protector, to protect the interests of children, to investigate any complaint into the practices of any child welfare agency and to be responsible to the Legislature (527);
- Providing Aboriginal and non-Aboriginal child and family service agencies with sufficient resources to enable them to provide a full range of director and preventive services mandated by the *Child and Family Services Act* (536);
- Ensuring that federal and provincial governments provide resources to Aboriginal agencies to develop policies, standards, protocols and procedures, and to develop computer systems that will permit them to community effectively, track cases and share information (538);
- Amend Principle 11 of the *Child and Family Services Act* to read: "Aboriginal peoples are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage" (539);
- Establishing a mandated province-wide Métis agency (540);
- Expanding the authority of existing Indian agencies to enable them to offer services to band members living off reserve (540); and
- Establishing an Aboriginal child and family services agency in the city of Winnipeg to handle all Aboriginal cases (543);

Response to the report was mixed. The provincial government, led by the then, Filmon Conservatives since the 1990 election, had not been prepared for the extensiveness of the recommendations. When the report was released, the previous Northern and Native affairs minister Jim Downey commented to the media: "I think there were a lot of additional issues that were added that I'm not prepared to comment on at the present time" (Campbell, 1991). The Government of Manitoba studied the AJI Commission's recommendations, but implementation was slower than the Aboriginal community hoped. By 1994, a list of recommendations adopted by the Provincial Justice Department contained "only 17 items, from the construction of sweat lodges in two Manitoba correctional facilities to a program to appoint more Aboriginal justices of the

peace" (Robertson, 1994: A3). Reflecting on the overall response to the recommendations, Al Hamilton, one of the commissioners, noted the lack of commitment on the part of the provincial government:

Aboriginal people do not have faith in our society's system...and yet the provincial government has shown little commitment to instituting a separate Aboriginal justice system. ...You could take almost any issue we dealt with in the report and then say there have been no apparent changes or action with respect to those (Robertson, 1994).

The government questioned the need to proceed further on the recommendations of the AJI Report simply because it perceived there had been no strong public support for any implementation of its recommendations (Brock, January 1995). Although discussions on implementation did eventually take place between the province and Aboriginal leadership, justice remains a point of contention in Aboriginal/provincial relations (Brock, January 1995). Regardless of this impasse, the newly elected NDP Government on November 24, 1999 announced a commitment to address the Inquiry's recommendations and consequently established the Aboriginal Justice Implementation Commission (hereafter referred to as "AJIC"). The AJIC, led by commissioners Paul Chartrand and Wendy Whitecloud (including elders Eva McKay and Doris Young), reviewed the AJI Report to identify priority areas for government action and to advise the NDP government on ways of implementing the recommendations of the Report of the Aboriginal Justice Inquiry (AJI-CWI Conceptual Plan, July 2001).

The AJIC was critical of the previous administrations' record on AJI, concluding,

"... [t]here has not been a consistent overall plan to implement the recommendations of the Inquiry. While there have been some initiatives, pilot

projects and progress in some areas, overall, by and large, the recommendations have not been implemented” (AJIC First Quarterly Report, March 2000).

The Commission also made four major recommendations to the government, including the one below, that prioritize issues of family and child welfare:

The government of Manitoba seeks to enter into agreement with the Assembly of Manitoba Chiefs and the Manitoba Métis Federation to develop a plan that would result in First Nations and Métis communities developing and delivering Aboriginal child welfare services ...”

In order to implement the above recommendation, the Province of Manitoba entered into negotiations with political representatives of First Nations and Métis organizations. These negotiations led to the signing of three separate three-year agreements (previously referred to as the Memorandum of Understanding or MOU) between the Provincial Government and the Aboriginal peoples of Manitoba. The first agreement was signed February 22, 2000 on behalf of the Métis people as represented by their political authority, the Manitoba Métis Federation (MMF). Two subsequently agreements were formalized with the Assembly of Manitoba Chiefs (AMC) on behalf of the southern First Nations on April 27, 2000 and finally with the northern First Nations as represented by its political authority, the Manitoba Keewatinowi Okimakanak (MKO) on July 20, 2000 (AJI-CWI, July 2001).

All four parties subsequently signed the Child and Family Services Protocol, which established the Aboriginal Justice Inquiry – Child Welfare Initiative. The four parties agreed that this initiative would be based upon a joint and common process that:

- Recognizes a province-wide First Nations right and authority, by extending and expanding off-reserve jurisdiction for First Nations;

- Recognizes a province-wide Métis right and authority; and
- To restructure the existing child welfare system through legislative and other changes (AJI-CWI, July 2001)

The AJI-CWI proposes substantial changes to the way in which child and family services will be delivered to the First Nations, Métis peoples and general public within the Province of Manitoba. The most profound change of this initiative has seen increased participation by the Aboriginal peoples in the restructuring process as well as a willingness on the part of the Manitoba Government to share some aspects of its child welfare jurisdiction with Aboriginal peoples in Manitoba by:

- Recognizing a province-wide First Nations right and authority over the delivery of child welfare services by extending and expanding the off-reserve jurisdiction to provide child welfare services to First Nations citizens;
- Recognizing a province-wide Métis right and authority over the delivery of child welfare services to its constituents; and
- To restructure the existing child welfare system through legislative and other changes (AJI-CWI, 2001).

This new relationship will see the responsibility for management of services delegated to two First Nations (both on and off-reserve) child and family service authorities and one Métis child and family service authority. The responsibility for management of services to other children and families (non-Aboriginal) will be delegated to a General Child and Family Services Authority. The new Authorities to be set out under this new initiative are as follows:

- A First Nations of Northern Manitoba Child and Family Services Authority;
- A First Nations of Southern Manitoba Child and Family Services Authority;
- A Métis Child and Family Services Authority; and
- A General Child and Family Services Authority (for all other families) (AJI-CWI, 2001: 13).

Under these proposed changes, the Province will continue to maintain ultimate responsibility for the safety and protection of children in Manitoba. It will continue to set laws, policies and standards for the new system and will work together with the four Authorities in providing services. The four Authorities will have new and expanded but significant rights and responsibilities granted by the Minister and these will be recognized in new legislation. Each Authority will design and manage the delivery of child and family services throughout the province and assist in setting standards as well as have the authority to decide and provide funding to various agencies under its mandate who qualify to deliver services under the new system (AJI-CWI, 2001: 11). The services delivered by the Aboriginal agencies and Authorities will be culturally appropriate and based on an understanding of Aboriginal families and communities. The proposed governance structure of this new system can be found at Appendix G.

Under this system, all four Authorities (and their agencies) will work together to serve the needs of people across the province at the same time, referred to as “concurrent jurisdiction”. Concurrent jurisdiction means that all four Authorities (and the agencies operating through them) will have responsibility over the same geographical area and citizens (the entire province) at the same time. This marks a major shift away from the current system of geographic jurisdiction in which only one child and family service agency had responsibility in any given location in the province in the past. A process for authority determination is largely about who will be responsible for delivering services to whom. The central objective of the new system is to ensure that people receive services through the most culturally appropriate Authority. All families and children involved with child and family for the first time will be guided through a process that will stream

them to the appropriate Authority. The “streaming process” is based on the belief that families will want to receive services through the Authority that they most closely identify with (AJI-CWI, 2001; 19).

The AJI-CWI maintains that the proposed changes to the child welfare system are about the Provincial government’s efforts to implement the recommendations of the Aboriginal Justice Inquiry as they pertain to the Child and Family Services system. AJI-CWI posits “[I]t is not about an effort by the Province to offload responsibilities for children and families to community and Aboriginal groups” (21). The proposed changes are about increasing the involvement of Aboriginal peoples at all levels of the system and empowering them in significant ways within the system. It is not about the creation of a tiered system that promotes inequities between the general population and Métis and First Nations peoples. The proposed changes are about a careful and planned approach to restructure the system and redistribute resources and workload throughout the system in a way that achieves parity and equity throughout the Province. It is not about a sudden, almost overnight, change that uproots children and families currently being served by the system. AJI-CWI is adamant that restructuring the child welfare system is mostly “about all parties working together, putting their minds and hearts together and doing hard work to make this initiative a success” (AJI-CWI, July 2001: 21-22).

A public feedback on the proposed child welfare system changes was jointly undertaken and implemented by the Aboriginal and provincial parties during a seven-week period, which ended September 30, 2001. The objectives were to provide Manitoba citizens without formal representation on the AJI-CWI an opportunity to provide additional comments on the proposed changes and to assist in identifying the strengths,

limitations and/or gaps in the changes being proposed to the child and family services system. The feedback by the public reflected a “strong and widespread support” (AJI-CWI, January 2002) for the overall vision for a restructured child and family services system as described in the *Promise of Hope: Commitment to Change* document, which was released to the Manitoba public August 9, 2001 by the Aboriginal and provincial parties. Public support was voiced for the overall goals, the governance model, the use of a streaming methodology combined with a choice in determining service jurisdiction, the service objectives proposed, the emphasis on the development of a culturally appropriate workforce and proposed changes to how the system would be funded (AJI-CWI, January 2002: 33).

Because of the complexity and the ongoing work of the AJI-CWI process, only some of the significant aspects of the proposed changes suggested by the AJI-CWI process have been addressed in this thesis. There is no doubt a great deal of work remaining ahead for those involved in structuring the change. As of June 2002 the restructuring of the child and family services system in the Province of Manitoba is one step closer to realization. Legislation was drafted, consistent with the work of the AJI-CWI, and introduced in the Legislative Assembly for first reading on June 10<sup>th</sup>, 2002. It has since passed the third reading and received Royal Assent on August 9, 2002. The legislation reflects the establishment of the four authorities and sets out the duties and powers of each Authority to oversee the provision of child and family and adoption services to their respective constituents<sup>21</sup>.

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<sup>21</sup> An unofficial copy of *The Child and Family Services Authorities Act* can be downloaded from the AJI-CWI site at [www.aji-cwi.mb.ca](http://www.aji-cwi.mb.ca).



## **Comparing the Two Child Welfare Initiatives**

It is clear from the elementary review of both processes that each is distinctively different from one another and yet on the most basic level, they both deal with the very same issue: child and family services for First Nations peoples. Both also appear to be quite comprehensive and much more complex beyond what has been presented in this thesis thus far. A comparison of these two initiatives has never been done before, although, First Nations political organizations within the Province have attempted to clarify the differences between the two (AMC, April 2002 and MKO, August 2001). The following section starts with a simple analysis of where the two initiatives appear to be similar and concludes with a brief analysis of where they diverge from one another.

### **How Are They Similar?**

Obviously, at a first glance, the goals of the CFS-FAI and the AJI-CWI initiatives are clearly similar in scope: both focus on and deal with new arrangements for the delivery of child and family services to the First Nations peoples within the Province of Manitoba. By involving and encouraging the participation of the First Nations peoples, both initiatives aim to restore some measure of authority; control and responsibility back to First Nations peoples regarding their own children, families and community matters. This approach certainly brings First Nations closer to their goals for self-government. Particularly for First Nations, both initiatives purport to increase the role and participation of First Nations peoples in policy and organizational development as well as increasing the delivery of services to members whether they live on or off reserve. Both initiatives have sought to engage the participation of First Nations peoples in the development of new child welfare structures through either community consultations

(CFS-FAI) or through opportunities to attend a public feedback process (AJI-CWI) to learn more about and share comments and feedback on the changes being proposed by both initiatives.

Both initiatives are based on negotiations that have resulted in bi-lateral agreements between the Aboriginal peoples in Manitoba and various levels of government within Canada. The AJI-CWI agreement, for instance, is a bi-lateral agreement between the Aboriginal peoples with the provincial government of Manitoba while, on the other hand, the CFS-FAI initiative is based on the bi-lateral agreement reached by AMC, on behalf of the First Nations of Manitoba, with the federal government. While these are bi-lateral agreements between Aboriginal peoples with two different levels of government, there are some implications that may surface on the question of the constitutional division of powers between the two levels of government. The similarity is not so much that both agreements are bi-lateral but a similarity lies in the fact that both initiatives raise some parallel constitutional implications around legislating on behalf of First Nations peoples and child and family matters. Child and Family Services is an area of provincial responsibility while on the other hand, First Nations Peoples are the constitutional responsibility of the federal government. The similarity here is that First Nations peoples in both initiatives are faced with issues that are not of their making yet they are forced to acknowledge this reality in negotiating with two separate levels of government. This will have ramifications for both initiatives because they both are looking at legislative changes regarding child and family issues in a First Nation context. First Nations peoples will always require the involvement of the provincial government in any negotiations where child and family matters are touched

on. This is evident in the federal government's reluctance to discuss jurisdictional issues in relation to child and family matters at the FAI table unless the provincial government is also invited to the negotiation table with the First Nations of Manitoba. The province has advanced federal involvement at provincial negotiations as this event affects issues on funding the new child and family services system which will require an understanding of the extent of federal funding that the First Nation agencies currently receive to carry out child and family services on reserve.

The locus of influence over both processes comes from the growing authority and persuasion of specific individuals (primarily the First Nations Child and Family agency Directors) and political leaders who have worked long and diligently over the past decade on behalf of First Nations peoples within Manitoba. Some of the actors responsible for the development of both the CFS-FAI and the AJI-CWI are the very same individuals who have been at the forefront of successfully developing and negotiating to make sure both initiatives get off the ground. This indicates that there is some continuity between the actors who oversee these arrangements and there appears to be coordinated efforts to link both initiatives. This is evident in the way that both initiatives are similarly structured. Both incorporate the north and south political division into their structural arrangements, which has long been evident between the First Nations peoples within Manitoba. With regard to AJI-CWI, AMC signed the MOU on behalf of the southern First Nations (of which there are 36 communities) and MKO signed on behalf of the northern (26) First Nations communities. Under the CFS-FAI initiative, MKO oversees the CFS Jurisdiction Project for 26 northern First Nation Communities, while SCO

through the southern First Nations CFS/FAI Research Project represents 36 First Nations communities under the Manitoba Framework Agreement<sup>22</sup>.

While these initiatives are positive steps forward for First Nations self-government in Manitoba, under both initiatives, First Nations peoples may still suffer from the paternalistic attitudes evident in government attitudes and as a result of the legacy of being a colonization people. Both initiatives have afforded greater involvement of First Nations peoples in the development of new arrangements in child welfare however, there is still reluctance expressed by government representatives in the ability of First Nations peoples to take on an expanding role in their future. Some government officials still question whether First Nations are capable of making decisions that may have ramifications for future generations. This attitude is premised on racist and ethnocentric views that First Nations are not capable of making decisions for themselves. That being said, both the AJI-CWI and CFS-FAI initiatives provide a new breed of political actors more willing to share the reigns of power over a jurisdictional field that has been long been a provincial responsibility.

### **How Are They Different?**

The CFS-FAI is a federal initiative that is driven solely by First Nations peoples in their desire to maintain full control over child and family matters. It is part of the self-government initiatives set out under the Manitoba Framework Agreement Initiative. Given that the FAI is a First Nations driven endeavour the Métis are not inclusive to the process as they are under the AJI-CWI initiative. Child and family services is but one

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<sup>22</sup> Sioux Valley First Nations in southern Manitoba has since signed their own separate self-government agreement with DIAND in 2001. This agreement also includes provisions dealing with CFS jurisdictional aspects.

area of self-government and First Nations peoples are of the opinion that when the powers were being divided between the provinces and the federal government, First Nations were never consulted or involved in matters that gravely affected their nation members nor was consent sought when these powers were decided. According to First Nations, the right to deliver child and family services to their people is an existing Aboriginal right that has never been extinguished. As such it is viewed as one of those areas that rightfully belong within the jurisdiction of First Nation governments to control. There is much work to be done yet with respect to this initiative as it has not moved at quite the same pace as the AJI-CWI initiative. Given that child and family services is a provincial responsibility the federal government is reluctant to negotiate further with First Nations unless the province is negotiating along side them. The fears, which First Nations peoples have also, prevent the CFS-FAI initiative and, indeed all of FAI, from progressing further than where it is currently situated.

The AJI-CWI is a provincially driven initiative that does not require the participation of the federal government given that the province holds sole jurisdiction over child and family services. Although the discussions on restructuring the child and family services system with the First Nations and Métis sectors of society thus far have been collaborative in nature in, it is not a self-governing process. Under the AJI-CWI initiative First Nations will continue to be subjected to delegated provincial legislation even though they have exclusive jurisdiction on reserve and must share concurrent jurisdiction off reserve. First Nations will not own or have the right to direct or control the development of the child welfare system as might be more possible under the CFS-FAI initiative. The AJI-CWI initiative in the meantime is viewed by First Nations as an

interim step toward but is not an impediment to the First Nations' goal of achieving full restoration and jurisdiction over Child and Family matters. The positive aspects behind this view lie in the AJI-CWI's ability to increase and build capacity in any new emerging First Nations child welfare structures, organizations and individuals. The AJI-CWI provides an increased opportunity to develop a larger First Nations workforce once it is substantially in place and this can be equated with more employment and educational opportunities for First Nations peoples both on and off reserve. The AJI-CWI process also provides an opportunity to First Nations people to share in and have increased access to provincial resources. All of these factors – a good service delivery system, a competent First Nations workforce and increased resources – are important stepping stones that play a significant part in building the First Nations capacity that will be required to make the self-government aspects of the CFS-FAI initiative a reality (AMC, 2002).

## **Conclusion**

While my analysis is for the most part simple it is sufficient to say that the AJI-CWI initiative paves the way for capacity building and sets the next stage for First Nations in Manitoba to take over the child and family jurisdiction under self-government. Both initiatives are quite complex and at some point more discussion will need to focus on how the AJI-CWI can be used to transition the newly restructured child and family services system into one that is independent of provincial jurisdiction and an infrastructural entity as part of the FAI process toward self-government.

The collaborative approach promulgated through the AJI-CWI is unprecedented in the history of relations between Aboriginal peoples, the Province of Manitoba and

Canada. The AJI-CWI has been formed around compelling notions of inclusion that acknowledges the complexities of modern existence by focusing on new approaches and innovative ways of dealing equally with and benefiting different social groups within the Province by being inclusive. From a policy perspective, AJI-CWI's approach to inclusion of Aboriginal peoples in this restructuring initiative is a powerful benchmark which has enabled the provincial government to focus on what people within the Province share in common (i.e. children, family and community); it has given policy makers alike (both Aboriginal and non-Aboriginal) a powerful tool for understanding the complexities of society and a logic for collective action and social cohesion (Jenson, 1998); it has focused on political will by removing obstacles and barriers to the access and participation by Aboriginal peoples and it acts as a barometer which gauges the government's authority and commitment to access, participation, sharing and prioritization as public values that are important for making any initiative successful. The federal and First Nations negotiators sitting at the FAI negotiating tables could incorporate a lesson or two from the AJI-CWI process into their self-government negotiations with First Nations peoples by observing the collaborative restructuring process currently underway between the Manitoba Government, First Nations and the Métis peoples.

## CHAPTER 5: DATA ANALYSIS OF THE RESPONSES

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### **Overview**

This chapter focuses on a question-by-question approach to analyzing the responses to the ten open-ended questions asked of the fourteen individuals referred to earlier in Chapter Two of this thesis. In this chapter the voices of those interviewed take center stage. In analyzing the responses to the question I relied primarily upon what the Key Informants shared and have highlighted what I considered as the strongest responses to the questions posed. Each analysis begins first with a general exploration of the purpose for asking the question. An introduction to the response was then followed by direct quotes taken liberally from the interviews with the Key Informants. A summary of the replies along with reference to sources which support the Key Informants' perspectives follows. The analyses of the responses are set out in the same numerical sequence as they appear in the questionnaire (see Appendix E) provided to the Key Informants in advance of the interview.

### **Analysis of Interview Question 1**

Question number one is really a two-part question. The first part of this question asked whether the Key Informants were familiar with the community consultation requirements and the self-government provisions set out in 1994 Manitoba Framework Agreement Initiative. The second part of the question was designed to obtain points of view on the role or responsibility First Nations people might have in relation to



community consultations on child welfare development under self-government. The question was framed as follows:

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**1. Are you familiar with the community consultation requirements regarding various self-government processes set out under the Manitoba Framework Agreement Initiative? What role do First Nations peoples have regarding the community consultations on child welfare development under this initiative?**

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Of the fourteen Key Informants, seven Internal and three Regional Informants indicated familiarity with the community consultation requirements and self-government provisions contained in the Manitoba Framework Agreement Initiative. The remaining four Respondents (an equal mix of External and Regional Respondents) were only vaguely familiar with the Framework Agreement's provisions on self-government, child welfare and community consultations. Three Internal Informants specifically indicated that to date they had not been involved in or knew of community consultation outcomes on child and family services or self-government matters conducted in their community or in other communities as evidenced by these three specific comments:

*... FAI staff never came to this office and wanted to sit down and talk with anybody. So I don't even know if they did a community consultation or interviews with "my community." I heard that they [FAI] did but I don't know with whom? I don't even know the outcome of those community consultations that they did? [Internal Informant 2].*

*I know there was a consultation process, but I don't know what's happened with that information. I don't know what they [FAI] have done with the information and most of it [community consultations] has been on reserve. I don't know what happened to the off reserve piece. I would be really concerned and I am concerned with the direction it is going or not going [Internal Informant 6].*

*... No, nothing specific to child and family ... no but we had a couple of workshops or one workshop in our community with \_\_\_\_\* ... she came and did a*

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\* The name of this individual(s) was intentionally left blank to protect the identity of individual.

*presentation to our Board but having the community involved? No, that didn't happen [Internal Informant 1].*

From these responses one can assume that community consultations either did not happen in some communities or if they did, then little or no information was offered by FAI to the public or the communities about what was learned from those consultation events. The one response above clearly states that consultations did happen in one community specific to that Informant's community and that it was an event explicitly focused on child welfare. It appears that only a select group of people were invited to participate in one workshop but that it did not involve the community as a whole. There is no indication that the outcome from this workshop was shared with the First Nations public.

The second part of question one invoked a wider range of in-depth responses from the Key Respondents than the first part. Each Key Informant responded differently to what they see as being the key role of First Nations peoples when it comes to community consultations on child welfare development under self-government as can be drawn from the range of perspectives captured below:

*I believe that the grassroots people at the community level, their participation, their involvement is essential to the success of whatever you are trying to do. I believe that when you consult the people or any people at the grassroots level, you bring them in, you involve them and I think there are basic human emotions attached to that. People feel important and I guess the other essential part of that is that you also have to provide some knowledge and information on what is going on [in the consultation]. I believe that the type of information that you provide has to be very clear in terms of the goals of what you are trying to attain and how the process is going to be and how they are going to benefit from it. This is key! People want to know what is in it for them. That is just normal human behaviour and attitude and in the process of providing that awareness and education you are providing knowledge to that person and that knowledge empowers that person. It gives them the information so that they can make an informed vision, make informed comments and the other thing is that it has got to*

*be done in the language that the person is most familiar with because the worldviews are totally different when translated into the English language. I find that very important because ensuring that the people understand what it is you are saying. I have noticed that sometimes people and communities do not quite understand and through that misunderstanding, your project may not be as successful because if you offend somebody at the community level, chances are that they are going to turn around and start talking bad about your project [Regional Informant 3].*

*I look at the whole consultation process as a learning process for the agency to improve its services. I'm sure there might be a lot of negative comments – that's expected when you are doing consultations and the way you approach the negative comments and how you deal with that in the consultations with the members, it's improving your services to be a lot more better. That's what I believe community consultations are there to do, not to bring down the agencies ... it's a process of learning and growing. I think that is what needs to happen when there are changes and we want to have a hand on that change [Internal Informant 2].*

*The role of First Nations people right now regarding current processes in place in Manitoba that works toward self-governing structures is hands on and there is no other way to do that unless you have hands on. You have to have a grassroots approach and I would say the AJI-CWI experience thus far has embraced that whole grassroots approach and we would not be where we are today without that approach but you need the right players at the table to coordinate it too ... also, I think that it is important to utilize to the fullest extent possible the involvement of First Nations child welfare workers who have been working within the First Nations Child Welfare System, particularly because those people are the experts. Those are the people that work in the system day in and day out and they know what it is needed for children and families and they have been able to take their issues, concerns, suggestions and recommendations and put it in plans [Regional Informant 2].*

*Well I think they [First Nations people] have a really key role and I think that it is more important for us to pay attention to finding out what that role is because we are dealing with ... an environment where First Nations are a minority group but also their own governing systems are not clearly identified or set up or recognized. So I think when you look at the mainstream you have laws that reflect the will of the people so to speak. Laws change as people's values change and their cultures change. What seemed okay twenty years ago is not okay now and the law subsequently changes to reflect that because that is what law making is, people deciding how they want to live and the rules they need to do that. So I think that holds true with any group including First Nations. If you are going to have a law in any area including child welfare, it needs to be a law where people say this is how we think we need to do that. Because we don't have the formal governing mechanisms and structures and dollars where you could reasonably say, "Well this person does speak for this group of people so they can make these laws," they don't have that. ... So I think it is more important that when we look at these kinds of initiatives [community consultations] ... where we are trying to build the infrastructure pieces that we pay a lot of attention to asking the*

community, "How do you think children should be looked after and what laws do you think we need to do that?" ... I think that it is really important for us to go and find out ... how people see it [Key Informant 5].

... There is a lot of variation of different [community consultation] techniques nationally. In some communities, in Northern British Columbia for example, it's done in the context of a house system because that's traditionally how consultations are respectfully held and in other areas, it will be more of a community-meeting format. But what I think is so wonderful about our systems, I think without exception, is that there is a strong desire to behalf of First Nations, either the leadership or folks in the child welfare sector, to go back to the community and to have them own the process. It is not a question of just asking for their wisdom, it is a question of inviting them as members of the community to be part of the solutions around children and recognizing the skills and assets that they have ... because you don't see that in the mainstream child welfare systems. The provincial government ministries aren't by and large going out to communities and saying, "What are your values and beliefs around children? What are your values and beliefs about family? What types of things have traditionally worked? What types of things are gaps given where we are now in terms of the modern world? And how can we have an ongoing conversation about this?" I think the most successful agencies have been those that have framed consultation not as just going out as a one off, it's about saying to people, "this is a conversation that we need to have as a community over a long-term basis and we are all collectively a part of this collectively caring for children and being a part of the solutions." They need to have the courage to have that conversation with the community. So in terms of formats, I think it looks very different but I think the commitment is really what separates a lot of the First Nations agencies from mainstream [External Informant 1].

What can be extrapolated from above comments is an unanimously belief that First Nations peoples do play an important and key role in making sure that there is more in-depth participation by First Nations people in child welfare discussions and debates which coincide with self-government developments. Although child welfare agencies, leaders and communities' will need to pay particular attention to finding out exactly what that role will be and how to ensure First Nations people participate in consultation processes that involve child and family issues.

These responses also provide an insight into perspectives on how some of the Key Informants view the role of community consultations in First Nations communities. For

one Internal Informant, the role of consultations is considered to be part of the learning and growing process which allows child welfare agencies to improve on services provided to the community based on feedback from the community, even though at times that feedback may be negative. For another, consultation with communities requires the participation of people at the grassroots level but the right players need to be at the table to coordinate consultations in the community. In addition to the participation of grassroots members, it is also essential that any consultations undertaken in a community include the participation of First Nations child welfare workers because they are considered community experts with intimate knowledge about what is needed for First Nations children, families and communities not only because they work in these communities but because they live in these communities also. Consultations are also considered important to First Nations peoples because it is a process that allows First Nations peoples to evolve and change based on how they want to live and how the rules they develop should reflect those wishes. Consultation must pay particular attention to ensuring that people in the communities are invited to participate in discussions around how they think children should be looked after and what laws need to be developed by the community to reflect that understanding. First Nations owe it to themselves and their communities to get involved in consultations. The approach and techniques to consultation is as varied as the First Nations communities across Canada but in order for consultations to be successful First Nations peoples must be able to own the consultation process. This perspective is supported by McCaskill et al (1999) when they reviewed the consultation process set out under FAI and stated that “community members need to develop a sense of ‘ownership’ of the process to motivate and sustain their participation

in community consultations (p. 43). First Nations people need to invite their own community members to take part in conversations that “flush out” the values and beliefs of the people in the communities. Consultation is about inviting members of the community to be part of the solutions around children and recognizing the skills and assets that they bring to the conversations and the consultation process. To one Key Informant, consultation is not considered a one time event. It is a long-term conversation that is a collective responsibility. First Nations peoples need to be courageous in having ongoing conversations about collectively caring for the children in their communities.

## **Analysis of Interview Question 2**

The response to part two of the previous question regarding the role of First Nations people in the consultation process is fleshed out in more detail in the collective responses given to question number two regarding the importance of First Nations people’s participation in the development of any child welfare initiative under the self-government process occurring in Manitoba. Question two is worded as follows:

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**2. How important is it for First Nations peoples to participate in the development of child welfare structures and laws under the self-government process occurring in Manitoba?**

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The following four responses capture some of the views held by Key Informants on the importance of ensuring the participation of First Nations peoples in the development of child welfare structures and laws under self-government:

*I think it is critical [again emphasis added]. Our discussions would not just be about child welfare but how we conceptualize our own systems, for example, asking what does justice mean in our community? What does safety mean in our community? What does relationship mean in our community? And how do we*

*then formulate a child welfare legislation law system, whatever we want to call it, that fits with those values and beliefs? If we don't engage people in that discussion then it's easily one where we're interpreting provincial legislation and again, I guess, perpetuating that tradition of colonization or that we're only reflecting our own values and beliefs as one or a group of Aboriginal people who happen to work in an agency and that becomes the kind of guiding principles. That is not what we want. This has got to be a community kind of effort where everybody is engaging in the process and if they aren't consulted if they aren't invited to be part of the conversation then it isn't their solution. It isn't about caring for their kids it's still another system coming in [External Informant 1].*

***I think it's critical and probably more so as we're developing or restoring self-governments*** [again emphasis added], *that those institutions that become arms of that government like child welfare does, that we do it right in the first place and involve the people in how we're doing it. I think it would not only help the success of the child welfare piece but it would also help the success of governments. I mean if the governments don't have the support of the people they're not going to last. So, it doesn't matter where you are, whether you are or might be a dictator or not, like it might take longer to fall down but at the end of the day if you don't have the support [of the people], I mean that is what the government is. It's an entity of the people and if it doesn't have the peoples' support, if you're not giving the authority to government then you don't have anything. So, if we're going to be successful in self-government and those arms of government that will become First Nations arms of self-government then I think it is really important we make sure they are legitimate and they become legitimate by having the support of the people [Internal Informant 5].*

***I think it is imperative; it's essential*** [again my emphasis added]. *I think they need to devise their own structures that will meet the needs of the communities. Structures that they can work within that they are familiar with. I think foreign structures don't always apply to the way we do things. I think people work more comfortably and effectively with systems that they know and understand rather than trying to fit a culture into a system so to speak ... [Internal Informant 7].*

*Well ... I think that it's been proven in the past that when Aboriginal people or First Nations aren't part of those processes from the beginning, they usually don't work out very well. I think that's been proven more than one time and like Directive 20-1<sup>23</sup> is a perfect example; there was very little consultation before that policy was developed and now we're trying to deal with the problems that have arisen because of that. I think AFN has always taken that position too that that's the only way to do it is to involve meaningful participation of the First Nations people at the beginning and all the way through. I think that if they really want to develop something that will be effective and that will really work and that people will take ownership of ... it increases the chances of success I guess. And if that doesn't happen then ... it's like the national chief always says*

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<sup>23</sup> Directive 20-1 is a national funding formula administered by the Department of Indian and Northern Affairs, which restricts funding to "eligible children on reserve." A population threshold (based on children 0-18 years of age) influences how much funding each FNCFS agency receives (McDonald et al, 2000; ANCFSAO, 2001; Bennett and Blackstock, 2002).

*that “it’s like a form of insanity, they keep doing the same thing over and over and it doesn’t work where we are repackaging the same failed policies and processes.” So I think it is critical [emphasis added]. I think part of the problem is that people have to be willing to participate too! ... I think that to a certain degree that responsibility for raising our children has been handed over to institutions and it is just not a matter of access and there being a forum for people ... they have to go. It’s about them and their children [External Informant 2].*

The four responses above are reflective of generally how all of the Key Informants responded to this particular question. All Key Informants felt that engaging First Nations people to participate in the development of their own child welfare systems is absolutely critical, extremely important as well as necessary in order for any new child welfare structures and supporting legislation to successfully operate to the advantage of the self-governance process occurring in Manitoba or elsewhere across Canada.

How First Nations conceptualize child welfare as part of self-government will depend on communities’ definitions around concepts such as justice, safety and/or relationships as well as how to formulate a child welfare system and legislation that conforms to a community’s values and beliefs. Existing First Nations child welfare agencies must be careful that they are not imposing their values and beliefs on First Nations communities. How child welfare will operate under self-government must come from the solutions identified by the people in the community. The involvement of First Nations peoples is critical to the success of First Nations governments. McCaskill et al (1999) noted in their evaluation of the FAI that “it is critical that First Nations people are active participants in the FAI if they are to make informed decisions about self-government” (p. x). Governments are entities that are reflective of the people they represent. If First Nations people do not support the governments that are created



through self-government, then it is highly unlikely that these governments will be seen as legitimate in the eyes of the people in the community and the only way these governments become legitimate is by having the support of the people.

One of the comments above also clearly reflect concerns around having not been involved in past policy decisions and government structures imposed by the federal and provincial governments through legislation, funding mechanisms or structural and ideological development of First Nations Child Welfare agencies. External Informant 1 identified Directive 20-1 as an example of the government's inability to consult with First Nations peoples regarding an imposed policy directive, which greatly impeded the operations of on-reserve child welfare agencies. Directive 20-1 has many implications for FNCFS agencies especially as it relates to the jurisdictional impasse created by section 88 of the *Indian Act* and was the focus of attention in a national policy review conducted in 1998 by DIAND and AFN (McDonald et al, 2000). Under this policy, First Nations child welfare agencies must have delegated authority from provincial or territorial governments and must go through various levels of developments in order to receive funding from either DIAND or provincial authorities (McDonald et al, 2000). Funding under this formula is strictly for operating and maintenance costs and ignores the growing demands placed on First Nations child welfare agencies to provide not just protection in times of crisis for children but be able to provide services that are based on cultural values that are holistic and preventative aspects of conducting child welfare in a modern context. First Nations' aspirations to exercise jurisdiction over the field of child welfare as an arm of self-government will be exasperated in the future by the constraints and restrictions which Directive 20-1 currently imposes. More flexibility is required in

order to allow First Nations child welfare agencies to be responsive to emerging trends in child welfare (McDonald et al, 2000).

The comments specifically highlighted above also warn that not including First Nations peoples in the developments of infrastructures and processes that impact them personally continues the ongoing perpetuation of colonizing First Nations peoples (Hylton, 1997). First Nations peoples must be a part of the solution and the solution lies in their involvement and participation in community consultations that looks at the range of child welfare options that might be available under self-government. Whatever systems and laws First Nations people develop it must incorporate the cultural teachings and natural laws handed down from the old ones. This is similar to what Chandler & Lalonde call “cultural match” (1998). The following quote is lengthy but it was essential to capture the Elder’s teaching and her perspective on the importance of incorporating cultural teachings into the fabric of First Nations child welfare laws. Her teaching interweaves a perspective on the natural law systems that are reflective of her First Nations culture:

*How important is it for First Nations peoples to participate in the development of child welfare structures and laws under the self-government process? Yah, it goes unsaid, **definitely it is really important** [my emphasis] to develop these child welfare structures and laws under self-government processes. I guess what I wanted to say on that point is that when I look at laws I think of white man’s laws and the natural laws that the old people gave us. All those virtues, respect, honour and truth – there is a host of them that they taught us and they are not like, how shall I say, not in a classroom setting but on a day to day basis as time unfolds or the events unfold, we learn those things. When we walk with the grandmothers or the grandfathers, our parents, the grandmothers and the grandfathers who are the teachers, they gave us that knowledge. And it was kind of difficult for me because I was almost schizophrenic. Here I was in an Indian residential school where discipline was very rigid and whatnot. Where God is love – that was preached and at the same time you would get whippings. And then when I would go home in the summer and I would find these old people, where not a hand was laid on me but more or less kindness and showing kindness*

and maybe just a mild reprimand but always telling you “don’t do this ‘kowiastutah’.” It was always related to the natural law. “What are you kids doing up there, are you building a tree house?” “Kowia’, don’t do that, you’ll bring a big storm.” “Oh how come we can’t build a house in the trees?” And they would say, “no, no, you can’t do that, the tree is living and that is where the birds make their home, you got homes here, you know ‘esquemaw’”, they would say. Little things like that eh, but embedded in that was the respect for other creatures, you know, things like that. And as they went along “payatuk” be careful like when there’s old people, “don’t go in front of them, go around them, you know, like respect. And “payatuk” if somebody was crippled, “don’t stare at that person, that’s not nice.” Okay, but sometimes they would say why we shouldn’t do that but we kind of knew that we shouldn’t do that because it would make them uncomfortable, they are just like us. We learned those things and my mother was a traditional Cree woman, even though she practiced United Church ways. She saw to it that we went to ceremonies and, there, I found it was so profound. When I was in the lodges and the way those old men would beseech the Creator. They would throw their arms up and they would cry “jegimawksukeum, I’m poor, we’re humble, have pity on us” kind of thing. It’s almost as if, how shall I say now, we’re your creation, we are asking you, you are powerful, to look after us, we’re poor in spirit, mind, body and soul but we’re asking for your help, kind of thing. It was very profound and I guess I had difficulty with “how do I make these two environments compatible for me?” And always if I was in great difficulty in the board school, getting whipped or getting reprimanded for something, made to feel less than human or whatever. I would always go back to the lodge and hear those old people praying and everybody was together. You could just feel the power in there. And the little children and I noticed the little children and they are small okay. There are rituals in the lodge okay? That you were supposed to follow that we are taught, you do it this way, go around the tree okay? But little children, they haven’t yet got the mind to decipher what is right and wrong and are allowed certain liberties. You know there are limits you can’t walk in the fire, the sacred fire. Those are the things that I made observations. We weren’t always told. We were allowed to observe and to absorb those observations and maybe construct a moral or a teaching out of it. Cause I would ask mom “Oh, what are they doing?” Maybe the medicine person was healing somebody and she said, “Just watch and listen and be quiet” and whatnot. That is what I would do but I would come out of there feeling strengthened. It always gave me the strength to go back to school. There was ... how shall I say? There was this, how do you say the opposite of something ... the dilemma ... it was incompatible I guess with what I was experiencing with my old people. But that’s ... I think when we talk about how important it is okay for the First Nations people in the development of child welfare structures and the laws okay? Sure we have to obey the laws of the land okay **but at the same time we have to incorporate the teachings of the old ways** [my emphasis]. I think that probably is what will help the families and the children to grow and develop. So when I came out of boarding school, the discipline to hit and correct somebody, I was doing that to my own son and I knew it wasn’t the right way. So I had to go to a course on parent effectiveness training to learn or unlearn those ways of hitting, physical, punishment – it wasn’t good. But I think it is really important to abide by the laws, “whitogey” you have to have laws in the white man’s way **but they have to work side by side with the First Nations people to develop child**

*welfare structures* [my emphasis] because the old people say that when those little children are running around, those are gifts okay? They are lent to you for just a certain time. The Creator gave those children to you for a little while you look after them. That is the way they talked to them. It was not only just your children; it's our child too. It's the child of the community, you know? I always like that poster that says "it takes a whole community to raise a child." Grandmas and Grandpas used to correct us, Aunts and Uncles and you know mother and dad, and I never had any qualms about that, it was quite okay to correct us [Regional Informant 5].

### **Analysis of Interview Question 3**

Question three was designed to capture the range of perspectives about the "state of readiness" and "capacity" of First Nations peoples and their governments and communities to take on more responsibility over child welfare as an arm of self-government. It is an important question that not only federal and provincial bureaucrats are asking but it is a question being asked openly and bluntly by mainstream society, Canadian governments and First Nations peoples (RCAP, 1996; Durst 1996). Consultation on the state of readiness and/or the capacity to take on child welfare under the full jurisdiction of self-government will no doubt require a response from First Nations leaders, child welfare experts and First Nations citizens in order to proceed forward. Question three is structured as follows:

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**3. Within Manitoba, do you think that First Nations peoples, communities and governments are ready to develop their own governing child welfare systems with supporting legislation?**

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The following statements highlight what the Key Informants had to say about the state of readiness of First Nations peoples, communities and governments in developing their own governing child welfare systems with supporting legislation:

***I think some are** [my emphasis] but again, I think you have to do some preparation work within the communities and let them know, clearly let them know what is the whole purpose to this exercise is and sit down with them, and not only once. You're going to have to do that for a number of months before the actual work starts to begin [Internal Informant 2].*

***Yes ... I'll say yes, with limitations** [my emphasis]. There are certain First Nation communities that probably are not. There are certain First Nations communities that yes, are ready! [Internal Informant 1].*

***Yah, I think they have been ready for a long time** [my emphasis]. I think there are different gradients where people are at with that ... We have always demonstrated the talent. We have the persistence. What we need is the opportunity. And that is for governments to simply ... invest in our people by providing them with an adequate opportunity to take these systems on - that is where the struggle is right now. It is also something that we must do. It's our responsibility and we have to do it regardless of whether our government's moves on this or not. We simply cannot allow another generation of kids to pay the price for our fear or our inaction as adults, as Aboriginal people. We have take it and go after this child welfare stuff because it is about protecting them and sometimes that means a rougher ride for us but I think there are many, many, many of us who are prepared to do that. ... Yah, I think, I mean there are some real issues in communities where we have family divisions, we have people who are still products of colonization and unfortunately will cover up for abuse, etc. like that. And we need to have conversations about what our standards are as a community. In my community, alcohol was not an issue but now there is a certain level of alcohol consumption that is expected to be tolerated and to me that level is higher than what should normally exist. So, we need to re-group as community members around that piece and say "what are our basic expectations around children in the care of community?" So there needs to be engagement in that but I think the first step is inviting people to be part of the solution. Because for far too long our people have had the experience of having child welfare done to them instead of inviting them to be part of caring for their own children and honouring that they have those skills and abilities and just say, you know what, we have these challenges in these communities – none of us want to see our kids sexually abused, physically abused, or exposed to domestic violence. There are these issues with family, there's these issues, etc. how do we get past that to make sure that kids are looked after? And people will step up to the bar in greater and greater numbers but we [First Nations Child Welfare agencies] have to continue to be there and we need to continue to be strong as agencies and as people who work with communities and not hide from those issues. And to also role model in our own likes [External Informant 1].*

***I think some communities are. Not all** [my emphasis]. But at the same time ... I would be concerned because the way the systems are set up now, they are so unstable ... like the elections are every two years and you can't get stability in the community in two years. And just the way the election thing is set up, it's always the big families who run the reserves and there is no ... how would you put it? ... There is nothing pushing them to ... do what is best for the community. A lot of the times it's what is best for big families ... you're only there for two*

*years, you know and if you don't please them, you're gone. You can't do very much in two years. I think some of them are and I really believe that they should because we've got to start somewhere we really have to start somewhere. I believe there are people out there who can do it if they are given the chance. There's good people out there but it's just the way the system is set up its hard to get good honest people, you know, people who are willing to put in the time and all that, I think. It's screwed up, the communities are screwed up because of the system, because of the way Indian Affairs is set up and the way Indian Affairs controls everything [Internal Informant 3].*

*... Are we ready for it as First Nations people? **I think that we are** [my emphasis]. I think we have a lot of people in child welfare that work within First Nations that know the customs, culture and traditions ...I think it's a matter of non-Aboriginal people letting us or giving us the chance to do it and then for them to step back and watch how we do it. I think we need the opportunity to implement our own child welfare laws, our own standards [Internal Informant 7].*

*And that is a question that a lot of people ask very openly and bluntly and they are in fact questioning whether or not Aboriginal people have the ability but to me that is just developing into another stereotype of Aboriginal people as being ignorant and unskilled and just not capable and I totally disagree with that. When I was out in the Dauphin area teaching, the people that I worked with were for the most part social workers already working in the field and they were very passionate about what was happening in their communities and definitely knowledgeable. I mean they knew first hand what the experiences were and they wanted to see changes for the families that they worked with. They are very capable of doing that work and **I think that for the most part they are ready** [my emphasis]. If we have self-doubts a lot of those self-doubts are just coming from the colonial experience. We certainly need to see ... and our Elders in the early years acknowledge that we need to understand the main systems, the Western perspective, if we are going to continue to survive and I think that we need to continue to do that without losing sight of what our needs are and our culture [Regional Informant 4].*

***I think that some people are at that point** [my emphasis] and some people are working towards that and because there has been uneven progress with communities ... I find some of the more urbanized communities to be more progressive than a lot of various, say, remote communities, but I think the goal is the same for everyone but people are at different places. I think there are a lot of First Nation communities that are ready to take that step and have been doing work towards that [External Informant 2].*

The Key Informants' responses referred to above point out that some if not all First Nations peoples and their communities are ready. Many however expressed that there are limitations attached to what they perceive as the state of readiness respecting First Nations peoples, communities' ability and commitment to move toward self-

government to ensure that full jurisdiction over child welfare becomes a reality. Some of those limitations are tied to the imposed *Indian Act* election system, colonization and the division within families and communities because of government tactics, and the stereotypical belief that generally First Nations peoples are unskilled or just incapable of taking on the responsibility which comes with self-government. According to the perspectives above, the experience, education, and the belief that First Nations communities and governments have the capacity and the ability to take over child welfare exists. What is missing is the trust and an opportunity to demonstrate that capacity and ability. At least two of the responses above point out that federal and provincial governments must release their paternalistic hold on First Nations peoples and allow First Nations peoples, leaders, child welfare agencies and communities the opportunity to see how far they can take child welfare under their own self-governing initiatives and begin extending and respecting the fact that First Nations do want responsibility over the child and family jurisdiction which they once held. Caution was expressed by one key informant who pointed out a rather simple factor which impedes considerably on that readiness. First Nations leaders, child welfare professionals and communities must begin to address in this their dialogue on developing their own child welfare jurisdiction:

*I think for the most part they are. I think there is a lot of experience [my emphasis]. As far as doing the child welfare work, I think where the weaknesses are is in the self-government piece. Child welfare cannot operate by itself. It needs other institutions like legal and justice and things like that. I mean even in a province it [child and family services] runs through a ministry and government, so until those structures are defined by First Nations people, you can't really say. Child welfare can't operate as an arm of self-government if there is no self-government. I think what we can do now is what we're trying to do now with AJI-CWI, is build the infrastructure, develop the workforce, do all those pieces so that when someone says okay, are you ready to take it, we're ready to take it. But if you can't do child welfare here and not have those other pieces done there [Internal Informant 5].*

According to this Informant First Nations child welfare agencies are ready to develop their own child welfare jurisdiction but there are weaknesses with the self-government process envisioned in the FAI because other institutions needed to support child welfare have not yet been created through self-government. The creation of these other institutions will be necessary before a First Nations child welfare system can be operational under self-government. Morgan & McGettigan, (1999) also acknowledge there is a need for an interdependent and holistic framework of service delivery by exploring options for the design and implementation of integrated health, education, child care and child welfare services within a First Nations self-government framework.

The restructuring of the child welfare system through AJI-CWI as commented by the Informant above is viewed as a process that will build on developing the infrastructures and human capacities needed to operationalize the child welfare jurisdiction under self-government. The AJI-CWI however is seen by another Key Informant as only an interim step towards full First Nations jurisdiction over child welfare:

*Well yes, I think it is a stepping-stone towards self-government [my emphasis]. It's one of the issues we always deal with is the fact that our leaders don't believe that the provincial government has a role to play within First Nations' governments however the fact of the matter is when it comes to ... education, child and family services, health, the province has their foot in the door and I think it is our job as leaders to find a way of shoving them back out the door when it comes to all those issues ... (Regional Informant 1).*

The restructuring of child and family services as proposed under AJI-CWI is not the ideal circumstances but in the meantime, it is considered by many First Nations child welfare and political organizations as one step forward in claiming full jurisdiction over



child welfare as I have alluded elsewhere in this thesis (AMC, no date; and SCO, 2001). This individual's comments acknowledge that jurisdictional barriers currently exist within the province in many other areas besides child welfare that affect First Nations peoples. This informant expressed a belief that more long term planning is needed before the ability to take over child welfare and/or other jurisdictions can be achieved. McCaskill et al (1999) reiterated in its review of the FAI that the authors of FAI underestimated the extent of the self-government process.

Awareness through education of all technical aspects of self-government is an important factor in securing individual and community involvement in child welfare development as was noted by one Internal Informant:

*... I think that before we take something like that to the communities, we need an education process, what is an act, what does it do, how does it become law, who enforces it and what goes into it? Those of us that work in child welfare know all about that but community people don't really. They hear about it but they don't really know what it actually means until you're involved in it sometimes. Then you sort of get an idea or what section applies or to whatever it is that is applicable. I think that that has to happen initially is that education (Internal Informant 7).*

For this individual, the significance of education as part of the consultation process cannot be excluded. More education is required to facilitate a broader understanding of how self-government will be developed and implemented. Before First Nations peoples can become meaningfully involved in consultations there must be an education process that explains how laws will be created and enforced under self-government. This view is supported by McCaskill et al (1999) wherein they noted that because of FAI's complexity, FAI must encompass an educational process to assist in overcoming community attitudes of fear and mistrust about self-government.

Furthermore, McCaskill et al recommended that when information about self-government is disseminated through consultations it should be provided in “laymen’s language” as well as in Aboriginal languages.

#### **Analysis of Interview Question 4**

The assumption that First Nations communities’ and governments’ are ready to take on the jurisdiction of child welfare under self-government appears to be the predominant perception. My inquiry then turned to identifying ways of engaging the participation and involvement of First Nations peoples in community discussions on child welfare as required for self-determination but in ways that are respectful. Question four asked the Key Informants to identify respectful ways of engaging First Nations peoples this way:

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**4. Assuming First Nations peoples are ready, what is the most respectful<sup>24</sup> way of engaging First Nations peoples in becoming more involved in the development of First Nations child welfare laws and governing structures under self-government?**

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A respectful process as noted by one Internal Informant requires a more individualized approach to consulting with First Nations peoples. It was explained this way in this response:

*I prefer one on one because people are more at ease when there are just two people or three people or four people. In a town hall a lot of our people are basically shy and they don't participate as much as, I'm sure, they want to. But one on one, they will tell you how they feel without fear that somebody is going to oppose them or somebody is going to think that what they are saying is wrong kind of thing. So one on one – it probably would take a lot longer to do but is probably more effective ... (Internal Informant 7).*

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<sup>24</sup> The concept of “respect” and being “respectful” is explained more fully in Chapter One, at p. 18.

This approach is seen as producing a more successful outcome than conducting large scale consultations where participation is impersonalized and which can impede on participation.

Other Key Informants pointed out that the ability to respectfully engage First Nations peoples in the participation process means acknowledging that there are internal differences and different ways of doing things in the community which can affect how participation is respectfully conducted:

*We have to start where people are at and that's part of ... the differing views and opinions, it's part of the richness of the community view, is to allow there to be community debate, to allow there to be discussion and differences but to encourage that that is resolved in a way that is respectful for children [External Informant 1].*

*... I think there are a lot of issues. One is that for the communities that are ready, there has to be respect for the way they do things including their official leadership, Chief and councils but also the community people like Elders including the whole community, youth, having respect for their own internal ways of doing their business [External Informant 2].*

Other examples where First Nations peoples have been respectfully included and invited to participate in the debates and discussions around child welfare was evidenced in the Province of Manitoba's restructuring of the child welfare system as this Key Informant explained:

*Let's say on the AJI-CWI side, I think the way the province approached it with the MOU and the way the provinces really pushed working this whole initiative is through the leadership and identifying clear parties that speak even though other people may disagree and really trying to create a sort of government to government context. I think that has been very respectful in how they did that. I think the way the four partners ... I think overall there has been a lot of attention paid in making sure that everybody is equally represented even though for example, the province certainly has more weight because they control the resources or they could think they do and exercise it, but they for the most part, haven't done that. So I think they [the province] have been very respectful in that regard, trying to work it so that everybody is at the table. They've been willing*

*to fund a process that involves, that recognizes our own structures for getting approval and they have been willing to pay for that and allow the time for it even though sometimes it takes more time, costs a little bit more, because we have assemblies or whatever. So they recognize that we don't have one minister to run to, to get the okay - That we [First Nations] have a group of people that we have to deal with. I think that has been respectful and the funding of the steering group process recognizing that you have a number of levels, the political, the technical and you have to try and involve everybody and try and get as much feedback as you can. I think that piece has been respectful ... [Internal Informant 5].*

On the other hand, this same Internal Informant also viewed FAI as being disrespectful in comparison to the AJI-CWI in encouraging First Nations peoples to participate and become involved in discussions on child welfare as part of the self-government initiative underway in the province:

*I think FAI's been completely the opposite. I think that when FAI first got signed, like the whole agreement, there was a good debate and there was a good taking of things to the communities and communities came back with different positions, some supported it, some hated it. There was a debate about that and I think there was an effort and more of a recognition that we have to involve the community. Somewhere along the way I think FAI lost steam on a number of fronts, including the leadership. It became something that I don't think was intended. I think that the community piece certainly fell off the table when the funding for community reps [community coordinators] was lost. I'm not saying that [the community coordinators] was even effective but at least it recognized the need for them. I think with the CFS part on FAI, it's been very disrespectful particularly since it moved over to a political organization. I think that was a very bad thing for it and it lost not only the connection to the community but also the connection to the Aboriginal child welfare experts, the agencies. Those agencies have been around for 20 years and they have a broad network of people, committee members, foster parents, and staff. All would contribute extremely valuable input into drafting law and there is no communication and no effort to interact or set up a process. Like no attention was paid to a process to involving these folks in a meaningful way. So when I sit with the directors, no one knows what's happening with FAI. As far as the community stuff, like I have no idea. I'm aware that they came out to two of our communities in \_\_\_\_\_\* and I'm aware in one of them they were asked to leave the community and in the other one, I don't know what happened at that session. I know that our staff were not involved in that which to me is a mistake but I also know that after that, our local committee met and they were extremely upset over what had been said by the FAI people and I think it is because some of those people don't know child*

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\* Name of agency withdrawn for confidential purposes.

*welfare, and they are not working with their child welfare experts and they are bringing their own baggage to the table and that all came out in the consultation. So you really didn't get any kind of information that I think anybody could rely on that anyone should rely on to make law [Internal Informant 5].*

Respectfully engaging First Nations to participate in community consultations on child-welfare also requires that consultations be undertaken with the governments too as one informant iterated below:

*... What I find most challenging is how do we engage those we need resources from in order to make this happen? That opportunity question - so, the federal and the provincial governments, for example, ... how do we have a conversation with them in saying that you know what, what you've done in terms of child welfare has not worked. You could all acknowledge that but what you need to do is allow us the freedom and invest in us to look after the children in the way that's respectful in our communities. And it sounds easy - there's lots of rhetoric around that but it's very, very difficult for people to let go in [non-Aboriginal] government of their traditional ways of doing things. They still come from the place of thinking that what they are doing is better even if there is tons of evidence to the contrary. That is the most difficult conversation to have when you invite people to be part of a process because it is not just an invitation to do practice differently. It's an invitation to think differently (External Informant 1).*

On the other hand when governments claim to consult with First Nations peoples generally, it not always respectful as one External Informant pointed out:

*A perfect example is not about child welfare but it's the First Nations Governance Act. The particular parts of the Indian Act that they [DIAND] want to amend are government priorities. They are not First Nation priorities. [First Nations] People aren't saying we don't want to change the Indian Act or they aren't saying the Indian Act is fine. They are saying those aren't our priorities; those aren't our issues that we see as being urgent. Like reforming the electoral process is not an urgent need, there are problems with it but people are talking about housing, they are talking about child welfare, they are talking about poverty. Those are urgent issues and ... so I think that if somebody's is telling you focus on this area, focus on that area, that's not what First Nations want to hear because they have gone through that so many times. There's a resistance there [External Informant 2].*

Respectfully engaging First Nations peoples and communities to participate requires recognition that First Nations must come to terms with the past and deal with the role that child welfare has played in the history of their communities as this Regional Informant expressed:

*For me the ideal way would be for communities to start looking at the history of child welfare in their own communities and start working through the emotion and spiritual hurt that's come from that because I think as individuals that if we've been involved, our generation has been involved in child welfare, it's one of the most frightening things that is going to happen with our own children, with the next generation and we see that it is happening in a lot of families. So, just the word "child welfare", it's not something positive, it's something that is easier to avoid than to take it head on and everybody deals with their experiences differently. I guess people look at that as sort of the slow way to do things, because you know you need to heal, you need to start dealing with some of those issues and then you become empowered and start participating [Regional Informant 4].*

The individual's comments above indicate that healing must be a priority before First Nations peoples and communities can be meaningfully engaged and involved in any consultation process, not just those that deal with child welfare or self-government. Healing is a necessity for the success of Aboriginal self-government and the healing solutions to be used and implemented should be initiated holistically, be culturally appropriate and community-based (Warry 1998).

Engaging First Nations peoples to become more involved in child welfare, self-government and community consultation discussions will require a great deal of creativity, unrestricted time and money if consultation with the people in the community is to be successful. Respectfully engaging people is also about acknowledging, like with conducting research in First Nations communities, that there must be ownership and a sense of responsibility over the consultation process by the people themselves (Tuhiwai

Smith, 1999). First Nations have to be able to buy into the process. If there is a sense of ownership then more people will become involved but participation cannot be induced by force, which has happened all too frequently in the past (Cardinal, 1995; Tuhiwai Smith, 1999). Respectfully engaging First Nations to participate in community consultations on child-welfare also requires adequate human resources as well as money and realistic time frames to undertake meaningful consultations in the communities without losing site of the diverse cultural context of communities (Durst, 1996b).

### **Analysis of Interview Question 5**

The focal point of question five was designed to elicit whether the Key Informants interviewed for this study were aware of reasons why First Nations people might chose not to participate in the development of their own structures.

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**5. Have First Nations people been hesitant to participate in the development of their own child welfare governing structures and supporting child welfare laws?**

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People are just not interested in these sorts of things because of the complexity of the issues and the sheer fact that it is not a high priority to the people in the community as noted in this comment:

*No the attendance wasn't that great to begin with but I think that's because people have a lot of other things to do and legislation is kind of foreign to them. I think until it hits you or you have to deal with it, it's not a priority, you would rather go shopping instead of going to a two hour presentation on legislation that you don't really know about. I think that is how they think at least that is how I would think as well (Internal Informant 7).*

Although not all of the commentary is included here, all of the participants indicated in their responses that they have witnessed low attendance rates at consultations respecting child welfare issues. As one External Informant stated “the whole nature of child welfare it’s no one’s favorite topic.” However that is not to say that First Nations do not get involved in child welfare discussions as reflected in this response:

*I think when we have to deal with specific issues in communities, people do come out. For example, in \_\_\_\_\_<sup>25</sup> there was an issue around kids getting into trouble because they don't have nothing else to do sort of thing. So when the police, the education peoples and ourselves, people came out and wanted to listen and to find out what we're going to do about it. Some people offered help by volunteering to work on this area and that area. I think a lot of it has to do if those issues affect them directly and I think that applies to anybody no matter if they are on reserve or off reserve. Where I found the people that volunteered the most are those that are kind of independent that have jobs, and don't have to worry so much tomorrow about how they are going to eat. Those are the people that volunteer more or maybe it is families that is, in our judgment I suppose who raise their kids and don't have any problems with their children. They grew up and go to school and are well behaved and don't get into trouble with alcohol or drugs. Those kinds of parents also come forward and offer their advice and their services to do things for the community. I guess a lot depends on your economic well-being if that's the term? [Internal Informant 7].*

This response points to an important factor why First Nations may not participate in community consultations. The ability to participate is directly tied to the economic well being of the person and the community. Another Informant put it similarly this way:

*But I still have a problem with consultation because of the fact that our people are in a situation where so many of them do not have their basic needs met and how can you talk to people ... when you are not meeting their basic needs? [Regional Informant 1].*

The Elder offered up a similar observation when she responded with this view:

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<sup>25</sup> Name of community removed for confidentiality reasons.



*I think what really comes to mind is that we have to look at the total situation, the economics, the socio-economics, the physical, the mental, the spirituality, the holistic approach to child welfare. We can't deal with this unilaterally. People won't allow it. Things are so interconnected okay? If I'm feeling good about having enough food and clothing and you know to look after my baby and then I feel good about my self, you know? That is only one aspect of it and if I have, if I can be given time for myself, okay? [Regional Informant 5].*

The Elder's words remind us that participation is only possible when we look holistically at the situation of First Nations people's ability to participate. This includes the economic, socio-economic, physical, mental and spiritual aspects of an individual.

The hesitation on the part of First Nations peoples to become involved in the development of their own child welfare systems extends from the impact of colonization through the residential school experience (McKenzie & Hudson, 1985; McKenzie, 1989; Knockwood, 1992; Durst, 1992; Durst, 1996b; McGillivray, 1997; Callahan, 2002). There is a lot of historical pain wrapped up on the communities because of what happened in the past and although many the First Nations child welfare agencies have worked hard to change this that pain still exists (Hudson and Taylor-Henley, 1995; RCAP, 1996; Hudson, 1997). Other reasons behind the disinterest may be due to residual anger in the community especially when some community members have children in care (Hudson, 1997). One informant noted that the dynamics respecting community debates between members is one explanation behind the hesitation to participate in issues that affect the community as a whole:

*... The other big problem is that our communities are not comfortable or good at healthy debate. Like the debate is stopped because people get defensive and they feel that when they have a debate on an issue, its side taking. So if you have an opinion that differs from the majority or that differs from the leadership, you're afraid to offer it because you get jumped on. We don't have forms of government with chief and council structures where we have kind of an official opposition where your job is precisely that, to question everything that is done, not because*

*you're attacking them but just because that is your job. We don't have that in our communities so I think it is difficult to engage people in really good consultation. It becomes more people sit there and nod their head and if you ask if there is any questions no one has any questions, if there is problems no one says anything and then as soon as you leave the meeting, as soon as everybody leaves, it all starts right? I think the context of it is we need to pay more attention to those pieces. I think people are free to say what they want to say. I think a lot of them feel like they are stupid, they're uneducated. I've heard those comments from people, like well what do I have to say? They devalue their role and that's why you don't get good attendance at these things. Then you have community gossip and people don't even want to come to thing in the first place. I think those are all dynamics that you can't undo over night but I think you sure have to pay attention to this when you are figuring out how to do consultation. I don't think those are always recognized, it just let's set up a meeting and people will come. If they don't come then we assume they are not interested and I don't think that's the right assumption either [Internal Informant 5].*

The replication of past abuses and the overall fear of taking on the responsibility and control of child welfare is another reason behind the hesitation in some First Nations communities because First Nations peoples are:

*... Scared, scared when you are getting to a point where you are going to be taking responsibility for your own but as ... those outside systems will be incorporated and used in our communities have not worked and failed our people in a way ... I guess people are leery that things will or may not work out the way they would like to see them. And there have been major flaws in child welfare and there's been issues raised from all angles, like when they talk about abusive authority, abuse in the system, I mean the big thing is going to be to put mechanisms in place to deal with those abuses. Again, I'm not sure how that is going to be done but I have faith in the people involved in moving this process along and those people being our experts in the field of child and family services. I think they'll, they are cognizant of those issues and they'll assist in putting mechanisms in place so that abusive authority by clients, political people or staff members is seriously minimized. I think that this has been a problem from those outside systems we never really had a say ... if you refer back to the sixties ... that caused major damage within our families and if you look at residential schools, that caused even more damage, generational damage right up until even my generation and next after. So those kinds of things I think as First Nations people when we look at putting systems in place, we are so aware of those kinds of things, the damage they caused and because of that, you're more careful in how you set up or will set up your systems but it is still scary! [Regional Informant 1].*

## Analysis of Interview Question 6

At the heart of question six is whether First Nations peoples can develop laws that will impact highly on fundamental areas that are by their very nature deeply private and which will strike at the heart of families and communities. Are First Nations peoples capable of creating legislation as well as capable of monitoring themselves in making sure the application of this law is being complied with in their own communities? The question focuses on the ability of First Nations peoples to make decisions about how their laws will impact their lives and their communities. The question was worded as follows:

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**6. How would First Nations peoples respond to the development of laws that impact on such personal areas on child and family matters and the safety of children/youth who might be in need of protection?**

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The comments below emphasize some of the perspectives on the capacity of First Nations peoples to develop laws that will have a personal affect on family and community matters:

*... First Nations peoples already have their own laws, but they just aren't recognized [by mainstream society or the judicial system]. And I use custom adoption as an example. I mean there are examples all over our communities where there are kids that have lived with other extended family placements and even in non-related family. For just about their entire lifespan and into adult, where they are adopted by a clan and it's never gone through any court system. No one has asked for provincial support or funding support. It is just simply what you do. So, to me, it's not provincial laws until we develop our own laws. It is always this tension saying that our traditional laws are still in place here and we have this tension, almost like sandpaper grating with this other independent provincial child welfare law. At some point, we need to recognize what has always worked, compare the two of them and if you take a moment and just reflect on the provincial child welfare system and we look at the results of how that has been on our people and then we looked that over and say, okay, with our traditional laws what would have been the result? I think every objective research project would find that those traditional laws have been superior. So we need to find ways of having those recognized by broader society because having them recognized by broader society, stops the inhibition, this*

*grating of the sandpaper of those others laws and I would also say offers, opens up an opportunity for mainstream society of learn from some of these traditional ways of caring that have been true since the beginning. And then ... you know when you raised that discussion yesterday about cultural match, your own solutions have to come from your own ways of knowing and being and that would even go for First Nations. ... In describing things in a way that people can understand the law. The law should be a collective view about certain standards that we have in communities, certain ways of knowing. ... A legislation about children and families should always be respectful to their changing circumstances but should be tied to that core center of values and beliefs that identify them as a people, as they define them not as someone or a law maker defines them but as a community defines those values and beliefs [External Informant 1].*

*I think if those laws truly reflected the community's needs and desires, what needs to happen for that community, I think that they would be supported. When you were asking me that question, I was going through this real conflict because in myself there's this doubt about whether or not colonization has affected so many of our leaders in terms of making decisions that are good for the whole community or whether there's another agenda. And we know there are these other people who are really fighting for all the values that our people have been fighting for, for centuries. At that same time there is this feeling of excitement at the whole concept of Aboriginal people really being able to develop laws or policies that pertain to their communities and to their families and that they are based on the values of our grandfathers and grandmothers [Regional Informant 4].*

*... I think they would probably act so long as it was in the best interest of the child and the safety of children who might be in need of protection? We never said that children should be abused right? In the old days we never saw abuse. I never saw abuse. I think that people, families had ways of dealing with situations so that abuse wouldn't occur. ... I think that we always want a safe environment for our children and I think that as First Nations people we will see to it that our children are raised up in a safe environment [Regional Informant 5].*

First Nations already have their own laws that have been monitored by the people for centuries however they are not recognized by mainstream society (Warry, 1998). Custom adoption is a primary example of where this was so (Durst, 1992; Jourdain, 2002). Many of the interviewees were of the opinion that First Nations can step up to the base and create legislation, policies, standards and guidelines that are based on standards more culturally relevant and appropriate than what currently exists (ANCFSAO, 2001).

Whatever is created through self-government, independent First Nations child welfare systems and any supporting laws must reflect and share the same understanding, values and principles found in the communities to which it applies. Nations must be resolute about investing all aspects of Aboriginal culture into their modern structures (Newhouse, 2000). In other words, there must be a cultural match between the law created and the First Nations values and principles espoused and how they are reflected in the law. Chandler & Lalonde (2002) for instance, indicate that the solution to youth suicide in First Nations communities is predicated on the engagement of Aboriginal youth and their communities in efforts to recover from the effects of colonization and in the movement of the community toward self-government and culturally appropriate institutions of self-governance.

Some of the Key Informants expressed concerns around developing child welfare laws as illuminated by these observations captured below:

*I think they [First Nations people] are kind of suspicious that they are being asked because they have never been asked before. They are kind of wondering if this is just another study another thing by the government. When you have been burnt so many times, it's hard to trust [Internal Informant 3].*

*I think that people would be hesitant because, well there's right now, in regards to the community's development and in regard to child abuse; there is no community norms in how we deal with child abuse cases. We are by law to report and investigate and remove but it has to go back to [the community] and through that whole consultation process, like how this community\* going to deal with child abuse cases? What support systems do we have to set up for our victims but also the offenders in our community? Because, when you look at an offender, most likely they have also have been abused and that whole cycle of abuse is further continuing, right? But also the whole development of child and family safety, that whole definition, what are the communities' norms, standards on child protection for child and family? Right now you have this Act that says a child is in need in protection when all those little statements, neglect, abuse, physical, all those statements, right? The community has to go back and look at*

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\* Name of community removed for confidentiality purposes.

*their own norms and values as to child protection issues and safety? What is theirs, what is ours? You know what I mean? (Internal Informant 2).*

*... And the way that we deliver child welfare today. That's not our way. It has never been our way. Our way was looking after each other but how do we go back to that without the RCMP, without the courts getting involved? Long ago if a child was ever sexually abused, the people would look after this little child and they'd make the offender pay some kind of consequence and protect that child, whether it is a boy or a girl. That's lost. We never had foster care and all that stuff and it's sad to see. How do we get our people back to being able to ... like I don't want to sound like a hallmark card or anything, but to loving each other and being able to share? ... The more you think about it ... like sometimes, I get insomnia lots ... I was fine, I used to sleep. But now things are getting so intense. There is so much work to do and like I'm constantly thinking. My mind cannot stop because I'm thinking, thinking, thinking and I'm lying in bed and trying to sleep and I'm thinking all these thoughts... how do you get back to it? **Like how do you give back our race their pride and their dignity? First Nation people used to be so proud before** [emphasis added]. There never used to be people on the corner of Main and Higgins sniffing glue or whatever they sniff? It wasn't us! How did we get to where we are today? Even our organizations ... sometimes I think they are selective about whom they want to help and whom they want to work with. It's turning into a clique that's what I think. I could be wrong but it's what I see, I think? [Internal Informant 1].*

*Yes, they have to be involved in what that legislation is going to be and one of the things that we need to be very clear on is that we do not duplicate what is out there because what's out there with Manitoba's legislation, like you said, it doesn't work. There has to be a better way of doing things, you cannot reward monies to agencies for bringing children into care. There needs to be more focus on prevention and working with families and obviously, ultimately, protecting children. Things can't continue to be dealt with the way they currently are and the other piece is that there has to be major networking with our service delivers whether that's child and family, NADAP, health, Brighter Futures and those kinds of programs that are currently there in our First Nations and again focusing on prevention and empowering our youth and trying to stop the cycle of family violence and alcohol abuse. I know it sounds simple but it's a long-term goal, a long-term thing [Regional Informant 1].*

Some of the concerns expressed above center on issues of trust, how to deal with the social problems that plague some communities like child abuse for instance, and how to define and capture a community's norms about safety, child protection, family violence and sexual abuse. These are issues not easily dealt with in the short term and simply creating new systems and laws under self-government will not eradicate them

from the community (Durst, 1996a). The above responses also imply that something deeper must happen in communities before First Nations can go about creating new systems and laws. Many of this concern can be traced back to the backlash of colonization in the communities (Stokes & Ternowetsky, 1997). Healing is needed before self-government can be established (Warry, 1998).

### **Analysis of Interview Question 7**

There is no doubt that education is important to Aboriginal peoples across Canada (Battiste & Barman, 1995). Do First Nations peoples view education as important to the self-government process is the focus of this question. Is being educated a prerequisite to participating in community consultations which focus on child welfare or self-government? Question seven is replicated below:

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**7. Is it necessary for First Nations peoples to be educated in order to participate in the development of their own child welfare governing structures and laws under self-government process in Manitoba?**

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The answers received from the Key Informants to this question point to well-known traditional teachings around the medicine wheel, which supports a mix or a balance of experience and education. Cultural teachings and stories are very often at the heart of this perspective and were interwoven into some of the responses given. This is captured in two of the responses below:

*To me ... self-government is the ability for people to make decisions about what impacts their lives. So, the question becomes what kind of knowledge you need to make decisions about what impacts your life in the future and in the present. You need to have a sense of what your history has been, you need to have the wisdom that comes from the choices that were made before you and what the implications of those decisions were, you need to have certain values and beliefs that guide*

*your decision making like a compass. You need to know, understand and appreciate that there are different gradients of knowledge depending upon your life experience. And to encourage that those that are in the best position to make decisions based on that experience. We also live in a very complicated world and so for some decision makers they definitely need that university education. It is part of making sense of things such as globalization or the impacts of the NAFTA Treaty. And some people say that ... our traditions never anticipated that but I disagree. I think that a lot of our legends, at least in my community, we have a lot of legends ... for example, a legend about someone who takes way too many fish and they are profitable ... during their life span, they were able to share with their family, they become very well respected because he's a nice guy who went and took all this fish but seven generations later, his family is starving and the lesson is that we always need to be cognizant of what our choices are today for seven generations down the line [External Informant 1].*

*I think that people should look at the medicine wheel and say you need a balance of people. You need your educated people for sure because they have a role; they have certain things that they need to do. But you need to have people who don't have that same perspective. You want to look at the issue through a lot of different lenses and if you just have a bunch of educated people, you don't necessarily get the best thing out of them but you need them there. I think they can help frame things and they can maybe bring some understanding but I certainly wouldn't want to see leaving them out. I think they are critical but I don't think that that's certainly not the only thing and I would really like to see a mix, just like you should have a mix of ages because you get different perspectives and you should have a gender balance. Cause all that's important really at the end of the day is having a product that is good for everybody [Internal Informant 5].*

The idea of balance and having a mix of people with difference experiences was strongly endorsed by the majority of the Key Informants. The ranges of opinions which reflect this idea of balance are captured below:

*Well, I think that people who live in our communities know our communities better than anybody else who lives outside of our communities, right but that they have that knowledge that other people don't have. However I still think that you need people who are educated through the legal systems, through different ... areas to assist people from that community to be involved. I mean I don't know that people who are not really well versed in child welfare for example can participate in a meaningful way if somebody does not guide them. People need to know what the parameters are and how far they can go or how much of what they say will be used because we have sometimes that problem with our communities right, where we ask our communities for advice but then they think we're not taking it and then they get mad and say why are we here if they are not*



going to listen to us. So it is really important to tell people that this is your role. We're asking you to participate for this reason and that some of what you say we can use and some of it we can't but to be really up front with that. Because if not, and then people just think that you're asking all these questions and you're not paying attention to us, you're not writing down what I'm saying, so what's the point? To stop that from happening you need people who are really good facilitators and people who know what they are talking about, so educated people are really important in that sense. But in order from them to participate in the development, well, then I don't think that you have to have an education degree, a law degree, and social work degrees. I think that to participate you just need to have your "shit" together. People who are educated who have life experience, who developed that and learned from that have so much more to offer than somebody who just has an education or somebody who just has the experience. So the mix is really good. I have people working for me who don't have social work degrees and they are really, really good and they just have the ability to work with people and I've had people who worked for me who have social work degree who have really been the pits. So you sort of see that where somebody has both it is so much better. You can't say one is good without the other or put too much emphasis on the one and not the other. I mean personally, I would rather hire somebody who is mature who had a good sense of themselves and comes from levels of experiences of their own that they have dealt with themselves and learned and then they could help people through their own issues. I would rather hire somebody like that than somebody who is right out of social work with a social work degree and all they have is a social work degree because you have to train them anyways [Regional Informant 2].

I guess that depends on how you define education right? If we are talking about post-secondary schooling, then no, absolutely not! I think that we need to be educated in our cultural ways and those understandings about how our communities were run and the strengths of those communities. Educated in life, being able to understand the values that we live our lives by, being able to understand what child welfare and what history has done to us. So that's the kind of education people need. I mean, If you were to say only educated people educated in mainstream society were to be involved that would eliminate most of our Elders and many of the people in our communities [Regional Informant 4].

On the one hand, I agree that they should be educated but at same time too, I think that there has got to be some effort made to get the whole community, or at least most of the community, involved because they have to be involved because this is their community, their kids. I think they could be if they were made to understand if somebody took the time to sit down with them. I think they would make a good contribution, yah! [Internal Informant 3].

I think we need to be... when it comes to education; we need to find our own ways of doing that. With education, you also have to deal with the healing, especially when you are in the field of social work and somehow we need to do that and of course, yes, it is very important that our own people get an education in every area but it doesn't necessarily have to be in those foreign systems when you look at, let's say junior high school, for me, I would like to see our young children being taught life skills. How to live and survive on your own, not just

*the academics because that is part of our problem with our young people today because there is not enough being taught even in the schools when it comes to morals and values and just living. We are so caught up on ... you got to learn to read and write, math and all that kind of stuff. There is more to life than that [Regional Informant 4].*

*...Who is to say that somebody needs to be educated? Do you know what I mean? I can think of so many people in many communities that I think are the wisest people and maybe probably didn't even finish high school or grade school. I don't think it's educating them, it's more getting them involved because I think there is a lot viable information that we would not normally know about unless somehow you are able to engage people in the community to get them involved. But I think people have a lot to say on the whole issue of child welfare. They just don't say it to the authorities or certain people. ... because it's such an issue of authority ... [External Informant 2].*

*No! As long as you can understand what's going on and ask questions. I think regardless if you have a grade six or grade eight education, and you're thirty-five years old and you've lived life, you've experienced life and you've possibly been with the systems, different systems and you've learned from it. I think that every time we were involved with different systems in our lives, we've learned from it and we can grow from it. It's a way of looking at it. I think yah, if you're educated, you might have a quicker response to understanding but I think all our people have a lot to offer [Internal Informant 2].*

*I think that there needs to be a balance. There needs to be a balance. We used to have this one staff that used to hurt my feelings all the time. She's deceased now and I really feel lonesome for her. She just died not long ago. She used to say, "Oh what's a piece of paper, I know more than most people." But I worked hard for my degrees and I feel that I should be proud of it and congratulated. I pulled myself out of the gutter and went to university to where I am today. She used to make me feel bad, I don't know why I let her do it and I used to feel bad about it. I used to say maybe she's right. She doesn't have a degree and she was a good worker. But I feel that we should be applauded when we make successes like that in our life to get a Bachelor of Social Work Degree or Bachelor of Arts Degree. I think that we should be able to be proud of that and not someone say, "Oh just because you have a piece of paper you think you're better than us." No I don't think I'm better than you guys are, "I am proud of myself damn It!" There has to be a balance. We have to know ... like can you expect a person that has never drunk a drop of alcohol to be able to counsel alcoholics? [Internal Informant 1].*

*If it's for example setting standards or values, then they have to be. They need to be involved, they need to be a participant and have a voice in it, at least being listened to because they are the ones that have to live with it. They are the ones that have to see their children or relatives be dealt with according to whatever standards that they have. Educate? I think a little more complex is the development of legislation. I think that is a little more complex. I think as workers we don't always understand the Act as well as we should but ordinary community residents - we shouldn't expect them to have a working knowledge of*

*the Act. It's good enough to have knowledge that such legislation exists to protect our children (Internal Informant 7).*

Education is important for First Nations citizens but it is not the end all be all for all communities. Many mistakenly believe that education is the panacea to the problems that face Aboriginal communities and is a must for developing self-government (Durst, 1996). Having a mix of people with different experiences is considered by many of the Key Informants as important but it appears from the responses above that education also needs to be backed up by life experience. These views are supported by Warry (1998) who observed that First Nations have increasingly moved toward hiring and promoting their own community members and have begun to recognize life experience in lieu of other professional training (p. 54).

One Regional Informant viewed education slightly differently by pointing out that education is absolutely essential for First Nations peoples to successfully negotiate outcomes on self-government and this can only be obtained from getting experience or an education:

*I know some people have said that First Nations people don't need to be formally educated in a Western learning institution in order to participate because their life experiences inform them and they have based their understanding and their ways of knowing on that life experiences that they do have. Okay, I don't think someone needs to be educated to stand up in a town hall and say his or her piece because then that's not democracy right? Then you are holding people back from freedom of speech just because they don't have a college degree. If you're part of working in the actual development process, you know, sitting at negotiating tables, doing things in that aspect I think it is important to have some type of formal, no ... it's essential to have some sort of education or experience. You need to be able to effect a successful outcome ... you need to be able to speak two languages, and I'm not talking about Ojibway, I'm talking about your own First Nations background and history, plus you got to be able to deal with it in mainstream [Regional Informant 2].*

## Analysis of Interview Questions 8 And 9

The analyses of responses to question eight and nine were collapsed together as both questions deal specifically with urban issues and whether urban First Nations peoples' participation is important and if so how should urban First Nations be brought into the self-government discussions on child welfare. Question eight and nine are duplicated below:

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8. **Should urban First Nations peoples participate in the development of First Nations Child Welfare laws and governing structures?**
  9. **Assuming that First Nations peoples residing in urban areas should be involved in self-government discussions, in your opinion how could this be achieved?**
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Many of the Key Informants indicated that the participation of urban First Nations peoples in self-government discussions on child welfare is important and is necessary. I have highlighted eight of the Key Informants' responses below:

*Well if we're going to define self-government as nations and if we're going to start thinking, as I believe we should, as citizens and not band members, **then absolutely, they have to be part of it because that's their nation** [my emphasis]. We're talking citizenship unless we're saying our little country is the reserve. If we were to take that approach with self-government, it would be self-defeating because half the people live off of the reserve. I think you really want to build a nation that includes all your people and not just people living in your geographic area. ... Trying to keep it limited to the reserve I think is more a fear of change. I think self-government people need to think different. I think it would create so much more health to the nation, to have all the people not just the people living in a small area. ... I think if we're going to start defining who belongs to our nation, that's the concept of citizenship. It should not be based on the Indian Act concept of who is registered and who is a band member. That was not traditionally how it was done either. I mean band membership and Treaty Indian, that's really an Indian Act kind of thing, you're registered but it's the federal government's register [Internal Informant 5].*

***Absolutely, they have to be involved** [my emphasis] ... and you see this whole ploy of on and off reserve too, I think that is just another ploy to split our ranks even further. Turn the urban against each other so now we're fighting. The chiefs are fighting for one thing and now, that whole attitude thing again, that*

negative attitude ... I'm going to side with these guys because these guys ... are going to do something for me, like the whole FNGA [First Nations Governance Act] thing. Well, they never did anything for me on reserve anyway, so I'm going to go over here. See, that's not even healthy thinking. That's coming from resentment, anger, and frustration. They are playing us like a fiddle and we're just falling into it. Our people are just falling into it, eh? [Regional Informant 3].

**Absolutely!** [My emphasis] For me there is no reason to eliminate a person because they are urban based? Their experience is just as valid as those in the rural areas [Regional Informant 4]

**Of course! I really believe that they should be because there is such a large population of Aboriginal people in Winnipeg** [my emphasis] and if they are ever going ... have an impact here in the city and if they are ever going to be organized as a community, they are going to have to start. They are going to have to have a say, even just because they left the reserve, they are still a part of that culture, part of that community [Internal Informant 3].

**Absolutely! Our leadership has always said that we represent our people on and off reserve** [my emphasis]. So yes, they need to be involved and in fact, we need to start forming partnerships with other urban organizations that have provided services to our people in the urban setting. I guess we have to do a lot of work in that area as well [Regional Informant 1].

**Yah, for sure! ... That's always been an issue even in the National Policy Review. First Nations were clear that they want to take care of their own people regardless of residency** [my emphasis] and ... barriers have been set up by the different levels of government, not by First Nations, in terms of providing services depending on where people live. Just because you leave your reserve doesn't mean that you are not a member of that community anymore. I don't think there would be any dispute about involving First Nations peoples in urban centers [External Informant 2].

We have some band members who are called urban \_\_\_\_\_\* but they still have connection to family. They may live in Winnipeg but you know people are traveling back and forth on weekends to visit family. You know they always have that connection. They may be living in Winnipeg but you know they are going to part of a system of child of family and sure, **I would think they should be, they should be involved** [my emphasis], because it has ... it would have an impact on them also [Internal Informant 2].

**Yes, it's** [child and family services] **going to impact on them at some point** [my emphasis]. For example, the jurisdictional issue through MOU, yah, they needed to be involved because we are going to be working with them. Even if a self-government process was put into place we would be working with those First Nations people that live in urban areas. Yah, I think they have to be offered the

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\* Name of community taken out to protect the identity of the community.

*same benefits that could come from this self-governing structure* [Internal Informant 1].

The above responses clearly establish the importance of including urban First Nations people in discussions on self-government. First Nations families do end at but extend beyond reserve boundaries. Graham and Peters (2002) recognize that the urban Aboriginal population in Canada is not distinct from the “non-urban.” On and off reserve First Nations and Aboriginal peoples are interconnected in terms of mobility, culture and politics as well as family (de Montigny, 1993).

One Internal Informant raised the complication of how to go about getting First Nations peoples in urban areas involved in self-government because it is virtually impossible to identify who is First Nations or where they live or whether they even want to participate in community consultations regarding self-government issues. This view was captured in the following concerns expressed by this person:

*If you have somebody who is really poverty-stricken who lives in the inner city of Winnipeg and who have had their children apprehended, they are not going to come to town hall meetings. Some of them might. Truly disadvantaged people are not going to do that. The onus is on us to go out and tell them rather than expecting them to go and get the information themselves. I think people in those situations don't know how to do that and are really uncomfortable about doing that ... I don't know what percentage of people out there are like that but I imagine there are some, we see them in our communities all the time ... Some of them we would know. We could tell now by the names, like we have the names of all the kids in care, for example, the families that Winnipeg is working with... but also, I guess that would be sort of up to us to take the initiative but of course there is a funding issues there, there's personnel issues, there's where do you get the people to do the work. And the information that we would give them is different than what a worker from Winnipeg would give them. There is no way to track that ... we would know who is on reserve. There are a lot of people who live off reserve and people don't know even where they are. There are a lot of people who live off reserve who basically are just band members but who don't really affiliate themselves or feel as if they are part of the community. I mean they are there for the benefits like medical services that kind of stuff but I'm not sure they see really see themselves as band members. There are lots of different kinds of*

*people out there and to get to them all I don't if that can be done ... [Internal Informant 6].*

There are a lot of unknown factors that make consulting with First Nations peoples in urban centers very complex and fraught with uncertainty about their status on and off reserve. The issues get even more complex and murky around who represents First Nations people politically off reserve when it comes to self-government development. First Nations peoples in communities cannot be represented without consultation. This degree of concern was expressed by this External Informant like so:

*I think if we create this urban population then I think we are creating a simplification. We need to say there is a whole continuum of Aboriginal people and that self-government needs to be about reflecting those differences and allowing people to pursue different choices about what self-government means. What I'm against is for people to be represented without their consultation or permission. For example, if there was a friendship center in my area who said we represent all urban people who live in the urban area here in Ottawa, and we want to create a self-government nation. Well, that's not okay because no one has asked me whether or not I give him or her authority to be my governors. I don't. If it is a group of people who say, you know what, we don't feel that the current mechanisms of self-government adequately reflect who we are, and we agree on a certain collective political body to go forward and represent us then I give all the more power to them as far as I'm concerned. But I think it is really about that choice about how people identify themselves and respecting people's personal choices about what political arena should represent them and I think government too often simplifies things. They'll say there are urban Aboriginal people who want to pursue self-government ... and they'll have this universal kind of standard, there are some urban Aboriginal people who want to pursue self-government. Well who are they and why? Why is this important and what kind of mechanisms is available to them? [External Informant 1].*

Many First Nations communities experience a brain drain through the educational process because people must leave the reserve communities in order to get an education and with that education comes a realization that access to resources, other opportunities and better jobs are better and much more fortuitous off reserve (Graham & Peters, 2002). The crux of self-government will depend to some degree on access to educated First

Nations individuals whose experiences and knowledge may be crucial to the success of self-government and therefore First Nations peoples in urban settings need to be incorporated as remarked by one individual in the explanation below:

*... Somehow I don't think there is an overwhelming capacity of First Nation professionals living on reserve all across Canada. A lot of our people who live off reserve are the experts out there, the lawyers, the doctors, and the accountants. Some live on but I think that in order to make the best ... to take advantage of the situation, you're going to have to include First Nations peoples in urban areas (Internal Informant 6).*

It will be a challenge to include off-reserve members simply because the attitudes that fuel the on and off reserve divisions between members is still there as was pointed out in this statement:

*... You'd have to consider that in an urban setting because they don't have that connection in the community because child and family are right in the center of everything. Everybody knows what goes on in child and family. You may have the confidentiality of working along with clients ... but it's a small community and everybody knows your business. So ... I can understand the fear with the urban people regarding the development of taking over child and family in Winnipeg and the whole law and how does that work? You also have to consider the outside influences and what we need to do out there to educate these people. It's all about resourcing collaterals, everybody that has to do with child and family. Here [on reserve] it would be a lot easier because it's a small community but in Winnipeg, it's a bigger challenge. ... And sometimes too ... it takes the whole community to make ... that whole decision, it takes some time for the community members to go beyond our reserve lines and say that if people have to be consulted ... well then why do they have to be consulted when they left our communities years ago. They have no say ... all those attitudes ...you know? (Internal Informant 2).*

Many urban Aboriginal organizations and political bodies were also identified by the Key Informants as important entities that need to be consulted and included in the discussions on child welfare under self-government. These urban organizations are seen as having a key role which should be utilized to the fullest extent possible when



conducting consultations with urban First Nations peoples because these organizations more fully understand the unique issues that First Nations peoples face in the urban arena that many on reserve agencies are aware of but lack full understanding of the extent of these issues as these individuals highlight in their response to question nine:

*The situations are different the problems are different. I mean some of them are the same but not to the same extent. So now when we think about them and so okay and we have to develop a service in Winnipeg, to me, it's like, what do we know about the inner city of Winnipeg because we have never had to live there. What do we know about the poverty level, the violence level, the gang level, the prostitution? We have some of those difficulties in our communities but not to the same extent. Our communities are more ... there is sort of an element of control over some of these things so that it doesn't end up like being the inner city of Winnipeg. ... Like there is a sort of mechanism in there that sort of controls it, not like here [Winnipeg] you know. I think that the situations are different (Internal Informant 6).*

*I think ... you can't have ... right now it is very confusing because when we have band elections people from Winnipeg come down but they are not really involved at the local community. So what they are involved in is totally different ... the local communities involvement and they see things different, you know? Because being in the city it is a lot more harsh and all that and you are not as protected. Here you have like a little anthill. You know all the ants and you know all the tunnels and all that. We know where our food is. Here [reference to Winnipeg] it's totally different and you have all these other strange ants coming in and some are really aggressive. And these ones are more when they come in they are more assertive. I think they should have, if they have a system, they should have one where it's a community here (Internal Informant 3).*

The inclusion of urban First Nations peoples brings expanded perspectives that can benefit the consultation process respecting child welfare and self-government as noted in the two commentaries that follow:

*Well, I think that the agencies are already involved with a lot of people off reserve. They could serve as a good link between the reserve and the off. I'm looking at \_\_\_\_\_\* in addition to staff, we work with foster parents and support workers and First Nations people that are involved with our services off reserve. They maybe sometimes can even bring a better piece because they have a better*

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\* Name of First Nation community removed for confidentiality.

*grasp of how to compare the two systems than on reserve that are only exposed to the First Nations agency. There do exist Aboriginal organizations that offer family related services, like Ma Mawi. There is a whole host of them so you have educated people that also have a network of Aboriginal people. I think there is a lot of ways that you could engage it. I think that it has to get taken out of the hands of the politician because they will only talk to who they are politically affiliated, then there is the tension between the on and off reserve at the political level. But I think in terms of engaging the people in the discussion there is lots of ways that could happen that would be probably good and get some good information (Internal Informant 5).*

*I think it's important although they would bring a different perspective to it, I think. A different perspective because I think they are more accustomed to ... they have more access to resources so they would see it differently. At the community level you got to improvise more it costs you more to access resources, you got to go further. You just can't hop into a car and in 10 minutes be at some resource center. You've got to travel further and it costs you more money. So maybe urban people don't experience those kinds of expenses I suppose because the resources are in Winnipeg or in a large town are there all the time. How would they contribute? They would probably be knowledgeable of more resources that are out there. They would know that there are resources out there they would know that. Whereas at the community, even at this point in time, we still find resources that we didn't even know existed in the city so I think they would help. Yah, their involvement wouldn't hurt and sometimes their involvement would open our eyes because of their different experiences. In the communities all we know is what is in the boundaries of our communities (Internal Informant 7).*

The First Nations child welfare agencies have tried to bridge the distance between on and off reserve members through the use of resources located both on and off reserve through the use of foster parents, the hiring of staff and support workers and collaboration with other Aboriginal service organizations such as the Ma Mawi Chi Itata Centre in central Winnipeg (Morrisette et al, 1993). Most First Nations child welfare agencies have extended their services off reserve and many of them have satellite offices situated in urban centers (McKenzie, 1999; McKenzie & Morrisette, 2002).

Urban First Nations peoples (and those residing elsewhere) were given an opportunity to participate in the public feedback process on the restructuring plans on the child welfare system in Manitoba as this individual pointed out:

*... we had included big time the feedback from urban First Nations and we did that through town-halls in the city of Winnipeg and Brandon because, yah ... because we knew directly folks in families that live off reserve and that live in the cities, that they needed some kind of access to a town-hall if they wanted to say their piece, eh? ... Yah, well AJI that's what the recommendation is, to expand and extend the mandate to off reserve, so you're going to be working with off reserve people, so yah, it's important to have that! [Internal Informant 6].*

Consultation with urban First Nations people under the Manitoba Framework Agreement Initiative has not yet taken place but there is little information forthcoming from the political organizations responsible for FAI that would verify whether this assumption is correct or not. There is uncertainty and hesitation as expressed by the child welfare leaders who participated in these interviews about engaging not just the participation of First Nations individuals in the child welfare developments under the Framework Agreement Initiative but in any consultation process that involves their mandate to provide child welfare services. Under the Manitoba Framework Agreement Initiative little consultation has happened with the First Nation child welfare agencies in the Province who have seen more collaborative endeavour exercised to date by the provincial government in the AJI-CWI process than with their own political organizations on the issue of child welfare under self-government (AJI, 2002). Many of these concerns will be highlighted in the next section, which analyzes the last of the ten questions.

In addition to jurisdictional matters, the axis of these two questions revolves around the issue of identity for First Nations peoples. These specific questions, more than any other, conjured up a host of additional questions by the individuals who were interviewed for this study. For example, do First Nations peoples define themselves by

where they live? Is our identity attached to geographical boundaries and if so, how will this play itself out in the discussions around self-government and exactly who will be subject to the child welfare laws that might be created under the self-government? Can First Nations peoples be members of multiple communities? Should we continue to reinforce the divisions that are reinforced by government and systemic barriers? How do we get First Nations peoples in cities to participate if we don't know who they are or where they are? Do urban Aboriginal organizations play a key role or should they be included in the debate around self-government? Some of these additional questions are covered in the testimonies that follow but it is clear that all the people consulted in this study strongly believe that First Nations peoples residing in urban centers are imperative to the discussion and debate on self-government over child welfare. The Elder consulted in this study adamantly agreed too and pointed out that:

*Yes, yes, yes. What did the census say? Something about the number of Aboriginal people that are in Winnipeg has grown. 36 percent of the Aboriginal population is people under 15, little people under 15, so there are a number of children living in the urban area ... [Regional Informant 5].*

The need to include urban First Nations in self-government discussions as expressed by the Elder above is further supported by the statistics which point out that almost half of the First Nations people in Canada now live in urban centres (Graham and Peters, 2002; Hanselmann, 2001 and 2003). Data recently released by Statistics Canada shows that Winnipeg in particular continues to lead the country in Aboriginal population. The current population in Winnipeg is an impressive 55,755, an increase of 10,000 since the 1996 census (Hanselmann, 2001; Aboriginal Council of Winnipeg, 2003; Rollason, 2003). The increased numbers of Aboriginal people isn't just a Winnipeg phenomenon.

It's mirrored in cities and towns across Manitoba as well as throughout Canada (Rollason, 2003). The Aboriginal populations in cities are relatively young (Hanselmann, 2001 and 2003; Rollason, 2003). Children under 15 years of age comprise one-third of urban Aboriginal population, compared with 20 percent of the urban non-Aboriginal population (Graham and Peters, 2002). In terms of child welfare these statistics are significant as most Aboriginal children and families in urban areas do not receive the same level of services or access to culturally appropriate programming as do First Nations on-reserve (Graham & Peters, 2002). Hanselmann (2003) also noted that urban Aboriginal people lack an effective voice with which to participate in designing and implementing policies and programs.

### **Analysis of Interview Question 10**

This question asked the Key Informants to share opinions on whether enough has been done to successfully encourage First Nations people to participate in the consultation processes that would lead to development of new governing child welfare structures and legislation under the MFAI. That question was worded in this way:

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**10. In your opinion, do you believe that the Manitoba Framework Agreement Initiative's consultation process with First Nations peoples regarding child and family services, has been successful in engaging First Nations peoples both on and off reserve in the participation process of developing new governing structures and legislation respecting child welfare in Manitoba?**

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All responses to this question were a resounding no! A few select responses have been highlighted below which explains why some Key Informants believe the community consultations as envisioned by FAI have not been successful:

No, I'm really disappointed. I think that personally it's not going to go very far or be very good. Just even the basic piece of consulting with agencies hasn't even happened. And to me if you miss that, you miss the main chunk and then it hasn't been compensated for in the communities or at the grassroots level either so I think they've got some serious flaws and weakness. It's not to be personal about anybody who is there, but they don't have the right people there either. ... Well it [consultation] has to be built into the process. I don't agree with having a consultation process and then we'll do the work. I think that is maybe one of the things with AJI that's good it's because we didn't just have the work groups at the beginning of the process and that was it. There have been lots of attention paid to having that process built, a consultation approach to things and lots of opportunities to engage different people along the way. So, it's built in as part of the whole strategy and not just as a piece that happens at the beginning and then we say, "We've done it!" I think it makes people feel they have more meaningful input too. You know how we get when the government says that they want to consult with us, we all kind of laugh and say, yah right! I think people say the same thing sometimes when we do it, yah right, they come and sit down and we say something and they do what they want to do anyway. I don't know how you become accountable to those people that you consult with if you don't somehow figure out how to keep them involved. Maybe that's partly what turns people off too because they are asked to come and participate and they never see the result or the result they see is nowhere near what they talked about [Internal Informant 5].

I don't think so, I think it's totally failed. Other than these quick touch downs that they did but I think there has hardly been any consultations. It's like the Prime Minister taking a tour of the country and then flying out. I don't know why it wasn't done properly or why ... or is it because the politics involved from that office or maybe there wasn't trained or professionals pushing that. Maybe there should have been more money for staff. I don't think a longer period would have helped. What was it ten years? [Internal Informant 3].

... the people that they had doing the consultation process ... the people they [communities] had hired to do the community consultations, didn't know how to do self-government and didn't understand enough about the process to be able to consult on it ... That was too much to place on one individual who didn't know what to do. I mean, it was really difficult to watch and be a part of because it was like, you knew that none of the information was going to get out and it was really unfortunate because it was a political decision (Internal Informant 6).

The biggest flaw I see and I'm not sure if it's a flaw or oversight or what it is? I think to me AMC has not done its homework in terms of developing governance models. CFS under FAI is expected to come up with definitions for example of jurisdiction and developing models of governance. To me that should have happened already after all the years that FAI has been in existence. To me FAI's role for CFS was to develop an Act. ... I think the approach might have been wrong by going to a community and saying okay here is what we want to do without showing them examples like governance models or talking about an Act in the end which might be the result if we don't run out of time and money. Like I said earlier I think you have to take examples to the people for them to

*understand and to see, they have to see something on paper, a drawing or whatever so that that way they will understand it better and quicker. Overall, I'm not particularly optimistic that we are going to do that in the next year or two or what is left of the FAI time limit and funding ... (Internal Informant 7).*

The fact that so many viewed consultations as unsuccessful can also be extrapolated from these Informants' responses as well:

*In doing whole the community consultation ... process ... doing it now, I don't think it's going to be successful. I think it is dying quite frankly, I think it is a matter of time before it rolls over. But I think what's currently happening with Manitoba with the whole off-reserve services is taking over and it's unfortunate that we didn't have the tools to support this whole FAI process and it would have made this whole off-reserve component a lot easier for all the First Nations if we had a stronger foundation within the Framework. I don't know, sure we have the north and the south. The south hasn't gone anywhere and ... the reason that I am saying this is that I haven't been involved with FAI for quite some time, maybe a year, two years and when I've been given information, it is very little. I don't know even what the south is doing for the FAI process. I know there's a north and south and that's all I know. I don't know where it's at these days and I think the north has taken over and they are the lead. I know they are the lead because they have gotten the community consultation process over and done with. They have taken what they have gotten from the people and have tried to implement the services ... I think that is what the south tried to do but they couldn't because they were trying to do it too fast and in a rush and within a time frame and that just didn't get anywhere and I think that's the reason to that. Because they had to do this on a shorter time frame than they had up in the north. I think that is why they didn't get that much information. ... I think it's unfortunate that since this whole consultation took place I don't even know what the outcome was. I heard little stories here and there that they went to some communities and they didn't go to others and they were kicked out of some communities. So, I don't even know they have anything to put together for the south, you know? [Internal Informant 2].*

*Not for the process of defining the governance, the governing structures and legislation. In my opinion what it mostly achieved was for First Nations people to rant and rave about the child welfare agency that services their community and say the negative things and nothing positive. That's what I think it turned out to be ... to be honest with you, like I haven't seen anything regarding legislation, any drafts or any structures there. I really haven't. ... Like in my honest opinion, I could never see the province giving up their responsibility or whatever under the Constitution in the area of child welfare anyway. I really don't. They're not going to say, "the Province of Manitoba for First Nations peoples operates under federal law ... federal law takes precedence over Provincial law, I can't...they [the Province] are not going to give something like that up [Internal Informant 1].*

*I think it fell short and I say that because I went out to the communities and people don't even know what it is about. If we had done an excellent job FAI would be a household word. I went out to communities such Sagkeeng, Waywayseecappo, and OCN<sup>26</sup> and we talked a little bit about the FAI; there was maybe on average 10 or 12 people at each meeting and I would say maybe 2 or 3 people out of those 10 or 12 people had heard about FAI and had an understanding about it; the rest of them were wondering what it was [Regional Informant 3].*

While many Key Informants support the development of a First Nations child welfare system predicated on full jurisdiction they acknowledge that at present most communities and First Nations child welfare agencies are confined to the current provincial child welfare jurisdiction. There is some optimism that another child welfare process will be able to provide First Nations child welfare agencies with an alternative to what they cannot have yet under FAI in the meantime. Here are three different but compatible thoughts on this point:

*The child welfare people look at it [AJI-CWI] like that, as an interim step towards the restoration of the whole jurisdiction back to First Nation communities. ... It was never at one time seen as pre-requisite but why not and what we're talking about right is taking those two initiatives and making them work for each other. Because what the AJI can do, it can build capacity eh? To eventually take over. You need that, you know and it's going to take awhile to get that and this process [AJI] ... I think it's good to take advantage of the process and why not use it for the benefit of building that capacity. And that's what we're trying to do ... First Nations child welfare leaders, experts, technicians, whatever, are communicating that to the chiefs [Internal Informant 6].*

*... The two initiatives should not be pitted against each other, which some people in some areas are starting to do that and they shouldn't be doing that because these are two initiatives that should work with each other, enhance each other and compliment each other. ... The Steering Committee members are talking about that now ... they are going to start looking at how the two, the FAI and the AJI can be brought together and entwined and benefit each other. Yah! Now the AJI is a very fast moving file, there are a lot people and it's very technical. That is the other difference between the FAI and AJI. The AJI is a systemic change*

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<sup>26</sup> Acronym for Opaskewayak Cree Nation, in northern Manitoba.



*it's a major system change happening right now. It's very technical and very detailed; its very social work, child welfare, directed ... it's developing a new child welfare system in the province, right? ... And that takes up a lot of time and not deliberately. The communication has not been as strong as it should be between the two initiatives [AJI and FAI] [Regional Informant 2].*

*Overall, the people, the clients and the people in the community, members ... are supportive of their First Nations agencies and more or less generally open in having that expanded authority province wide. There was an excerpt taken from a First Nations foster child ... well, she is an adult now, she had been through the system ... it was actually a quote from ... one of the town halls, a written submission ... or was it one of focus groups and she talked about her experience and she had wished that when she was growing up the foster care system ... there was a First Nations agency or something that could have helped, like could have been working with her instead of the non-Aboriginal agency [Regional Informant 2].*

Unquestionably there are reasons for the discrepancy in consultations between the FAI and AJI processes. But it may be unfair to compare the FAI and AJI child welfare processes simply because of the disparity of power that currently exists between provincial governments and First Nations political organizations. Where government has been able to engage First Nations peoples' participation in the child welfare restructuring process in Manitoba, its ability to do this is unfettered by any other governments or First Nations political organizations because the province is operating within its jurisdiction to encourage participation of the population in child welfare changes. FAI on the other hand cannot compete because lack of coordinated political power, inadequate financial resources, human capacity, time and most importantly, jurisdiction among others factors (Durst, 1996; McCaskill et al, 1999). It may also mean that the flow and access to the information that would encourage more participation has not been as forthcoming as FAI envisioned because AMC as an elite entity holds the power to distribute the information needed by community members to assist them in making informed decisions to participate in self-government and child welfare initiatives (McCaskill et al, 1999;

Kruzenga, 1999). Engaging the people to participate in consultations on child welfare developments under FAI is viewed as being unsuccessful. Those interviewed agreed that more consultation must be done and it must be done consistently at the pace of the community (Cyr, 2000) and built into the process and not just a one time activity. The success of community consultations and getting people to participate hinged on a process that hired individuals who didn't quite fully understand the self-government process as envisioned by FAI's leadership (McCaskill et al, 1999). McCaskill further notes that the challenge of achieving the objectives of establishing jurisdiction and restoring First Nations governments in 62 communities in Manitoba appears to have been underestimated by the authors of the FAI Agreement (p. 54). Other responses clearly reiterate the disappointing outcomes respecting FAI consultations on child welfare detect other serious flaws that point to issues of ownership and lack of accountability to the First Nations peoples who participated in the FAI consultations thus far (McCaskill et al, 1999). Furthermore important service providers within the communities were ignored in the consultations undertaken by SCO respecting child welfare under FAI. Lack of consultation and a lack of communication with grassroots members and the child welfare professionals who provide the child and family services on reserve has been viewed as disrespectful. Some of the main reasons why there is the perception that FAI consultations on child welfare do not appear to be successful in engaging First Nations people either on or off reserve lay in the history of both the child welfare project under the MFAI and the MFAI itself along with the break down in negotiations and funding to the process in 2000 and in the subsequent move of the CFS/FAI research project out a child welfare environment into one that was political. As one of the Internal Informants

noted, “Moving the CFS/FAI research project into a political environment destabilized the role of the First Nations child welfare agencies originally appointed by the Chiefs of AMC to oversee child welfare consultation in the south.” The speed with which the AJI-CWI initiative came about also set in motion a whirlwind of activities where First Nations and Aboriginal child welfare agencies were central to the policy and decision making activities under that process that soon surpassed the efforts of FAI in expediting child welfare under self-government. Emphasis and attention on the child welfare front in the province in the mean time has shifted from the MFAI to the AJI-CWI.

Regardless of the efforts under the MFAI, First Nations child welfare agencies in Manitoba continue to operate according to the provincial jurisdiction throughout the restructuring process. While AJI-CWI is not what First Nations want, it does offers an opportunity to build on the capacity of First Nations peoples and to assist First Nations child welfare agencies in building a strong, capable and accountable infrastructure that will be required for full jurisdiction in the future (AMC). As was previously noted elsewhere, AJI-CWI is viewed by First Nations Leaders and child welfare professionals as an interim step toward the goal of having full jurisdiction over child welfare. The AJI-CWI initiative offers an opportunity that will assist First Nations child welfare agencies to begin building stronger infrastructures with the human capacity that will be necessary under self-government (AMC, 2002).

## CHAPTER 6: CONCLUSION AND AFTERTHOUGHTS

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### **Community self-confidence**

Freedom and development are as completely linked together as are chickens and eggs! Without chickens you get no eggs; and without eggs you soon have no chickens. Similarly, without freedom you get no development, and without development you very soon lose your freedom ... Development brings freedom, provided it is development of people. But people cannot be developed; they can only develop themselves. For while it is possible for an outsider to build a person's house, an outsider cannot give the person pride and self-confidence in themselves as human beings. Those things people have to create in themselves by their own actions. They develop themselves by what they do; they develop themselves by their own decisions, by increasing their own knowledge and ability and **by their own full participation – as equals** [emphasis added] – in the life of the community they live in ...

Julius K. Nyerere, *Freedom and Development*, 1974, p.58.

The strength of my analysis depended very much on what was shared with me in the interviews with each of the fourteen Key Informants. Most of the responses to the 10 open-ended questions highlighted earlier in the Chapter 5 analyses reflect a general consensus among the fourteen Key Informants who participated in the research for this thesis. This consensus reveals that the majority of the Key Informants are familiar with the Framework Agreement Initiative in Manitoba and among them there is a strong opinion that First Nations people play a significant role in the community consultations process. The participation of First Nations people is seen as a key component to the success of self-government for First Nations in Manitoba and elsewhere in Canada. Furthermore, the Key Informants are of the view that First Nations are generally ready to undertake full jurisdiction and responsibility over child welfare under self-government.

The Key Informants note that First Nations child welfare agencies in Manitoba have built capacity and experience in providing child welfare services to their First Nations constituents but now need the opportunity to be able to restore their own child welfare jurisdiction. A mix and balance of educated First Nations people will be required to do this. All Key Informants stressed that the balance between experience and education should also include the participation of urban First Nations peoples in the discussions on child welfare jurisdiction and self-government. All the Key Informants view consultation as an important element of self-government. Unfortunately, many Informants felt that the consultation efforts by FAI did not successfully involve enough First Nations peoples, communities or First Nations child welfare agencies in the consultation process. Lastly, a good majority of the Key Informants' responses accentuated a belief that more consultations and opportunities to engage First Nations peoples in discussions, debates and development are required to restore the child welfare jurisdiction and create success for the future of First Nations self-government. Consultation is not merely a one-time event; it is an ongoing event that requires evolving and courageous commitment to an ongoing dialogue between First Nations peoples, communities and their governments as well as their service agencies.

The success of self-government hinges on the full participation of First Nations people. The very people who will be directly impacted by its creation can only strengthen self-government if they participate. Participation is therefore integral to the progress of self-government. But there are impediments to obtaining the participation of First Nations people in community consultations on self-government as some of the Key Informants alluded in their discussions. Many of these impediments are related to the toll

of colonization and dependency of First Nations peoples, communities and governments. Before there can be meaningful participation by First Nations peoples in discussions and decision making processes that lead to the establishment of self-government, there must be healing and empowerment. Warry (1998) believes that the process of community healing and self-government are intrinsically linked. I strongly agree with that proposition but healing and empowerment can only happen if there is real invitation to become engaged in the activities that will lead to the development of such governing structures. Consultation requires more than just a plan. First Nations must find a way to motivate First Nations people to want to become fully engaged and involved in developing, implementing and maintaining their own governments. Participation is about the will of the people but because First Nations people have lived through long periods of dependency, most of have forgotten their true strength. It is important therefore that First Nations initiatives that work toward establishing self-government work with the community towards the re-discovery of its own strengths, wisdoms and humanity. Future consultations must be based on collaboration between all sectors within First Nations communities (public, private, government, and third sector agencies). Furthermore inclusion of First Nations child welfare agencies which provide services in First Nations communities must also be part of the process especially if it involves structural changes that infringe on their child welfare mandates.

As noted in the introduction, the purpose of this research was to look at participation of First Nations people in community consultations as a process central to decision-making and establishment of self-government for First Nations. There were also personal reasons why I embarked on conducting research on this specific topic. As

mentioned in the first chapter of this thesis the justification for conducting this research was for me to bring some closure to a Project that had previously been left unfinished. I would like to return briefly to that reason again, as I believe it plays an important consideration in concluding about what I learned in conducting this research. When I was laid off from working on child welfare under FAI, I was very disappointed because the next phase of the research with the southern First Nations CFS/FAI Research Project involved conducting community consultations in 36 southern First Nations communities in Manitoba. This unfortunate and unanticipated event deprived me including those overseeing the southern child and family consultation from an opportunity to learn from the First Nations people in those 36 communities. But it also saved me and others from making mistakes in the process of carrying out such a complex and massive undertaking without understanding first how to engage and more importantly empower First Nations people to participate in community consultations. We will continue to see low levels of participation until we recognize that involvement is the result of empowerment and is conductional upon people's feelings being effective and valued. More research on empowering marginalized peoples needs to be built into the consultation processes with First Nations peoples. Consultation requires providing people in the communities with a sense that the process belongs to them and them alone. Engaging involvement of the people requires more than just radio announcements and posters advertising consultation events. First Nations people need to increase their knowledge on public consultations, citizen engagement and exercising more social inclusion as well as fostering voluntary activities directed toward establishing their own self-determining governments. But without real progress in healing this goal will be an illusory as the quote at the beginning

of this chapter seems to imply. However self-government plays itself out, it is certain that healthy, intact, engaged and empowered First Nations families, communities, and governments must be the cornerstones of these new governing arrangements. The ability and the right of First Nations peoples to participate in discussions on developing new governing structures is in itself a self-governing exercise that is a necessary and crucial component in navigating the road toward self-government.



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## APPENDICES



UNIVERSITY  
OF MANITOBA

**Appendix A: Ethics Review Approval**

OFFICE OF  
RESEARCH SERVICES

ORS  
244 Engineering Building  
Winnipeg, Manitoba R3T 5V6  
Telephone (204) 474-8418  
Fax (204) 261-0325  
[www.umanitoba.ca/vpresearch/ors](http://www.umanitoba.ca/vpresearch/ors)

**APPROVAL CERTIFICATE**

23 October 2002

**TO:** Marlyn Bennett  
Principal Investigator

**FROM:** Wayne Taylor, Chair  
Joint-Faculty Research Ethics Board (JFREB)

**Re:** Protocol #J2002:104  
**"Engaging First Nations in Child Welfare Legislation"**

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Please be advised that your above-referenced protocol has received human ethics approval by the **Joint-Faculty Research Ethics Board**, which is organized and operates according to the Tri-Council Policy Statement. This approval is valid for one year only.

Any significant changes of the protocol and/or informed consent form should be reported to the Human Ethics Secretariat in advance of implementation of such changes.

## ***Appendix B: Introductory Letter To Key Informants***

Date:

**PERSONAL & CONFIDENTIAL**

Dear Key Informant:

### ***Re: Engaging First Nations in Child Welfare Self-Government Development***

Thank you for verbally agreeing to participate in my research project on engaging First Nations participation in the Development of Child Welfare Governing Systems and Supporting Legislation under the self-government process as outlined in the Manitoba Framework Agreement Initiative. My research focuses on the perceptions of Child Welfare leaders respecting the community consultation process as a means of engaging the participation of First Nations peoples in the government development process. Authorization to conduct this research was granted by the Ethics Review Board of the University of Manitoba in October of 2002.

As per our telephone conversation this letter is to introduce you to the research that I am conducting and to ask you to consider meeting with me before the holiday break. The interview will last anywhere from 45 minutes to 1.5 hours. I am more than willing to meet with you in the evening if that is more convenient to you. Please call me when you have identified a date that is open for you to meet with me.

All rules regarding confidentiality will govern the interview process and excerpts from your interview will be anonymously inserted in portions of my thesis. In that regard, you will find enclosed for your consideration, a copy of the questionnaire outlining approximately 10 questions that will be asked of you during the interview. A consent form is included as well which gives you further information about what this research is about and what your participation will involve. Your signature on the consent form will be required before the interview can take place. You can either sign the consent form on the day we meet or mail it to me at the following address:

Marlyn Bennett, Principal Researcher  
First Nations Research Site, CECW  
c/o Faculty of Social Work, University of Manitoba  
413A Tier Building, Winnipeg, MB, R3T 2N2

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If you have any questions with respect to this matter, please do not hesitate to contact the undersigned at either Additional information about  
this research study can also be obtained by contacting Dr. Denis Bracken, Associate Professor, Faculty of Social Work, University of Manitoba at (204) 474-9264. Your participation in this research project is greatly valued and will be an important contribution to both my education and to the growing body of literature respecting First Nations Child Welfare and self-government in Canada. I look forward to meeting and learning from you as well as discussing the contents of the enclosed questionnaire. Miigwetch!

Sincerely,

**Marlyn Bennett**, Principal Research

cc: Denis Bracken, Faculty of Social Work, U of M

## **Appendix C: General Consent Form**

**Research Project Title:** Engaging First Nations participation in the Development of Child Welfare Governing Systems and Supporting Legislation under the Self-Government Process in Manitoba

**Researcher:** Marlyn Bennett, Interdisciplinary Masters of Arts,  
Department of Native Studies, University of Manitoba

---

**This consent form, a copy of which will be left with you for your records and reference, is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.**

---

### **Introduction**

You have been invited to participate in a research project entitled "Engaging First Nations participation in the development of child welfare governing structures and supporting legislation under the Manitoba Framework Agreement Initiative's self-governing process." Marlyn Bennett is conducting this research project under the supervision of Dr. Dennis Bracken, Associate Professor, Faculty of Social Work, as part of the requirements of the Interdisciplinary Masters Program through the Department of Native Studies, University of Manitoba.

### **Volunteer Status**

Your participation in this research project is voluntary. You may refuse to participate or withdraw from this study at any time without penalty.

### **Purpose and Procedure**

The purpose of this research project is to look at the role of First Nations people in the development of their own child welfare governing systems and supporting legislation under the self-government process initiated through the 1994 Manitoba Framework Agreement Initiative. If you agree to participate, you will be asked to provide feedback and opinion on approximately 8 to 10 questions based on your knowledge and understanding of the Framework Agreement Initiative and the consultation process respecting the role of First Nations people in the participation process of developing child welfare government systems and supporting legislation.

### **Time Commitment**

The entire procedures will take approximately one and one-half to two hours to complete.

### **Risks**

There are no anticipated risks.

### **Benefits**

There are no direct benefits to you for participating in this study.



**Payment**

You will receive no monetary payment for participating in this research project.

**Recording**

A digital recorder along with accompanying notes will be used to record your responses to assist in the analysis of information related to this research project. In the event that you withdraw from the interview, any recorded or written notes from the interview will be destroyed and no transcript will be made of the interview.

**Feedback provided to Interview Participants**

Feedback will be provided through one of two means. Interview participants will be provided with a copy of the transcribed tape(s) of the interview and/or participants may request a copy of the thesis upon conclusion of the research.

**Confidentiality**

All information obtained in this study will be handled confidentially. A study code number will identify your responses. Your name will NOT be used for any portion of this study. If any information is published, there will be no information, which would identify you as a participant.

**For Further Information**

Any questions that you may have about this study can be answered by either Marlyn Bennett, the Principal Researcher or by her committee advisor, Dr. Dennis Bracken, Associate Professor, Faculty of Social Work, University of Manitoba (474-9264).

**Before you sign this Document**

Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the researchers, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time, and/or refrain from answering any questions you prefer to omit, within prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.

---

Participant's Signature \_\_\_\_\_ Date: \_\_\_\_\_

---

Researcher and/or Delegate's Signature \_\_\_\_\_ Date: \_\_\_\_\_

**This research has been approved by the [Research Ethic Board of the University of Manitoba]. If you have any concerns or complaints about this project you may contact any of the above-named persons or the Human Ethics Secretariat at 474-7122. A copy of this consent form has been given to you to keep for your records and reference.**

## ***Appendix D: Elder's Consent Form***

**Research Project Title:** Engaging First Nations participation in the Development of Child Welfare Governing Systems and Supporting Legislation under the Self-Government Process in Manitoba

**Researcher:** Marlyn Bennett, Interdisciplinary Masters of Arts,  
Department of Native Studies, University of Manitoba

---

**This consent form, a copy of which will be left with you for your records and reference, is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.**

---

### **Introduction**

You have been invited to participate in a research project entitled "Engaging First Nations participation in the development of child welfare governing structures and supporting legislation under the Manitoba Framework Agreement Initiative's self-governing process." Marlyn Bennett is conducting this research project under the supervision of Dr. Dennis Bracken, Associate Professor, Faculty of Social Work, as part of the requirements of the Interdisciplinary Masters Program through the Department of Native Studies, University of Manitoba.

### **Volunteer Status**

Your participation in this research project is voluntary. You may refuse to participate or withdraw from this study at any time without penalty.

### **Purpose and Procedure**

The purpose of this research project is to look at the role of First Nations people in the development of their own child welfare governing systems and supporting legislation under the self-government process initiated through the 1994 Manitoba Framework Agreement Initiative. If you agree to participate, you will be asked to provide feedback and opinion on approximately 8 to 10 questions based on your knowledge and understanding of the Framework Agreement Initiative and the consultation process respecting the role of First Nations people in the participation process of developing child welfare government systems and supporting legislation.

### **Time Commitment**

The entire procedures will take approximately one and one-half to two hours to complete.

### **Risks**

There are no anticipated risks.

### **Benefits**

There are no direct benefits to you for participating in this study.

### **Payment**

In keeping with oral tradition and First Nations protocol, you will receive a gift of appreciation for participating and sharing your wisdom in this research project.

**Recording**

A tape recorder along with accompanying notes will be used to record your responses to assist in the analysis of information related to this research project. In the event that you withdraw from the interview, any tape or written notes from the interview will be destroyed and no transcript will be made of the interview.

**Feedback provided to Interview Participants**

Feedback will be provided through one of two means. Interview participants will be provided with a copy of the transcribed tape(s) of the interview and/or participants may request a copy of the thesis upon conclusion of the research.

**Confidentiality**

All information obtained in this study will be handled confidentially. Your responses will be identified by a study code number. Your name will NOT be used for any portion of this study. If any information is published, there will be no information which would identify you as a participant.

**For Further Information**

Any questions that you may have about this study can be answered by either Marlyn Bennett, the Principal Researcher or by her committee advisor, Dr. Dennis Bracken, Associate Professor, Faculty of Social Work, University of Manitoba (474-9264).

**Before you sign this Document**

Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the researchers, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time, and/or refrain from answering any questions you prefer to omit, within prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.

---

Participant's Signature

Date:

---

Researcher and/or Delegate's Signature

Date:

**This research has been approved by the [Research Ethic Board of the University of Manitoba]. If you have any concerns or complaints about this project you may contact any of the above-named persons or the Human Ethics Secretariat at 474-7122. A copy of this consent form has been given to you to keep for your records and reference.**

## **Appendix E: Questionnaire**

**Research Project Title:** Engaging First Nations participation in the Development of Child Welfare Governing Systems and Supporting Legislation under the Self-Government Process in Manitoba

**Researcher:** Marlyn Bennett, Interdisciplinary Masters of Arts,  
Department of Native Studies, University of Manitoba

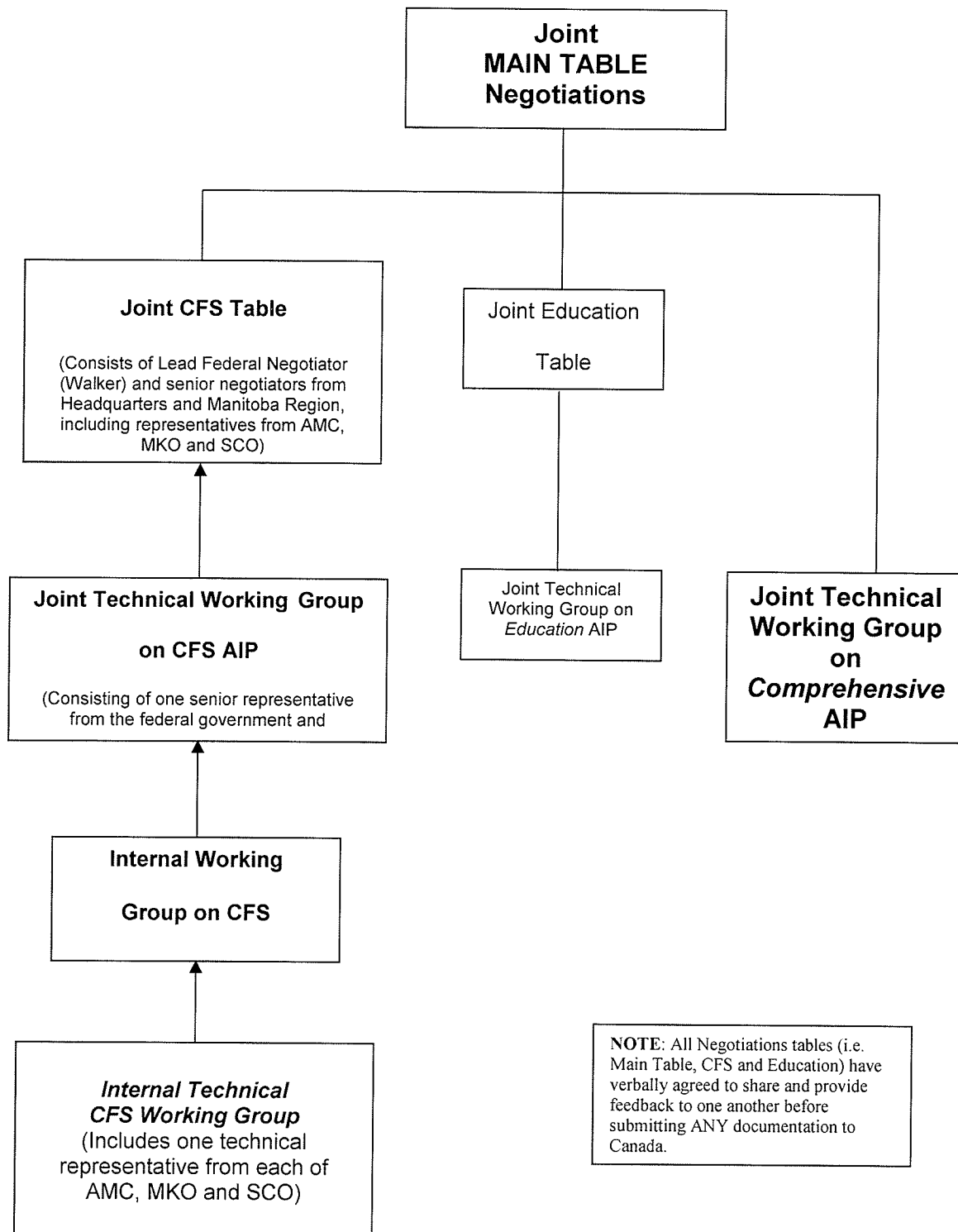
\*\* Questions may change slightly during interview

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The questions below are provided to you in advance of the interview to assist you in answering the questions which will be asked during the oral interview set up between yourself and the above named principal researcher. If you have any questions or concerns with respect to these questions, further clarification can be sought at either the beginning of the interview by or calling the principal researcher at . Additional questions to clarify your responses may be asked which will flow from the content of our discussions.

1. Are you familiar with the community consultation requirements regarding various self-government processes set out under the Manitoba Framework Agreement Initiative? What role do First Nations peoples have regarding the community consultations on child welfare development under this initiative?
2. How important is it for First Nations peoples to participate in the development of child welfare structures and laws under the self-government process occurring in Manitoba?
3. Within Manitoba, do you think that First Nations peoples, communities and governments are ready to develop their own governing child welfare systems with supporting legislation?
4. Assuming that First Nations peoples are ready, what is the most respectful way of engaging First Nations peoples in becoming more involved in the development of First Nations child welfare laws and governing structures under self-government?
5. Have First Nations people been hesitant to participate in the development of their own child welfare governing structures and supporting child welfare laws?
6. How would First Nations peoples respond to the development of laws that impact on such personal areas as child and family matters and the safety of children/youth who might be in need of protection?
7. Is it necessary for First Nations peoples to be educated in order to participate in the development of their own child welfare governing structures and laws under self-government process in Manitoba?
8. Should urban First Nations peoples participate in the development of First Nations Child welfare laws and governing structures?
9. Assuming that First Nations peoples residing in urban should be involved in this self-government, in your opinion how could this be achieved?
10. In your opinion, do you believe that the Manitoba Framework Agreement Initiative's consultation process with First Nations peoples regarding child and family services has been successful in engaging First Nations people both on and off reserve in the participation process of developing new governing structures and legislation respecting child welfare in Manitoba?

**Appendix F: Child & Family Services – Framework Agreement Initiative  
Working Structure Of Negotiations On CFS Agreement In Principle**



**Appendix G: Aboriginal Justice Inquiry – Child Welfare Initiative Proposed System Governance Structure**

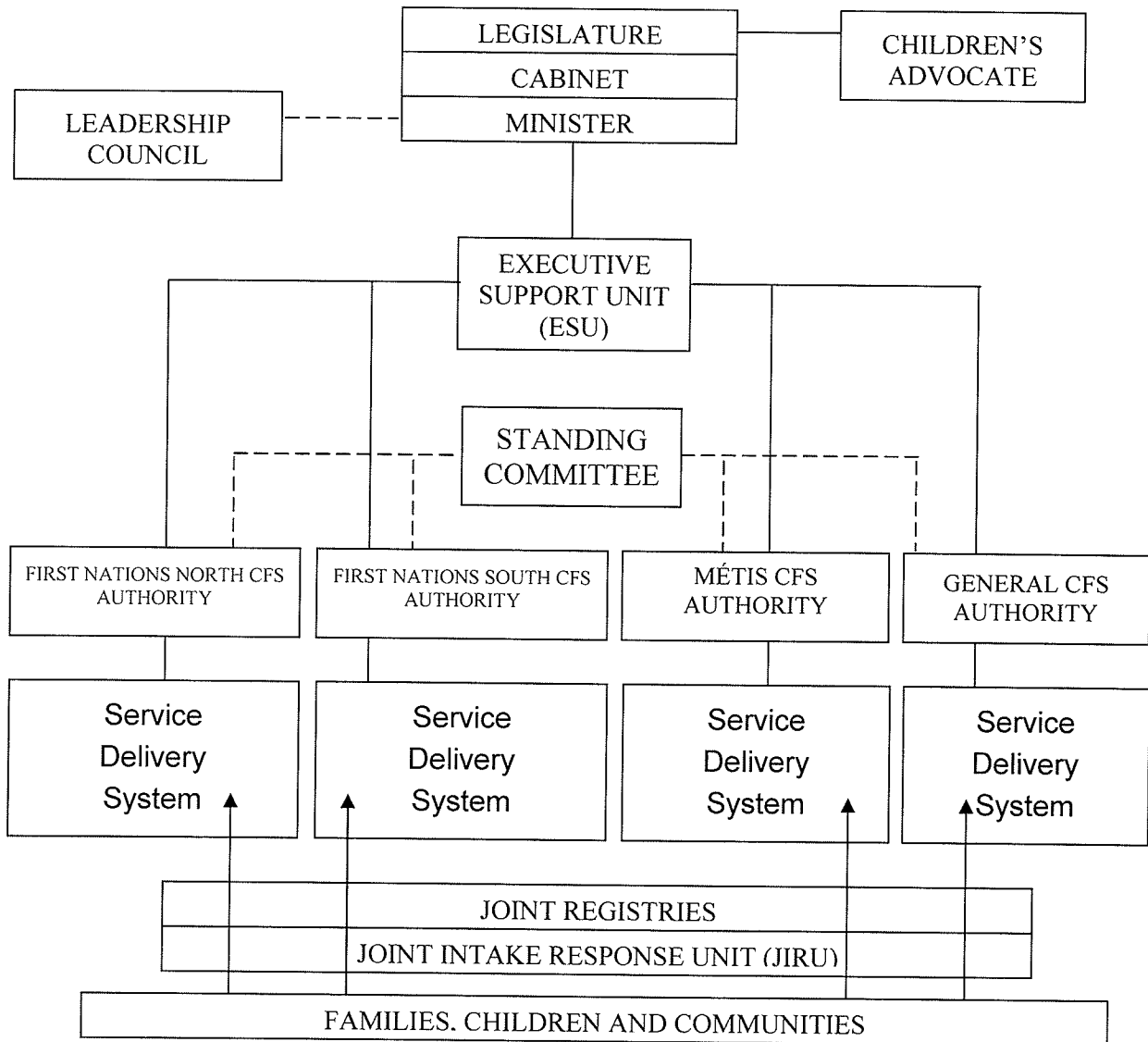


Diagram of Governance Structure taken from the *AJI-CWI Promise of Hope: Commitment to Change*, August 2001, p. 22.