

We Have Never Forgotten the Children: The Journey of the Treaty #3 Anishinaabeg as they Exercise Jurisdiction in Relation to their Children and Families, with Consideration of the Act Respecting First Nation, Inuit and Metis Children, Youth and Families

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Abstract

The *Anishinaabe* Nation in Treaty #3 have profound and distinct laws for raising their children that flow from their sovereignty, *miinigoziwin*. Their laws have transcended generations through the *adisokanaan*, the teachings of *Nanaboozhoo* and through ceremony. *Anishinaabe* children were nurtured and protected within a web of relationships and taught to understand their interconnectivity to all of Creation, to know their rich history and be immersed in the nuances embedded within the language.

This thesis traces steps that the Treaty #3 *Anishinaabe* have taken to continuously assert jurisdiction of their children and families, despite colonial policy of dispossession and cultural genocide. The *Anishinaabeg* have never forgotten the children and have been creative and active in their efforts to displace the child and family services system. This thesis paints a picture from an *Anishinaabe* perspective purposely utilizing predominantly primary sources to illustrate from both a micro and macro view.

First Nations will each have to determine how best to shift the child welfare paradigm for their children and their future. Seeking and implementing *Anishinaabe* truths with the guidance of *Anishinaabe* knowledge keepers offers the best hope. The federal *Act Respecting First Nation, Inuit and Metis Children, Youth and Families* has potential as a further step on the pathway to exercising full unencumbered jurisdiction of children and families.

Acknowledgement

First and foremost, I have to acknowledge the fortitude of my late father, Tobasonakwut Kinew as an *Anishinaabe* philosopher and teacher, for his lifetime of openly sharing his knowledge so articulately and generously, that the future generations of *Anishinaabeg* would know who they are. Without his investment this thesis would not have been possible. He continues to be an inspiration to so many *Anishinaabeg*. *Kizhe'wenimin*.

I am grateful for the steadfast encouragement, support and advice from my advisor, Dr Lorna Turnbull. The journey to see this through to completion has been long, challenging and above all very enlightening. Throughout this process Dr. Turnbull has assured me that there is light, even when I could not see any. Most of all I am honoured to have walked this journey with her, *aapiji miigwech!*

Special *miigwech* to Maureen Matthews for freely sharing her wisdom and thought-provoking questions. Also, for her connection with an anonymous donor through the Manitoba Museum to have years of recorded lectures of my late father digitized.

Miigwech to my advisory committee, Dr Cary Miller and Patricia Ningewance for reading my draft thesis and offering thoughtful advice and wisdom.

I am grateful to my community, the Ojibways of Onigaming for their financial support throughout this process. Also, for funding through the Honourable Brian Dickson Graduate Fellowship, the National Indian Brotherhood Trust Fund scholarship, the Manitoba Museum Scholar in Residence cohort and the Aboriginal Issues Press Scholarship.

I must also acknowledge the wisdom and foresight of the Chiefs that negotiated the terms of Treaty #3, that ensured that our right to an education was protected into the future so that we could adapt and thrive as they had done before us.

Finally, this thesis was written with kindness and respect for the many individuals who were influential in shaping my understanding of being *Anishinaabekwe*. I apologize in advance for any shortcomings, any mistakes or misunderstandings are mine.

Dedication

This thesis is dedicated to *Anishinaabe* families.

In July of 2022, I suffered an existential crisis, an indescribable heart shattering, with the loss of my youngest son Mike, *Miigwebiness*. I would have followed him if not for the love of my mother, Margaret, my three adult children, Jennifer, Wendy and Peshanaakwut (Jeff), eight grandchildren, Taniel, Seven, Thunder, J.J., Dmitrius, Ariel, Aidyn and Acelynn and especially for Mike's four children whom he loved so dearly. They all pulled me back and gave me purpose.

Too many *Anishinaabeg* have touched the depths of despair through the loss of family. Yet through the love, laughter and richness of the *Anishinaabe* language, ceremony and teachings there is hope and there is life.

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Part 1) Background

a) Introduction

Each generation of *Anishinaabeg*¹ was taught to understand the operation of laws and relationships flowing from their sovereignty and to remember the teachings of the *adisokanaan*,² and the adventures of *Nanaboozhoo*³ as enveloped within *Anishinaabemowin*.⁴ Throughout his life, my father,⁵ the late Dr. Tobasonakwut Kinew, always had a very inquisitive nature, and thirst to understand and articulate on the deepest of levels. He was gifted and fortunate that he listened and learned in a way

¹ There are several iterations that combine to giving meaning to *Anishinaabe*. See Fred Kelly in “*Traditional Governance: The Anishnaabe Nation in Treaty #3*”, May 2001 at page 5. The “spiritual meaning derives from two components: ‘*niisiina*’ which means descended and ‘*naabe*’ which means male. Hence, man descended from the Creator unto Mother Earth.” Second, “in colloquial terms, ‘*anishaa*’ means ‘of no value’ combined with male, transforms to male of no value” or “the humble being” however to be taken in context with other *Anishinaabe* teachings, APTN ‘Face to Face’ interview of Fred Kelly by Michael Hutchinson, at www.aptnnews.ca/facetoface/elder-fred-kelly, February 3, 2016. Within this paper all references to *Anishinaabe* (the people) or the *Anishinaabeg* (plural), is specific to the *Anishinaabe* people of the territory now known as Treaty #3, formerly *Anishinaabe Aki*. The *Anishinaabeg* outside of Treaty #3 territory are not discussed. Additionally, throughout this paper, I use Indigenous to refer to the First Nation, Inuit and Metis peoples of Canada. I use First Nation to refer to people with Treaty rights and who are distinct from the Inuit and Metis peoples. I use Aboriginal or Indian only as a direct quote such as reference to Aboriginal rights or the *Indian Act*.

² *Ibid*, Fred Kelly, at page 75, “Spiritual truths contained in sacred stories.” Also, Dr. Tobasonakwut Kinew, conversation and lectures over many years taught that spiritual teachings, what our elders told us of our peoples’ journeys and relationship with the spirit world and the instructions that we have received over millennia, the embodiment of the collective memory of the *Anishinaabe*. Loosely translated as ‘stories’ or ‘legends’ diminishes the depth and becomes simplistic and derogatory, oral tradition is the culmination of the collective group worldview of the entire *Anishinaabe* Nation, embedded with cultural truths. The embodiment of *Anishinaabe* law is embedded within the oral tradition.

³ To the Treaty #3 *Anishinaabeg*, *Nanaboozhoo* is prominent in creation stories and often appears as a trickster whose adventures shaped the world within which we live. These adventures explain the origin of relationships with all living beings, their evolution and geographic formations. “These lessons teach us how to live life, and what not to do” conversation with Patricia Ningewance, March 2025.

⁴ *Anishinaabemowin* is the language spoken by the *Anishinaabe* people who are part of the Algonquin language group covering a large section of North America.

⁵ Born *Tobasonakwut* in 1936, and also known as Peter Kelly, he later legally changed his name to *Tobasonakwut Kinew*. *Kinew* was my fathers’ paternal grandfather and was the first of the family to be given the surname Kelly, likely by an Indian Agent or other government representative. My fathers’ registered birthplace was Kenora, Ontario, his actual birthplace was Turtle Narrows on Lake of the Woods. See also *Tobasonakwut Kinew*, “*Let Them Burn the Sky*” in “*Manitowapow: Aboriginal Writings from the Land of Water*”, Highwater Press (2011), eds, Niigaanwewidam James Sinclair, Warren Cariou, at page 143, for partial explanation of his name change. In 2011, my father received an Honourary Doctorate from the University of Winnipeg for his outstanding accomplishments.

that not everyone did. This was a tremendous gift that he shared with me throughout our time together.

My father inspired many people to seek their dream and find their purpose, *anndo-pawaachigin*.⁶ He had an ability and calling to spark innate excitement within a person to awaken their own inquisitiveness and connection to *Anishinaabe*-ness. He did this for me. I was blessed to have been invited to walk with him on so so many adventures, the ceremonies, the Grand Council Treaty #3⁷ meetings, various political forums and philosophizing, late evening and lunch break conversations, the visits and afternoons out on the lake.

My father guided me to a way of life and a way of thinking that transcends generations and transcends language. He was passionate and relentless to pass the torch and to create a lasting record. He was successful. What he and other Elders have taught me about sustaining *Anishinaabe* sovereignty, *miinigoziwin*⁸ and seeing *Anishinaabe* law in everyday activities is reflected in all of the work that I have done over the course of my career and will continue to do. It is the core and foundation of this thesis.

⁶ My father often spoke of the fundamental importance of this notion that he received from his mother. It literally means to “seek your dream, live your dream, understand your dream and move forward with your dream” and refers to “how I’ve lived all my life, and how my parents lived.” It is about finding, identifying and fulfilling your life’s purpose, even through vision quest and other means. Fulfilling and living your dream, will be foundational to a balanced relationship with all of life. See also, “*Let Them Burn the Sky*” *ibid* at page 143.

⁷ The Grand Council is the traditional government of the *Anishinaabe* Nation in Treaty #3. The Grand Council pre-existed Confederation and is the government that negotiated Treaty #3 (also known as the Northwest Angle Treaty) with the Crown representatives over the span of four years from 1869 to 1873.

⁸ In *Anishinaabemowin* meaning sacred gift, sovereignty, and acknowledges our status as beneficiary of these sacred gifts and connotes a way of life where all were given responsibilities. *Supra* at note 1, Fred Kelly in “*Traditional Governance*” pages 1 to 4. The source of *miinigoziwin* is the Creator, “there is only one Creator, the Maker of all life. Because everything is made by the Great Spirit, all life is imbued with the sacred” “and like the four winds, we cannot see it, but we can surely feel its power.”

Today the *Anishinaabeg* continue to assert their sovereignty albeit through a myriad of colonial obstacles. This thesis is an illustration of sovereignty of the *Anishinaabeg* in Treaty #3 from pre-Confederation with a focus on children, families and community. The foundation of this work is from a lifetime of learning and living an *Anishinaabe* understanding of life, law and the oral tradition. This thesis considers the evolving child welfare policy, predominantly in Ontario, and including the recent federal legislation, *An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*⁹ (CYFA), from an *Anishinaabeg* perspective. It considers the *Anishinaabe* way of life from ancient times and contrasts that with their consistent efforts to minimize the impact of the colonial system while consistently asserting sovereignty to protect and strengthen *Anishinaabe* children, families and communities. This thesis is not a conventional study of Canadian law, but rather it is an attempt to show the ongoing existence of *Anishinaabe* law and how their legal framework continues to be relevant and holds the most promise for *Anishinaabe* children, families and communities.

This thesis has four parts. Part I is my personal story shared to provide insight about what my father taught me about being *Anishinaabe* and to justify my ability to speak with authority given my unique experiences implementing *Anishinaabe* law from various professional capacities. This culminates in a positionality statement, a methodology and literature review. Part II provides an overview of *Anishinaabe miinigoziwin* including *Anishinaabe* law, *Abinoojii Inakonigewin*¹⁰ and the importance of

⁹ *An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*, S.C. 2019, c 24. Formerly, and also sometimes referenced as Bill C-92.

¹⁰ *Abinoojii Inakonigewin* passed by the Chiefs in Assembly in 2005. In *Anishinaabemowin*, literally translated as the law (*inakonigewin*) of children (*abinoojii*) or children's law, sometimes also referred to as the 'Child Care Law'.

Anishinaabemowin with a snapshot of an *Anishinaabe* childhood pre-Indian Residential school to illustrate a complex and rich system. Part III describes the impacts of colonialism and assimilation on the *Anishinaabe* child, family and community contrasted with the unbreakable love for the child compelling consistent and active efforts of the Treaty #3 *Anishinaabeg* in fulfillment of *miinigoziwin* and their duty to protect the children. Part IV analyzes the evolution of colonial policy and demonstrates how the *Anishinaabeg* have adapted policy on the trajectory to retain the unencumbered restoration of their inherent jurisdiction of the children, the heart of the Nation. Finally, I consider potential benefits of the federal *CYFA* and its implications for the Treaty #3 *Anishinaabeg*.

b) Growing Up *Anishinaabe*

Ogemaa Bineesiik n'dizhinakoz, pizhew n'dotem, Onigaming n'dozhi. My two brothers¹¹ and I were born to an *Anishinaabe* father and an English / Scottish mother.¹² When I was born and in our very early years, we lived at our home community of Ojibways of Onigaming First Nation,¹³ formerly *Sabaskong*,¹⁴ and originally *Kakagi Wazason Onigaming*.¹⁵ My community of Ojibways of Onigaming is located on the east

¹¹ Darryl Peter Kelly, born 1961, deceased 1980 and Daniel Clinton Kelly, born 1965 deceased 1984.

¹² Margaret Ethel Kelly, nee Redford born in 1941, in Devlin, Ontario.

¹³ *Anishinaabemowin* for 'portage' and has been referred to as 'Crow Portage'. Originally, Ojibways of Onigaming and Big Grassy First Nations were the *Assabaska* First Nation. The community split into two separate First Nations in 1964.

¹⁴ Also referred to as *Shabashkong*, describes the grassy narrows situated near those lands.

¹⁵ In *Anishinaabemowin* means the 'Raven's Nest Portage'. The portage (*onigaming*) is the shortest overland route between Lake of the Woods and Crow Lake. It additionally refers to an island on Crow Lake close to the portage, and almost barren of trees that the ravens used to use for nesting. This was told to me by my father, as was told to him years prior by a respected community Elder of the Shebagegit family.

side of Lake of the Woods¹⁶ at *Sabaskong* Bay and sits at the portage to Crow Lake,¹⁷ part of a system of spring fed clear water lakes. Starting in my formative years I learned of the importance of the waterways of the Lake of the Woods to the *Anishinaabe* way of life.

My paternal grandmother¹⁸ lived mere steps from our home. I didn't know it at the time, but I later came to understand that my grandmother had attained the highest levels of the *Midewewin*¹⁹ society. I never met my paternal grandfather.²⁰ In 1947 he had been killed as he walked home on the highway through our community by an impaired driver who was a local cottage owner. There was no investigation, and no charges were ever laid. My father and his brothers were away at St Mary's Catholic Residential school²¹ at that time of the accident. Both of my paternal grandparents briefly attended an earlier Residential school, St Anthony's, located on the Lake of the Woods.

My maternal grandparents lived less than an hour drive to the south. My grandfather²² was a second-generation farmer who had retired early due to severe arthritis. He later took up rod and reel repair in a little shop he established at the back

¹⁶ Lake of the Woods in *Anishinaabemowin* is *Kabapikotawangag* which translated is more like Lake of the Sand Dunes. See also, John Tanner in "A Narrative of the Captivity of John Tanner during Thirty Years Residence Among the Indians." "This lake is called by the Indians Pub-be-kwaw-waung-gaw Sau-gi-e-gun, the Lake of the Sand Hills. Why it is called Lake of the Woods by the whites, I cannot tell as there is not much wood about it" at page 27. Lake of the Woods is 4,350 square kilometers and straddles the Canadian and United States border, approximately $\frac{3}{4}$ is located in Canada.

¹⁷ Also referred to as *Kakagi* Lake, is roughly 110 square kilometers and remains somewhat uncharted to this day.

¹⁸ Alice Kelly, *Nenakiizhigok* nee Big George of *Naongashing*.

¹⁹ The *Midewewin* is considered to be a healing medicine society. There are various levels or degrees that one can attain.

²⁰ Norman Kelly, *Wabanakwut*.

²¹ Operated by the Oblates and Grey Nuns at Rat Portage / Kenora, Ontario between 1897 and 1972.

²² Wesley Redford, born at Devlin, Ontario.

of their house when they moved into the local town of Fort Frances. My grandmother²³ was a history buff and loved writing, singing and was an avid gardener, her flowers were award winning at the horticultural shows. She was a stable influence on me.

I was told that my maternal grandmother's father, my great-grandfather²⁴ was a business owner in England and sought a summer adventure with his brother, so they flipped a coin to decide between Australia and Canada - the coin led them to Canada. When they arrived at Kingston, they took the train as far west as they could travel which took them to present day Devlin, about ten miles west of Fort Frances. My great-grandfather fell in love with the land and was in awe of the abundance of wild animals; rabbits and deer that wandered freely without fear of humans. The area would later become his home.

My mother was the second of seven children and grew up at the family farm in Aylsworth county, a few miles south of Devlin. As a child she walked two miles to a one-room schoolhouse with her sisters and cousins. My mother loved being on the farm and spent hours outdoors helping her father with the daily chores. As a teenager, my mother and her older sister spent their summers working at tourist camps in Sioux Narrows and Nestor Falls respectively. My mother continues to share her love for the outdoors with grandchildren and greatgrandchildren. In 1959, while my mother operated the cash register at Red Deer Lodge located adjacent to *Onigaming*, my parents met. They married in July 1960.

²³ Dorothy Mae Redford, nee Greener, born in 1919 at Devlin, Ontario

²⁴ Mr. Greener.

My father was a twin, his brother *Bineshii* died of scarlet fever as a toddler. They were born at Turtle Narrows on Lake of the Woods at a family campsite in the early spring. My father had two younger brothers²⁵ and one older²⁶ as well as numerous half siblings from previous marriages of both his parents. He spent his childhood predominantly at *Naongashing* and *Onigaming* and visited other sites on Lake of the Woods at various times such as during *manomin*²⁷ harvesting season.

My father told me that he was his maternal grandfathers²⁸ favourite and as such spent considerable time with his grandparents, along with two of his cousins.²⁹ The time spent with his grandfather would remain with my father throughout his life as some of his fondest memories. Being consistently at his grandfather's side was a priceless gift of a most comprehensive education and foundational understanding of *Anishinaabe* sovereignty, law, ceremony and the cosmos.

My father was taken to St Mary's Residential school at the age of eight and stayed for eight years. He learned quickly and excelled at academics where he completed to grade eight in three years. He dreamt of attending High School even personally writing to the Principal of Beaver Brae High School in Kenora, only to be formally denied.

²⁵ John Pete Kelly and Fred Kelly, *Kizhebowse Mukwaa*.

²⁶ Edwin Kelly.

²⁷ In *Anishinaabemowin* means wild rice.

²⁸ *Kaagagewannakweb*, Big George of *Naongashing*, my father's maternal grandfather.

²⁹ Joe Big George and Bessie Tom, nee Big George.

In 1965, his younger brother Fred³⁰ organized a peaceful march in Kenora, Ontario which was infamous as Canada's hotbed of racism.³¹ "The march is considered to be a key moment in starting the First Nations civil rights movement in Canada."³² This was the first of many actions that my father and / or uncle Fred initiated to create an environment of awareness and pride in *Anishinaabe* rights.

During that same time, my father began a quest among the Treaty #3 First Nations meeting with Elders, leaders and citizens seeking a way to unify the people and the communities and to energize the rights movement. Capitalizing on the collective commonality of Treaty #3 and upholding our roots, by 1970 my father had re-established the Grand Council's role as the traditional government of the *Anishinaabe* Nation in Treaty #3. The Grand Council adapted as the protector of treaty rights and an advocacy body in a new era.

My father and each of his younger brothers served terms as Grand Chief of Grand Council Treaty #3. All three brothers also served as Chief of our First Nation and were known in Indigenous circles throughout Canada and the United States as the 'Kelly brothers'. My father and uncle Fred were instrumental in the creation of the

³⁰ Fred Kelly, *Kizhebowse Mukwaa* (Kind Walking Bear), is an Elder in *Midewewin*, the Sacred Law and Medicine Society of the *Anishinaabe*. As such he is a Keeper and Practitioner of Sacred Law. He is also a Drum Keeper and a Pipe Carrier and has been called upon to administer healing therapies among many indigenous people on Turtle Island and to conduct sacred ceremonies across Canada, in the United States, Mexico, Japan, Argentina, and Israel. See firstpeoplesgroup.com/team-member/fred-kelly

³¹ See "*While People Sleep: Sudden Deaths in Kenora Area*" Grand Council Treaty #3, 1973.

³² Kathi Avery-Kinew, Fred Kelly and Diane M. Kelly, "*The Creator Placed Us Here: Timeline of Significant Events of the Anishinaabeg in Treaty #3*", page 10. The march involved hundreds of *Anishinaabeg* bused into Kenora including Dan Hill and Alan Borovoy, seeking action to remedy major issues. See also, Assembly of First Nations (AFN) National Chief Perry Bellegarde speaking on the 50th Anniversary of the March. [New era of First Nations civil rights ushered in 50 years ago in Kenora – Winnipeg Free Press](#)

National Indian Brotherhood and, my father was one of the first Ontario Regional Chiefs.³³

My father was an avid believer in education and was a lifelong learner and teacher. When I was a young child we lived briefly in Antigonish, Nova Scotia while my father pursued a degree in Community Development at St Francis Xavier University. My father was likely one of the first 'Indians' to attend a Canadian post-secondary institution, fulfilling the promise of education in Treaty #3.

In the 1960's we relocated to Toronto while my father attended the University of Toronto. While we were living there, he began an intimate relationship. This was a very trying time for my mother, brothers and me. After two years in Toronto, we all, including my father decided to return to the Treaty #3 area. Despite the move, my father managed to continue the relationship with the other woman. By 1971 my mother had had enough and divorced my father. The divorce had a lasting impact on us all in many ways and set the path for my father to build more deliberate relationships with my brothers and me.

My brothers and I were the first 'Indian' children to attend non-denominational elementary school in Fort Frances. St Margurite's Residential School³⁴ was still in operation, and as a child I wondered why I could not attend school there. I enjoyed school, however for the first time in our lives we faced a lot of racism, we were called names and looked down upon. My older brother who was big for his age experienced

³³ Each province and Territory elect a Regional Chief who together formed the Executive Council of the Assembly of First Nations (AFN), formerly National Indian Brotherhood (NIB).

³⁴ St Margaret's Residential Schools was Catholic run and situated on Agency #1 lands between Couchiching First Nation and Fort Frances, ON.

bullying on top of the racism. Our time in Fort Frances was full of ups and downs as the only Indian children of the only single parent family. Times were very challenging.

I always had a keen and proud sense of *Anishinaabe* history and worldview. I believe that it was this deep awareness of being *Anishinaabe* that carried me through my darkest times from primary school to present and has been foundational in that it brought a profound connection and purpose to my life.

In 1980 we lost my older brother to suicide, my family was devastated. Later that year, my oldest daughter Jennifer³⁵ was born and brought joy and hope back to our family as we moved through our grief. With her addition to the family, and my father's new role as a grandfather, his zest for venturing out on the Lake of the Woods with us in tow was renewed. He again began to share with us age old teachings of significant sites and events; we visited rock paintings and ceremonial sites on the lake which was a very healing time. Visiting the multitude of sacred sites, walking the shores where generations before had camped or where important events had taken place deepened my respect and love for the lake and my ancestors. Sadly, in 1984 my family was dealt another devastating blow when we lost my younger brother in a car accident.

During the 1980's I was blessed with another daughter, Wendy,³⁶ and two sons Jeff and then Mike³⁷ to complete my family. Just as with my childhood, I wanted my four children to be introduced to experiences of being *Anishinaabe*. They all were gifted with *Anishnaabe* names and awareness of their clan. Jennifer, Wendy and Jeff danced

³⁵ Jennifer was born in August, 1980.

³⁶ Wendy was born in October, 1981.

³⁷ Jeff also known as Peshanaakwut was born in April, 1986 and Mike, was born in June, 1987.

in their regalia at the pow wows, and Mike was only two months old when we attended his first Sundance.

Although I didn't understand it at the time, the residential school legacy had a lasting impact on my young family. The control and abuse at the hands of my then partner was unbearable, beyond acceptable and more than I could tolerate. As my mother had done before me, my children and I left the relationship and by 1994 I was a single parent.

In pursuing a formal post-secondary education, I was inspired to be independent and provide for my family. I was always drawn to give back to my community and to Treaty #3. In 1992 I began as a student at Robson Hall Law School at the University of Manitoba. It was never my intention to litigate or specialize in the enforcement of Canadian law, but rather, I was compelled to understand the legal system in order to reconcile what my father had taught me about *Anishinaabe* law and *miinigoziwn* with the paternalistic treatment of *Anishinaabe* people in Canada that I experienced.

In my law school experience, I was disappointed at the lack of First Nation content, and with the perpetuation of the colonial falacy through highlighting the *Indian Act*,³⁸ land surrenders and the subordinate position within the constitutional framework. I had naively thought that I would have learned broadly about Aboriginal law,³⁹ particularly given that Canada had recently repatriated its *Constitution*⁴⁰ and *Charter of Rights in Freedoms* in 1982.⁴¹ When I began law school in 1992 there were ten

³⁸ *Indian Act*, R.S.C., 1985, c 1-5.

³⁹ *Constitution Act, 1982*, section 35(2) defined Aboriginal peoples as the Indian, Inuit and Metis peoples.

⁴⁰ *Constitution Act, 1982*.

⁴¹ *Charter of Rights and Freedoms*, 1982, R.S.C., section 25.

Indigenous law students yet unfortunately only three of us graduated in 1995. I was the first *Anishinaabe* woman from Treaty #3 to graduate from a law school and to practise law in the Treaty #3 territory.⁴²

c) Learning an *Anishinaabe* Perspective

In 2000, I was approached by the then Executive Director⁴³ of Weechi-it-te-win Family Services⁴⁴ to be the Legal Counsel for the northern Treaty #3 First Nations situated in the Kenora area. At that time Weechi-it-te-win Family Services, the child welfare agency mandated by the southern Treaty #3 First Nations in the Fort Frances area, agreed to act as an interim provisional Board of Directors⁴⁵ to help address capacity concerns in the northern Treaty #3 Child and Family Services agency. After two years, Weechi-it-te-win Family Services decided to focus solely on their First Nations in the south and withdrew as the interim Board of Directors.⁴⁶ When the northern Treaty #3 agency later regained its' society status, it became Anishinaabe Abinoojii Family Services.

It was during this time that I came to understand the broad flexibility and significance of customary care⁴⁷ that Weechi-it-te-win Family Services had created. Customary care arrangements were based on the First Nations' inherent authority alone and were entered into without court application or sanction, or Ministry approval. It was

⁴² The Kenora Enterprise, July 20, 1997, article by Morgan Boyd.

⁴³ George Simard was the Executive Director of Weechi-it-te-win Family Services from 1986 to 2012.

⁴⁴ Weechi-it-te-win Family Services is a mandated Native child and family services agency created in 1987 by ten First Nations in the southern portion of Treaty #3. Further detail will follow in subsequent chapters.

⁴⁵ The Ontario Ministry of Community and Social Services sought and established this arrangement.

⁴⁶ At the time there was speculation that the Ontario was delaying the process to restore the mandate to the northern Treaty #3 child welfare agency.

⁴⁷ The *Child and Family Services Act*. R.S.O. 1990, c. C.11, ss. 208 - 213, formerly Part X.

clear that they had seized upon the opportunity to implement *Anishinaabe* values and decision-making for their families with the development of a distinct system grounded in *Anishinaabe* jurisdiction through the operation of child and family services outside of the Ontario legislative child welfare regime. Their customary care model was a vehicle that prevented more children from becoming lost permanently in government care, and it also facilitated the transition of permanent wards to connect back to the care of their First Nation, so that parents, extended family and community could address the family's support needs and plan for reunification.

For eight years I worked with the staff, families and the northern Treaty #3 First Nations to support their decision-making in planning for their children. In every situation that I was involved in, there were always family members willing and able to stand in for the parents where that was an option. We worked by consensus with families and as a result, not one of our families had to go to a trial against the agency before the Ontario Court of Justice.

As part of my association with Anishinaabe Abinoojii Family Services, I was given the responsibility in 2005 to develop a prevention program⁴⁸ in consultation with appointed representatives from each of the fourteen member First Nations. Leading up to this time, the First Nations had received their prevention funding directly from the federal government who then unilaterally decided to have the prevention program and

⁴⁸ The federal government funds First Nation child and family service agencies to deliver prevention services as part of the First Nation child and family service program (FNCFSP). Prevention and early intervention services are intended to support the well-being of children, families and communities in a culturally congruent manner.

funding flow through the province of Ontario via the *1965 Welfare Agreement*⁴⁹ and then to Anishinaabe Abinoojii Family Services to administer. The Chiefs were opposed to this approach believing that the decision would dilute their Nation-to-Nation relationship with the federal Crown and diminish their jurisdiction in relation to their children and families.

The Chiefs faced the dilemma of how to uphold their inherent jurisdiction while ensuring ongoing and immediate access to much needed prevention services. Deliberations between the agency and Chiefs became quite heated. I was perplexed at how to meet the divergent priorities and find a path forward.

I sat with my father and summed up the dilemma for him. His response was “well, why can’t the Chiefs have what they want.” It was at that moment I realized that just as the federal government had delegated its’ authority to the province to administer the prevention program, so too could the Chiefs delegate their authority to Anishinaabe Abinoojii Family Services to administer the prevention program on their terms and conditions. The Chiefs agreed with the proposal. I drafted a Declaration for all member Chiefs to sign asserting their inherent jurisdiction and delegating an interim mandate to Anishinaabe Abinoojii Family Services for the delivery of the prevention program.

In 2005 I was hired to lead an Ontario-wide engagement strategy with First Nations to draft Customary Care Principles and Best Practises.⁵⁰ First Nation

⁴⁹ The 1965 Indian Welfare Agreement is a bilateral funding arrangement between Canada and Ontario whereby Canada funds Ontario to deliver and / or to delegate program authority to First Nation entities for ‘Indian’ social programs, such as child and family services. First Nations are not a Party to the agreement. Canada reimburses Ontario approximately 93% of expenditures. See also *First Nations Child and Family Caring Society v Attorney General of Canada*, Canadian Human Rights Tribunal decision, 2016 CHRT 2 at pages 76 to 79.

⁵⁰ Diane M. Kelly, “*Customary Care: An Exercise in First Nations’ Governance – Principles & Best Practice Guideline*” Association of Native Child & Family Service Agencies of Ontario, (2006).

participants from all corners of the province shared their understandings of Traditional child rearing and family care. The direction was clear and consistent across the many Nations that we could not define customary care because it is specific to each First Nation community. Each First Nation has a “multitude of diverse and vibrant teachings, philosophies and systems that can only be described by each First Nation, based on the advice and input of their respective Elders, leaders and community members.”⁵¹ I learned that many of the principles of Indigenous law in relation to children across Ontario were universal however, each community has its own distinct narrative and interpretation to govern how their law is implemented within their community.

I saw clearly that the operationalization of customary care was a process to decolonize whereby First Nations were able to rebuild the requisite capacity for their communities to function under their own laws and legal framework, and to reinforce their decision-making. Customary care was not only an alternative practice to mainstream child welfare, but it is also an exercise of First Nation governance.⁵²

Grand Council Treaty #3

One of my first summer employment experiences as a High School student was with Grand Council Treaty #3 where I played a role recording data on *manomin*⁵³ growth and water level fluctuations at various locations throughout the Treaty #3 territory. I saw firsthand the importance of protecting this resource and how integral it is

⁵¹ *Ibid*, at page 5.

⁵² *Ibid*, at page 1.

⁵³ Wild rice grows in many bays of Lake of the Woods and is harvested in the late summer and early fall. Wild rice was a staple to *Anishinaabe* existence from time immemorial, so importance that it is reflected in rock paintings on Lake of the Woods.

to *Anishinaabe* sovereignty and sustainability. *Manomin* has been such a vital staple to *Anishinaabe* survival that the *Anishinaabeg* insisted that their right to harvest be recognized and protected in Treaty #3. Chief *Powassin*, one of the principal *Anishinaabe* negotiators of Treaty #3 had the foresight and astuteness to hire note-takers⁵⁴ to document the promises that were made to the *Anishinaabeg* during the negotiations. These notes, now referred to as the *Paypom* document or *Paypom* Treaty⁵⁵ include the protection of the *Anishinaabe* right in that “The Indians will be free as by the past for their hunting and rice harvesting.”⁵⁶ There is no reference to wild rice in the printed version of Treaty #3, which was likely printed in 1872 prior to the final negotiations in 1873.⁵⁷

As teenagers my brothers, cousins and I spent many afternoons during the late summer and early autumn picking *manomin* in the nearby bays that we could reach by canoe. I remember my father teaching us how to traverse the rice fields and pack the rice for sale to our community processors. On certain days word was sent through the community to “rest the rice fields” which we all followed religiously, despite being rebellious teenagers. We followed the *Anishinaabe* harvesting laws and did our part to ensure the resource endured.

⁵⁴ Brothers Joseph and August Nolin.

⁵⁵ Notes on the back of the *Paypom* Treaty indicate that the document is an original set of notes made for Chief Powasson at the signing of Treaty 3. Elder *Paypom* described communication he received from C.G. Linde, a photographer and friend to the Treaty #3 *Anishinaabeg*, who had been given the notes by Chief *Powasson* in 1906 at Bukety on Lake of the Woods.

⁵⁶ *Paypom* Treaty, paragraph 11

⁵⁷ The notes differ in several respects from the printed version of Treaty #3 which was delivered to the signatories by the government officials sometime later, recent research indicates that the print version may have been written a year before the 1873 negotiations.

The governance of Grand Council Treaty #3 has always been steeped in ceremony, and almost all meetings begin with the drum, the pipe and induction in *Anishinaabemowin* by specific recognized Elders. At Grand Council Treaty #3 meetings the Elders are prominent throughout the deliberations, from beginning to closing.

Grand Council Treaty #3 governance continues to be complex. Some aspects have adapted over time to meet contemporary challenges in order to enter into funding agreements, contracts and other arrangements. For instance, the Grand Council is not incorporated but rather it created an administrative appendage under the authority of Grand Council Treaty #3, with a Board of Directors to oversee the day-to-day operations. Any decision to adapt to new situations are undertaken by a process of deliberation and ceremony underpinned by great care and caution, *weweni*,⁵⁸ that ensures *Anishinaabe* sovereignty, the Grand Council or Treaty #3 are not negatively impacted.

I regularly attended Grand Council Treaty #3 meetings with my father. Just as my father had learned so much sitting with his grandfather during deliberations, storytelling and ceremony, I too learned from my father as an observer in many of his meetings, hearing his commentary, watching processes unfold and debriefing.

On many occasions, I had seen certain Elders intervene to offer guidance or a change of tone in the Grand Council Treaty #3 Chiefs' deliberations where the meeting was going astray. For example, in 1999 the elders, leadership and participants could

⁵⁸ *Anishinaabemowin* meaning to take care, be careful, cautious, take your time. At Grand Council Treaty #3 meetings, Elders might suggest *weweni* in certain deliberations.

not arrive at a consensus on the status of the Grand Chief of that time. The longer the deliberations dragged on, the deeper each side became embedded in their position, causing tempers to flare. After several days of back and forth, the late respected Elder Clifford Skead⁵⁹ sat at the drum and hit it four times. He then summoned the Chiefs to gather in a circle around the drum and asked them one by one if there “should be a selection for Grand Chief, yes, or no?” Each had an opportunity to respond, and the majority answered in the affirmative. A selection for Grand Chief was set. No questions or claims of illegitimacy ever arose because of the respect for Elder Skead, the adherence to the ceremonial process and the transparency of the decision-making that had been made in full public view.

The Treaty #3 Grand Chief Traditional selection process is unique to Treaty #3; however, it has recently been adopted by other First Nation entities.⁶⁰ The process is open and transparent. Once all nominees have been selected, they form a circle around the drum. All Chiefs and Councillors stand behind their choice for Grand Chief, the nominee with the fewest supporters is eliminated and the process repeats until there is one contender remaining. This is the person who is then lifted up as the Grand Chief for the next four years.

⁵⁹ Late Elder Clifford Skead of Wazhusk Onigaming was my father’s uncle and was the youngest sibling of respected elders Alex Skead and Bill Skead. See “*Dancing Around the Table*” Part 1, the First Ministers Conference on Aboriginal Constitutional Matters in 1983, National Film Board of Canada (1987), where the late Elder Alex Skead brought a prominent *Anishinaabe* ceremonial role.

⁶⁰ The Chiefs of Ontario (COO) is a First Nation Political Territorial Organization (PTO) that advocates and supports 133 First Nations in Ontario. COO was created in 1975 as a committee of the four Ontario First Nation organizations, including Grand Council Treaty #3. COO has adopted the Grand Council Treaty #3 Traditional selection process for their Ontario Regional Chief, who also is the Ontario representative to the Assembly of First Nations (AFN) Executive Committee.

After years of working with the Grand Council and the Treaty #3 Chiefs in various capacities, my father suggested to me that it was time for me to run for Grand Chief. I did so, and in 2008, I was selected as the first female Grand Chief of Grand Council Treaty #3. During my term I was fervently committed to the priorities of nation building and repositioning the Grand Council back into the strong representative government and protector of treaty rights, responsibilities and relationships that I knew it had once been from firsthand experience and stories that my father had shared with me.

My first order of business was to refocus the operations and the Chiefs' agendas back to the original mandate as the traditional sovereign government. I initiated an administrative process to transfer community-based programs and services from Grand Council Treaty #3 to the First Nations to deliver. We were then free to focus solely on our mandate as the traditional government in Treaty #3 and began rebuilding *Anishinaabe* laws and systems.

During my tenure I was fortunate to spend time with very knowledgeable Elders. One year on the occasion of the anniversary of the signing of Treaty #3, a group of Elders led by Clifford Skead and I went by boat to the site on Lake of the Woods where Treaty #3 had been signed in 1873 after four years of negotiations. On the north side of the channel at the Northwest Angle of Lake of the Woods, a clearing on the land was visible from the shore where a settlement had once been but had long since become overgrown. Elder Skead led an honourary acknowledgement of Treaty #3.

On another anniversary of Treaty #3 Elder Mary Lorraine Mandamin⁶¹ invited me to pay homage to one of the original Treaty #3 documents from 1873, housed in a climate-controlled environment. It was fascinating to see the original parchment with hand-written notes at the margins taken at the time of the negotiations in 1873. This original document reinforced to me that the *Anishinaabeg* were not passive, but rather very astute negotiators with a profound understanding of their sovereignty and the gravity of their responsibilities to protect their way of life throughout their territory for the generations to come.

At a meeting in 2009 while I was Grand Chief, I was explaining that the rights guaranteed in Treaty #3 are the very rights that we had before we signed the treaty. “In fact,” I said, “Treaty #3 didn’t give us *Anishinaabeg* anything that we didn’t already possess!” To which the late former Grand Chief Steve Fobister⁶² interjected and stated “That is not true. Treaty #3 guaranteed that our way of life and our rights would be protected.”⁶³ His statement broadened my understanding of Treaty #3 and deepened my appreciation that the negotiators had the foresight to seek assurances that our sovereignty and our way of life be protected. Thus, a major role of the Grand Council as a government is to protect, uphold and honour the sovereignty that has been bestowed upon us *Anishinaabe* by the Creator.

⁶¹ Originally a member of *Naotkamegwanning* (Whitefish Bay) First Nation, married into *Wabaseemoong* Independent Nations.

⁶² Steve Fobister was the Grand Chief of Grand Council Treaty #3 from 1989 to 1991, he was a member and former Chief of Grassy Narrows First Nation. Steve was a deliberate thinker and very knowledgeable of Treaty #3. I reached out to him periodically for his sage advice.

⁶³ At Grand Council Treaty #3 meeting in early 2011.

As Grand Chief I sought to reinstitute an Executive Council of Chiefs as part of the governance structure. After engaging with numerous Chiefs and Elders and failing to reach a consensus, I decided to go Fasting for insight on a structure. During the winter of 2010, the late Elder Steve Keejick⁶⁴ agreed to supervise my Fast that resulted in a structure reflective of the four main themes of Treaty #3 intended to sustain the *Anishinaabeg*: social, environmental, economic and cultural issues or pillars. From here, four Chiefs committees were formed each assigned one of the themes to focus upon, the Chairperson from each committee formed the Executive Council. Along with the four pillars, the governance structure had four layers or hoops representing the people as the foundation, the *Oshkaabewis*,⁶⁵ the Chiefs and the Elders, a structure replicating the *chisikii*,⁶⁶ central to *Anishinaabe* governance as was taught to me by Elder Keejick.

During my term I also established a Governance Advisory Body comprised of the former Grand Council Treaty #3 Grand Chiefs. This became a very important forum for brainstorming, strategic planning and understanding perspectives from various eras. We met periodically and the advice and insight that I received was invaluable on a range of issues and processes. Some of what I write about in the chapters that follow flow from the perspective I gained from this body.

⁶⁴ The late Elder Steve Keejick was a former Chief / Councillor and member of Shoal Lake #39 First Nation. Steve was extremely principled and had a wealth of knowledge on *Anishinaabe* governance and ceremony. Steve had been instructed to construct a traditional roundhouse beside his home for ceremonies and other activities. Elder Steve Keejick gave my daughter Wendy and son Jeff their *Anishinaabe* names in the early 1990's.

⁶⁵ In *Anishinaabemowin* means helpers, messengers as told to me by Elder Steve Keejick and my father, Tobasonakwut Kinew on numerous occasions.

⁶⁶ *Anishinaabemowin* for a Shake Tent ceremony.

Near the middle of my term, the Chiefs of Ontario⁶⁷ facilitated a meeting at *Washagamis* Bay First Nation for the Nuclear Waste Management Organization⁶⁸ to share information on their site selection process seeking a community to host their Deep Geological Repository⁶⁹ for spent nuclear fuel. Many of the Chiefs spoke out in opposition to the notion and as Grand Chief I also took the opportunity to forcefully speak against the possibility of the Deep Geological Repository being located in the Treaty #3 territory.

When I finished my comments, Elder Allan White⁷⁰ approached me and said, “I heard your comments about the Deep Geological Repository, and your decision not to have the nuclear waste buried in Treaty #3.” “Yes,” I said content with my defence of Treaty #3 lands. Elder White continued, “How do you know that the *Anishinaabeg* don’t have something in our laws to protect the land?” I was floored! Elder White certainly was not suggesting that the nuclear waste be buried in Treaty #3 lands but rather reminded me that we have processes to ensure that we are protected now and into the future, just as we did when the settlers arrived in our territory and sought a treaty. I know that the *Anishinaabeg* can rise to any occasion with remarkable solutions grounded in *Anishinaabe* law as interpreted in ceremony by Elders. History has repeatedly shown that the *Anishinaabeg* survive, adapt and endure.

⁶⁷ The Chiefs of Ontario, *supra* at note 59

⁶⁸ This organization was created in 2002 pursuant to the federal *Nuclear Fuel Waste Act* S.C. 2002, c-23, to develop a plan for Canada’s used nuclear fuel.

⁶⁹ An underground facility built to store hazardous or nuclear waste hundreds of meters underground,

⁷⁰ Elder Allan White is a member of *Naotkamewwanning* (Whitefish Bay First Nation). Elder White is a respected Elder with a deep understanding of Treaty #3 and *Anishnaabe* law. Allan’s father was the late Frank White, a prominent leader in the Grand Council pre-1960’s. In his time, Frank White had travelled to Ottawa by his own means on several occasions in defence of Treaty #3 rights, see, *supra* note 32, Kathi Avery-Kinew, et al, “*The Creator Placed Us Here*” page 10.

Despite my academic education I have always been humbled and astounded by the advice and perspective of Elders that is so deep and genius on any given subject matter or scenario. There has not been one issue that has rendered the *Anishinaabeg* perplexed, or without direction. Recognizing the value of guidance from the Elders, the interpreters of *Anishinaabe* law; their knowledge of Treaty #3, and of *Anishinaabemowin* I struck an Elders Council comprised of Agnes Kabatay,⁷¹ Nancy Jones,⁷² Allan White⁷³ and the late Steve Kejick⁷⁴ for advice to guide the work of the Grand Chiefs' Office and the Grand Council Treaty #3 agenda.

In 2005, the Grand Council Treaty #3 Chiefs in Assembly had endorsed *Abinoojii Inakonigewin*,⁷⁵ as the official *Anishinaabe* law on caring for children. In late 2010, I had commissioned Elder Gilbert Smith⁷⁶ to travel to Treaty #3 First Nations to engage in conversation with Elders on principles and practices of Traditional child rearing – *Ombigosowin*.⁷⁷ My intent for this initiative was to create a record and gather information and teachings that would be the basis for standards, practices and principles⁷⁸ to aid in the operationalization of *Abinoojii Inakonigewin*. I envisioned that the advice from the Elders would form the underpinnings to the development of policy

⁷¹ Elder Agnes Kabatay is a member of *Mitaanjikaming* First Nation, located on the western shore of Rainy Lake near Fort Frances, ON. Agnes continues to very instrumental in *Anishinaabe* ceremonial processes.

⁷² Elder Nancy Jones is a member of *Nigigoonsemencanning* First Nation, located a few miles east of Bears Pass, ON. Nancy has worked tirelessly on ensuring that the *Anishinaabemowin* lives on, she has written and co-authored books and stories in *Anishinaabemowin*.

⁷³ Elder Allan White, *supra* at note 70.

⁷⁴ Elder Steve Keejick, *supra* at note 63.

⁷⁵ *Supra* at note 10. The chapters below have additional detail.

⁷⁶ Elder Gilbert Smith is a member of *Naicatchewenin* First Nation and a former leader of his First Nation. Elder Smith previously worked with Weechi-it-te-win Family Services.

⁷⁷ *Anishinaabemowin*, meaning to raise a child, a sacred duty, responsibility to take care of our children, duty to care, we do not own our children we are responsible to raise our children. Raising a child, child-rearing.

⁷⁸ Irene Linklater with Gilbert Smith, "*Abinoojii Omibig Igos Owin: Anishinaabe Elders Teachings on Abinoojii Caring and the Family*" Grand Council Treaty #3, October 2012. This process culminated with this report.

and regulations as the next step to implementation of our *Anishinaabe* law. My four-year term as Grand Chief then came to an end.

In December 2012, I lost my father to cancer. I was devastated. I sought to refocus my energy not clear on what direction to pursue next.

An Unexpected Opportunity

In early 2015 I became the Assistant Deputy Minister responsible for the Child and Family Services Division in the Manitoba Department of Family Services and the statutory Director of child welfare. In 2014 I had an introductory meeting with the then Minister of Family Services, Kerri Irvin-Ross⁷⁹ who suggested the position to me. Although I was reluctant initially, I realized that this was an opportunity worth pursuing to open the door to First Nation leadership and attempt to shift the First Nation child welfare policy from within the Manitoba government. I agreed to take the position.

In the years leading up to and around 2015 there was growing public scrutiny of the child welfare system that had more than 10,000 Indigenous children in care in Manitoba, which proportionately eclipsed that of any other province of any time period. It was a time that out of home placement could not keep pace with the number of children in care.

A First Nations child in care who had been placed in a downtown hotel in Winnipeg had been reported missing and sadly had been found murdered. The tragic death of Tina Fontaine triggered an uproar from across Canada and was the impetus for renewed calls for a national inquiry into Missing and Murdered Indigenous Women and

⁷⁹ NDP Member of the Manitoba Legislative Assembly from 2003 to 2016.

Girls. Soon thereafter, and under great pressure for change, Minister Irvin-Ross issued a province wide Directive to the child and family services system banning the use of hotel rooms as placements for children in government care. This set off a domino effect throughout the system due to the severe shortage of emergency and temporary placement options, particularly for newly apprehended children, children with large sibling groups and children with specialized needs.

It was during this tumultuous time that I stepped into my role within the bureaucracy. I saw that the Directive resulted in little change; emergency placements became situated emergency shelters as opposed to hotels, and in many instances the care providers continued to be the very same shift staff.

Once the dust began to settle from the development of alternative emergency placements, I shifted my focus to proactive and preventative approaches. Internally, I carefully proofread briefing documents and correspondence drafted within the Division editing out racist and derogatory comments and innuendos on First Nation issues and then added First Nation perspective and context before releasing for Deputy Minister and Minister approval. As the Director of Child Welfare, I was a member of the Standing Committee⁸⁰ with the Chief Executive Officers of the four Child and Family Services Authorities⁸¹ where we all sought system improvements.

It was clear to me that customary care could be beneficial for Manitoba First Nations as a bridge to increase decision-making and community capacity building

⁸⁰ The *Child & Family Services Authorities Act*, C.C.S.M. c-90 section 30 established the Standing Committee as an advisory body to provide advice to the Authorities and to government.

⁸¹ *Ibid* at section 17, the child and family services Authorities to administer and provide child and family services programs.

leading to the eventual implementation of their jurisdiction and displacement of the provincial system just as had been done in Treaty #3. By December 2015, a draft Bill⁸² with the intent to recognize customary care for Indigenous children was tabled for First Reading in the Manitoba legislature. The Bill defined customary care as the “care provided to an Indigenous child in a way that recognizes and reflects the unique customs of the child’s Indigenous community.”⁸³ At a ceremonial introduction to the Bill at the Thunderbird House Minister Irvin-Ross acknowledged my contribution by stating that “we would not be here today without her (Diane’s) determination, vision and experience to help guide us to the place of today, a new way of supporting families.”⁸⁴

Being the first major policy change to support Indigenous families and communities, had the Bill been proclaimed, it could have also paved the way to develop community capacity in preparation for the federal *CYFA*. Bill 15 did not pass Third Reading before the writ dropped for the 2015 Provincial election. First Nation stakeholders and I were disappointed and discouraged by the lost opportunity.

In 2016, the Progressive Conservatives were elected in Manitoba, and I witnessed the transfer of power. An integral aspect of the transfer was to identify the top three priorities from within the Child and Family Services Division, I listed customary care as number one. I reframed some terminology of customary care to align with Conservative priorities and the Department’s new Minister, Scott Fielding agreed to move forward with the proposed amendment to the *Child and Family Services Act*.

⁸² Bill 15, *The Child and Family Services Act, (Recognition of Customary Care of Indigenous Children)*, 5th Session, 40th Legislature.

⁸³ *Ibid* at section 8.24

⁸⁴ Manitoba gov bill 15 2015 customary care irvin-ross youtube

On behalf of the Manitoba government, I met with First Nation⁸⁵ leaders and communities throughout the province for their input on customary care. While meeting in *Pimicikamak* First Nation,⁸⁶ Cree Elder William Osborne spoke about *Ombikiosowin*,⁸⁷ which he translated as “taking care of our children” culminating in the name of the proposed Bill to amend the *Child and Family Services Act*.

“These ground-breaking amendments are a first step to allow for more community decision-making and greater support for families and children. This allows a shift to greater extended family and community involvement in the care of and upbringing of the children from that community in a way that preserves cultural identity and respects their heritage.”⁸⁸

Seeing that customary care had been tabled in the Manitoba legislature, it was time to depart from my role as the Assistant Deputy Minister. I later learned that once again the customary care amendment failed to be Proclaimed. On October 1, 2024, the successor Manitoba NDP government proclaimed the customary care amendment to the *Child and Family Services Act*, which defined customary care as “care provided to an Indigenous child in a way that recognizes and reflects the unique customs of the child's Indigenous community.”⁸⁹

Full Circle – Return to Weechi-it-te-win Family Services

⁸⁵ I also met with the Manitoba Metis Federation President, David Chartrand and other members of their government. This paper however is solely focussed on First Nations.

⁸⁶ Also known as Cross Lake First Nation, *Pimicikamak* is a Cree community.

⁸⁷ This is a Cree term and is very similar to the *Anishinaabe Ombigiosowin*, there are similarities and variations in the Cree and *Anishinaabe* languages.

⁸⁸ Government of Manitoba Press Release, March 19, 2018. “*Province Proposes the Child and Family Services Amendment Act (Taking Care of Our Children)*, Changes will Lead to Development of Culturally Specific Models of Customary Care.”

⁸⁹ *An Act Respecting Child and Family Services (Indigenous Jurisdiction and other Amendments)*, Manitoba, S.M. 2024, c 36, s4, Definitions section 1(1).

In 2018, I began working with Weechi-it-te-win Family Services on a process to share information and elicit feedback from their member First Nations on Grand Council Treaty #3's *Abinoojii Inakonigewin* and to explore options to transition the agency to *Anishinaabe* jurisdiction. Phase 1 of the initiative began with a mandate from the Chiefs of the then ten⁹⁰ Weechi-it-te-win Family Services member First Nations which culminated in a Declaration of Principles⁹¹ affirming their commitment to the spirit and intent of *Abinoojii Inakonigewin* with a pathway to guide development and implementation. The Chiefs' Declaration also set out parameters for Grand Council Treaty #3 that would ensure their system and standards that had been developed by the First Nations and Weechi-it-te-win Family Services over the preceding decades were protected.

Engagement and information sharing sessions occurred in each member First Nation and consisted of a review of *Abinoojii Inakonigewin*, the Declaration of Principles, a Readiness checklist, a process outline and a set of questions to consider beginning their law development process. In 2020, Weechi-it-te-win Family Services tabled the roll-up report⁹² with recommendations to their Chiefs.

⁹⁰ In 2021, the Ojibways of Onigaming First Nation served Notice to Weechi-it-te-win Family Services that the community would be transferring their delegated authority to Anishinaabe Abinoojii Family Services resulting in nine member First Nations remaining with the organization.

⁹¹ The *Declaration of Principles*, August 2019. The document was a consensus mandate from the Chiefs to guide Weechi-it-te-win Family Services and was shared with community members during the engagement sessions.

⁹² Diane M. Kelly, "*Abinoojii Inakonigewin: Community Engagement Process 2019/20 Report*", Weechi-it-te-win Family Services, 2021.

The Chiefs agreed that the best pathway for the ongoing implementation of their inherent jurisdiction had two aspects, 1) to develop their First Nation law, and 2) evolve the role of Weechi-it-te-win Family Services.

My advice to the Chiefs was to initiate a parallel process to reconstitute their agency⁹³ to evolve Weechi-it-te-win Family Services to operate pursuant to the terms set out in *Abinoojii Inakonigewin*. The Chiefs agreed and directed that the agency design a system consistent with *Anishinaabe* law that would support the ongoing capacity development work within the First Nations. The Chiefs delegated authority to Weechi-it-te-win Family Services as their Indigenous Governing Body⁹⁴ for “the limited purpose of system development to undertake activities that continue to align with *Abinoojii Inakonigewin* and our community laws.”⁹⁵

In phase two, Weechi-it-te-win Family Services created tools and templates to assist each First Nation as they implement and transition to their inherent jurisdiction. Weechi-it-te-win Family Services will transition to a resource bank in phase three to continue to support the operation of their member First Nations’ laws and will become a specialized service delivery agent with responsibilities consistent with *Abinoojii Inakonigewin*. The final phase for Weechi-it-te-win Family Services will require determination of which services will be administered by the First Nation and which will

⁹³ *Supra* at note 10, *Abinoojii Inakonigewin*, section 28.

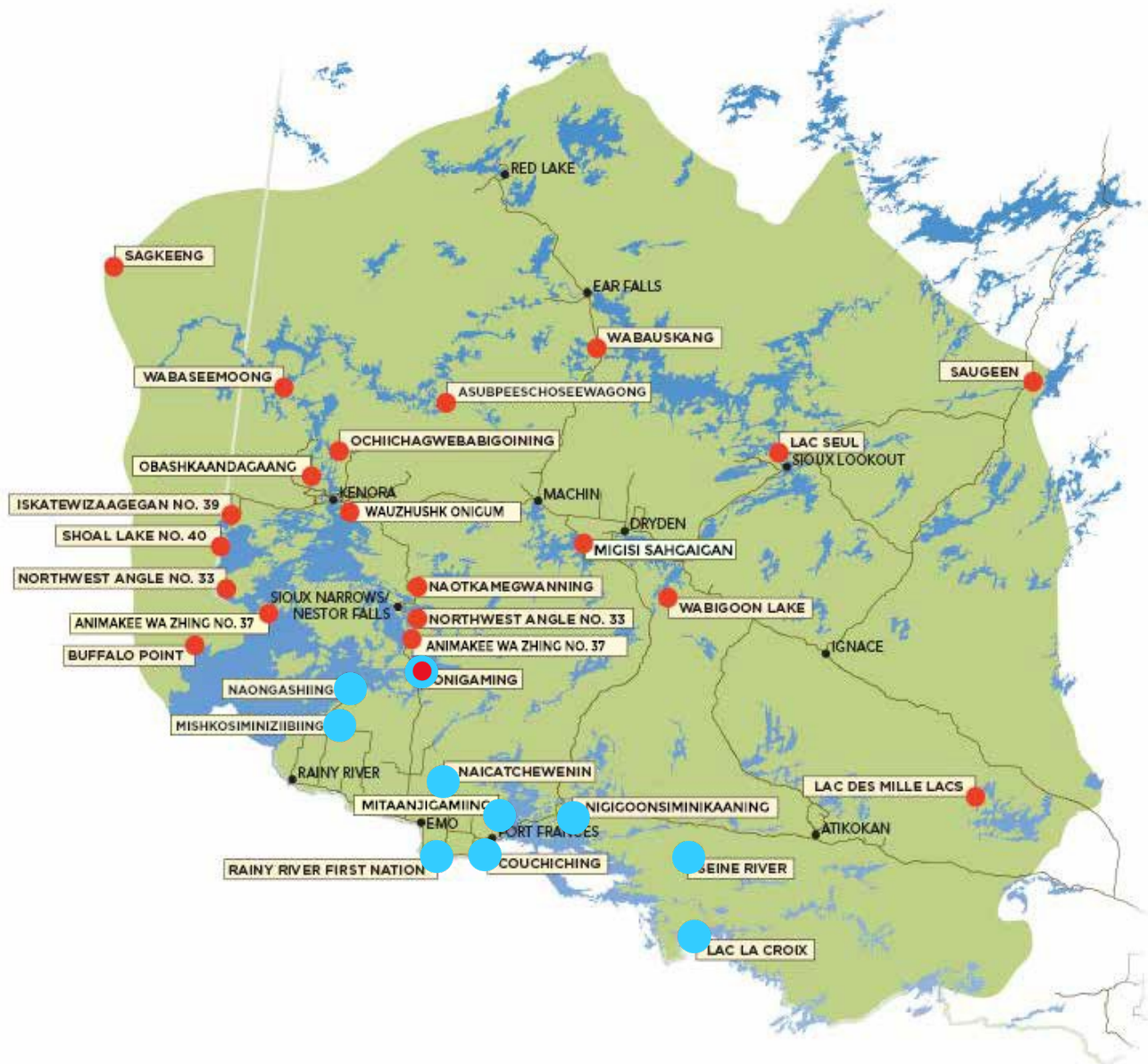
⁹⁴ *Supra* at note 9, *CYFA*, definition of ‘Indigenous governing body’ means “a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.” Additional discussion in chapters below.

⁹⁵ Diane M. Kelly, *Chiefs Re-Affirmation Declaration*, Weechi-it-te-win Family Services, June 2021.

be administered by Weechi-it-te-win Family Services as well as to adapt service models to align with *Anishinaabe* law.

Image #1, Map of Treaty #3 Territory with locations of First Nation Communities⁹⁶

⁹⁶ https://gct3.ca/wp-content/uploads/2018/1/gct3_map.jpg



= Weechi-it-te-win Family Services First Nation members / Treaty #3 South

d) Positionality Statement

I am an *Anishinaabekwe*⁹⁷ of *Kabapikotawangag*,⁹⁸ an integral part of Treaty #3. My late father taught me that I am a part of the profound lifeways of the *Anishinaabeg* and likewise inspired me to fulfill my responsibility to embrace and share that gift with future generations.

In my unique and wide-ranging professional experiences and capacities, I have always been drawn into or created opportunities to assert *Anishinaabe* sovereignty as the ultimate and uncompromising goal. I have always kept an eye open searching for the thread of *Anishinaabe* law still observed and in practise and then sought ways to expand it like a pebble dropped in water.

I have been privileged as an *Anishinaabekwe*. As my father's daughter, as a lawyer and Grand Chief, I have been welcomed into elite Indigenous circles, I have been introduced to admired Indigenous leaders and welcomed into *Anishinaabe* ceremonies. I have worked extremely hard to bridge the gap as part of a new generation of *Anishinaabe* thinkers and leaders educated in both worlds, carefully striving to adapt to contemporary times without compromising *Anishinaabe* sovereignty.

I have played a small role and shared in the responsibility to meet the standards set by our *Anishinaabe* ancestors. As the first *Anishinaabekwe* lawyer from Treaty #3, and the first female Grand Chief of Grand Council Treaty #3 I have drawn upon the ancient and inherent truths of the *Anishinaabeg* to find a good path forward. As an *Anishinaabekwe* I have worked tirelessly to prove myself worthy.

⁹⁷ A female *Anishinaabe* person.

⁹⁸ *Supra* at note 16, Lake of the Woods in *Anishinaabemowin* is *Kabapikotawangag*.

I believe that colonialism, paternalism and oppression have been the greatest enemy of the *Anishinaabeg*, and I have been committed to undo their pervasive impacts. In my life and work experiences I have learned that I alone do not have answers, but rather, I am a conduit through which experiences can be shared and processes initiated that interpret and reinforce *Anishinaabe* law, sovereignty and *mino-bimaatiziwin*.⁹⁹

My motivation is for the betterment of *Anishinaabe* children and youth who are depending on us to fulfill our responsibility and be relentless in our efforts to pave the way for them to attain *mino-bimaatiziwin* and *aando-bawaachigen*. I have had the opportunity in many professional capacities to develop approaches to honour the *Anishinaabe* child, preserve the *Anishinaabe* family and restore *Anishinaabe* law alongside many extraordinary *Anishinaabeg*. My life and work experiences provide me with a unique perspective to understand the implications of the implementation of the federal *Act Respecting First Nation, Inuit and Metis Children, Youth and Families* (CYFA).

e) Methodology

This thesis aims to show the continuing strength and relevance of *Anishinaabe* law and sovereignty in the furtherance of the protection of children, the preservation of family and Nation re-building. Constant and consistent efforts to reinvigorate the operationalization of inherent jurisdiction over decades as an act of self-determination in

⁹⁹ *Anishinaabemowin* meaning a good life, well balanced. – *mino* connotes a quality / good tone, *bimaatiziwin* is life, life in the Great Spirit, quest to fulfill one's purpose; a good, balanced relationship with all of life.

contemporary situations has moved the marker further from colonial policy that has had a dark and detrimental impact on the vibrance of the *Anishinaabeg*.

I draw heavily upon my distinct personal and professional immersion in *Anishinaabe* law and sovereignty of the Treaty #3 *Anishinaabeg*. Through my experiences, I was able to bridge age old yet still relevant *adisokanaan* with contemporary applications to create and expand every opportunity to further the goal of reassertion of *Anishinaabe* jurisdiction in relation to children and families.

I have been extremely fortunate in my life that my late father was extraordinarily knowledgeable on the sovereignty and legal framework from the Lake of the Woods in Treaty #3, and that he was a very generous and articulate orator. Over the years we paid homage to significant sites on the Lake of the Woods, we travelled and participated in many ceremonies together, we were regulars at Grand Council Treaty #3 Assemblies and spent hours visiting. This education is foundational to my life's work and is the backbone of this thesis.

In my professional life I have been drawn into areas that have given rise to the honour and privilege of sitting with and learning from many gifted elders who have shared their knowledge of *Anishinaabe* law and sovereignty. I have also been drawn to the plight of *Anishinaabe* children, the heart of our Nation, and their families that have been caught hopelessly in the grip of the colonial child welfare system. This despair coupled with the possibility presented with the federal legislation affirming the inherent right of self-government including jurisdiction for children, youth and families has compelled me to consider in this thesis how the federal *CYFA* helps or hinders the continued operationalization of *Anishinaabe* law.

i) Research Design

An autoethnographic-like research design was chosen for this thesis due to the uniqueness and advantage in recounting and applying *Anishinaabe* law and processes that have not been widely written about. This method amplifies understanding of *Anishinaabe* lived experience as an insider and *Anishinaabe* perspective and its application to address complex scenarios of implementation of *Anishinaabe* sovereignty. Primary, secondary and academic sources were also utilized.

ii) Data Collection Methods

Personal Experience – Knowledge was acquired over decades as an observer, student, daughter and participant of lectures, travels, ceremony, visits with my late father. My father also had the incredible foresight to record years of lectures at the University of Minnesota and Center School in Minneapolis, MN., where he instructed on *Anishinaabemowin*. These tapes once digitized and transcribed form a wealth of knowledge of the Treaty #3 *Anishinaabe* that will benefit generations to come. His understandings are a major source in this thesis.

Professional Experience – Observations and learnings were obtained through unique professional endeavours where participation ino *Anishinaabe* processes and seeking guidance from Elders through various ceremonies, the application of *Anishinaabe* teachings, and living *Anishinaabe* law. Combined with my academic and legal background I was on the cutting edge of implementing *Anishinaabe* law and sovereignty while displacing colonial laws and systems as a lawyer, Grand Chief of Grand Council Treaty #3, Assistant Deputy Minister and consultant on major initiatives.

iii) Conclusion

This thesis employs personal and professional experiences and reflections learned as a student in *Anishinaabe* law and sovereignty, then as a leader and advisor within the context of facilitating processes that assert inherent jurisdiction particularly in relation to *Anishinaabe* children, families, community and the Nation.

f) Literature Review

The central thread of this thesis is the Treaty #3 *Anishinaabe miinigoziwin* as a backdrop to the implementation of inherent jurisdiction in relation to children and families. The major source of this thesis is the learning acquired as a participant and observer of *Anishinaabe* governance, legal tradition and ceremony interpreted in the wisdom of gifted Elders, permitted processes and implementation of law that is not readily available in print.

The materials referenced below are evidence of how the Grand Council pre and post Treaty #3 exercised its' responsibility of *miinigoziwin* as the traditional government of the *Anishinaabe* Nation. In the area of child and family services, the documents reflect the creative and tireless efforts of *Anishinaabeg* Elders, leadership and Child and Family Service agencies of Treaty #3 as examples of the resistance against colonial policy to create space to exercise *Anishinaabe* law.

This Literature Review is a narrative review organized in two themes: Treaty #3 *Anishinaabe Miinigoziwin* and the *Adisokaanan*, and *Anishinaabe* Child Welfare. The sources referenced on Treaty #3 *Anishinaabe Miinigoziwin* and the *Adisokaanan* are

first because it is foundational and broader; *Anishinaabe* Child Welfare follows because it is more specific and flows from the first.

Treaty #3 *Anishinaabe Miinigoziwin* and the *Adisokaanan*:

Many of Grand Council Treaty #3 publications have been drafted from primary sources available in the RG10¹⁰⁰ files situated at their Treaty and Aboriginal Rights Research office on specific issues such as governance and the fisheries to show how pre-Treaty #3, the *Anishinaabeg* asserted their sovereignty throughout their territory to govern and protect their lands, resources and way of life.

The exercise and assertion of *Anishinaabe* sovereignty as recorded in the reports, position statements and strategies of Grand Council Treaty #3 in historic and contemporary times is consistent and evident in the approaches taken in governance and law-making. Primary and secondary documents show that the *Anishinaabeg* of Treaty #3 and the Grand Council have not strayed from their original instructions and responsibilities of *miinigoziwin* despite some adaptations to temporal law and customary practice to meet contemporary challenges.

For example, the adoption of *Abinoojii Inakonigewin* as the law of the *Anishinaabeg* is an example of how legal principles enshrined ancient responsibilities to the child and are relevant today to guide *mino-ombigiosowin*. *Abinoojii Inakonigewin* is not an exhaustive or comprehensive list of responsibilities to the child, it is a framework to be interpreted and applied consistent with the *adisokanaan* and the practices specific

¹⁰⁰ Historical primary source records held at the Library and Archives Canada, created by the Department of Indian Affairs and Northern Development and its predecessors of its' correspondence, files and transcripts. Grand Council Treaty #3's Treaty and Aboriginal Rights Research (TARR) had a microfiche copy of the RG10 series.

to each particular First Nation or family. Further, processes such as this continue to be employed that draw out law to guide its' application such as with the *Community Decision-Making Resource Tool*¹⁰¹ and the *Abinoojii Omibig Igos Owin: Anishinaabe Elders Teachings on Abinoojii Caring and the Family*.¹⁰²

A major challenge is the scarcity of literary sources due to the *Anishinaabeg* practice to capture and transmit knowledge from one generation to the next largely through an oral tradition. To the *Anishinaabeg*, written records are culturally subjective and can lead to misunderstanding and misinterpretation.¹⁰³

The *Adisokanaan* is critical for understanding the *Anishinaabe* role, rules and responsibilities in connection to their relationships within all of creation. The transmittal also reveals the thought processes, the philosophy and the descriptive analysis utilized by the *Anishinaabeg*. *Anishinaabemowin* is predominantly the vehicle through which *Adisokanaan* is transmitted, yet one need not need be fluent in the language to appreciate the depth and breadth of key underpinnings. There is a vibrant field of literary resources on *Anishinaabemowin*, Patricia Ningewance¹⁰⁴ is a major contributor.

Written sources on *Adisokanaan* that instruct on *Anishinaabe* law and governance are rare and narrow in scope. There is however a growing body of literature on traditional governance of the broader *Anishinaabe* nations that are similar

¹⁰¹ Marlene Starr, "Governance Development Initiative: A Community Decision-Making Resource Tool – Implementing Our Traditions" Grand Council Treaty #3, 2009.

¹⁰² *Supra* at note 78, Irene Linklater et al, "Abinoojii Omibig Igos Owin".

¹⁰³ Cary Miller, "Ogimaag: Anishnaabe Leadership 1760 – 1845" University of Nebraska, 2010, at pages 38 and 39.

¹⁰⁴ Patricia Ningewance-Nadeau, a member of Lac Seul First Nation in Treaty #3, has written on and taught *Anishinaabemowin* for more than forty years. Patricia's books include "Gookom's Language, and an Ojibwe Thesaurus.

to those of the Treaty #3 *Anishinaabeg*. Cary Miller in *Ogimaag*,¹⁰⁵ acknowledges that existing sources on *Anishinaabe* leadership and governance rely primarily on archival materials rather than the vitally important and informative oral tradition that she draws on both sources to reveal a more accurate picture.

Miller contrasts the *Anishinaabe* reality of governance and leadership roles with the colonizer ethnocentric viewpoint that has culminated in a distorted and shallow understanding of the complexity of the *Anishinaabe* system. She provides examples of the intrinsic adaptability of cultural practices to modern crises, through the incorporation of seeking spiritual guidance through ancient processes grounded in reciprocal social relationships. In this way, the *Anishinaabeg* have been steadfast in the operation of their legal framework flowing from *miinigoziwin* and remained resilient despite colonial pressures on American and Canadian tribes.

Heidi Bohaker in “*Doodem and Council Fire*”¹⁰⁶ similarly combined both archival sources and oral tradition to illustrate *Anishinaabe* governance through the examination of “Doodem”¹⁰⁷ and alliances. Bohaker focuses on the *Anishinaabeg* of south-eastern Ontario and examined pre-Confederation alliances to illustrate the complexity of *Anishinaabe* governance, including the process of treaty making which the *Anishinaabeg* infused with their law. Settler states recognized the distinction in the

¹⁰⁵ *Supra* at note 102, Cary Miller’s “*Ogimaag*” is a study of the Ojibwa tribes around the Great Lakes on the American side of the border in the states of Minnesota, Wisconsin and Michigan. The Ojibwa and *Anishinaabe* are both Algonquin speaking peoples, who are closely related and often use the two names interchangeably.

¹⁰⁶ Heidi Bohaker, “*Doodem and Council Fire: Anishinaabe Governance through Alliance*” University of Toronto Press, 2020.

¹⁰⁷ Treaty #3 *Anishinaabeg* say dotem, meaning clan which forms a kinship relationship beyond the biological family. The *Anishinaabeg* have rules and responsibilities that govern the relationship between members of the same clan. See, Dr. Tobasonawut Kinew in “*Let Them Burn the Sky*” *supra* at note 5, at page 143, “I belong to the lynx clan, the pizhiw. It is very important that I identify myself in this manner because that is who I am, who my family is.”

operation of *Anishinaabe* governance and considered it primitive without grasping the complexity thereby setting in place the policy of “destroy and replace”¹⁰⁸ through assimilation.

A foundational source of this thesis has been the verbal transmission of the oral history to me by my late father, including lectures recorded over several years while he instructed on *Anishinaabemowin* at the University of Minnesota and Center school in Minneapolis, MN. The sharing of the spiritual truths from long ago are a source of life lessons that connect the *Anishinaabeg* with all of creation and teach appropriate behaviour when confronted with challenges and continue as a significant source to the *Anishinaabeg* today. These truths continue to inspire and encourage us to protect our ways and our people and as such must be shared and verbalized openly.

The documents and recordings referenced in the Appendix are but a sample of the *Adisokanaan* that have transcended generations of Treaty #3 *Anishinaabeg*. This knowledge is critical in that it connects the *Anishinaabe* to the past and teaches how to live in a good way in the present within the territory where we were placed.

Anishinaabe Child & Family Services:

The Treaty #3 *Anishinaabeg* have been steadfast and creative in meeting their responsibility to children and strengthening families as substantiated in the documents produced by Weechi-it-te-win Family Services and Grand Council Treaty #3. The literature illustrates a variety of examples of how the *Anishinaabeg* have not

¹⁰⁸ *Supra* at note 106, Bohaker in “*Doodem and Council Fire*” page xx.

surrendered to colonial assimilationist or child welfare policy but rather resisted and taken every opportunity to operationalize their inherent authority.

The Treaty #3 *Anishinaabeg* build on the strength of *miinigoziwin*, their sovereign position with the underlying understanding that “the Creator placed us here and gave us laws to govern ourselves rightly”¹⁰⁹ and thus are not beholden to colonial structures to defend or implement their rights. Rather, the *Anishinaabeg* have chosen to utilize colonial laws and institutions as a catalyst to regain capacity as they inch towards the goal of full unfettered jurisdiction to implement *Anishinaabe* law. For example, the interim establishment of Weechi-it-te-win Family Services as a provincial entity implements *Anishinaabe* law through customary care. The Treaty #3 *Anishinaabeg* continue to determine the best path forward for children, families and communities irrespective of the colonial imposition.

¹⁰⁹ Chief *Mawendopenais*, one of the three principal *Anishinaabe* spokespersons / negotiators of Treaty #3. See Tim Holzkamm and Leo Waisberg in “*We Have Kept Our Part of the Treaty: The Anishinaabe Understanding of Treaty #3*” Grand Council Treaty #3, 2011 at page 1. See also Alexander Morris “*The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based*” Fifth House Publishers, 1991, at page 59.

Part 2) *Anishinaabe Miinigoziwin*

The *Anishinaabe* in Treaty #3 are sovereign. For the *Anishinaabeg*, the source of sovereignty is from the Creator and in acknowledging its' source, the *Anishinaabeg* describe this as *miinigoziwin* and because it is sacred, it is indivisible. It cannot be given away and cannot be taken away. It cannot be sold. "Our sovereign right to self-determination is non-negotiable. It comes from the fact of our creation as *Anishinaabeg* with laws, principles, and teachings that guide and hold us together as a distinct Nation."¹¹⁰ Sovereignty is the sacrosanct freedom of a people expressed through their will, and it is an activity embedded in *Anishinaabe* culture.

"The Anishinaabe know their place and role in Creation which is expressed in their unique culture and world view. A culture is the full range of teachings, customs, values of a people passed on through the generations through their own and distinct language. Simply put, culture consists of everything that a people need to ensure their continuity and survival. Customs and traditions have been developed and adopted and adjusted as necessary by the people over many generations of time, or since time immemorial, as is often stated. They are deemed valid and are abided as the legitimate ways of conforming to the traditional understanding of the purpose of life and the laws that govern Creation. These laws are part of the Supreme Law sacredly conferred upon the Anishinaabe, and which form an integral part of their constitution – the fundamental set of laws to be self-enforced and ultimately enforced by the Nation."¹¹¹

The 55,000 square miles that is now Treaty #3, was controlled to the exclusion of others by the *Anishinaabeg*. The original peoples of the Boundary Waters¹¹² were

¹¹⁰ Eli Mandamin, Grand Chief of Grand Council Treaty #3, "*Bimimidizowin Omaa Akiing*" Speaking notes from a meeting with Indian Affairs Minister Ron Irwin, July 24, 1996, page 5.

¹¹¹ *Supra* at note 1, Fred Kelly, "*Traditional Governance: The Anishinaabe Nation in Treaty #3*", page 1.

¹¹² The Boundary Waters are the lakes, rivers and other waters that flow between Canada and the United States and are also sometimes referred to as the Quetico – Superior country which spans the border between Ontario and Minnesota west of Lake Superior.

distinguished from other *Anishinaabeg* by the name *Kojeje wininewug* or “peoples of the Lakes and Rivers” and they formed a political unity around this major resource area.¹¹³ For thousands of years the Boundary Waters have been the favoured place to hold huge gatherings where food was plentiful in the spring and the fall, for ceremonies, for arranging marriages and making relations, before leaving in smaller family groups for the winter.

As early as the 1600’s European explorers and traders began arriving at *Anishinaabe Aki*, now referred to as the Treaty #3 territory. At that time the *Anishinaabeg* did not understand fully the European ways or language and the extent to which they were about to be “agitated by... the initiation of a system which is forever to change their conditions of life...”¹¹⁴ In 1740, Joseph la France, a half-breed fur trader, camped with the *Anishinaabeg* for a month at an island on the Lake of the Woods that he described as a place where they meet for the purpose “to be merry and confirm their friendship and alliance.”¹¹⁵

“Large seasonal groupings were the foundation for tribal government and military organization. Through a tribal Grand Council, the Anishinaabe bands asserted sovereignty over their territory,”¹¹⁶ over which they considered themselves to be the “sole lords and masters”.¹¹⁷ For example, by

“1787 fur traders found an interior route on Rainy River to Lake of the Woods to avoid “interception and payment of taxes [tolls] on the Rainy River. Customary law since at least the seventeenth century recognized the right of native groups to control territory, to control

¹¹³ Supra at note 32, Kathi Avery-Kinew et al, “*The Creator Placed Us Here*” page 3.

¹¹⁴ Joan Lovesick, Ph.D. M.E.S., “*Expert Report*” for Keewatin v MNR and the AG Canada, (Ontario Court of Justice) prepared for Robert Janes, Miller Thomson LLP, July 9, 2008, at page 37.

¹¹⁵ *Ibid* at page 16.

¹¹⁶ *Ibid* at page 18.

¹¹⁷ *Ibid* at page 32.

passage through the territory and to demand and expect payment of tolls.”¹¹⁸

While the *Anishinaabeg* were not concerned with customary law recognition, to the *Anishinaabeg* the granting of a right of way and safe passage through their territory, or refusal thereof,¹¹⁹ was a well-established exercise of sovereignty. *Anishinaabeg* continue to assert that granting a right of way through their territory was the central objective and underpinning of Treaty #3. “Your government needed our land as a passageway to the prairies for troops to fight the metis. It was also needed as a route for the settlers...”¹²⁰

The *Anishinaabeg* were keenly aware of their sovereignty and how to assert control of their lands. By the mid-eighteenth century, written records began to reflect the details of a complex *Anishinaabe* system headed by a hereditary Grand Chief who communicated collective concerns to allies, external governments and commercial interests. Fur traders and missionaries were unable to penetrate or influence this system, especially among the Treaty #3 *Anishinaabeg*, who had developed non-hierarchical stratified layers of governance encompassing the roles of war chiefs, village

¹¹⁸ *Ibid* at page 18.

¹¹⁹ The Hind Expedition of 1857 sought to survey *Anishinaabe* territory through Lake of the Woods west and were encountered by *Anishinaabeg* who stopped them from traveling further until their Chief arrived. Seeking to understand the purpose of the ‘expedition’ through this part of their country, a long council ensued that ended in the *Anishinaabeg* refusal to grant permission to be guided from Lake of the Woods. The Chief also refused any gifts from Hind as they had “no right to pass this way...” Neither did the Chief demand a toll. See *ibid* at page 23.

¹²⁰ John Pete Kelly, Grand Chief Grand Council Treaty #3, “*We Are All in the Ojibway Circle*” A Speech delivered to the Royal Commission on the Northern Environment in 1977. Reprinted with the author’s permission in “*From Ink Lake*” Canadian Stories Selected by Michael Ondaatje, Lester & Orpen Dennys, 1990, page 580. See also *ibid*, Lovesick confirmed Canada’s objective in negotiating Treaty #3 was to acquire a “right of way” for road construction, military route and for construction of the railway, at page 6,

chiefs, talking chief, pipe chief and messengers – an arrangement that diffused political power while maintaining egalitarian principles.

“Anyone who, in negotiating with these Indians, should suppose he had mere children to deal with, would find himself mistaken. In their manner of expressing themselves, indeed, they make use of a great deal of allegory... but in their actual dealings, they are shrewd and sufficiently awake to their own interests, and, should the matter be one of importance, affecting the general interests of the tribe, they neither reply to a proposition, nor make one themselves, until it is fully discussed and deliberated upon in Council by the Chiefs.”¹²¹

To the Treaty #3 *Anishinaabeg* their sovereignty, laws and lifeways were paramount and beyond challenge. Settlers also recognized the comprehensiveness and complexity of *Anishinaabe* law.

“They have a rude sort of government, and the regulations made by their Chiefs are observed, it is said, better than laws usually are where there are no great means of enforcing them. They are very intelligent and are extremely jealous as to their right to soil and authority over the country which they occupy.”¹²²

Efforts were made to convert the *Anishinaabeg* to Christianity, which was deemed a failure. “Missionaries have made no impression upon them, and in many respects, they have shown themselves to be less amenable to the influences of civilization, than Indians usually are.”¹²³ The *Anishinaabeg*, in fact, took pride in maintaining their distinctive Indian character, are deeply imbued with traditions of what they believe to be an honourable past history, and would look with disdain on any

¹²¹ *Supra* at note 114, “*Historical Report*” Grassy Narrows v MNR, at page 30.

¹²² Simon Dawson on the appropriateness of entering treaty with the *Anishinaabeg*, *ibid* at note 114 at page 29.

¹²³ *Ibid* page 29.

community becoming Christian.¹²⁴ Between 1839 and 1857, Reverend Jacobs described Rainy Lake as “the headquarters of heathenism.”¹²⁵

The *Anishinaabeg* exercise *miinigoziwin* which is said to endure for as long as the sun shines and the waters flow.¹²⁶ Following their constitution, the *Anishinaabeg* entered into Treaty #3 with the British Crown representatives in 1873, for example.¹²⁷ For the *Anishinaabeg*, it was essential that the treaty negotiations be steeped in ceremony. Chief Mawindopiness, a principal spokesperson in the Treaty negotiations said, “This is what we think, that the Great Spirit has planted us here on this ground where we are, as you were where you came from... the Great Spirit has given us rules that we should follow to govern us rightly.”¹²⁸ Respect for the treaty is a sacred obligation for all time, *Bimiiwinitisowin Omaa Akiing*,¹²⁹ or governance on our land is how the *Anishinaabeg* describe the duties of the *Anishinaabeg* properly balanced and discharged through *miinigoziwin*.

The *Anishinaabeg* understand their responsibility extends to those yet to come. “It is said that ... we have no right to insert our views and make additional comments, because if we do, future generations will not know the original instructions.”¹³⁰ The

¹²⁴ *Ibid*, at page 32.

¹²⁵ Joan A. Lovesick, “*The Political Evolution of the Boundary Waters Ojibwa*” Grand Council Treaty #3, Papers of the Twenty-Fourth Algonquian Conference (Ottawa: Carleton University) 1993, 280-305 at page 296.

¹²⁶ It is significant to the *Anishinaabeg* that this principle of *Kagakiwe Inakonigewin* be contained in the treaty, see Fred Kelly, chart of Anishinaabe Law, Image #2 below.

¹²⁷ Comments by Fred Kelly at numerous Grand Council Treaty #3 meetings. See also Fred Kelly in “*Traditional Governance*” *supra* at note 1, pages 1 – 6.

¹²⁸ *Supra* at note 109, Holzkamm et al, “*We Have Kept Our Part of the Treaty*” page 1.

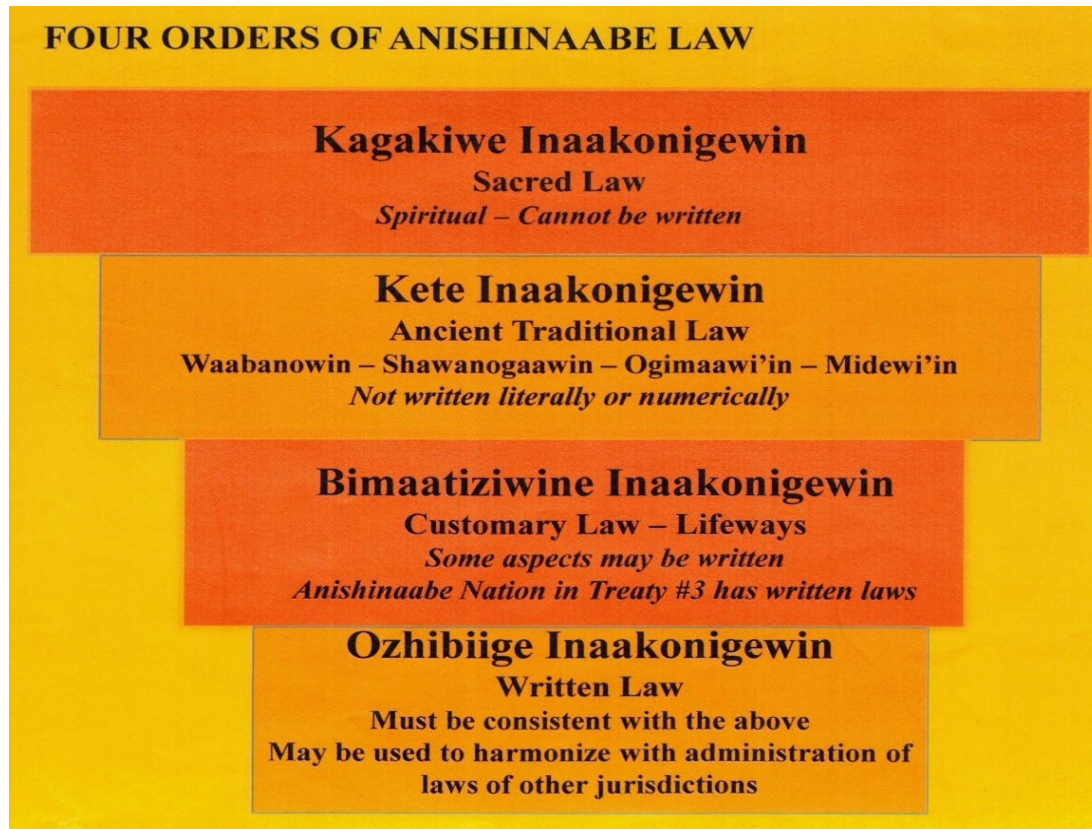
¹²⁹ *Supra* at note 1, Fred Kelly, “*Traditional Governance: the Anishinaabe Nation in Treaty #3*” at page 8. See also Grand Council Treaty #3 “*Bimiiwinitisowin Omaa Akiing, Governance on Our Land*”, Community Consultation Feedback, 1988/89.

¹³⁰ Dr. Tobasonakwut Kinew, “*Traditional Treaty-Making and Related Protocols from an Anishinaabe Perspective*” Report prepared for the Treaty Relations Commission of Manitoba, 2009, page 10. See also, Anton Treuer, [‘Decolonise and re-indigenise’: The Ojibwe language warrior | Indigenous Rights | Al Jazeera](#). Dec 19, 2019.

Anishinaabeg did not doubt the role and rule of *Anishnaabe* law or the extent of its' application. Renowned *Anishinaabe* Elder Fred Kelly,¹³¹ keeper and practitioner of sacred law, explained that there are four orders or levels of *Anishnaabe* law that govern all aspects of *Anishinaabe* life as illustrated in his chart below.

¹³¹ Fred Kelly, *Kizhebowse Mukwaa* (Kind Walking Bear) is an Elder in *Midewewin*, the Sacred Law and Medicine Society of the *Anishinaabe*. As such he is a Keeper and Practitioner of Sacred Law. Fred is the uncle of this writer.

Image #2, Chart of Anishinaabe Law, Fred Kelly, 2012¹³²



¹³²Fred Kelly, on the occasion of a meeting between Grand Council Treaty 3 and Indigenous Service Canada Minister Carolyn Bennett, 2015, PowerPoint slide.

a) *Anishinaabe* Law

The source of *Anishinaabe* law is from *Kizhe Manito*, the Kindhearted Spirit,¹³³ Creator and thus is sacred law, also referred to as *Kagakiwe Inakonigewin*. The Creator as a benevolent gift giver who predominantly through the *adisokanaan* and adventures of *Nanaboozhoo* provides culture and knowledge to the *Anishinaabeg* and informs them of the sacred rules and direction of the universe. “Because the *Anishinaabe* do not separate the secular from the sacred, and the temporal from the eternal law, the source of all law is the Creator.”¹³⁴ It is said that sacred law must not be written, and it cannot be changed and contains the original instructions to the *Anishinaabeg*. Living the *Anishinaabe* way of life according to the *Kagakiwe Inakonigewin*, the *Anishinaabe* seek to fulfill their sacred duty. *Kagakiwe Inakonigewin* underpinned treaty-making with the Crown as well as alliances with other Nations.¹³⁵

Kete Inakonigewin, is reflected in *Anishinaabe* institutions and structures, and in the *adisokanaan* that is taught beginning in childhood. *Bimaatiziwin Inakonigewin* are the temporal laws that the *Anishinaabeg* uphold in their quest for a good life as adapted to meet current challenge and circumstance, an example is Grand Council Treaty #3’s *Abinoojii Inakonigewin*. *Ozhibiige Inakonigewin* is literally written law,¹³⁶ drafted to address contemporary matters, flowing from *Kagakiwe Inakonigewin*. A fundamental

¹³³ Dr. Tobasonakwut Kinew, “*Menh wiizha iitog anishinaabe kii andoo paawaamawitog*” sharing a teaching of the late Elder Naabikwaan of Lake of the Woods from 1941, on the occasion of the adoption by Fred Kelly of Frank Iacobucci, former Justice of the Supreme Court of Canada, as his brother, Winnipeg, MB, November 3, 2007.

¹³⁴ *Supra* at note 1, Fred Kelly, “*Traditional Governance: The Anishnaabe Nation in Treaty #3*” page 44.

¹³⁵ *Supra* at note 130, Dr. Tobasonakwut Kinew, “*Traditional Treaty-Making and Related Protocols*” on alliances and treaty-making with other Nations.

¹³⁶ For further description of Fred Kelly’s “*Four Orders of Anishinaabe Law*”, see also Leo Baskatawang in “*Reclaiming Anishinaabe Law: Kinamaadiwin Inakonigewin and the Treaty Right to Education*” University of Manitoba Press, 2023, description of Fred Kelly’s pages 50 – 53.

principle for example, is set out in *Abinoojii Inakonigewin*, permitting “agreements with other jurisdictions for harmonizing the administration of this Law and the administration of their Laws.”¹³⁷ Treaty #3 Elders have been unequivocal that the *Anishinaabeg* have never intended to use or adopt foreign law, we always intended that we would continue to use our own laws,¹³⁸ and that “the nation must stay within our own sphere of jurisdiction.”¹³⁹

The Elders as custodians of sacred law have a system of interpreting law through ceremony and reference to history. Since confederation, federal and provincial governments have passed hundreds of statutes, regulations and policies that have directly and indirectly affected the *Anishinaabeg*. The colonial system has “encroached upon the inherent jurisdiction of the Anishinaabe in respect of such matters as their relationship to the land and resource development, fishing, gaming,”¹⁴⁰ and most detrimentally, to their children and families. The *Anishinaabe* systems have been seriously tested but they have endured.¹⁴¹

Through millennia, and long before Canada became a colony of Britain, the *Anishinaabe* Nation in Treaty #3 thrived according to their own distinct and complex laws and social structures. Integral to *miinigoziwin*, *Anishinaabe* people have inherent jurisdiction in relation to their children. From time immemorial the *Anishinaabeg* have taken care of one another, they have lived their lives guided by complex and ancient traditions, customs and values that have been conveyed through the language and

¹³⁷ *Supra* at note 10, *Abinoojii Inakonigewin*, sections 47, see also sections 48 & 49.

¹³⁸ *Elders Gathering*, in contemplation of drafting *Abinoojii Inakonigewin*, Notes, Grand Council Treaty #3, February 5, 2002, page 6.

¹³⁹ *Supra* at note 1, Fred Kelly, “*Traditional Governance: The Anishinaabe Nation in Treaty #3*” at page 44.

¹⁴⁰ *Ibid* at page 44.

¹⁴¹ *Ibid* at page 46.

lifeways from one generation to another, “we still live by the fundamental values of our traditional culture... in our spirit and in our mind, in the way we treat each other... we continue to be true to the roots of our civilization.”¹⁴²

Anishinaabe law includes unique mechanisms in relation to the care of the children including in times of loss or catastrophe that ensured that the community endured, and that children were safe, connected and loved. Families and communities within the Nation have always worked together to support each other and have processes to protect their most precious members, the children.

When *Anishinaabe* communities and families faced turbulent times or when children required special care there have always been solutions to address the situation whether it be by relatives stepping in, the establishment of new relationships or through ceremony and protocols to resolve any quandary and ensure lifelong bonds for the child.

There are many examples of the operation of *Anishinaabe* law that show how the *Anishinaabeg* ensured that children were appropriately cared for and that their needs were met. While *Anishinaabe* law may not be as visible today it remains intact and consistent and continues to be regarded as the highest ordinance to many *Anishinaabeg* through the millennia.

b) *Abinoojii Inakonigewin*

The *Anishinaabeg* believe that one must be acutely aware of their interconnectedness and be respectful to all living beings. The *Anishinaabeg* know that

¹⁴² *Supra* at note 120, John P Kelly, “*We Are All in the Ojibway Circle*”, at page 587.

we are here for our children and the generations to come. To illustrate, Dr. Tobasonakwut Kinew explained his understanding of the concept of ‘Seven Generations’. An individual must be accountable to and responsible for living according to the three generations prior, thus one’s great-grandparents, grandparents and parents. As well, in every action, one must consider the implications of their actions and share their knowledge exactly for the benefit of the next three generations forward, thus one’s children, grandchildren and great-grandchildren.¹⁴³

The creation and preservation of relationships are fundamentally important at all levels of *Anishinaabe* life and serve to address a variety of functions. For example, the *Anishinaabe* greeting “*Ahow n’dinawemaaganaatok*”¹⁴⁴ is used to request your attention, but mainly is an act of kindness, referring to everybody as my relative.

It has always been very important to point out ones’ relatives and explain how it is that we are related or how we are connected. On every occasion, whether it be a visitor to our home or us on an excursion outside of the home, my father explained, in great detail, who that person is, their parents and grandparents, their *Anishinaabe* names, clan, community and their link to us, followed maybe by a story about that family or historic event which included them. Then, he would introduce us.

The *Anishinaabe* family was close knit, all children of a community were raised as relatives. “Anishinaabe law recognizes that the child must live, belong and grow within an environment of human relationships rooted in the family, the clan and the

¹⁴³ Dr. Tobasonakwut Kinew, shared his understanding with me on several occasions, and including in response to a request from the Seven Generations Education Institute of the Treaty #3 territory, to translate their name into *Anishinaabemowin*.

¹⁴⁴ Dr. Tobasonakwut Kinew, “*Making Relations: Citizenship is the Inherent Right of the Anishinaabe Nation of Treaty #3*” 2011 at page 3. In *Anishinaabemowin* means ‘Hello, my relatives’ and is used as a greeting in small and large groups as well as formal and informal settings.

community, and that these needs are essential to the best interests of every Anishinaabe child.”¹⁴⁵

My father spoke of having 18 grandmothers and 18 grandfathers, always emphasizing the importance of relationships. To the *Anishinaabeg*, siblings of the biological grandparents are also considered to be grandparents. *Anishinaabe* family structure encompassed “not only marital and parental ties among the members of multiple households, but also a wider set of kin relationships that arose from Ojibwa life circumstances.”¹⁴⁶ The immediate extended family was “a fundamental nexus of relationships, a foundation for socialization, enculturation, and daily existence.”¹⁴⁷ To the *Anishinaabeg* all members of the community were relatives of some sort, and therefore deeply connected.

All *Anishinaabe* children belong to a family. In *Anishinaabemowin*, there are several ways to connote family,¹⁴⁸ none of which are interpreted in the limited sense as that of the nuclear family.¹⁴⁹ Fred Kelly explained that within *Anishinaabemowin* family is broader and depicted as,

“*Ngoondote*: family – a people – *anishinaabek* – ‘a nation’. This is an ancient traditional word. It comes from *ote’imin* which is the strawberry, literally the heart berry. The *Anishinaabe* language is filled with heart, *t’otem*. *Ngoondote* is collective hearts embedded into one family. The family, extended family, the clan and the community... all hearts belong to that territory.”¹⁵⁰

¹⁴⁵ *Supra* at note 10, the preamble of *Abinoojii Inakonigewin*.

¹⁴⁶ Laura Peers and Jennifer S.H. Brown. “*There is no End to Relationships Among the Indians*”: *Ojibwa Families and Kinship in Historical Perspective*” *The History of the Family*, Volume 4, Number 4, 2000, at page 531.

¹⁴⁷ *Ibid* at page 531.

¹⁴⁸ *Supra* at note 104, Patricia Ningewance, “*Talking Gookum’s Language: Learning Ojibwe*”, “*ngodwezhaan – one family*” at page 314. See also *supra* note 104, Patricia Ningewance, “*Ojibwe Thesaurus*” at page 56.

¹⁴⁹ *Supra* at note 146, Laura Peers et al, “*There is no End to Relationships Among the Indians*” at page 531.

¹⁵⁰ Fred Kelly, “*Anishinaabe Sacred Law*”, *Robinson Huron Treaty (RHT) Gathering 2022 | Fred Kelly – Anishinaabe Sacred Law*, Youtube, at 4:00.

When a child is born, they should as soon as possible receive an *Anishinaabe* name that will connect them to the family, community and the nation. The naming ceremony is the formation of the relationship to creation and ensures ongoing acknowledgment and connection throughout a lifetime. An *Anishinaabe* name will play a major role through all stages of life.

Parents, family and community each individually and collectively have a duty to each *Anishinaabe* child to be supported and raised in a good way. The *Anishinaabeg* refer to the duty of raising a child as, *ombigosowin*, also referred to as *mino ombigosowin*.¹⁵¹ It is imperative, a duty that the *Anishinaabeg* raise their children in a manner that encourages them to follow their own course and to seek their dream, fulfill their destiny, *aando bawachigen*. “The health of the people is determined by parents fulfilling their role. Parental responsibilities are critical to ensuring our survival and resurgence as a people.”¹⁵²

Anishinaabe parents, grandparents and members of the Nation are all duty bound to *ombigosowin*, to teach and raise children to appreciate their relationship to the world around them. “Central to our responsibilities as a Nation is returning the children to the center of our lives. The most important things that you can teach a child are values and kindness.”¹⁵³

¹⁵¹ Late Elder Charlie Nelson of Roseau River First Nation, during a telephone conversation about *Anishinaabe* families with this writer. January 2021. ‘*Mino*’ in *Anishinaabemowin* connotes a good tone and quality job.

¹⁵² Dr. David Courchene, Jr., Chief Harry Bone, C.M., LL.D., Florence Paynter, Philip Paynter, Chief Katherine Whitecloud, Chief Robert Maytwayashing, Mary Maytwayashing, Gordon Walker, the late Orianna Courchene, Knowledge Keepers, “*Wahbanung: The Resurgence of a People: Clearing the Path for Our Survival: 50 Years After Wahbung: Our Tomorrows*” 2020, written at the Turtle Lodge Central House of Knowledge, at page 38.

¹⁵³ *Ibid*, Dave Courchene et al, “*Wahbanung: The Resurgence of a People: Clearing the Path for Our Survival*”, at page 35.

Within the *Anishinaabe* family the grandparents had a significant role, which is still prevalent today. While play is very important it was also vital to educate children about ceremonies, deliberations and other activities to ensure the transmission of knowledge. This arrangement was an effective way to make certain that *Anishinaabemowin* and the *Anishinaabe* way of life flourished. At certain times of decision-making, it has been the grandmother that has had “unfettered discretion”¹⁵⁴ when it comes to the best interests of her grandchildren. In instances of parental separation, Peers reported that “children whose parents had separated were often raised by a grandparent, so that the stepparent would not be mean to the child.”¹⁵⁵

Besides distinguishing family members by maternal and paternal relations, the *Anishinaabeg* also distinguished cousins. Cross cousins are fathers’ sisters and mothers’ brothers’ children and were potential marriage partners. Parallel cousins were children of fathers’ brothers and mother’s sisters, and were considered siblings and as such marriage between parallel cousins was forbidden. Distinctive dialogue and relational references reflected the difference in the relationship between cousins. Children learned the distinction at an early age and understood the implications of the role and relationship of the members of their extended family.

Clan / dotem relationships are an important element of the *Anishinaabe* family structure that ensured relational connection beyond the community and throughout the Algonquin speaking territories. *Anishinaabe* children inherit their clan from their father which they carry for life. The connection and relationship between members of the

¹⁵⁴ Fred Kelly, through presentations at Grand Council Treaty #3 and personal discussions.

¹⁵⁵ *Supra* at note 146, Laura Peers et al, “*There is no End to relationship among the Indians*” at page 537.

same clan is so close that it is akin to biological siblings and as such marriage is forbidden, despite not being consanguineous.¹⁵⁶ Today the *Anishinaabeg* continue to introduce themselves by stating their *Anishinaabe* name, their clan and their community

Anishinaabe law continues to be prominent in the establishment of relationships and is utilized for various purposes. For instance, in times of loss, an adoption may occur where someone stands in the place of a son, daughter or sibling.¹⁵⁷ The *Anishinaabeg* have adopted groups of people and confer upon them every *Anishinaabe* right and responsibility.¹⁵⁸

Notably, nearing the end of the fourth year of the negotiations of Treaty #3 it appeared that an agreement would not be obtained. As a final effort to reach a consensus on the treaty terms, Chief Sakatcheway¹⁵⁹ stood and said to Commissioner Morris,

“If you give what I ask, the time may come when I will ask you to lend me one of your daughters and one of your sons to live with us; and in return I will lend you one of my daughters and one of my sons for you to teach what is good, and after they have learned, to teach us. If you grant us what I ask, although I do not know you, I will shake hands with you.”¹⁶⁰

This statement by Chief Sakatcheway culminated in the signing of Treaty #3 and is widely recognized as the promise to the treaty right to education. In my view, it also

¹⁵⁶ *Supra* at note 103, Cary Miller, “*Ogimaag: Anishinaabe Leadership, 1760 – 1845*” at pages 38 and 39.

¹⁵⁷ My father initiated an *Anishinaabe* adoption of a young man as his son. My father recognized qualities in this man that reminded him of my late brothers and as such established the new relationship to honour the love for my lost brothers and restore happiness and fulfillment in our family.

¹⁵⁸ In 1875, the *Anishinaabeg* “Half-Breed” adherence to Treaty #3 was affirmed to extend the protection of Treaty #3 to certain Metis living among them, including land rights connected to *Couchiching* First Nation.

¹⁵⁹ An *Anishinaabe* Chief at the treaty negotiations.

¹⁶⁰ *Supra* at note 109, Tim Holzkamm et al, “*We Have Kept Our Part of the Treaty: The Anishnaabe Understanding of Treaty #3*” at page 47. See also *supra* at note 109, Alexander Morris, “*Treaties of Canada with the Indians of Manitoba and the Northwest Territories, including in the Negotiations on Which They were Based.*”

signifies the importance of relationship building and how *Anishinaabe* adoption sought to bring the newcomers through treaty into their relational network.

The *Anishinaabeg* have law and ceremony to ensure that everyone has a family and knows their clan regardless of whether one is orphaned, is adopted in, has a non-*Anishinaabe* father or has become disconnected from their roots.

c) *Anishinaabemowin*

Language is important to a people because it “embodies a unique worldview”¹⁶¹ connects them to their history and transmits their culture. *Anishinaabe* identity, cultural ways, geography and the *adisokaanan*, are all embedded and reflected within *Anishinaabemowin*. *Anishinaabe* philosophy and thinking is expressed through the language which is centered in the value of relationships with the Creator and underpinned with kindness, respect and responsibility for all of life; respect and shared responsibility flow from such an understanding.¹⁶² “Ojibwe words are so loaded with respect that we don’t view respect as a separate concept. In that same vein, spirituality is embedded in the language. There’s no conceptual way to separate our physical and spiritual forms from each other.”¹⁶³

Through *Anishinaabemowin*, the *Anishinaabeg* recall and celebrate the sacred events in their history as they were passed on by the ancestors over countless generations. “These have become traditional teachings that embody spirituality and define the sacred relationship to the land and all life in creation.”¹⁶⁴ And because

¹⁶¹ *Supra* at note 1, Fred Kelly, “*Traditional Governance: The Anishinaabe Nation in Treaty #3*” page 4. See also *supra* at note 130, Anton Treuer, “*Decolonise and re-Indigenise: the Indigenous Language Warrior*”.

¹⁶² *Supra* at note 130, Dr. Tobasonakwut Kinew, “*Traditional Treaty-Making and Related Protocols from an Anishinaabe Perspective*” page 15.

¹⁶³ *Supra* at note 130, Anton Treuer, *Decolonise and re-Indigenise: The Indigenous Language Warrior*”.

¹⁶⁴ *Supra* at note 1, Fred Kelly, “*Traditional Governance: The Anishinaabe Nation in Treaty #3*” at page 4.

everything flows from the Creator, “all life is imbued with the sacred... everything is intimately and spiritually connected. There is no such concept as animate or inanimate.”¹⁶⁵

Further, *Anishinaabemowin* utilizes

“a high percentage of verbs, and verbs comprise an inordinate percentage of vocabulary; linguists working to document the language have recorded more than 20,000 verb stems (Nichols and Roulette – work in progress). This by no means begins to exhaust the possibilities because the language can readily produce novel verb forms on par with the ability of English to produce novel sentences. The language is classified by linguists as an agglutinative language, so Ojibwe verbs typically consist of many prefixes and suffixes bound into single words which convey complex sentence-like thoughts.”¹⁶⁶

Anishinaabemowin is a language whereby words are crafted precisely to express intricate descriptions or novel ideas and when spoken can illuminate the thought process, the history and the significance of any concept, simple or complex. Given this aspect of *Anishinaabemowin*, it is apparent in the way words have been constructed to illustrate the speakers’ worldview as well as the thought process for describing an object or situation as well as for new or ancient concepts.

For the purposes of this paper however, it is sufficient to say that to appreciate *Anishinaabemowin* one must consider the root of each word, with the prefixes and suffixes added in totality. For example, “*Nabaasitooon* refers to putting together something into another. *Naabaaka oochige* is the act of putting the stem into the pipe bowl. The word, *Naabakoshimaa* is also sometimes used. From there we have

¹⁶⁵ *Ibid* at page 4.

¹⁶⁶ Maureen Matthews, Roger Roulette, and Rand Valentine. “*Anishinaabemowin: The Language of Pimachiowin Aki*”, a discussion paper for the Pimachiowin Aki UNESCO World Heritage site proposal, April 2010, pages 5 and 6.

Nabaagoondiwin, the act of adoption.”¹⁶⁷ As such, this example also reflects the spiritual significance within the language and actions of the *Anishinaabeg*.

Anishinaabemowin does hold promise for future generations. For instance, we are told that the *adisokanaan* is within each *Anishinaabe* individual. It is both spirit and a teaching – it is a verb and a noun.¹⁶⁸ *Adisokanaan* is entrenched inherently within the spirit of the *Anishinaabeg*, and it cannot be removed by colonial law or policy. In this way *Anishinaabe* law is being revived as the *Anishinaabe* remember through dialogue and visions.¹⁶⁹

Anishinaabe law and *Anishinaabemowin* are critical elements in the resurgence of strong, healthy and vibrant *Anishinaabe* children, families and communities.¹⁷⁰ In pockets of the Treaty #3 territory the language remains intact in the older generation and as a priority must be spoken to and shared with the youth consistently. But that is not enough. It is vitally important that the origin of *Anishinaabe* words be understood to fully grasp the connection to creation, to our history and to unlock the secrets for today, otherwise we are just regurgitating *Anishnaabe* words without context or meaning. “Language is more than a mere means of communication; it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.”¹⁷¹

¹⁶⁷ *Supra* at note 144, Dr. Tobasonakwut Kinew, “*Making Relations: Citizenship as the Inherent Right of the Anishinaabe Nation of Treaty #3*” page 22.

¹⁶⁸ Dr. Tobasonakwut Kinew, conversations.

¹⁶⁹ *Supra* at note 5, Dr. Tobasonakwut Kinew, “*Let Them Burn the Sky*”.

¹⁷⁰ Dr. Tobasonakwut Kinew, conversations, including numerous Treaty #3 Elders have consistently expressed the need for resurgence of *Anishinaabemowin*. See also The Final Report of the Truth and Reconciliation Commission of Canada (TRC), “*Canada’s Residential Schools: The Legacy*.” volume 5, page 6.

¹⁷¹ *Mahe v. Alberta*, [1990] 1 S.C.R. 342 Dickson C.J. stated at page 362

Anishinaabemowin use however has been in decline and is one of only three indigenous languages expected to survive the next decade. In some communities' ceremony, customs and protocols are near forgotten or seen with disdain by some families. The impact of the separation of *Anishinaabe* children from their family structure and community culture has had ripple effects impacting their identity and resilience.

Image #3, Photograph of the Kelly family, from top to bottom and left to right. Vernon or Norbert, (my grandmother's son from a previous marriage), Nancy, (my grandfather's daughter from a previous marriage), Norman Kelly, Wabanakwut (my grandfather), Tobasonakwut Kinew / Peter Kelly, (my father), Alice Kelly, Nenakiizhagok (nee Big George, my grandmother), Edwin (my uncle), and John Pete (my uncle) on grandfather's lap. Photo taken outside of the Kelly family home at the Ojibways of Onigaming approximately 1941.



d) A Day in the Life of an *Anishinaabe* Child - My Father's Early Years

It was at dawn on an early spring morning that my grandfather walked to the lake shore to offer tobacco in gratitude for the birth of his twin sons born during the night. My family was one of several that had been camped at Turtle Narrows on Lake of the Woods while they waited for the ice to break. There was a thick fog resting on the lake that morning, and as he put the tobacco in the water at the shoreline where the winter ice had begun to recede, the cloud began to lift. Before long the cloud had lifted a few feet above the surface, and he could see clear across the bay. He named my father *Tobasonakwut*, low lying cloud, for the phenomenon that accompanied his birth.

As a young child, much of the early years were spent in close proximity to my grandmother, at *Kakagi Watisonigaming* where they often lived in the log cabin my grandfather built in the early 1930's. The infant brothers watched my grandmother from within the safety of their *tikanaagan*¹⁷² propped up against a tree or leaned next to her as she and the other ladies picked berries, wove reed mats or visited with each other. In the years following, the siblings helped plant potatoes and squash in the garden outside of the tiny log house. Life was very comfortable.

Children were up before dawn and asleep well before sunset. It was my grandmother who put the boys to sleep at night, relating the *adisokanaan*, the stories and legends of the *Anishinaabeg* of long ago. My grandmother was an excellent orator, and it was through her that my father became immersed in the trials and tribulations of *Nanaboozhoo*. On family journeys throughout the territory places, formations or even a

¹⁷² Cradle board used for infants to keep them safe and comfortable.

particular animal, bird or fish were pointed out that had had an ordeal with *Nanaboozhoo*, that explained a particular materialization or mannerism.

Some nights my father would evade bedtime with his brothers staying curled up on a blanket on the ground or on his father's lap listening as he talked with the other men around a crackling fire into the night. My father learned of things that were not spoken of during the day. Although they thought he was asleep, my father listened intently and learned the very descriptive language of a varying tone that connected present to the past and taught implicitly of when and how to speak of certain things.¹⁷³

An essential element of my father's early education was to be put out on his first Fast¹⁷⁴ at the age of five or six. My father described being woken up at dawn by his parents directing him to get ready and giving him a few items wrapped in cloth. A community Elder arrived and paddled with my father to a rock cut where they both disembarked from the canoe and ascended to a cavernous outcrop a few meters above the shoreline. The Elder directed him to crawl to the back of the crevice then turn around, come out to the edge and sit down. My father followed the instructions, when he re-emerged, the Elder was paddling away leaving my father in solitude for a short while to contemplate and connect with the environment.

Through the seasons the family travelled about the territory staying for extended periods at my grandfathers' hunting cabin, the ricing camp at Button Bay or visiting relatives at various villages. Sometimes different family members might join the household, or children might join the household of other family members, especially of

¹⁷³ *Supra* at note 130, Dr. Tobasonakwut Kinew, "Traditional Treaty-Making Protocols from an Anishinaabe Perspective" page 38.

¹⁷⁴ Fast and vision quest ceremonies are the same, Treaty #3 *Anishinaabeg* use both terms interchangeably.

their grandparents. There are laws and protocols that govern who occupies specific sites and for the sharing of resources, which are beyond the scope of this paper.

Suffice it to say that territory and resources were shared.

The Lake of the Woods, Rainy Lake and the many rivers were the transportation corridors where children had travelled with their parents, grandparents and other family members through the millennia. In the days before the highway was constructed connecting Fort Frances and Kenora by land, *Naongashiing*¹⁷⁵ on the southeast end of the Aulneau Peninsula was a central meeting place of the *Anishinaabeg* of Treaty #3 and was the home of my father's mother.

My father spent extended periods of time at *Naongashiing* with his maternal grandparents, parents, siblings and cousins. He was his grandfather's favourite. The *Anishinaabe* family was close knit, all children of a community were raised as relatives; my father always emphasized the importance of relationships.

In the summer months children learned to become great swimmers. Swimming races were regular occurrences across the bays by *Naongashiing*, some choosing to paddle in their canoe beside the youth.¹⁷⁶ Young *Anishinaabeg* learned to be very agile in the water, on the land and in their canoes.

On one occasion my father sat in the center of the canoe as his grandparents paddled with him to *Naongashiing*. It was an extremely windy day, so they decided to stop on shore and wait for the wind to disipate. His grandmother however could not get out of the canoe because a bog had dislodged and moved to block them in. They

¹⁷⁵ Also known as Big Island First Nation.

¹⁷⁶ *Supra* at note 130, Dr. Tobasonakwut Kinew, "Traditional Treaty-Making Protocols from an Anishinaabe Perspective" at page 42.

paddled around the bog and found a narrow spot to pull the canoe over. Once on the safety of shore his grandmother told him of how a long time ago, she had been warned that a floating bog could be concealing an enemy.¹⁷⁷ Every experience was an opportunity for learning.

My father was eight years old in 1944 when he was removed from his family and taken to the St Mary's Residential school in Kenora. The Roman Catholic indoctrination interrupted the life that he had been immersed in. His heart longed for the original path that had been well trodden by countless generations before him. It was an abrupt removal from everything and everyone that was familiar and comfortable.

My father was at St Mary's Residential school for eight years. His experience was typical, he saw and heard horrible things and was berated for reasons unknown. While in school at St Mary's my father was devastated by the loss of his father and maternal grandfather. Despite or may be in-spite of the trauma and separation, my father retained *Anishinaabemowin* and maintained a deep-seated sense of how it is that an *Anishinaabe* person should live and how to treat those around them.

¹⁷⁷ *Ibid* at page 41.

Image #4, Photograph of my father, Tobasonakwut Kinew (Peter Kelly), on the occasion of a visit from his maternal grandfather, Kaagagewannakweb at St Mary's Residential school, approximately 1945.



Part 3) Canadian Indian Policy - Colonialism & Assimilation

Dr. Tobasonakwut Kinew succinctly illustrated the impact of colonialism on the *Anishinaabe* way of life in what he described as the 'Four Horseman of the *Anishinaabe* Apocalypse'.¹⁷⁸ The sweeping legislative powers enforced by the Indian Agent, the RCMP, the clergy and the Conservation Officer together were the etiological drivers that effectively isolated and disempowered all aspects of the *Anishinaabe* systems and structures that deeply and deliberately affected the Nation, community, family and the children, amounting to genocide. "Removal and condemnation of our sacred beliefs and ceremonies was the core of the strategy for destruction: if you strip a people of their fundamental beliefs, they have nothing to work with."¹⁷⁹

The four actors, all empowered by colonial legislation, participated in the attempted destruction of the *Anishinaabe* identity and family structure with the removal of children from the influence of their relations to become indoctrinated with an "ingrained inferiority."¹⁸⁰ Socialization of boys and girls was disrupted, the extended family eroded, and the nuclear family emerged among the *Anishinaabe*. Many decisions formerly made by families were usurped by the Indian Agent, matters such as marriage, divorce, and adoption, fell under the agent's control. For example, Indian Agents discouraged divorce, keeping marriages intact that would not have survived previously even preventing the breakup of abusive marriages.¹⁸¹

¹⁷⁸ Dr. Tobasonakwut Kinew, "The Assembly of First Nations Delegation to Rome, April 25 to May 2, 2009" written reflections as the *Anishinaabe* Elder during the delegation to Pope Benedict XVI, at page 5. A term he coined to explain very concisely how the *Anishinaabeg* were suppressed by colonial law and institutions that undermined every aspect of their way of life.

¹⁷⁹ *Ibid.*

¹⁸⁰ Dr. Tobasonakwut Kinew, reflection on his Residential school experience, handwritten note from conversation with me, July 8, 1998.

¹⁸¹ *Supra* at note 146, Laura Peers et al, "There is no end to the relationship among the Indians" page 545.

At confederation British Crown and the Canadian government developed their *de facto* constitutional division of powers which assigned legislative authority for different matters to the federal government and provincial governments.¹⁸² In fulfillment of their self-delegated federal authority for “Indians and Lands Reserved for Indians”¹⁸³ Canada instituted its first version of the *Indian Act* in 1876 and immediately began to implement and enforce its’ policy of assimilation.¹⁸⁴ Some scholars suggest that the historical rationale of the federal exclusive jurisdiction for Indians and Lands Reserved for Indians stems from the federal government succeeding the Crown as the protector of treaty promises, that the federal government would “protect Indigenous lands, rights and sovereignty from local interests.”¹⁸⁵ Regardless of the intent, the delegation of power was made without involvement or input from the *Anishinaabeg* and without regard to the commitments made within Treaty #3. It is unequivocal that the purpose of Indian policy was to assimilate and eliminate the ‘Indian’.

a) Removing the Indian from the Child

One of the cornerstones of the policy of assimilation was instituting the residential schools which led to generations of *Anishinaabe* children being forcibly removed from the safety and comfort of their family, community and culture to meet the objective to ‘remove the Indian from the child.’¹⁸⁶ The policy objective was intended to

¹⁸² *Constitution Act, 1867*, R.S.C. 1985, App II, No.5, sections 91 and 92, the ‘*Division of Powers*’.

¹⁸³ *Ibid*, section 91(24).

¹⁸⁴ Canada, Report of the Royal Commission on Aboriginal Peoples (RCAP), volume 1, “*Looking Forward, Looking Back*” Chapter 9, pages 235 – 242.

¹⁸⁵ Naomi Walqwuan Metallic, “*A Human Right to Self-Government Over First Nations Child & Family Services and Beyond: Implications of the Caring Society Case*” *Journal of Law and Social Policy* 28. (2018): 4-41 at page 10.

¹⁸⁶ Duncan Campbell Scott was the Deputy Superintendent of the Department of Indian Affairs, from 1913 to 1932. Scott oversaw the Indian Residential school implementation; his goal was to ‘get rid of the Indian problem. See the *RCAP supra* at note 177 for detailed overview of Canadian Indian policy.

educate and indoctrinate Indian children away from their parents and all aspects of the *Anishinaabe* way of life, through the elimination of their language, culture and connection to family. The Truth and Reconciliation Commission (TRC) stated that the “residential schools were an integral part of a conscious policy of cultural genocide.”¹⁸⁷ In 1920, the *Indian Act* made it compulsory for Indian children to attend residential schools and any Indian parent could be fined or incarcerated for not sending their child to the school.

Within the Treaty #3 territory there were more residential schools per capita and per geographic area than any other place in Canada. The Church administered residential schools were St Anthony’s on Lake of the Woods that became St Mary’s in Kenora, Cecelia Jaffray at Shoal Lake that later relocated to Kenora, Pelican in Sioux Lookout, McIntosh at McIntosh and St Marguerite’s in Fort Frances.

The residential schools initiated a “multi-generational fallout that impacted the language, the teachings and the spirituality of the *Anishinaabeg*.”¹⁸⁸ The schools are infamous for the abusive treatment of Indigenous children. First generation *Anishinaabe* children that attended St Anthony’s residential school witnessed behaviour uncharacteristic of anything they had seen before. On becoming parents, many recreated the violence and turned to alcoholism to cope with the rage, jealousy, isolation and powerlessness.

Anishinaabe children at the schools felt deep loneliness from the “long, long nights, where time moved so slowly and seemed eternal. The not knowing when it would end, was a feeling worse than a convict because of no impending release date.

¹⁸⁷ *Supra* at note 170, The *TRC Report*, page 55

¹⁸⁸ *Supra* at note 180, Dr. Tobasonakwut Kinew, reflection on his Residential school experience.

Like a prisoner of war!"¹⁸⁹ Witnessing the physical abuse of siblings, cousins and relatives with an inability to help, intervene or retaliate created aberrant behaviours.

"*Maa mookwandam*, is a learned behaviour in order to torment and strip one to nothing, to break ones' spirit."¹⁹⁰ The residential school instilled this behaviour in many *Anishinaabe* children who as adults and parents recreated it in their own families and relationships.

In 2008, Prime Minister Stephen Harper apologized to the former students of Indian Residential schools. The apology read in part,

"Two primary objectives of the residential schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country."¹⁹¹

After thousands of children over several generations attended residential schools the implementation of the federal policy began to succumb due to criticisms of the lack of success in the assimilation of children and poor educational outcomes along with the expense of operating the institutions.¹⁹² Thus began the policy of integrating Indian children into public schools and day schools.¹⁹³

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Prime Minister Stephen Harper, *Statement of Apology – to Former Students of Indian Residential Schools*, June 11, 2008.

¹⁹² *Supra* at note 170, The TRC Report.

¹⁹³ *Ibid* at page 68.

In 1951 there was a major shift in Canadian Indian policy reflected in sweeping amendments to the *Indian Act*.¹⁹⁴ With the enactment of section 88 “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 those laws are inconsistent with this Act.”¹⁹⁵ Section 88 lowered the drawbridge and ushered in the application and implications of provincial law to Indians and lands reserved for Indians.

Prior to the amendment, Indians and lands reserved for Indians were subject solely to federal law and regulations. This change deemed provincial laws applicable and enforceable to the *Anishinaabeg*, and most detrimentally, brought *Anishinaabe* children into the grip of the provincial child welfare system. The *Anishinaabeg* were never consulted about this major change.

Beginning in the early 1950’s, under the auspices of provincial child welfare law, the Sixties Scoop¹⁹⁶ gained momentum and quickly filled the growing gap created by the closing of the residential schools. The Sixties Scoop was a continuation of the policy of assimilation and cultural standardization targeted at First Nation children. The policy impact was mass removal of *Anishinaabe* children adopted to homes throughout the world, disconnecting them from their culture. *Anishinaabe* parents did not consent to the removal of their children and were powerless to halt the practise. Many of the children scooped and adopted were never able to reconnect with their parents due to closed adoption records.

¹⁹⁴ *Indian Act*, R.S.C. 1951, c29.

¹⁹⁵ *Ibid*, section 88.

¹⁹⁶ Indian children began to be removed from their family and communities and placed for adoption with families throughout the world.

The TRC accurately described the explicit intent behind the residential school policy as being to erase the identity of Indigenous children and replace them with non-Indigenous identities; the ‘erase and replace’ model¹⁹⁷ continued as a throughline in the child welfare system.

By the early 1980’s First Nation Chiefs throughout Canada demanded that the removal and adoption of their children cease. In 1982, Manitoba commissioned an Inquiry¹⁹⁸ into the placement of Indian and Metis children with a final report “No Quiet Place” tabled in 1985 that condemned the policy. In the 1980’s the policy shifted to empower the development of First Nation children’s aid societies under provincial legislation.

The impact from both the federal and provincial colonial policies targeted at *Anishinaabe* children, the heart of the Nation, created a cross-generational disproportionate over-representation in addiction, poverty, despair and involvement in the Canadian justice system.¹⁹⁹ For some, the connection to their culture was severed while many others grew stronger in their resolve to embrace their *Anishinaabe*-ness, contrary to the underpinning of the Indian policy.

b) Provincial Child Welfare Framework

The history of child welfare in Canada varies from province to province and is succinctly explained in terms of the evolution of colonial imperatives and reaction to

¹⁹⁷ Hadley Friedland, “Reference Re, *Racine v Woods: Reference as to whether the Indigenous Nations Court Ought to adopt and apply the Supreme Court of Canada’s decision in Racine v Woods*” [2020] Canadian Native Law Reporter 177, page 165.

¹⁹⁸ Review Committee on Indian and Metis Adoptions and Placements: “*No Quiet Place: The Final Report to M.S. Smith, Minister of Community Services*” Associate Chief Judge Edwin C. Kimelman (also referred to as the “*Kimelman Report*”), Manitoba Community Services, 1985.

¹⁹⁹ Cindy Blackstock, Tara Prakash, John Loxley and Fred Wien, “*Wen: de: We are Coming to the Light of Day*”, First Nations Child and Family Caring Society, 2005.

conditions now historical. In her thesis, Landtinger described three eras in child welfare history,

“the period of emergence of child welfare/child-saving (mid 1880s – mid 1910s); the post war period in which child welfare services were extended to Indigenous children resulting in the ‘Sixties Scoop’ (1940s-60s); the turn towards ‘cultural sensitivity’ and the creation of Aboriginal child welfare agencies that informs the colonial present (late 1970s-2000s).”²⁰⁰

As history has shown, colonial concerns for the child have been dramatically different in definition and solution for *Anishinaabe* children in contrast to settler children.

The child welfare framework has universal components that are present in all provincial systems. The main tenets of the legislative framework set out provisions to mandate a children’s aid society with its legal responsibilities, licensing and governance; voluntary services; child protection services including the determination criteria of a child in need of protection and best interest criteria for decision-making; adoption; confidentiality and record keeping. The Ontario child welfare legislation has specific provisions for the delivery of First Nation child and family services.

In 1985, Ontario enacted major changes to its *Child and Family Services Act* including to the overarching Purposes which recognized that

“Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and their families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of extended family.”²⁰¹

²⁰⁰ Laura Landtinger, “*Child Welfare and the Imperial Management of Childhood in Settler Colonial Canada, 1880s-2000s*” Ph.D. Thesis, University of Toronto, 2017, page 4.

²⁰¹ *Supra* at note 47, *The Child and Family Services Act*, 1990, section 1(f).

In furtherance of the legislated purpose, the Ontario *Act* added Part X, which was the most consequential for the *Anishinaabeg*. It stated that “customary care means the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community.”²⁰²

A central and universal pillar to child welfare legislation is the ‘best interests of the child’ principle. The United Nations *Convention on the Rights of the Child*²⁰³ (*CRC*) established that the best interest of the child is a substantive right that is aimed at a child’s holistic development and requires a rights-based approach applied in a manner that promotes a child’s human dignity. In many countries, including historically in Canada, children were without rights and considered to be the property of their parents. The *CRC* established universal²⁰⁴ standards for the protection of children. Article 3 states that,

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”²⁰⁵

The *CRC* and the best interest principle do not create enforceable rights unless adopted into national law. Rather, due to the protected status of the child

²⁰² *Ibid*, section 208.

²⁰³ United Nations General Assembly, “*Convention on the Rights of the Child*”, 20 November 1989, United Nations, Treaty Series, vol 1577.

²⁰⁴ The *Convention on the Rights of the Child* applies only to countries that have ratified it.

²⁰⁵ *Supra* at note 197, UN General Assembly, “*Convention on the Rights of the Child*” at page 3.

given their inherent vulnerability of age, a responsibility is conferred to the parent, caregiver or decision-maker.

In 1991 Canada ratified the *CRC*, however the best interests of the child principle had already been enshrined in child welfare legislation throughout Canada. The *Ontario Child, Youth and Family Services Act*,²⁰⁶ outlines criteria for consideration in determining the best interests of a child, including culture, heritage and tradition²⁰⁷ as key criteria for First Nation children. In the past, the consideration of culture as a criterion of the best interest has been allocated very little, if any, weight by the judiciary and other decision-makers.²⁰⁸

The notion of the best interests of the child principle is commendable however, coupled with colonial laws and subjective assumptions, it has been used to adversely justify the removal of *Anishinaabe* children from their family and community. The best interests' principle has been implemented "with cultural bias in a system dominated by white, middle-class workers, boards of directors, administrators, lawyers and judges"²⁰⁹ at the Indigenous child's expense whether well intentioned or not. Friedland, in *Re Reference to Racine v Woods*, cautioned that the best interest of the child principle "will be distorted if we continue to conflate distinct legal histories and radically different social realities into a singular narrative."²¹⁰

First Nations have recognized the harmful impact of the best interests' criteria when applied subjectively by mainstream decision-makers' has meant that "many

²⁰⁶ 2017, S.O. 2017, c 14, Schedule 1, section 74(3).

²⁰⁷ *Ibid*, the best interest criteria have evolved over time. See also *supra* at note 9 discussed below.

²⁰⁸ Personal experience as in-house legal counsel from 2000 to 2008.

²⁰⁹ Kimelman Report, "*No Quiet Place*" *supra* at note 198, page 29.

²¹⁰ Hadley Friedland, "*Reference Re, Racine v Wood*" *supra* at note 197, at page 28.

factors which were crucially important to the native people had been ignored, misinterpreted, or simply not recognized by the child welfare system.”²¹¹ The child welfare system enabled the removal of children from their parents, devaluing their customs and traditions in the process, but still within the framework of the best interests of the child.²¹²

First Nations administering child and family services have been “dragged into the set of assumptions”²¹³ due to the universal acceptance and paramountcy of the doctrine. It is for this reason that we must be wary of the pitfalls of administering provincial law, even as an interim step in a delegated authority model. The *Anishinaabeg* exercised due diligence and *weweni*,²¹⁴ in taking advantage of every opportunity to assert decision-making for the children with their eyes open to the systemic risks and to the future with the interim step as a child and family services agency, never losing sight of the goal to fully restore jurisdiction unencumbered.

The *CRC* directs that

“families are the best environment to provide a safe and loving atmosphere for children that respects and affirms their cultural and spiritual identity. Children are entitled to grow up in their families without interruption and without unwarranted interference from government agencies.”²¹⁵

The provincial child welfare framework recognizes that not all families are safe and therefore children can be legally removed from their family to protect them from

²¹¹ *Supra* at note 198, A Chief Judge Kimelman “*No Quiet Place*” *supra* at note 198, at page 29.

²¹² AC Hamilton and C. Murray Sinclair, “Report of the Aboriginal Justice Inquiry of Manitoba “*Aboriginal Justice Inquiry Report*” (*AJI*), Volume 1, “The Justice System and Aboriginal People” (1991) page 9.

²¹³ Mary Ellen Turpel-Lafond, panel presenter at the 4th AFN Virtual Summit on C-92, March 30, 2021.

²¹⁴ Dr. Tobasonakwut Kinew, *Anishinaabemowin* meaning to be cautious, not rushing, taking good care, careful.

²¹⁵ *Supra* at note 203, UN General Assembly, “*Convention on the Rights of the Child*”.

harm or risk of harm, but only as a last resort. To the *Anishinaabeg*, family has a wide definition and consists of a web of relationships; birth family, extended family, clan family and community members who all are worthy of stepping in should the circumstances necessitate.

Where a child is apprehended and placed outside of the family home there are strict timelines²¹⁶ for reunification before parental rights are permanently severed and the agency becomes duty bound to shift efforts to permanent placement or adoption, the ‘erase and replace’ model. The provincial permanency policy severs the connections to identity as well as the transmission of culture and language for *Anishinaabe* children. As such, permanence must be implemented through an *Anishinaabe* lens to maintain lifelong connections. “Permanency accomplished by the legal severing of relations is literally inconceivable”²¹⁷ to the *Anishinaabeg*. “The Indigenous “addition” model of adoption achieves the same core purpose: the formation of a new parent-child relationship, without erasing or replacing the original parent-child relationship.”²¹⁸

The best interest criterion has had devastating impacts due to the notion of permanence and bonding of children-with their foster and adoptive parents. For example, in 1983, the Supreme Court of Canada decided the case of *Racine v*

²¹⁶ *Supra* at note 47, The Ontario *Child, Youth and Family Services Act* section 101(1) requires that a child under the age of six years can only be in society care for a maximum of twelve months, and a child six years and older can be a ward of the society for a maximum of twenty-four months before becoming a permanent ward of the government.

²¹⁷ Fran Kueler Josey, and Judy McRee, ‘*Ayawdwasowin: pe kiwe Come Home: Indigenous Adoptee Re-Connection with Self, Family and Community*’ in “*ohpikinawasowin: Growing a Child*” Implementing Indigenous Ways of Knowing with Indigenous Families, edited by Leona Makokis, Ralph Bodor, Avery Calhoun, Stephanie Tyler (Frenwood Publishing Company Limited, 2020) at pages 196 and 197.

²¹⁸ *Supra* note 197, Hadley Friedland, “*Reference Re, Racine v Woods*” at page 21.

*Woods*²¹⁹ and upheld the application of non-First Nation foster parents seeking to adopt their foster child. The First Nation biological mother objected and provided evidence that she had made significant progress in her efforts to overcome life challenges and sought to have her child returned to her care.

Applying the best interest test to determine the best outcome for the child, the Supreme Court considered the appropriate weight to be given to the child's right to permanency and bonding with the foster parent. Writing for the majority, Madam Justice Wilson stated that "the significance of cultural background and heritage as opposed to bonding abates over time. The closer the bond that develops with the prospective adoptive parents the less important the racial element becomes."²²⁰

It is not surprising that the Court decided against the "Indian" mother given the racist reasoning that stated that the child had been "rescued" "as an infant from an intolerable situation".²²¹ Ruling against the mother, the court went further and acknowledged her progress, however, was concerned with "danger signals in "the venom of her anti-white feelings" and wondered what effect "her visible hatred for all things white" would have on her child."²²²

In the decades since the Supreme Court ruling, *Racine v Woods* has been applied in a myriad of guardianship and adoption decisions. The precedent has had a disastrous impact for countless First Nation families fighting for reunification. Sadly, even in the *Racine* case the adoption placement broke down and the child spent the

²¹⁹ *Racine v Woods*, [1983] 2 S.C.R. 173.

²²⁰ *Ibid* at 174.

²²¹ *Ibid* at 174.

²²² *Ibid* at 178

remainder of her childhood in group care and struggled for years with a lack of identity and without a connection to her roots, never having been reunified with her mother.

“Far from the significance of her culture abating over time, Leticia Racine credits finding her way back to her community and culture as saving her life.”²²³

Permanency, combined with a biased application of the best interests of the child principle has prevented many First Nation children from reunification with their family and community, sentencing some instead to a life of struggle and disconnection.

Despite the challenges of working within the mainstream system of child welfare, the *Anishinaabeg* have persisted with creativity to maintain their goals and shift the balance of decision-making back to *Anishinaabe* law.

c) We Never Forgot the Children: Treaty #3 Steps to Restore Jurisdiction

Parents, grandparents and communities never forgot their children, and the children remembered their life before residential schools and foster homes. Generation after generation of children were removed from their community leaving parents and grandparents grief stricken by the deafening silence in their empty homes. The children were left to their own devices to find solace and connection in barren institutions or placements devoid of any semblance to what they were accustomed to, both infamous for the sterility of compassion, esteem, and nurturing. Some siblings were separated by

²²³ *Supra* note 197, Hadley Friedland, “*Reference Re, Racine v Woods*” at page 35.

being placed at different residential schools as close as the other side of town²²⁴ while other siblings were placed in schools at great distances throughout Canada.²²⁵

For decades starting in the 1900's families would camp across the bay, a distance of some 300 meters from St Mary's Residential school on the outskirts of present day Kenora, Ontario. To the *Anishinaabeg* the campgrounds were known as school park²²⁶ and families camped there to be close to their children and grandchildren. On some occasions they were able to visit.²²⁷ The land was originally set aside as Agency land for the joint use and benefit of several First Nations with reserve lands on Lake of the Woods.²²⁸ School park was a place of solace and connection for the families and their children in the residential school.

d) Child and Family Services in Treaty #3

Many efforts were made by the *Anishinaabeg* to hold onto their children. In 1986, Ojibway Tribal Family Services in northern Treaty #3 and Weechi-it-te-win Family Services in southern Treaty #3 were established through mandate of their member First

²²⁴ My father and his brothers were at St Mary's Residential school, and their sister attended Cecelia Jaffray, both schools were located in Kenora, ON. See also supra at note 172, Dr. Tobasonakwut Kinew, "*The Assembly of First Nations Delegation to Rome*" at page 3.

²²⁵ The mother of my half-sister Patricia Roote was from Saugeen First Nation in southern Ontario and attended St Mary's in Kenora.

²²⁶ Tobasonakwut Kinew, conversations.

²²⁷ Tobasonakwut Kinew was a student at St Mary's Residential school from 1944 to 1952. He explained the significance of 'school park' to me on several occasions, more recently known as Anicinabe Park (alternate spelling for *Anishinaabe*), I have a photo of my father and his maternal grandfather on the occasion of a visit, see Image #4 at page 65.

²²⁸ My late father explained that Anicinabe Park (alternate spelling of *Anishinaabe*) was originally designated as agency land (a reserve held for the joint use and benefit of several First Nations) but had later been sold by the Town of Kenora as a park which eventually led to an armed uprising and occupation by the Ojibway Warrior Society and the American Indian Movement. Coincidentally, during the time of the occupation of Anicinabe Park, my father was the Grand Chief of Grand Council Treaty #3 and as such played a significant role as mediator. The occupation was dismantled after roughly ninety days, the then Minister of Indian Affairs, Jean Cretien, told the *Anishinaabeg* that they would never get the land back due to the armed uprising. The *Anishinaabeg* have never been compensated for the loss of the land.

Nations as prevention and family preservation agencies. These organizations were funded solely and directly via a bilateral arrangement with the federal government, outside of the 1965 Indian Welfare Agreement.²²⁹

Currently in the Treaty #3 territory, there are two provincially mandated First Nation Children's Aid Society's. Each developed separately to reflect their aspirations of exercising their inherent authority in relation to children and families. Weechi-it-te-win Family Services in the south originally mandated by ten²³⁰ area First Nations, and Anishinaabe Abinoojii Family Services in the north with a mandate that had evolved from Ojibway Tribal Family Services and Wabaseemoong Family Services.

- Treaty #3 North

The Chiefs of the northern Treaty #3 First Nations deliberately choose not to seek provincial society status for Ojibway Tribal Family Services. Rather, they determined to focus solely on their unique approach to support and strengthen families. Their alternative to mainstream practice provided options to strengthen family and work with the community. Acting on their inherent authority, member First Nations did place children outside of the family home via subsidized customary care arrangements. Their service model for alternative care was premised on the prevention of harm.

Ojibway Tribal Family Services was a proponent of the Band Representative program²³¹ which they utilized to advocate and be proactive and collaborate with their

²²⁹ *Supra* at note 49, see also *First Nations Child and Family Services Caring Society v Canada*, 2016 CHRT 2 at paragraph 218. The 1965 Indian Welfare Agreement enabled Ontario provincial social services to be extended to registered Indians living on reserve, including delivery of child and family services that facilitated the beginnings of the "large scale removal of Aboriginal children from their homes and communities, commonly referred to as the 'Sixties Scoop'".

²³⁰ In 2021, the Ojibways of Onigaming began a process to transfer their jurisdiction for protection services from Weechi-it-te-win Family Services to Anishinaabe Abinoojii Family Services.

²³¹ The Band Representative program was federally funded as a means to ensure that First Nations could meet their legal requirements in the Ontario *Child and Family Services Act*. Section 213 required that "a child

member First Nations for planning and decision-making. The Band Representative was the conduit to ensure legal representations were made in child protection proceedings on behalf of the respective First Nation and ensured that the family and community voice was part of the decision-making.

In the late 1990's the federal government decided to wind down the operations of Ojibway Tribal Family Services. In 2001, the federal government moved to end the bilateral funding arrangement with Ojibway Tribal Family Services, and in conjunction with Ontario transferred the program authority to comply with the 1965 Welfare Agreement. From 2001 to 2003 a 'Coordination Unit' was struck between the Chiefs of northern Treaty #3 and the government of Ontario to transition services, provide program and administrative oversight related to the move from federal to provincial funding and program authorities.²³² By 2004, the protection mandate from all of the northern Treaty #3 First Nations had landed with Anishinaabe Abinoojii Family Services with the exception of Lac Seul First Nation.²³³

Wabaseemoong Independent Nations was the first First Nation in Ontario to have its own provincially mandated children's aid society with recognized jurisdiction for their

and family services agency "that provides services with respect to First Nations children must regularly consult with the child's band or community about the provision of the services, including the apprehension of children and the placement of children in care; the provision of family support services; and, the preparation of plans for the care of children" all of which had been undertaken by a Band Representative. The Band Representative role was especially critical as between First Nations and non-First Nation child and family services agencies. The federal department unilaterally deemed the program an "anomaly" in their funding model, and ceased funding in 2003. See *supra* at note 229, 2016 CHRT 2 for greater detail.

²³² This writer supported the work of the 'Coordination Unit' through facilitation of strategic and transition planning with an interim First Nations advisory team.

²³³ Lac Seul First Nation has delegated jurisdiction for the delivery of child and family services to Tikinagan Family Services. Tikinagan Family Services was the first Native Child and Family Services agency in Ontario. It serves exclusively the First Nations of Nishnawbe Aski Nation (NAN) with the exception of Lac Seul First Nation, a signatory to Treaty #3. For the purposes of this paper focus will be solely on Weechi-it-te-win Family Services and Anishinaabe Abinoojii Family Services.

members off-reserve.²³⁴ By the late 1990's, Wabaseemoong Family Services welcomed several other northern Treaty #3 First Nations into their agency as communities decided to delegate their authority away from mainstream Kenora-Patricia Children's Aid Society.

In 2000, Weechi-it-te-win Family Services was designated to be the interim provisional Board of Directors of Wabaseemoong Family Services by the Ontario Ministry of Community and Social Development. It was during this time that the customary care model developed by Weechi-it-te-win Family Services and its' member First Nation was adopted and adapted to be a key pillar by the northern Treaty #3 First Nations in the exercise of their inherent jurisdiction of their children and families.

From 2000 to 2008, all matters were resolved by the consensus between the agency and the families and their First Nation. Working hand in glove with each member First Nation, the agency terminated the Crown Ward²³⁵ status of many children in permanent government care and transitioned them into customary care arrangements where their family and First Nation played a key role in planning, decision-making and reunification.

By late 2002 the Board of Directors of Weechi-it-te-win Family Services decided to withdraw as the administrator of the northern Treaty #3 First Nation Family Services. In response, the Ontario Ministry literally overnight created Aboriginal Child and Family

²³⁴ Wabaseemoong Independent Nations suffered disastrous consequences from the mercury contamination in the English River system from the toxic dumping by the Dryden pulp and paper mill between 1962 and 1970. The impacts of mercury contamination in the water system and surrounding land destroyed their main source of sustenance and economic base of fishing, hunting and trapping that was the life blood of the community for centuries. As part of the compensation package in their settlement agreement, Wabaseemoong became a provincially mandated children's aid society to facilitate the return of their children and strengthen families.

²³⁵ Permanent ward of the government, formerly a Crown Ward. Parental rights are severed except in very limited circumstances.

Services with an administrator / Executive Director as the interim agency to work with the northern First Nations to regain society status. Northern Treaty #3 Chiefs were astonished at the speed with which the province could create an agency and establish its' governance structure when it had the will to do so. Upon completion of the transition activities, Anishinaabe Abinoojii Family Services²³⁶ became the provincially mandated agency. The remaining northern First Nations delegated their authority to the agency over the next several years.

Anishinaabe Abinoojii Family Services undertook creative practices to implement *Anishinaabe* law. In 2006, Wabaseemoong carried out a traditional adoption of a young child. The child's mother was unable to provide care, and the father could not be located. The child had been in a customary care arrangement with a community member who wished to become the permanent parent. Reaching out to a renowned Elder²³⁷ of Wabaseemoong, a traditional adoption²³⁸ ceremony took place, supplemented to document consent of the extended family and the First Nation. This child was no longer in government care.

- Treaty #3 South – Thinking Outside of the Box

In the late 1970's Elders of Naongashing and Big Grassy First Nations,²³⁹ adjacent communities in the southern portion of Treaty #3, became fed up with the local Children's Aid Society entering into the First Nation and apprehending their children.

²³⁶ Originally designated as Abinoojii Family Services, the name was later changed as a result of traditional advice received through ceremony to include Anishinaabe within the name.

²³⁷ An elder from Wabaseemoong Independent Nations described the *Anishinaabe* traditional adoption in detail which formed the foundation of the ceremony.

²³⁸ The English term 'adoption' does not adequately capture the *Anishinaabe* meaning because there is no word for severing ties to a child. See also *supra* at note 144, Dr. Tobasonakwut Kinew, "*Making Relations: Citizenship is the Inherent Right of the Anishinaabe Nation in Treaty #3*".

²³⁹ Member of the then Rainy Lake Region Tribal Chiefs (RLRT Chiefs).

The late elders Joseph Big George and Moses Tom took direct action and stood at the community boundary refusing entry to the local Children's Aid Society workers in order to stop the unnecessary removal of their children. This was the beginning of a new era of asserting community authority for their children and their families.

By 1982, the surrounding area Chiefs passed a resolution mandating a planning process to shift focus and create an "Indian Alternative" with a vision of family services based on *Anishinaabe* customs and values to displace the mainstream practice. The resulting Rainy Lake Community Care Program was founded on the following objectives:

"(a) The establishment of a Band-based and controlled system of family and child care.

(b) the ongoing participation of Weechi-it-te-win Family Services²⁴⁰ in the development and establishment and delivery of the Indian Community Care Program, and,

(c) the use of the mechanisms available under the provisions of the Child and Family Services Act, 1984 ("C.F.S.A.") as an interim measure leading to the ultimate control of Indian family and child care at the Band level as a result of direct negotiations and arrangements with the federal government."²⁴¹

In 1987, Weechi-it-te-win Family Services was directed to seek society status as a mandated agency under the Ontario *Child & Family Services Act* as an "interim

²⁴⁰ The name Weechi-it-te-win Family Services is an *Anishinaabe* term meaning "helping, supporting and supporting appropriately: this describes the nature of the Indian alternative conceived by the planning committee and endorsed by the Chiefs." Additionally, the organizational name deliberately did not include 'child' because one cannot separate the child from the family, the child is integral to the family. From presentations of former Executive Director, George Simard, at Grand Council Treaty #3 meetings. See also Peter Ferris, Estelle Simard, George Simard, "*Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services*" in *Promising Practices in First Nations Child Welfare Management and Governance*, (First Nations Child and Family Caring Society of Canada, 2005), at page 5.

²⁴¹ RLRT Chiefs Resolution (not numbered), March 23, 1987.

measure.”²⁴² Weechi-it-te-win Family Services was incorporated to “fully address the unique social, cultural and traditional values, customs and practices of the R.L.R. Bands.”²⁴³

Since its inception Weechi-it-te-win Family Services has been a leader in the development and implementation of innovative *Anishinaabe* principles and practices all intended to lead to the restoration of *Anishinaabe* law. Weechi-it-te-win Family Services along with their Chiefs and Elders continue to seize upon every opportunity to build capacity with the goal of revitalization of a system of care that is rooted in the customs, traditions and values of the *Anishinaabe* people of Treaty #3. These innovations include the customary care model, service delivery based on a bi-cultural practice continuum, devolution of services, *naaniigaan abinoojii*,²⁴⁴ and the development of capacity tools to implement *Abinoojii Inakonigewin*.²⁴⁵

Dual Mandate

The First Nations and Weechi-it-te-win Family Services began to design services and focus the organization to ensure that they gained and retained the locus of decision-making. Despite Weechi-it-te-win Family Services becoming a provincially mandated children’s aid society, it was first and foremost an entity created via the delegated inherent authority of each member First Nation to act as its agent for the delivery of child and family services, on their terms.

²⁴² RLRT Chiefs Resolution (not numbered), March 23, 1987.

²⁴³ *Ibid*

²⁴⁴ *Anishinaabemowin* meaning ‘child first, child focussed’ and is a spiritual teaching based in the traditional child rearing practices of the Anishinaabe. Weechi-it-te-win Family Services adopted *naaniigaan abinoojii* as “their central purpose” and has incorporated the value throughout the agency. See also www.weechi.ca/naaniigaan_abinoojii.

²⁴⁵ *Supra* at note 10.

The dual and often conflicting accountabilities imposed a higher burden on the agency to meet the standards required by both its member First Nations as well as to the provincial legislative framework. For example, every year the Ministry conducted a review of Crown Ward files, periodically Weechi-it-te-win Family Services files were found to be non-compliant when measured against the provincial file audit tool. However, the file review tools did not capture the prioritization of a child's family connection and plan for reunification over adoption or long-term care extending beyond twenty-four months.²⁴⁶ Their care plans for children and families were consistent with their First Nation mandate and the *Anishinaabe* definition of permanency.

Paramountcy of the First Nation mandate for Weechi-it-te-win Family Services does not imply that children are put in harm's way or left unprotected but rather, that *Anishinaabe* children are cared for according to *Anishinaabe* principles having considered any potential benefit available in mainstream child welfare. To meet the best interests of the *Anishinaabe* child Weechi-it-te-win Family Services is obliged to develop and implement a practice consistent with *Anishinaabe* principles involving extra analysis corresponding to every provincial system directive and policy.

Customary Care

In 1985, the Ontario *Child and Family Services Act* recognized customary care as "the care and supervision of an Indian or native child by a person who is not the child's parent, according to the custom of the child's band or native community."²⁴⁷ Weechi-it-te-win Family Services was quick to operationalize *Anishinaabe* law and

²⁴⁶ Discussions and presentations in meetings with George Simard, between 2000 and 2006.

²⁴⁷ *Supra* at note 47, *Child and Family Services Act*, 1990, section 208 (Part X).

assert jurisdiction for their member children and families through their customary care practice model.

“Customary Care (has) evolved over the past two decades as a First Nation exercise in governance to regain control over the welfare of their children... The ongoing development of Customary Care can be viewed as the conduit for First Nation efforts to regain control over the care of their children. Customary Care recognizes the validity of traditions as a guide for dealing with a variety of problems that our First Nation children and families encounter.”²⁴⁸

The development of the customary care model was a significant step in the divergence of the *Anishinaabe* practise to operate separate and distinctly from the confines of the mainstream system, while also building family and community capacity.

Customary care arrangements are authorized pursuant to the inherent jurisdiction of the First Nation as set out in a written Declaration and are not court ordered. Children bound by these agreements are in the care of the First Nation, not the society or the provincial government. The role of Weechi-it-te-win Family Services is to supervise the arrangement and provide services to the child, family and alternative caregiver on behalf of the First Nation. The terms of the agreement are reflected in a Care and Supervision Agreement supplemented with a Plan of Care.

Children in customary care arrangements are not subject to the legislated time frames, and parents maintain responsibility and a role in decision-making. Flexible timelines are important for the preservation and connection to family, community and culture especially given the extent of the inter-generational impact of colonial policy.

²⁴⁸ *Supra* at note 50, Diane M. Kelly, “*Customary Care: A First Nations’ Exercise in Governance*” at page 1.

Focus should not be on individual ‘bad mothers’ for the effects of social ills, factors that they have no control over and are the consequences of history.²⁴⁹

The Wen:de Report²⁵⁰ noted that First Nation children are much more likely to be apprehended and involved in the child welfare system due to neglect as opposed to abuse. The report considered neglect and found that substance misuse, poverty and poor housing were all a combination of risk factors, most of which are systemic factors and circumstances that can be addressed within the community. In many instances, it is safe and less traumatic for an *Anishinaabe* child to remain with their family with appropriate supports and planning once a thorough assessment has been conducted, consistent with the legislated principle of the least disruptive measure.

Customary care arrangements ensure that a child is raised by extended family and community members should an out of home placement be required. Customary care arrangements can provide hope to both parents and children of reunification and ongoing connection despite the time that may lapse while addressing underlying socioeconomic issues. Without hope, parents and their child(ren) may turn to addiction and despair²⁵¹ perpetuating the trauma for the next generation.

The customary care model recognizes that children ultimately return to their family and community of origin, and that maintaining a child’s connection to family and community is important to a strong sense of identity and resilience. Further, the customary care model promotes family and community healing because it provided an

²⁴⁹ Celeste Cuthbertson, “Statutory Recognition of Indigenous *Custom Adoption: It’s Role in Strengthening Self-Governance Over Child Welfare*”, (2019) 28 Dal J Leg Stud 29 at page 33.

²⁵⁰ *Supra* at note 199, Cindy Blackstock et al, “Wen:De: We are Coming to the Light of Day”.

²⁵¹ I am personally aware of several parents who have committed suicide due to the loss of their child(ren) having been placed in care in the child and family service system.

opportunity for the family, First Nation and agency to come together and address the needs of the child and family as a collective and on consensus basis.

Maintaining a child's connection to family and community is important to a strong sense of identity and resilience. Ongoing connection ensures reunification is uneventful for children, especially in those instances where children have been placed for extended periods away from the community.²⁵² Josey et al succinctly stated that "connectedness to culture, to place, to language and to one's relations are essential for healthy identity, esteem and belonging."²⁵³

Through the implementation and operation of customary care, each First Nation gained requisite capacity to deliver services and support children and families in innovative ways, consistent with the original mandate of an "Indian alternative" to colonial policy.

The customary care model developed by Weechi-it-te-win Family Services and adapted by Anishinaabe Abinoojii Family Services is much more than a placement option, it is not akin to kinship care.²⁵⁴ It is a comprehensive approach grounded in *Anishinaabe* sovereignty. The "greatest indicators of success are that children can say who their family is and know how to access and see grandparents. Children participate in ceremonies, families and communities know where their children

²⁵² *Supra* at note 217, Fran Josey et al, "Ayawdwasowin: pe kiwe Come Home: Indigenous Adoptee Re-Connection with Self, Family and Community" at pages 196 and 197.

²⁵³ *Ibid* at page 197.

²⁵⁴ Deb Cantrel, Marion Roberts and David Barnes, "Formal Customary Care, A Practice Guide to Principles, Processes and Best Practices" (Ministry of Children and Youth Services, 2013), defines customary care as "a term used to describe the placement of a child considered to be in need of protection with alternative caregivers" at page 19. A much narrower view than that of the *Anishinaabeg*. See also *supra* note 50, Diane M. Kelly, "Customary Care: An Exercise in First Nations' Governance."

are.”²⁵⁵

Devolution

In keeping with the original vision and mandate, Weechi-it-te-win Family Services created a unique service delivery model embedded in decentralization whereby child and family services are delivered by the First Nation at the community via service agreement.

“The vision of First Nations communities claiming and caring for their children is kept alive by empowering and finding strength within the community and using the strength of Anishinaabe family systems, cultural values and language.”²⁵⁶

In March 1999, the 10 First Nations Chiefs unanimously resolved to further devolve child welfare services to the First Nation. This devolution model supports the individual First Nation version of a “community care program” including a compliment of staff that deliver a full suite of child welfare and prevention services to families.

The process to devolve involved the agency head office working with the First Nations to build capacity in each community and to transfer the administration and delivery of services via Service Agreements “as community systems are revitalized thereby empowering them to care for their own children.”²⁵⁷ As each First Nation built their capacity locally, the central office and the provincial license holder evolved to manage training, common services and coordination generally. The decentralized model shifted the policy paradigm to become “highly centralized to community driven

²⁵⁵ *Supra* at note 240, Peter Ferris et al, “Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services” at page 13.

²⁵⁶ *Ibid* at page 6.

²⁵⁷ *Ibid* at page 7.

operations, community involvement, visioning and partnerships”²⁵⁸ leading to better community health.

Bi-Cultural Practice

Weechi-it-te-win Family Services developed a bi-cultural practice model²⁵⁹ for children and families needing support and healing. Through this model each individual client chooses either the mainstream clinical path, or the guidance from traditional healers and ceremonies, or a combination of both. This was a significant step towards the integration of *Anishinaabe* values and empowering autonomy and healthy decision-making of the family.

The delivery of “bi-cultural services has been a vital means of removing imposed colonial-based theories of child welfare management and practice from the communities and mitigating the forces of assimilation still in operation.”²⁶⁰

Naaniigaan Abinoojii

Weechi-it-te-win Family Services has braided *naaniigaan abinoojii*²⁶¹ as a guiding philosophy throughout its’ corporate structure and service model. *Naaniigaan abinoojii* means that “the child is first and foremost”²⁶² and expresses a foundational legal principle in *Anishinaabe* law that the primary consideration must be the child’s total well-being which includes their unique cultural background and family structure. In this

²⁵⁸ Gerard Bellefeuille, Sydney Garrioch and Frances Ricks, “*Breaking the Rules: Transforming Governance in Social Services*” (the Awasis Agency of Northern Manitoba, 1997) at page 99.

²⁵⁹ *Supra* at note 50, Diane M. Kelly, “*Customary Care: A First Nation’s Exercise in Governance*” pages 12 and 13. See also <https://www.weechi.ca/bi-cultural-practice-model>.

²⁶⁰ *Supra* at note 240, Peter Ferris et al, “*Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services*” at page 13.

²⁶¹ See <https://weechi.ca/naaniigaan-abinoojii>.

²⁶² *Ibid*

regard special recognition is given to a child's relationship with family, including immediate, extended, clan and community ties.²⁶³

Naaniigaan abinoojii provides direction for decision-makers in relation to the care of an *Anishinaabe* child, including the necessity to assess and limit "avoidable damage"²⁶⁴ to a child, and acknowledging that not all damage is avoidable. *Naaniigaan abinoojii* places a proactive duty on the agency staff to minimize harmful impacts to children by thoroughly considering and weighing all relevant factors. To guide the decision-making, Weechi-it-te-win Family Services adopted the rights of the *Anishinaabe* child that implicitly includes the best interests of the child principle, in addition to the following rights specific to *Anishinaabe* children:

"The rights of Anishinaabe children are inherent in all our customary care practices and include the following.

- The right to identity - anishinabewin - to know who he/she is within the context of his or her heritage and culture.
- The right to know, learn, and speak his/her language – anishinaabemowin.
- The right to traditional healing - miinigoosiwin - that reinforce his/her identity and cultural pride.
- The right to a good life, minobimaatiziwin.
- The right to land - Anishinaabe akiig - for the child's future lies in the land.
- The right to a lifestyle - anishinaabechigewin - that offers opportunity for good health, prosperity, and happiness.
- The right to education - kinamaatiwin - that includes opportunities to learn experientially from his or her people, in addition to learning from books in formal institutions.
- The right to their spiritual name - Anishinaabe ishinikaasowin.
- The right to know and be a member of his or her clan – ododemun.
- The right to protection both inside and outside of the family - shawentaasoo-in and ganawentasowin.
- The right to live a life full of purpose.

²⁶³ *Ibid*

²⁶⁴ *Ibid*

- The right to know and be a part of his or her family – gutsiimuh.”²⁶⁵

Weechi-it-te-win Family Services has been both proactive and creative in its’ strategies to restore the *Anishinaabe* system of care that is rooted in the customs, traditions and values of the *Anishinaabe* people of the southern portion of Treaty #3.²⁶⁶ Weechi-it-te-win Family Services with their member First Nations have instituted *Anishinaabe* practices that are over and above the standards set in provincial policy as a means to implement their inherent jurisdiction.

Abinoojii Inakonigewin Capacity Development

Anishinaabe legal principles reflect a holistic worldview and give greater emphasis to spiritual, cultural and relational needs in addition to the physical needs of the child, embedded as sacred responsibilities. In this regard *Anishinaabe* law inclusive of its’ protocols, practices and principles is much more encompassing and stringent than the provincial child welfare system.

The *Anishinaabeg* have emphasized actions to support and strengthen the protective web around the child to ensure *mino-ombigiosowin*. To meet the duty in *Anishinaabe* law requires a child remain within their familial environment, requires creative efforts that can be time consuming and require additional resourcing.²⁶⁷ Lack of initial investment in the ‘erase and replace’ model have severe downstream

²⁶⁵ Lawrence W. Jourdain, “*The Rights of Anishinaabe Children*” Weechi-it-te-win Family Services acknowledges Lawrence Jourdain for his passion, hard work, and dedication in seeking out this knowledge from our elders. “Although the information presented on this page belongs to all Anishinaabe and has been passed from generation to generation” https://www.weechi.ca/the_rights_of_anishinaabe_children.

²⁶⁶ <https://www.weechi.ca/about>

²⁶⁷ *Supra* at note 258, Gerard Bellefeuille et al, “*Breaking the Rules: Transforming Governance in Social Services*” at pages 11 and 12.

consequences, including removing children from the family while “not addressing the originating problem.”²⁶⁸ Creative approaches are essential.

Weechi-it-te-win Family Services has been a leader in the development of innovative practices based in *Anishinaabe* law that have emerged to form the foundation of a separate and distinct system leading to the restoration of strength and resilience of communities, families and children. The commitment of the Elders and leadership to the original vision has reinforced *Anishinaabe* law and reinvigorated traditional principles.

e) Grand Council Treaty #3

In the years after the signing of Treaty #3, the ability of the Grand Council to function openly had been diminished. The *Indian Act* unilaterally displaced *Anishinaabe* governance by creating the Band Chief and Council system and reserved for itself the right to approve or reject Band decisions. From 1885 to 1941, Indian Agents were empowered by the Department of Indian Affairs policy to restrict the movement of Indians outside of their reserve²⁶⁹ compounding the ability of the *Anishinaabeg* to move freely throughout their territory, contrary to guarantees made within Treaty #3. Despite the *Indian Act*, the *Anishinaabeg* continued to raise concerns and formerly petition the British Crown and various Department of Indian Affairs officials to demand recognition of their Treaty #3 rights, even travelling on occasion to Ottawa.²⁷⁰

²⁶⁸ Presentation / commentary by Eric Fisher, Chief of Wabaseemoong Independent Nations, reference to the removal of children without corresponding support to parents to redress underlying issues, Grand Council Treaty #3 meeting, 2013.

²⁶⁹ *Supra* at note 32, Kathi Avery-Kinew et al, “*The Creator Placed Us Here: A Timeline of Significant Events of the Anishinaabeg of Treaty #3*” at page 9.

²⁷⁰ *Ibid* at pages 6 to 10.

By 1938, the *Anishinaabeg* were so frustrated with the Department of Indian Affairs' ineffectiveness in the protection of their rights, that several Chiefs came together to form the Amalgamated Organized Indians of Northwest Angle Treaty #3.²⁷¹ They wrote letters and petitions to the Department and even sometimes had "non-Indian friends"²⁷² forward the complaints on their behalf. Despite receiving Departmental reassurances that their complaints would be addressed, nothing changed.

In the 1960's, Indian policy transitioned from an all-powerful Indian Agent to a policy of "grants to bands"²⁷³ where federal programs were devolved to First Nations to administer on-reserve on terms and conditions dictated by the department. Contribution Agreements²⁷⁴ became the foundation of the relationship between the federal government and First Nations, leading to the realization that without a sound economic base, First Nations were merely administering their own poverty.

At that same time, a new generation of *Anishinaabe* leaders emerged and renewed efforts to unify the people and bring attention to the issues of Treaty #3. Grand Council Treaty #3 became incorporated as a political advisory body, adapted operations and maintained the continuous thread as the Traditional government of the *Anishinaabe* Nation.

Nation Building

²⁷¹ *Ibid* at page 9.

²⁷² *Ibid* at page 9.

²⁷³ *Supra* at note 1, Fred Kelly "*Traditional Governance: The Anishinaabe Nation in Treaty #3*" at page 38.

²⁷⁴ A contribution agreement is a legal contract between a federal department and a recipient to grant financial assistance solely for the purpose of implementing a project or program consistent with the project/program description, specific conditions and budget.

In 1992 Grand Council Treaty #3 began discussions with Indian and Northern Affairs Canada²⁷⁵ to formalize a process to negotiate a Self-Government²⁷⁶ arrangement, that they titled *Meenigoziwin*,²⁷⁷ leading to “Bimimidizowin Omaa Akiing – Governance on Our Land,”²⁷⁸ and in 1995, an Agreement in Principle was finalized between the parties.²⁷⁹ As the negotiations began, Treaty #3 *Anishinaabekweg*²⁸⁰ insisted that Child Care be the priority and it quickly became the focal point of the process.

In 2000, Grand Council Treaty #3 leadership and citizens met and endorsed the Millenium resolution committing to “the vision of restoring the government of the Nation,” the “separation of politics from administration”²⁸¹ and a process to initiate the re-establishment of *Anishinaabe* law. This act of self-determination was an “act of reconciliation of government functions in accordance with traditional roles and contemporary needs.”²⁸² The Grand Council began the first steps after decades of dormancy with their renewed vision of traditional governance through nationhood, including the revival of national institutions, governmental structures and procedures.

Negotiations between the Grand Council and Canada stalled in 2002, however, pursuant to the Millenium resolution Grand Council Treaty #3 continued their pathway to

²⁷⁵ A successor to the Department of Indian and Northern Affairs.

²⁷⁶ Canada instituted their ‘Inherent Right to Self-Government’ policy as a mechanism to dismantle the Department and replace the *Indian Act* with Self-Government agreements.

²⁷⁷ Same concept as *miinigozowin* in previous chapters, this spelling is as quoted from the document title.

²⁷⁸ Framework Agreement title between Grand Council Treaty #3 and Canada as represented by the Minister of Indian Affairs and Northern Development, signed May 22, 1997.

²⁷⁹ Then Grand Chief Tobasonakwut Kinew and then Minister of Indian and Northern Affairs Canada, Ron Irwin

²⁸⁰ *Anishinaabemowin* for women (plural).

²⁸¹ Grand Council Treaty #3, “*The Millenium Resolution*” Resolution of the Constituent Assembly” in Dryden on the 18th Day of January 2000.

²⁸² *Ibid* at page 44.

re-establish *Biminidizowin Omaa Akiing*. Acting on their inherent sovereignty, *miinigoziwin*, Grand Council Treaty #3 found it unnecessary for Canada's participation in their process to displace the *Indian Act* and other colonial laws, and rebuild their Traditional government. At the millennial conference, the Nation re-committed to traditional law, revival of the traditional government and empowerment of traditional institutions. The work of reinstating *Anishinaabe* law continued despite Canada's unilateral decision to opt out of the process.

To the *Anishinaabeg*, their inherent right of self-government is consistent with organic law, however, it flows from *miinigoziwin*, and exists independent of colonial law, confederation or the Canadian Constitution. While section 35(1) "recognized and affirmed existing aboriginal and treaty rights"²⁸³ one cannot assume that "(1) the Anishinaabeg knew about or wanted in on, Confederation or that they were already in Confederation: and (2) that the inherent right to self-government would have to be circumscribed within another Nation's Confederation."²⁸⁴ As an example, Fred Kelly explained that

"one of the principal reasons for the rejection of the Charlottetown Accord by First Nations was its scheme to "circumscribe" the inherent right to self-government within someone else's constitution – an act delegating the will to others who could not possibly be authorized to exercise that power for the Anishinaabe. Such an act is not permissible under the traditional constitution."²⁸⁵

Accordingly, Grand Council Treaty #3 continues to focus on the exercise of their inherent jurisdiction and nation rebuilding and are not interested in or preoccupied with

²⁸³ *Supra* at note 39, *Constitution Act, 1982*, being Schedule B of the Constitution Act, 1982 (U.K.), 1982, c11.

²⁸⁴ *Supra* at note 1, Fred Kelly "*Traditional Governance: The Anishinaabe Nation if Treaty #3*" at page 48.

²⁸⁵ *Ibid* at page 48.

wresting jurisdiction away from the federal or provincial governments or mimicking colonial law or policy.

In this regard, it is safe to assume that negotiation between the *Anishinaabeg* and Crown governments should focus on the allocation of resources to operate and the mechanics of shared sovereignty to harmonize the administration of their distinct laws, as the *Anishinaabeg* had contemplated in Treaty #3.

Abinoojii Inakonigewin

Acting on their sovereignty, and in fulfillment of the pledge within the Millennium resolution, Grand Council Treaty #3 continued unilaterally to re-establish *Anishinaabe* law. By July 2002, Grand Council Treaty #3 presented *Abinoojii Inakonigewin* to the citizens of the Nation and on that occasion Grand Chief Leon Jourdain stated that “*Abinoojii Inakonigewin* is coming from an authority that only the Creator can confer through the sacred constitution and the sacred law, not through Canada’s inherent rights policy.”²⁸⁶

Abinoojii Inakonigewin is not the entirety of *Anishinaabe* law in relation to children, nor is it the entirety of all of the duties, rights and responsibilities of the *Anishinaabeg* for the care and protection of their children and families. Rather it sets out broad *Anishinaabe* fundamental underpinnings that sets the tone for individual First Nation’s to craft their own community law to operate in tandem with *Abinoojii Inakonigewin*.

²⁸⁶ “*Bimiiwinitisowin Omaa Akiing, Governance on Our Land*” newsletter, Grand Council Treaty #3, Volume 2, Issue 1, July 2002.

The importance of the web of relationships is illustrated in the preamble as “Anishinaabe Law recognizes that the child must live, belong and grow within an environment of human relationships rooted in the family, the clan, the community, and that these needs are essential to the best interest of every Anishinaabe child.”²⁸⁷ Everyone from the parent to each family member to the community all have a shared responsibility in the caring and protection of children.

It is important to instill a strong identity connected to the rich history and complex relational system embedded in *Anishinaabe* culture. This ideology ensures the continuity of the Nation and is captured as an underpinning within the preamble of *Abinoojii Inakonigewin* below.

“Anishinaabe culture comprises the whole knowledge and wisdom that has enabled the people to survive and live a good life; and, Traditional Anishinaabe Law requires each Anishinaabe person to protect and uphold the culture for the benefit of future generations and gives the Anishinaabe people guidance for their lives.”²⁸⁸

The Preamble is informative of the application of *Anishinaabe* law and its adaptability as *Ozhibiige Inaknigewin* and the relevance of *Kete Inakonigewin*.

“The Anishinaabe people has since time immemorial passed down to successive generations, and adapted for each generation, temporal law consistent with traditional law to meet the needs of successive generations as they may arise, including law for the care and protection of its children and families.”²⁸⁹

²⁸⁷ *Supra* at note 10, from the preamble of *Abinoojii Inakonigewin*.

²⁸⁸ *Ibid*, the preamble.

²⁸⁹ *Ibid*, the preamble.

The Preamble goes on to set out that the writing of *Abinoojii Inakonigewin* is to establish a snapshot of *Anishinaabe* law to be applied in response to this particular time in our history,

“The nation now finds it necessary for the care of its children and protection of its families to express certain aspects of its temporal law in writing so that it may be better and more widely understood and respected, and to adapt it to meet the needs of the present generation”.²⁹⁰

Abinoojii Inakonigewin affirms universal tenets of responsibilities and duties of individuals, families and the Nation in relation to the care and protection of the children and their families. It stipulates that children represent “the continuity of the nation”²⁹¹ and that each child is a “sacred gift”²⁹² and directs that the law shall be interpreted “as consistent with *Anishinaabe* law.”²⁹³ These principles within the preamble remain consistent from time immemorial, however, the manner in which the *Anishinaabe* of Treaty #3 build and implement their system to ensure that these principles are met is always adaptable to reflect modern times and contemporary situations.

The purpose of *Abinoojii Inakonigewin* is to provide for the well-being of children, to ensure their best interests are understood and given effect as well as to protect them from harmful impacts of colonial laws.²⁹⁴ The principles of interpretation reflect *Anishinaabe* values and are in contrast to accepted colonial values such as parental rights of custody versus *Anishinaabe* parental responsibilities. “*Anishinaabe* concepts of parental and other responsibilities for a child and not upon concepts of parental rights

²⁹⁰ *Ibid*, the preamble.

²⁹¹ *Ibid*, preamble.

²⁹² *Ibid*, preamble.

²⁹³ *Ibid*, section 2.

²⁹⁴ *Ibid*, section 4(c).

such as custody.”²⁹⁵ *Abinoojii Inakonigewin* emphasizes the importance of family and culture to children as our future, as an underpinning to the survival of the *Anishinaabeg* as a nation and in furtherance of *bimaatziwin* for individuals.

Abinoojii Inakonigewin adds criteria to the best interests of the *Anishinaabe* child of “access to fundamental attributes of Anishinaabe life, including Anishinaabe identity, language, culture and society”²⁹⁶ to be utilized in decision-making for *Anishinaabe* children.

The Grand Council Treaty #3 law also sets out guidelines for interpretation that operate to balance decision-making in relation to the “realities that may affect the best interests of a child”²⁹⁷ to ensure that holistic considerations are taken into account when those decisions are being made. In considering the best interests of a child and the potential necessity of taking the most intrusive action of removing a child from their family, *Abinoojii Inakonigewin* directs a two-step decision-making process. First, consideration of “the effects of severing a child’s ties with fundamental attributes of Anishinaabe life may be as traumatic and long lasting as those of physical amputation.”²⁹⁸ Second, that “no life is free from risk, nor will it be.”²⁹⁹

This two-step process is instructive in that decision-making for removal of a child must be balanced against the harm and trauma of removal. In those rare circumstances where a child must be removed for their safety, the harm of removal

²⁹⁵ *Ibid*, section 5(b).

²⁹⁶ *Ibid*, section 5(d).

²⁹⁷ *Ibid*, section 6.

²⁹⁸ *Ibid*, section 6(a).

²⁹⁹ *Ibid*, section 6(b).

must be mitigated by following the placement with extended family or the community for the move to be the least traumatic to the child. As with Weechi-it-te-win Family Services' customary care model, *Abinoojii Inakonigewin* requires parental consent³⁰⁰ for the placement of a child to ensure that the parents remain involved and responsible for their child's care, fulfilling their duty of *ombigiosowin*. The customary care model and *Abinoojii Inakonigewin* both underscores continued *Anishinaabe* responsibility to the child and directs that all steps must be taken to uphold the sanctity of the family.

In recognition of the need to reverse the harmful impacts of colonial aggression upon families and their children, a major principle of *Abinoojii Inakonigewin* is to re-empower the family as a healthy unit in the *Anishinaabe* web of relationships. *Abinoojii Inakonigewin* directs that family services "should support and strengthen the role of the families."³⁰¹ This principle is consistent with assertions and actions that the Treaty #3 leadership and Elders have taken for decades as well as *Anishinaabe* law from time immemorial, and Weechi-it-te-win Family Services' customary care model.

Over the last several decades prevention has gained value in child welfare policy and has evolved as a secondary strategy of protection services. Removal of children from the family home or community has not created the best opportunity for families to heal and to develop the skills necessary to meet the needs of their children. Since the middle of the twentieth century, child welfare policy has emphasized protection through removal enshrining the opposite value of *Abinoojii Inakonigewin*. For the *Anishinaabeg*,

³⁰⁰ *Ibid*, section 18.

³⁰¹ *Ibid*, section 5(e).

the impact has been compounded by the forced condition of poverty and learned dependence.

The predominate focus and funding in the child welfare system has been on alternative, out of home placements to protect children from the very conditions created by colonialism completely sidestepped the importance of any downstream value of the *Anishinaabe* family and community to the well-being of the child and ultimately the future of the Nation. *Abinoojii Inakonigewin* seeks to shift the policy impact and system funding to strengthening the family to be self-sustaining and self-reliant for the well-being of children which is the best possible outcome from all perspectives. It is hoped that restoring responsibility will lead to a vibrant community, where children thrive, and families make healthy choices. As recognized in *Abinoojii Inkanogewin*; “Healing of the people is essential to caring for children.”³⁰²

The primary focus of the colonial child welfare system has been to protect children from abuse and neglect as well as to provide a home where there was not one. Provincial legislation and policy empowered child welfare authorities with great latitude in their discretion to remove a child from their family home when there was a perception that parents could not or would not provide their child with a safe nurturing environment. The flaw in this approach is that “Indigenous children must be understood as being raised within a community: any assessment that sees a parent in isolation of that will be deficient and is only assessing one small part of the support system.”³⁰³

³⁰² *Ibid*, section 5(i).

³⁰³ *Supra* at note 249, Celeste Cuthbertson “*Statutory Recognition of Indigenous Custom Adoption*” at page 33.

A 'safe nurturing environment' is a subjective standard compounded by decision-makers' apathy toward family circumstance and lack of cultural awareness and sensitivity. The provincial child welfare regime continues to confer extreme discretion to child welfare workers who, perhaps, unwittingly apply their own understanding and learned standards of child rearing and family dynamics, to the detriment of *Anishinaabe* children, families, communities and their future.

The interpretive provisions in *Abinoojii Inakonigewin* that are intended to enshrine *Anishinaabe* values have the additional effect of displacing the ongoing impact of colonial thinking on the *Anishinaabeg*. The law both directs and reminds that the best interests of the child cannot be considered in isolation of all criteria, "Standards that reduce certain risks but result in injury to a child's identity or cultural supports may not be consistent with the best interests of the child."³⁰⁴

Although *Abinoojii Inakonigewin* was endorsed by the Grand Council Treaty #3 Chiefs in 2005, the law states that "notwithstanding anything in this Law, it shall not apply in respect of any community until that community has assented to it."³⁰⁵ Wabaseemoong Independent Nations and the Ojibways of Onigaming First Nation were the first to assent to *Abinoojii Inakonigewin* in 2012. Several additional First Nations have since assented to the Grand Council Treaty #3 law.

³⁰⁴ *Supra*, section 6(d).

³⁰⁵ *Ibid*, section 57. Fred Kelly explains that *Abinoojii Inakonigewin* is a legitimate law of the *Anishinaabe* Nation in Treaty #3, sanctioned by Elders through ceremony and duly passed by the Grand Council Treaty #3. *Abinoojii Inakonigewin* does not apply to any Treaty #3 First Nation until that First Nation Assents to the application of the law at a Grand Council Treaty #3 National Assembly.

In the case of Wabaseemoong Independent Nations, their assent to *Abinoojii Inakonigewin* triggered a comprehensive engagement process with community members to develop their law in contemporary terms. The Wabaseemoong Independent Nations 'Customary Care Code' was endorsed by their Chief and Council in December 2017 at a ceremony which included Grand Council Treaty #3 Ogichidaa (Grand Chief) Francis Kavanaugh.³⁰⁶ Part 1 of their Code states that "This Customary Care Code is intended to be and it should be interpreted as being consistent with Anishinaabe Law respecting the protection and care of children including, but not limited to, the provisions of *Abinoojii Inakonigewin*."³⁰⁷

Several First Nation Political Territorial Organizations (PTO)³⁰⁸ had also drafted laws before the federal *Act Respecting First Nation, Inuit and Metis Children, Youth and Families (CYFA)* was enacted that would apply to aggregate First Nations should they choose to exercise their jurisdiction collectively. The Manitoba Keewatinowi Okimakanak (MKO)³⁰⁹ prepared a draft First Nation Family Law in January 2000 titled *Minisiwin Winiswaywin* that states

"For greater certainty, First Nation governments shall make laws and provide further delegated authority to MKO Family Secretariat and the First Nation Family Services to exercise its authority and rights and to carry out its' mandate as prescribed in this legislation."³¹⁰

³⁰⁶ "Customary Care Code", Wabaseemoong Independent Nations, Appendices "Resolution of Chief and Council dated December 12, 2017.

³⁰⁷ *Ibid*, part 1, Interpretation.

³⁰⁸ PTO is defined as a First Nations advocacy and support secretariat. Indigenous Services Canada (ISC) provides annualized administrative and project specific funding to PTO's.

³⁰⁹ MKO was incorporated in 1981 as the Manitoba Keewatinowi Okimakanak and is a "non-profit, political advocacy organization that provides a collective voice on issues of inherent, Treaty, Aboriginal and human rights for the citizens of the sovereign First Nations we represent. The MKO First Nations are signatory to Treaties 4, 5, 6 and 10." See <https://mkonation.com/about-mko/#mko-constitution>.

³¹⁰ *Minisiwin Winiswaywin*, MKO family law, section 13.3

The model endorsed by the northern Manitoba Chiefs is premised on the notion of delegated authority from their First Nation communities, to be bound by the law and its' institutions. While both Grand Council Treaty #3 and the Manitoba Keewatinowi Okimakanak established laws available to aggregate First Nations, they are distinct because of their source of authority. Grand Council Treaty #3 established *Abinoojii Inkonigewin* on the basis of *miinigoziwin*, their sovereign authority as the traditional government of the *Anishinaabe* Nation, whereas the Manitoba Keewatinowi Okimakanak law depends upon empowerment through the delegated authority from one or more of their member First Nations.

Part 4.) Tinkering with Colonial Law: Righting the Wrong or Perpetuating the Harm

The *Anishinaabeg* of Treaty #3 have consistently established means for asserting jurisdiction in relation to their children and families, despite colonial policy undermining their authority. From the time of confederation there have been legal hurdles for the *Anishinaabeg* to traverse as they endeavour to fulfill their responsibility of *miinigoziwin* and to live a good life free of colonial encumbrances. Regardless of the evolution of Canadian Indian policy, that has ranged from annihilation through assimilation to the promise of reconciliation within the Canadian constitutional framework, the *Anishinaabeg* continue to strive to be the masters of their own destiny adhering to *kagakiwe inakonigewin*. It is from this tenacious foundation that I examine how the *Anishinaabeg* have not forgotten their children and have creatively utilized policy to further their purpose, and in particular consider the extent to which the federal *Act Respecting First Nation, Inuit and Metis Children, Youth and Families (CYFA)* is a help or hinderance.

a) Customary Care

Customary care has played a significant role reinforcing a child's bond with family and community and the life long positive outcomes that the connection cultivates. The notion of permanence through an *Anishinaabe* lens where the child maintains connection to family is an important aspect of undoing the harm of colonial policy.

The Treaty #3 *Anishinaabeg* and their child and family service agencies are protective of the customary care model that they have created. In 2004, the Ontario

Association of Children’s Aid Societies³¹¹ (OACAS), was contracted by Ontario to publish a Practice Guide on Formal Customary Care. This Practice Guide was met with extreme criticism and rejected outright by First Nation child welfare experts, leaders and Elders as being out of scope and inappropriate for the OACAS to undertake.

To ensure that the First Nation perspective was accurately reflected, the Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) commissioned their report, “*Customary Care: A First Nations Exercise in Governance. Principles and Best Practice Guidelines*”³¹² guided by a steering committee to oversee the province wide engagement, the content development and approve the final report. The consensus was that,

“while Customary Care continues to be embedded in age-old traditions of family relations and community support systems, the practice has grown into a First Nation specific service delivery model in a more formalized sense, as an alternative to mainstream practice and philosophy.”³¹³

Further, the report summarized that “Customary Care as a custom of the First Nation exists independent of legislative or judicial recognition.”³¹⁴

In 2013, Ontario again contracted with a non-First Nation entity to produce a Practice Guide for Formal Customary Care.³¹⁵ This time however, the consultant

³¹¹ The OACAS is an association of children’s aid societies in Ontario established to provide advocacy, training and education, for its members and the public on behalf of their membership. The “OACAS works with member agencies, community and provincial partners, and government to support positive change to the Ontario child welfare system.” See <https://www.oacas.org/about/>.

³¹² *Supra* at note 50, Diane M. Kelly, “*Customary Care, An Exercise in First Nations Governance*”.

³¹³ *Ibid* at page 1.

³¹⁴ *Ibid* at page 1.

³¹⁵ *Supra* at note 254, Deb Cantrell, et al, “*Formal Customary Care, A Practise Guide*” MCYS 2013.

group followed the First Nation process and established a project steering committee with Indigenous child welfare experts to provide commentary on the report. The primary question of the project was “What do you need to know in order to make customary care the placement choice for First Nation children who are believed to be in need of protection and in need of placement with alternative caregivers?”³¹⁶ Clearly, Ontario intended that customary care be an available option for non-First Nation Child and Family Services Agencies to utilize and as such defined formal customary care as a “term used to describe the placement of a child considered to be in need of protection with alternative caregivers, pursuant to a First Nation Band Council Resolution”³¹⁷ (BCR).³¹⁸

Unfortunately, not only did their definition limit the scope of customary care to a placement option, but it was also an affront to *Anishinaabe* inherent jurisdiction by requiring the necessity of a BCR which is an instrument of the *Indian Act*. Further, customary care has been successfully implemented by Treaty #3 First Nations to ensure an integral role in the care of their children and families as well as maintaining connection to ensure that children are not lost in the child welfare system. Colonial governments and institutions have a pattern of incorporating Indigenous concepts into policy and then controlling the scope and definition, diluting the value and importance of the concept as understood by the Indigenous group rendering the concept less meaningful and perpetuates the status quo.³¹⁹

³¹⁶ *Ibid* at page 17.

³¹⁷ *Ibid* at page 19.

³¹⁸ A Band Council Resolution (BCR) is a creation of the *Indian Act*, and it is a legal document to show that a decision of the Band (Chief and Council) has been made in accordance with the rules contained within the *Indian Act*.

³¹⁹ A further example of this practise is the federal government’s ‘Inherent Right to Self-Government’ policy which is a means to replace the application of the *Indian Act* with delegated authority within the

The Treaty #3 First Nations in the development and operation of their customary care model, maneuvered through the Ontario legislation to further their objectives on their pathway as self-determining. In the operation of customary care, First Nation communities gained requisite capacity to deliver services to *Anishinaabe* children and families in a culturally appropriate manner restoring *Anishinaabe* law, values and principles. Children have access to names, feasts and ceremonies and families and communities know where their children are.”³²⁰

Treaty #3 First Nations with their child and family service agencies have developed considerable capacity immersed in *Anishinaabe* values under their inherent authority, putting them in an advantageous position of readiness when they consider the *CYFA*.

b) The *Indian Child Welfare Act* – the USA example

In the United States, like Canada, there is a sad legacy of forced assimilation through the removal of Indian children to Industrial schools, adoption and the child welfare system. To redress the harm caused, the *Indian Child Welfare Act of 1978*³²¹ (*ICWA*) was passed to support tribal sovereignty and protect children within their family and community. The *ICWA* established that an agency must show that they have actively worked with the family prior to the removal of an ‘Indian’ child and that the decision to remove a child is the only remaining option.

constitutional framework, which is distinct from the *Anishinaabeg* understanding of their inherent right to self-government.

³²⁰*Supra* at note 240 Peter Ferris et al, “*Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services*” First Nations Caring Society, at page 13.

³²¹ 25 U.S.C. ss 1901-63

“Any party seeking to effect a foster care placement of or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”³²²

Additionally, the *ICWA* established a high threshold to substantiate the necessity to remove the child from their parent or guardian.

“No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”³²³

By contrast, in the Ontario *Child, Youth and Family Act*, a court must follow the legal definition of a child “in need of protection”³²⁴ as a condition precedent for an order limiting or suspending parental rights. The low end of the threshold is a risk of physical harm due to a pattern of neglect³²⁵ and “risk of emotional harm”³²⁶ is a much lower threshold.

It is also worth noting that the American legislation requires that a child welfare agency must meet a very high evidentiary burden where they seek an order to terminate the parental rights. In Canada, the evidentiary burden in civil courts is the balance of probabilities, a much lower evidentiary standard than is found in the *ICWA* of beyond a reasonable doubt.

“No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that

³²² *Ibid*, at subchapter 1, Child Custody Proceedings at paragraph 1912. Pending Court Proceedings (d) Remedial services and rehabilitative programs: preventive measures.

³²³ *Ibid*, at paragraph 1912 (e).

³²⁴ *Supra* at note 206, Ontario *Children, Youth and Family Services Act*, 2017, section 74(2).

³²⁵ *Ibid*, section 74(2)(b)(ii).

³²⁶ *Ibid*, section 74(2)(h).

the continued custody of the Indian child by the parent of Indian custodian is likely to result in serious emotional or physical damage to the child.”³²⁷

Despite the proactive provisions of the *ICWA*, American Indian children are still over-represented in their child welfare system. Francis et al, in their study of several reviews on the effectiveness of the *ICWA* found mixed outcomes; Indian children were placed with family and tribal affiliation, active efforts to avoid family breakup had been made, however, underfunding of the program and lack of system capacity hindered substantive change.³²⁸

c) Canadian Human Rights Tribunal, the Band Representative

In 2007, the First Nations Child and Family Caring Society and the Assembly of First Nations filed a human rights complaint at the Canadian Human Rights Commission (CHRC) against Aboriginal Affairs and Northern Development (AANDC)³²⁹ responsible for delivering the First Nation Child and Family Services (FNCFS) program. The complaint alleged that the department acted discriminatorily “in providing child and family services to First Nations on reserve..., on the basis of race and/or national or ethnic origin, by providing inequitable and insufficient funding for those services.”³³⁰

The Canadian Human Rights Tribunal (CHRT) closely examined the various provincial / territorial funding models developed for the delivery of the federal FNCFS

³²⁷ *Supra* at note 307, *ICWA* at paragraph 1912 (f).

³²⁸ Annie M. Francis, William J. Hall, David Ansong, Paul Lanier, Travis J. Albritton and Ashley McMillan, “*Implementation and Effectiveness of the Indian Child Welfare Act: A systematic review*” Children and Youth Services Review, Vol 146, March 2023, 106799.

³²⁹ At the time of the Canadian Human Rights Complaint Hearings, Aboriginal Affairs and Northern Development (AANDC), was the name of the federal department responsible for the administration of the *Indian Act*.

³³⁰ *Supra* at note 229, *First Nations CFS Caring Society v Canada*, 2016 CHRT 2, at paragraph 6.

program. In Ontario, the FNCFS program has a distinct funding model and is funded pursuant to the *1965 Indian Welfare Agreement*,³³¹ a federal / provincial cost sharing agreement with the objective “to make available to the Indians in the Province the full range of provincial welfare programs”³³² and to meet the same standard of services that are “reasonably comparable to those provided to other Canadians.”³³³ The CHRT ultimately found that the federal government through its FNCFS program discriminated against First Nation children in the manner in which it funded the program. At the time of this writing, a settlement to address the funding deficiency has not been reached.

The Chiefs of Ontario (COO) was an interested party to the complaint and alleged that AANDC had discriminately and unilaterally terminated the Band Representative program. The Band Representative program was unique to Ontario and was funded on the basis of the legislative requirement within the Ontario *Child and Family Services Act* requiring that

“a society or agency that provides services or exercises powers under this Act with respect to Indian or native communities children shall regularly consult with their bands or native communities about the provision of the services or the exercise of the powers and about matters affecting the children”³³⁴

such as apprehensions, placements, family supports, care plans, legal status reviews, adoptions and any other related matters.

³³¹ *Supra* at note 49, see also *ibid* for a description of purpose and structure of the cost sharing arrangement see paragraphs 217 to 222.

³³² *Supra* at note 229 at paragraph 246.

³³³ *Ibid* at paragraph 269.

³³⁴ *Supra* at note 47, The *Child and Family Services Act*, 1990, section 213.

In 2003, AANDC unilaterally terminated the funding for this program, stating that “it falls within the responsibilities of First Nation governments to determine their level of engagement in child welfare matters.”³³⁵ Ontario First Nations advocated politically and fought legally to have the Band Representative program reinstated through the submissions of the COO to the CHRT.

The role of the Band Representative in the First Nation was akin to a liaison working between the child and family service agency and the First Nation. The role had been instrumental working with northern Treaty #3 First Nations to ensure their involvement in planning, decision-making and court hearings on behalf of communities and their membership. The Band Representative was particularly important in southern Ontario where there are few First Nation mandated child and family service agencies.

Without the Band Representative program many First Nations were unable to participate in planning or to take part in child protection legal proceedings³³⁶ as they had in the past. In 2007 and again in 2011, the Ontario Ministry wrote to AANDC expressing concern with the impact of the federal unilateral funding decision stating that

“The band representative function supports not only the purpose of the Act but also the other important purposes and provisions to which the Act pertains. A lack of sufficient capacity within First Nation communities limits their ability to respond effectively and in accordance with legislated times frames for action. The withdrawal of funding for band representation functions has eroded First Nations’ ability to participate as intended in the *CFSA*.”³³⁷

³³⁵ *Supra* at note 229, 2016 CHRT 2 at paragraph 238.

³³⁶ *Ibid*, Annex, ex. 25 at page 2

³³⁷ *Supra* at note 229, paragraph 237, quote from letter from Ontario’s Ministry of Children and Youth Services (MCYS).

In 2018, the CHRT ordered the federal government to reinstate funding for the Band Representative program. In their decision, the Commission stated that the Band Representative workers

“play a vital role in ensuring that child welfare staff and the courts have a full appreciation of the child’s cultural heritage, traditions and needs before making decisions about the child. They work to ensure that the child receives culturally appropriate services and placements. Furthermore, they often support the plan advanced by a parent and assist that parent in advancing the plan by highlighting how it will foster the child’s ties to their Aboriginal community.”³³⁸

In April 2022, following the CHRT ruling, AANDC established the First Nation Representative program and expanded the delivery to all provinces and the Yukon.³³⁹ First Nations view the program as a vital mechanism to ensure their input is considered in matters impacting their community members, unlike the eras of the residential schools and Sixties Scoop where the *Anishinaabeg* did not have input. Unfortunately, through the success of the CHRT decision, AANDC imposed a corresponding limitation on the Band Representative program restricting the scope to apply to on-reserve children and families only.

d) *An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*

One of the most fundamental shifts towards the *Anishinaabe* goal of the restoration of unencumbered jurisdiction occurred on January 1, 2020, when the federal *Act Respecting First Nation, Inuit and Metis Children, Youth and Families* (CYFA) came into force. The introduction and proclamation of the CYFA was precipitated by a shift in

³³⁸ *The First Nations CFS Caring Society v Canada*, 2018 CHRT 4, at paragraph 327.

³³⁹ *Ibid*, see paragraphs 307 to 337.

Canadian Indian policy from “assimilation to reconciliation”³⁴⁰ as a result of the Truth and Reconciliation Commission’s (TRC) Calls to Action³⁴¹ and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into Canadian law.³⁴²

First Nation leaders across the country had been divided about the CYFA with some saying that Canada had failed to consult rights holders extensively on a matter that is core to treaty and inherent rights.³⁴³ Concerns were raised consistently that the inherent right of self-government should not be subsumed within legislation and that the scope of the proposed Bill³⁴⁴ had inadequacies such as the lack of a legislated funding commitment, lack of clarity on interjurisdictional matters between Indigenous laws and provincial laws, and the status of foster parents,³⁴⁵ for example. Others acknowledged the urgent need for change and suggested that the inadequacies of the proposed legislation could be addressed through negotiations and engagement as they considered the Bill an important step on the pathway toward the betterment for their children and families.

³⁴⁰ *Reference re An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*, 2024 SCC 5, at paragraph 12.

³⁴¹ In 2008, the TRC was established as part of the Indian Residential School Settlement Agreement to document the history and lasting impacts of the residential school system on Indigenous people. In July 2015, the TRC released an executive summary of its findings along with 94 ‘Calls to Action’ to further reconciliation between Canadians and Indigenous Peoples.

³⁴² *The United Nations Declaration on the Rights of Indigenous Peoples Act*, 2021, S.C. c.14.

³⁴³ <https://www.cbc.ca/news/canada/edmonton/bill-c-92-first-nations-alberta-edmonton>.

³⁴⁴ Formerly known as, and sometime still referred to as Bill C-92.

³⁴⁵ Indigenous Services Canada (ISC) “*Implementation of an Act Respecting First Nations, Inuit and Metis Children, Youth and Families: Federal, Provincial, Territorial and Indigenous Issues: Guiding Questions.*” PowerPoint presentation at the Federal Provincial Territorial Indigenous (FPTI) Technicians meeting, February 2, 2021.

Despite these drawbacks, many people maintained that the opportunity presented by the *CYFA* had to be seriously considered because of the potential to immediately address the needs of Indigenous children, and their families locked in the clutches of the colonial system. A central tenet of the *CYFA* is to alleviate or minimize harmful impacts of the child and family services system on indigenous children, families and communities.

The *CYFA* has two parts. The first part, purpose and national principles, addresses the well-being of Indigenous children and sets out national standards as recommended by the Truth and Reconciliation Commission (TRC)³⁴⁶ in their call to action #4, that “the federal government enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles.”³⁴⁷ The second part, laws of Indigenous groups, communities or peoples, is intended to be consistent with the implementation of *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*³⁴⁸ that states “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs...”³⁴⁹ The remainder of this section provides a critical analysis of the *CYFA* from an *Anishinaabe* perspective.

³⁴⁶ *Supra* at note 170, the TRC.

³⁴⁷ *Ibid*, at pages 143 and 144.

³⁴⁸ the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021 c. 14 was proclaimed into law in Canada on June 21, 2021. Adopted by the United Nations General Assembly in September 2007. *UNDRIP* Article 43 affirms the rights herein constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples throughout the world.

³⁴⁹ *Ibid*, *UNDRIP*, article 4.

i) Purpose and National Standards

The Preamble of the *CYFA* acknowledges the TRC Calls to Action specific to child welfare and expressed that the underlying legislative goal as “the enactment of federal legislation that establishes national standards for the welfare of Indigenous children.” The preamble also states that “the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples.”

The best interests of the child principle is incorporated into the *CYFA* and is to be interpreted and administered in accordance with the universal vision of the principle³⁵⁰ along with the added primary principles of “cultural continuity”³⁵¹ and “substantive equality.”³⁵² The *CYFA* established that when considering the best interests of an Indigenous child, the “importance, for that child, of having an ongoing relationship with his or her family and community... and of preserving the child’s connections to his or her culture”³⁵³ must be taken into account. The *CYFA* requires that “all factors related to the circumstances of the child must be considered”³⁵⁴ eliminating the discretion to weigh some criteria over others. The importance of ‘cultural continuity’ was acknowledged by the SCC in the *Reference re CYFA* “the Crown has always clearly understood the role played by family in the survival of Indigenous culture. It is no coincidence that the Crown targeted Indigenous children when, at the height of its imperialism, it was seeking to destroy Indigenous cultures.”³⁵⁵

³⁵⁰ *Supra* at note 9, the *CYFA* at section 9(1)

³⁵¹ *Ibid*, the *CYFA* at section 9(2).

³⁵² *Ibid*, the *CYFA* at section 9(3).

³⁵³ *Ibid*, the *CYFA* at section 10(2).

³⁵⁴ *Ibid*, the *CYFA* at section 10(3).

³⁵⁵ *Supra* at footnote 340, *Reference re CYFA* at paragraph 114.

Mary Ellen Turpel-Lafond described the primary principles and added criteria to the best interests of the child considerations in the *CYFA* as, “no factor should have a super weight, but the primary considerations are turbo-charged.”³⁵⁶ The primary principles intend to effect better outcomes for Indigenous children, and when added to the best interests’ considerations reduces the potential for subjectivity and harm created by legal precedents such as in *Racine v Woods*.³⁵⁷

An Indigenous Governing Body (IGB) is a new concept introduced in the *CYFA* and is defined as “a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed in section 35 of the *Constitution Act, 1982*.”³⁵⁸ The IGB is a term created by legislation, not by First Nation peoples and like that of an Indian “Band”³⁵⁹ has specific legal responsibilities in order to interact with other entities, in this case in relation to child and family services. Referencing Indigenous peoples as an Indigenous Governing Body, a statutory label, sets a condescending tone.

First Nations, such as the members of Weechi-it-te-win Family Services have utilized the IGB concept to delegate limited authority to their agency to undertake specific activities at their direction. Perhaps a benefit of the IGB is that governance functions can be separated and delegated as an interim measure to various bodies as was the case of the Weechi-it-te-win Family Services. A First Nation acting upon its’

³⁵⁶ *Supra* at note 213, AFN “*Upholding the Best Interests of First Nation Children*” Virtual Gathering #4, March 20, 2021.

³⁵⁷ *Supra* at note 219, *Racine v Woods*.

³⁵⁸ *Supra* at note 9, the *CYFA*, definitions.

³⁵⁹ *Supra* at note 38, *Indian Act* section 2(1) ‘Band’ is defined “as a body of Indians”. The concept of a Band was created by the *Indian Act* to fulfill governance responsibilities as determined by the Crown, and to be accountable to the Crown.

inherent authority must be cautious and clear on the specific scope, terms and accountabilities by which any authority is delegated to an IGB, always protecting and preserving their inherent authority.

The Supreme Court of Canada (SCC) in their reasons in the *Reference re CYFA* stated that the national standards in the *CYFA* direct service providers and are categorized as “preventive, which means that they come into play *before* any important decision is made, or any action is taken”³⁶⁰ and are intended to “lessen the historical propensity of child welfare systems to apprehend Indigenous children”³⁶¹ whenever possible. Additionally, “other standards come into play *after* a decision has been made to place a child.”³⁶² The later are intended to increase the number of Indigenous children remaining with their family and community, resulting in less Indigenous children in care. Preventative standards ensure that a child is not unnecessarily removed from their family due to “poverty, ill-health and lack of services to parents or caregivers,”³⁶³ or as a result of a “birth alert.”³⁶⁴

Where a service provider has made a decision in relation to a child, the *CYFA* requires that the service provider must provide notice to the parent, care provider and the relevant IGB before taking any significant measure in relation to the child, as long as it is consistent with the best interests of the child to do so.³⁶⁵ A significant measure is not defined in the *CYFA* however, it is open to a First Nation or IGB to determine a broad definition and outline interventions that they want to be notified of, such as an

³⁶⁰ *Supra* at note 340, SCC *Reference re CYFA*, at paragraph 84.

³⁶¹ *Ibid* at paragraph 84.

³⁶² *Ibid*, at paragraph 84.

³⁶³ *Supra* at note 9, the *CYFA*, section 15.

³⁶⁴ *Ibid*, section 14(2).

³⁶⁵ *Ibid*, section 12(1).

apprehension, change in placement, awareness of or responses to mental health issues, health matters, or any changes to agreed upon terms within the care plan. Unfortunately, the *CYFA* created a process that a First Nation must first designate an IGB, and, inform the relevant service provider as a precondition to receive notice of a significant measure.

The *CYFA* does not stipulate a timeline or mechanism to effect 'notice' however, a service provider must be able to establish how and when they provided notice to the relevant parties. it would be prudent for a First Nation to provide context to service providers of measures that they deem significant.

In civil court proceedings, the IGB is entitled to notice and has the right to make representations.³⁶⁶ Similar to the Ontario *Child and Family Services Act*,³⁶⁷ the provision of notice has been and continues to be vitally important to the *Anishinaabeg* to ensure that the family and community know where their children are and that they do not lose their children to the system as they did with the Sixties Scoop.³⁶⁸ The First Nation Representative program staff will be helpful to First Nations as a conduit working with the community.

Should a child require an out of home placement, a service provider "must demonstrate that he or she has made reasonable efforts to have the child continue to reside with that person (the child's parents or another adult member of the child's

³⁶⁶ *Ibid*, the *CYFA* at section 13(b).

³⁶⁷ *Supra* at note 47, The Ontario *Child and Family Services Act*, section 39(1)4 "Where the child is an Indian or a native person, a representative chosen by the child's band or native community" is a party to a proceeding.

³⁶⁸ The Manitoba child welfare legislation did not require notice to a First Nation child's community.

family).³⁶⁹ A weakness in the *CYFA* is that reasonable efforts are not defined and can be subject to the discretion of agency staff and the judiciary.

The standards in the *CYFA* are helpful to curtail the status quo of the mass apprehension of Indigenous children. However, the American *ICWA* standard of clear and convincing evidence that continued custody of the child by the parent is likely to result in serious emotional damage, or *Abinoojii Inkonigewin*'s two-step process to consider the trauma of severing a child's ties to the attributes of Anishinaabe life, or Weechi-it-te-win Family Services *naanigaan abinoojii* of weighing all potential harm, all create a higher standard for removal of a child from their family. The *CYFA* 'reasonable efforts' is a lower standard open to subjective interpretation. For the *Anishinaabeg*, *Abinoojii Inakonigewin* and *naanigaan abinoojii* demand a higher threshold that they will continue to utilize.

The *CYFA* sets out that in the delivery of child and family services prevention must be the priority³⁷⁰ to keep the family intact, however, corresponding funding has not been identified. Many First Nation communities and First Nation child and family service agencies have implemented successful primary, secondary and tertiary prevention programs, even though historically funding has not been stable or consistent.

One of the most successful tertiary prevention programs is the Family Preservation model of Weechi-it-te-win Family Services. The model assigned one worker to work intensively with four families over a period of several months to address challenges, establish a support network and assist with the development of any other

³⁶⁹ *Supra* at note 9, the *CYFA*, section 15(1).

³⁷⁰ *Ibid*, the *CYFA*, section 14(1).

capacity required.³⁷¹ When the Weechi-it-te-win Family Services communities implement their jurisdiction, it is unclear how or if their existing prevention programs will be funded.

Reports have consistently noted that “the present funding formula provides more incentives for taking children into care than it provides to support preventive, early intervention and least intrusive measures.”³⁷² In 2016, the CHRT Panel concluded that “First Nations children and families living on reserve are discriminated against in the provision of child and family services by AANDC”³⁷³ and ordered that the department must “ensure equitable levels of service, including funding thereof, for First Nations child and family services on-reserve.”³⁷⁴

Funding for the delivery of child and family services by First Nation agencies has been historically inadequate and tied to provincial child welfare program downloading. Canada has funded First Nation agencies directly through contribution agreements³⁷⁵ that dictate the terms and conditions, adherence to provincial standards and performance requirements to be met.³⁷⁶ Child and family service agencies have had little opportunity to create and implement their own solutions when they are compelled to “operate within a legal straitjacket.”³⁷⁷ In 1983, the Penner Report argued that “in order for First Nations governments to effectively govern the affairs of their people, their

³⁷¹ Presentation by Laurie Rose, former Executive Director of Weechi-it-te-win Family Services to some Manitoba First Nation Child and Family Services Executive Directors, Winnipeg, Manitoba, Fall 2014

³⁷² *Supra* at note 199, the *Wen:de Report* at page 114.

³⁷³ *Supra* at note 229, 2016 CHRT 2, paragraph 473.

³⁷⁴ *Ibid* at paragraph 475.

³⁷⁵ In 1991, INAC (formerly AANDC), introduced a new national funding formula, Directive 20-1 that formalized the mechanisms for program devolution of child welfare services to First Nations child and family services agencies.

³⁷⁶ Except in Ontario, where the funding model is established in the *1965 Welfare Agreement*.

³⁷⁷ *Supra* at footnote 249, Celeste Cuthbertson, “*Statutory Recognition of Custom Adoption*” at page 31.

funding relationships with the federal government need to be on the same level as transfer agreements between the federal government and provincial governments, that is, unconditional.”³⁷⁸

National standards in the *CYFA* apply to Indigenous children “whether they reside on a reserve or not.”³⁷⁹ The standards are directed to child and family service providers and are intended to reduce the number of Indigenous children placed outside of their family and community. Prior to 2000, Weechi-it-te-win Family Services had implemented the placement priority³⁸⁰ as part of their service model and it is now legislated within the *CYFA*. The *CYFA* also requires that “the possibility of placing a child with or near children with the same parent must be considered”³⁸¹ in the determination of the child’s best interests. In practice, Treaty #3 child and family service agencies and communities as a priority have been placing siblings together whenever possible.

The *CYFA* sets out that if an Indigenous child cannot be placed with a parent or extended family member, the “child’s attachment and emotional ties to each such member of his or her family must be promoted.”³⁸² The *CYFA* requires that “there must be a reassessment, conducted on an ongoing basis, of whether it would be appropriate to place the child with”³⁸³ a parent³⁸⁴ or an extended family member.³⁸⁵ However, the *CYFA* is silent on the scope and frequency of the reassessment, as well as on how a

³⁷⁸ Manitoba, the Penner Report, page 89.

³⁷⁹ *Supra* at note 9, the *CYFA*, the Preamble.

³⁸⁰ *Ibid*, the *CYFA*, section 16(1).

³⁸¹ *Ibid*, the *CYFA*, section 16(2).

³⁸² *Ibid*, the *CYFA*, section 17.

³⁸³ *Ibid*, the *CYFA*, section 16(3).

³⁸⁴ *Ibid*, the *CYFA*, section 16(3)(a).

³⁸⁵ *Ibid*, the *CYFA*, section 16(3)(b).

service provider must promote a child's attachment and emotional ties with their family. The silence in the *CYFA* is an opportunity for the *Anishinaabeg* to define and develop standards for reassessment.

It is noteworthy that the burden to reassess a child's placement lies with the service provider to ensure that these objects are met as opposed to the onus being on the parent or extended family who far too often do not have the resources or awareness of the legislative requirements to initiate a process to trigger reunification. This is a critical aspect to address and shift the power imbalance to compel the agency to continually justify through reassessments the reasons that the child cannot be placed with their family.

In the case of Manitoba, where there were between six and seven thousand Indigenous children twelve years of age or younger growing up in permanent government care³⁸⁶ the *CYFA* is promising in that children of tender years can have a permanent connection to their family and community and that reunification through the reassessment is more likely. The requirement reduces the impact of provincially legislated timelines that terminate parental rights and alternatively focusses on an ongoing parent and child relationship as an important aspect of permanence. This is a significant provision.

The SCC in the *Reference re CYFA* noted that the national standards operate to ensure that the child and family services provided "to Indigenous children are culturally appropriate for them and are in their best interests."³⁸⁷ The national standards shift the burden to the service providers to be proactive in their efforts to reunify the family. The

³⁸⁶ Manitoba Department of Families, Annual Reports, 2014 through 2016.

³⁸⁷ *Supra* at note 340, *Reference re CYFA* at paragraph 84.

standards within the *CYFA* are instructive for shifting the detrimental status quo formed by the colonial system and are intended to be “a floor, not a ceiling”.³⁸⁸

ii) Laws of Indigenous Groups, Communities’ or Peoples

The *CYFA* is consequential in that “the right to self-determination of Indigenous peoples, including the inherent right of self-government, recognized and affirmed by section 35 of the *Constitution Act, 1982*, includes jurisdiction in relation to child and family services including legislative authority in relation to those services”³⁸⁹ is a central tenet. For decades First Nation leaders have asserted their inherent authority to fulfill their responsibilities to their children and families. In 1969, Harold Cardinal succinctly wrote that “[a]s a matter of fundamental principles, Canadians should recognize and accept the fact that First Nations and First Nation families possess and are entitled to possess the primary and sole authority to decide what is in the best interest of their children”³⁹⁰

The recognition of the inherent right of self-government was a significant step that aligns with the assertions and actions of sovereignty that the *Anishinaabeg* have made for decades and certainly before Canada became a country.³⁹¹ It is important to underscore that the *CYFA* does not give First Nations jurisdiction, but rather, it recognizes and affirms their inherent authority in relation to children and families, which to the *Anishinaabeg* exists independent of legislation. The *CYFA* has however, made it easier for the *Anishinaabeg* to disentangle from the colonial system.

³⁸⁸ Naomi Walquan Metallic, Hadley Friedland and Sarah Morales, “*The Promise and Pitfalls of C-92: An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*” (Yellowhead Institute, 2019), at page 5.

³⁸⁹ *Supra* at note 9, the *CYFA*, the Preamble and section 18(1).

³⁹⁰ *Supra* at note 388, Harold Cardinal quoted from the “Unjust Society” 1969, within Naomi Walquan Metallic, et al, “*The Promise and Pitfalls of C-92*” at page 4.

³⁹¹ *Supra* at footnote 106, Heidi Bohaker “*Doodem and Council Fire*” generally and at page xix.

The *CYFA* is unique in that it explicitly created a legislative framework to facilitate the exercise of the inherent right of self-government.³⁹² This varies from Ontario's legislative recognition of customary care, where the *Anishinaabeg* acted on their inherent authority to implement their jurisdiction,³⁹³ an example of legal pluralism.

Two options have been established that facilitate Indigenous peoples legislative authority: first an authorized IGB can provide notice of its intention to the federal and relevant provincial Ministers,³⁹⁴ and, second, the IGB may request that the federal and relevant provincial Ministers enter into a coordination agreement respecting³⁹⁵ the provision of emergency services for the safety of children,³⁹⁶ support measures,³⁹⁷ fiscal arrangements³⁹⁸ and any other coordination measure.³⁹⁹ In the latter case, where an IGB has entered into a coordination agreement or has made reasonable efforts to do so, their law has "the force of a law as federal law."⁴⁰⁰ In the case of a conflict of laws, whether federal⁴⁰¹ or provincial,⁴⁰² the law of the Indigenous group, people of community is paramount to the extent of the inconsistency.

Paramountcy is the legal principle to resolve conflicts between provincial and federal laws, that renders a provincial law inoperative to the extent of the conflict. The *CYFA* is premised on the notion of overlapping jurisdiction in child welfare, and through the negotiation of a Coordination Agreement, provincial concerns may be addressed.

³⁹² *Supra* at note 9, the *CYFA*, sections 20 to 24.

³⁹³ *Supra* at note 50, see generally Diane Kelly, "Customary Care: An Exercise in First Nations Governance".

³⁹⁴ *Supra* at note 9, the *CYFA*, section 20 (1).

³⁹⁵ *Ibid*, the *CYFA*, section 20(2).

³⁹⁶ *Ibid*, the *CYFA*, section 20(2)(a).

³⁹⁷ *Ibid*, the *CYFA*, section 20(2)(b).

³⁹⁸ *Ibid*, the *CYFA*, section 20(2)(c).

³⁹⁹ *Ibid*, the *CYFA*, section 20(2)(d).

⁴⁰⁰ *Ibid*, the *CYFA*, section 21(1).

⁴⁰¹ *Ibid*, the *CYFA*, section 22(1).

⁴⁰² *Ibid*, the *CYFA*, section 22(3).

Thus, by extending federal paramountcy protection to Indigenous laws, Indigenous interests are protected from potentially harmful action or inaction by the provinces.⁴⁰³

Where an inconsistency occurs between the law of two or more Indigenous groups, people or communities in relation to the provision of child and family services, the law “with which the child has stronger ties” prevails.⁴⁰⁴ As First Nations implement their laws, they will determine the scope of its application, which may include all members regardless of place of residence. The *Anishinaabeg* will look to their inherent authority coupled with deliberations between the relevant First Nations to determine which law will prevail in the case of two, or more laws that may apply to a family. Weechi-it-te-win Family Services has considered the likelihood for jurisdictional ambiguity and has drafted principles and template options to guide First Nations decision-making, transfer of services, funding and reporting between the pertinent First Nations.⁴⁰⁵

The *CYFA* has legislated constraints on Indigenous laws, and established that “sections 10 to 15 of the *CYFA* and the provisions of the *Canadian Human Rights Act*”⁴⁰⁶ apply to an Indigenous law, and prevails to the extent of any conflict or inconsistency. An Indigenous law must not be inconsistent with the best interests of the child.⁴⁰⁷ Additionally, the *Charter of Rights and Freedoms* applies to an IGB in the exercise of jurisdiction on behalf of an Indigenous group, community or people.⁴⁰⁸

⁴⁰³ Naiomi Metallic, “*Extending Paramountcy to Indigenous Child Welfare Laws*” at page 8.

⁴⁰⁴ *Ibid*, the *CYFA*, section 24(1).

⁴⁰⁵ Weechi-it-te-win Family Services, “*Abinoojii Inakonigewin: A Catalogue of Resources to Support First Nations with Family Service System Development*” Shannon Blight, Diane M. Kelly, Sherry Copenace, Crystal Doolittle and Larry Jourdain, contributors (2023).

⁴⁰⁶ *Supra* at note 9, the *CYFA* section 22(1).

⁴⁰⁷ *Ibid*, the *CYFA*, section 23.

⁴⁰⁸ *Ibid*, the *CYFA*, section 19.

The *CYFA* does not affect the application of provincial child welfare legislation to the extent that they are not in conflict with or inconsistent with the *CYFA*⁴⁰⁹ or the law of an IGB with a coordination agreement. It is important to the *Anishinaabeg* that the *CYFA* guarantees that the provincial system will not override their law and ensures that service providers of other jurisdictions will adhere to the minimum national standards.

The *CYFA* reflects jurisdictional lines in that the federal government aims to protect Indigenous interests in the creation of minimum standards and protects the operation of Indigenous laws from potential provincial claims that their child welfare legislation is being infringed.⁴¹⁰ The *CYFA* does provide a shield for Indigenous communities from potential disputes over recognition by provinces, to “prevent the types of uncertainty, delays or denials that will arise if provinces are given the opportunity to disregard or challenge Indigenous laws.”⁴¹¹ Should a First Nation choose to pursue a Coordination Agreement, the *CYFA* “provides a nudge to get the province to the table”⁴¹² within the legislated timeframe of one year. Should a province not participate, the Indigenous law and Coordination Agreement will still have effect.⁴¹³

iii) Reference re An Act respecting First Nations, Inuit and Metis children, youth and families

In February 2024, the Supreme Court of Canada (SCC) released its’ unanimous decision in the *Reference re An Act respecting First Nations, Inuit and Metis children, youth and families*⁴¹⁴ (*Reference re CYFA*) case and held that the *CYFA* as a whole is

⁴⁰⁹ *Ibid*, the *CYFA*, section 4.

⁴¹⁰ *Supra* at note 403, Naomi Metallic, “*Extending Paramountcy*” at page 6.

⁴¹¹ *Ibid*, at page 7.

⁴¹² *Ibid*, at page 8.

⁴¹³ *Supra* at footnote 9, the *CYFA*, section 20(3)(b).

⁴¹⁴ *Supra* at footnote 340, *Reference re CYFA*, 2024 SCC 5.

constitutionally valid. The Attorney General of Quebec had asked the Quebec Court of Appeal (QCCA) by reference to consider the constitutionality of the *CYFA*.⁴¹⁵ Quebec argued that the *CYFA* is *ultra vires* Parliament because it interferes with provincial public service⁴¹⁶ by directing how child and family services are delivered and that it unilaterally alters the constitutional framework by recognizing indigenous governments as a third order of government. The QCCA held that the *CYFA* was constitutional except for the conflict provisions of sections 21 and 22, that Indigenous laws have the force as federal laws, and prevail over provincial laws to the extent of any conflict or inconsistency. The Attorney General of Quebec and the Attorney General of Canada both appealed the QCCA decision to the SCC.

The SCC found that the core purpose and effect of the *CYFA* was to “protect the well-being of Indigenous children, youth and families by promoting the delivery of culturally appropriate child and family services and, in so doing, advances the process of reconciliation with Indigenous peoples.”⁴¹⁷ Further the *CYFA* “incorporates by reference the laws adopted by an Indigenous group, community or people and gives them the force of law as federal laws.”⁴¹⁸

Constitutionally Valid

The SCC held the *CYFA* falls squarely within Parliament’s legislative jurisdiction over “Indians, and Lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*, and does not alter the Constitution. Jurisdiction provided for

⁴¹⁵ *Renvoi à la Cour d’appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, [2022 QCCA 185](#).

⁴¹⁶ *Supra* at note 182, the *Constitution Act, 1867*, provincial jurisdiction, section 92(13) property and civil rights, and 92(16) matters of a local and private nature.

⁴¹⁷ *Supra* at footnote 9, paragraph 41.

⁴¹⁸ *Supra* at footnote 340, *Reference re CYFA* at paragraph 122.

in section 91(24) is broad in scope and relates first and foremost to ‘Indianness’ or Indigeneity, that is, Indigenous peoples as Indigenous peoples.⁴¹⁹

Section 91(24) can be read as including a protective function. Prior to Confederation the British Crown committed to protect First Nations and their rights from incursion by settlers and the colonies. This is made clear from the text of the *Royal Proclamation 1763*, that “established a Crown monopoly to make treaties with the original Nations”⁴²⁰ as well as in the terms of the treaties themselves, where the *Anishinaabeg* sought and obtained assurances that their way of life would continue ‘free as by the past’, not dissimilar to Quebec and the provinces. This suggests that “the power of section 91(24) was meant to represent a transfer of power from the imperial Crown to the federal government at Confederation to fulfill the obligations pursuant to the treaties and the *Royal Proclamation of 1763*.”⁴²¹ Through the division of powers, the federal government has had the responsibility to protect Indigenous lands, interests and governance from encroachments from local populations and their governments represented by the provinces. Many consider this to be the driving force behind section 91(24).⁴²²

The colonial narrative underlying the division of powers is problematic to the *Anishinaabeg* because it assumes that the federal and provincial governments are the only legitimate orders of government based solely on the provisions in the *Constitution*

⁴¹⁹ Ibid at paragraph 95.

⁴²⁰ *Supra* at footnote 1, Fred Kelly “*Traditional Governance*” at page 17.

⁴²¹ Catherine Dunne “*Sui Generis Self-Government: The Lasting Impacts of the Doctrine of |Discovery in the Reference to the Quebec Court of Appeal in Relation with the Act Respecting First Nation, Inuit and Metis Children, Youth and Families*” UBC Law Review, 2023 Vol 56:2 397 at p 415.

⁴²² *Supra* at footnote 403, see generally Naoimi Metallic in “*Extending Paramountcy*” and referencing John Borrows in “*Canada’s Colonial Constitution*” in *The Right Relationship: Reimagining the Implementation Historical Treaties*, John Borrows and Michael Coyle, eds, (Toronto: University of Toronto Press, 2017) at 18.)
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Act, 1867. The presumption that the Crown has absolute sovereignty, legislative power and underlying title flows from the paradigm that Indigenous people and their legal orders are subsumed and subordinate within the constitutional framework.⁴²³ The notion that European nations gained title and sovereignty over the territory that is now Canada simply by ‘discovering’ it⁴²⁴ builds upon racist legal fictions about Indigenous peoples⁴²⁵ and relegates them to a subordinate position. The SCC in the *Reference re CYFA* continues to perpetuate the status quo that Indigenous people are constrained within a *de facto* Crown sovereignty, and, reserved for itself the likelihood to “formally rule on the scope of s. 35.”⁴²⁶

Despite the notion of a protective responsibility, the federal government has historically utilized section 91(24) and the *Indian Act* to exert power over First Nation people and their lands as opposed to protecting their interests as was the case with the Residential schools. Additionally, the division of powers between the federal and provincial governments has more often led to jurisdictional neglect where neither government accepts nor claims responsibility,⁴²⁷ as was the unfortunate instance that culminated with Jordan’s Principle. A protective purpose for section 91(24), as opposed to an assimilationist purpose couched in a colonial narrative, is more consistent with reconciliation, however there is much more work to be done. The TRC and the *UNDRIP*

⁴²³ *Supra* at note 421, Catherine Dunne, “*Sui Generis*”.

⁴²⁴ *Supra* at note 403, Naomi Metallic “*Extending Paramountcy*”

⁴²⁵ See the *St Catherine’s Milling and Lumber v R., (1886), 10 OR 196 (HC); [1887] 13 SCR 577; [1888] UKPC 70 (JCPC)*. An infamous early division of powers case on underlying Aboriginal title in the Treaty #3 territory with racist commentary. See also *supra* at note 219, *Racine v Woods*

⁴²⁶ *Supra* at footnote 340, *Reference re CYFA* at paragraph 118.

⁴²⁷ *Ibid* at paragraph 100. See also *supra* note 229, 2016 CHRT 2 and *supra* at note 338, 2018 CHRT 4 generally on the FNCFS program and Jordan’s Principle.

Act have substantively paved the way in a more promising direction aligning more closely with the *Anishinaabe* understanding of sovereignty and treaty federalism.

Self-Government

In the *Reference re CYFA*, the SCC stated that the affirmation of the inherent right of self-government is within the authority of parliament. The court also stated that “the federal government can now no longer assert, in any proceedings or discussions, that there is no Indigenous right of self-government in relation to child and family services.”⁴²⁸ The finding and affirmation of the inherent right is consistent with the *Anishinaabe* understanding of their sovereignty and assertions that they have made through the ongoing implementation of their laws.

The *UNDRIP Act* describes self-government as “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”⁴²⁹ Fred Kelly, in *Traditional Governance* explains that to the *Anishinaabeg*, the inherent right of self-government exists free of any external pressure. They have the inalienable right to do things their way based on a system of inherent rights and duties embedded in the culture of *Anishinaabe* society that flows from the universal scheme according to the Laws of the Creator.⁴³⁰ To the *Anishinaabe*, self-government is an actual right that they have continuously implemented unilaterally through *Anishinaabe* initiatives, including in the absence of legislative recognition, self-government agreements or court action.

⁴²⁸ *Supra* at note 340, *Re Reference CYFA* at paragraph 63.

⁴²⁹ *Supra* at note 341, the *UNDRIP Act*, Article 4.

⁴³⁰ *Supra* at note 1, Fred Kelly “*Traditional Governance*” at pages 7 – 8.

The affirmation within the *CYFA* of “the inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982*”⁴³¹ also poses potential risks to Indigenous inherent rights. “When written into legislation, judicial interpretation and application can be an insidious form of interference with Indigenous law and customs.”⁴³² The inherent right of self-government, as a right contingent upon external permission or interpretation leaves it subject to infringement and highlights an oxymoron within the framework that an inherent right of self-government could be justifiably infringed by another government.

To reiterate, “an act delegating the will to others who could not possibly be authorized to exercise that power for the Anishinaabe. Such an act is not permissible.”⁴³³ “It contradicts the very definition of self-government, which is necessarily rooted in respect for independence and autonomy. What can ‘self’ mean if it is subject to ‘another’”⁴³⁴

Treaty federalism and legal pluralism are mechanisms that uphold the compatibility of Indigenous sovereignty as exemplified in the treaties and the assertion of Crown sovereignty. Indigenous sovereignty could not be extinguished by the mere assertion of Crown sovereignty alone. The assumption that a European power could unilaterally diminish Indigenous authority constrains Indigenous peoples within a constitutional framework where they are subsumed. The assumption poses a risk that any Indigenous self-government rights can be adapted to fit within colonial legislative

⁴³¹ *Supra* at footnote 9, the *CYFA* section 18(1).

⁴³² *Supra* at footnote 249, Celeste Cuthbertson, “*Statutory Recognition of Indigenous Custom Adoption*” at page 54.

⁴³³ *Supra* at footnote 1, Fred Kelly “*Traditional Governance*” at page 48

⁴³⁴ *Supra* at note 421, Catherine Dunne, “*Sui Generis*” page 421.

contours. Either assumption would negate the sanctity and legitimacy of treaties and *Anishinaabe miinigoziwin*.

Treaties reflect the intention to share jurisdiction over the same territory. Both the peace and friendship and the numbered treaties were manifestations and acknowledgements of the existence and exercise of Indigenous self-determination and inherent jurisdiction. “Treaty federalism united independent First Nations under one Crown, *but not under one law*.”⁴³⁵ Historically, colonizers were able to extend de facto sovereignty across North America, but the legal basis for sovereignty remains embedded in a model that shares jurisdiction and authority with Indigenous peoples.⁴³⁶

Treaty federalism calls for a dual system of law and governance where indigenous peoples and the Crown share jurisdiction. As Fred Kelly wrote,

“an objective observer might conclude that the essence of the treaties between the Indigenous nations and the Crown should have brought about a peaceful co-existence and amicable policy arrangement between the two signatories a long time ago. Instead, the implementation and enforcement of Treaties continues to be a most elusive objective and remains the most contentious of issues between the parties.”⁴³⁷

The SCC in the *Reference re CYFA* stated that the affirmation of Indigenous inherent right of self-government may act as a beacon for the federal and provincial governments “to inculcate new attitudes or approaches that will further promote a culture of respect for and reconciliation with Indigenous peoples in Canada.”⁴³⁸ Further, the SCC acknowledged that “Parliament has used the Act to communicate to the courts

⁴³⁵ *Supra* at note 421, Catherine Dunne in “*Sui Generis*” at page 429.

⁴³⁶ *Ibid*, at page 429.

⁴³⁷ *Supra* at note 1, Fred Kelly in “*Traditional Governance*” at page 16.

⁴³⁸ *Supra* at footnote 340, *Re Reference the CYFA*, paragraph 82.

and society its position that the law must recognize the importance of Indigenous self-government in relation to child and family services.”⁴³⁹ Perhaps, the constitutional door has been opened to the reality of de jure sovereignty in Canada emerging from treaty federalism.

Reconciliation

Canada’s legitimacy rests with the treaties. “It is important for all Canadians to understand that without Treaties, Canada would have no legitimacy as a nation. Treaties between Indigenous nations and the Crown established the legal and constitutional foundation of this country.”⁴⁴⁰ Elder Fred Kelly, quoted in the TRC report, emphasized that Treaty making and Aboriginal peoples’ ways of resolving conflict must be central to reconciliation. He said,

“If reconciliation is to be real and meaningful in Canada, it must embrace the inherent right of self-determination through self government envisioned in the treaties.... Where government refuses to implement Aboriginal rights and the original spirit and intent of the treaties, the citizens of Canada must take direct action to forcefully persuade its leadership. Treaties and memoranda of agreement are simply the stage-setting mechanisms for reconciliation. There must be action ... It is upon these rights and obligations that our relationship is founded.”⁴⁴¹

Honouring the wisdom and advice from Canadians of many capacities that have shared their thoughts and experiences memorialized in the pages of the TRC reports provides a foundation and inspiration for the journey to reconciliation.

In the *Reference re CYFA* the SCC recognized the innovation of the *CYFA* and categorized the legislative measures as a “process that some have termed as legislative

⁴³⁹ *Ibid* at paragraph 82.

⁴⁴⁰ *Supra* at note 170, The TRC, “*The Legacy*” at page 249.

⁴⁴¹ *Ibid*, at page 249, quoting Fred Kelly, “*Confessions of a Born Again Pagan*” pages 22–23.

reconciliation”, that is, the enactment of legislation “to respect, promote, protect, and accommodate inherent rights through mechanisms or frameworks elaborated upon within the statute”⁴⁴² The court goes on to say that “legislation of this kind does not purport to be the source of the rights in question, but rather proceeds on the premise that these rights exist.”⁴⁴³

An example of legislative reconciliation is the *Aboriginal Custom Adoption Recognition Act* (“ACARA”)⁴⁴⁴ of the Northwest Territories that recognized custom adoption. The ACARA does not define or allow custom adoptions to take place, it simply records that they have occurred.⁴⁴⁵ The law respects Indigenous peoples’ own understanding of their customary laws, the Minister may appoint a custom adoption commissioner “who have knowledge and understanding of aboriginal customary law in the community or region in which they reside.”⁴⁴⁶ Ontario’s customary care provisions discussed previously are another example of legislative reconciliation.

The SCC in the *Reference re CYFA*, sought to explain the term “process of legislative reconciliation”⁴⁴⁷ and as such considered how

“the purpose set out in s. 8 reflect Parliament’s openness to using three different types of legal norms that will be interwoven in this framework for reconciliation to ensure the well-being of Indigenous children: the legislative authority of Indigenous peoples in relation to child and family services, the legislative provisions enacted by Parliament to establish national standards, and the international standards referred to in the Declaration. The metaphor of “braiding” together these three types of norms has been helpfully proposed to

⁴⁴² *Supra* at note 340, SCC *Reference re CYFA* at paragraph 18. Quoting N.S.W. Metallic, “*Aboriginal Rights, Legislative Reconciliation and Constitutionalism*” (2023) 27:2 Rev. Const. Stud 1, at page 5.

⁴⁴³ *Ibid* at paragraph 18.

⁴⁴⁴ *Aboriginal Custom Adoption Recognition Act*, (ACARA) S.N.W.T. 1994 c 26.

⁴⁴⁵ *Supra* at note 249, Celeste Cuthbertson “*Statutory Recognition of Indigenous Custom Adoption*” at page 42.

⁴⁴⁶ *Supra* at note 444, ACARA section 6.

⁴⁴⁷ *Supra* at note 340, SCC *Reference re CYFA* at paragraph 6.

explain how the Declaration [*UNDRIP*] should be implemented in Canada, so as to “work out **how state law and Indigenous law could be interwoven**, [emphasis added] with guidance from international law, to form a single, strong rope.”⁴⁴⁸

The metaphor is a useful analogy of interweaving the three tenets of the *CYFA*, however the notion of interweaving *Anishinaabe* law with colonial or any other laws is contrary to the *Anishinaabeg* perspective in so far as a blending of two or more distinct legal systems is proposed.

Blending of laws has the inherent result that perpetuates colonial superiority over *Anishinaabe* law, it becomes vulnerable to misinterpretation by a system with divergent values. The *Anishinaabeg* are guided by *miinigoziwin* and have consistently worked towards restoring their own laws unfettered by colonial laws⁴⁴⁹ with a focus not on blending, but rather on harmonizing the administration of *Anishinaabe* law and colonial or other laws. In this way, *Anishinaabe Inakonigewin* will not lose meaning in translation or through interpretation by those not indoctrinated or without authority.

The European Union (EU) has developed a process of harmonisation of laws for the purpose of “creating common standards across a common market. Each EU member has primary responsibility for the regulation of most matters within their jurisdiction, and consequently each has its own laws.”⁴⁵⁰ Each state maintains independence and autonomy yet collaborates towards a common goal to “facilitate free trade and protect citizens.”⁴⁵¹

⁴⁴⁸ *Ibid*, at paragraph 7, quoted from G. Christie, “*Indigenous Legal Orders, Canadian Law and UNDRIP*” in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (2017), 48, at page 48. See also O. Fitzgerald and R. Schwartz, “Introduction” *ibid* 1 at page 3.

⁴⁴⁹ *Supra* at note 132, see Fred Kelly’s Four Orders of Anishinaabe Law, Diagram #2.

⁴⁵⁰ Wikipedia, “*Harmonisation of Law*”

⁴⁵¹ Peter E Nygh, Peter Butt (ed). (1997). “Butterworth Australian LEGAL Dictionary” page 543.

The harmonization of laws concept employed by the EU could be a comparative example to utilize in the context of the *CYFA* in relation to the coordination agreement. Section 20(2) is a mechanism for collaboration between Indigenous, federal and provincial governments to negotiate “the exercise of legislative authority” respecting how the administration of the respective laws will be administered independently and concurrently. Harmonizing the administration of distinct legal orders as opposed to blending, is an element of reconciliation, and can be attained in the context of *Anishinaabe* and Canadian laws.

The TRC most succinctly described a revolutionary action that would have significant and long-lasting ripple effects for the future of Canada and all Canadians:

Call To Action #45)

“We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

- i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.
- ii. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
- iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
- iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements. The principles enunciated in

the new Royal Proclamation will serve as the foundation for an action-oriented Covenant of Reconciliation, which points the way forward toward an era of mutual respect and equal opportunity.”⁴⁵²

Reconciliation in Canada is long overdue, it is complex, multifaceted and requires ongoing attention and action. The *CYFA* is a good beginning.

⁴⁵² *Supra* at note 170, The TRC “*Honouring the Truth, Reconciling for the Future*” Summary of the Final Report of the TRC of Canada at pages 252 - 253.

Part 5) Conclusion

The *Anishinaabeg* have been relentless in their embrace of *miinigoziwin* guiding the implementation of their inherent jurisdiction in relation to their children and families. The enactment of the *CYFA* and recognition of their inherent right of self-government does not mean that the work of restoring *Anishinaabe* jurisdiction starts now or ends here, but rather it is understood as another step in the pathway towards their ultimate goal of restoring *Anishnaabe* law and systems according to *miinigoziwin*. The *CYFA* does not eliminate the application of colonial law and policies, however, it opens the door a little wider for the *Anishinaabeg* to further operationalize their laws and continue to regain decision-making of their children, their families and control their future.

To maximize this opportunity to decolonize the *Anishinaabeg* must again turn to their knowledge keepers, follow the traditional processes in ceremony and strengthen the roots of law and language that remain strong. This well trodden path ensures that our cultural integrity will be sustained and in turn will sustain future generations to be inspired to fulfill their potential, *aando-pawaachigin*. To not do so risks perpetuation of the status quo with little change for the children and families trapped within the confines of a provincial legislative framework in a delegated authority model.

The laws developed by the *Anishinaabeg* will vary in their inclusion of *Anishinaabe* legal concepts. The *CYFA* provides an opportunity to focus heavily upon the restoration of *Anishinaabe* law closing the door on the provincial child welfare framework. The *Anishinaabeg* operationalizing their inherent jurisdiction in relation to their children and families must exercise due diligence and carefully implement their laws to maximize this newest opportunity; *weweni*.

The Treaty #3 *Anishinaabeg* will continue to be innovative in the exercise of sovereignty just as has been done for millennia. We will continue to fulfill our responsibility of *mino-ombigiosowin* for our children and their children and their children's children. As we adapt to new situations and overcome obstacles placed in our pathway, we will continue to inspire each other to reflect and follow our *Anishinaabe*-ness.

When we look closely, it is apparent that *Anishinaabe* law and language is vibrant, relevant and very much integral to all that we do.

Each First Nation has the responsibility to determine the best path for their children and families given the options presented in the *CYFA* and fulfilling the responsibility of *miinigoziwin*. Whether the decision is to maintain the status quo or fully embrace every opportunity to inflate our inherent authority, we can learn from each other, share our successes and warn of the pitfalls.

It is my hope that in sharing the vision of our ancestors and Elders, and that following the steps in the journey that the Treaty #3 *Anishinaabeg* have taken to protect the children, our most precious resource and heart of our Nation, that it will inspire others to see that we intrinsically have all of the solutions that work best for us in this place where the Great Spirit has planted us.

We cannot forget the family, *ngoondote*, collective hearts embedded into one, they are the core of resilience and together have the strength to emerge from the depths of despair. And, in all of this we cannot forget the children, integral to their family, they are the reason that we persist.

Mi-e-eh. Kizhe'wenimin ninim n'dinawemaaganaatok.

Appendix A

BIBLIOGRAPHY

LEGISLATION

- Abinoojii Inakonigewin* (Child Care Law), the Anishinaabe Nation in Treaty #3, 2005.
- Aboriginal Custom Adoption Recognition Act, S.N.W.T. 1994 c 26.
- An Act Respecting Child and Family Services* (Indigenous Jurisdiction and other Amendments), S.M. 2024 c-36.
- An Act Respecting First Nation, Inuit and Metis Children, Youth and Families*. S.C. 2019 c-24
- Bill 15, *The Child and Family Services Act, (Recognition of Customary Care of Indigenous Children)*, 5th Session, 40th Legislature, Manitoba.
- Charter of Rights and Freedoms*, 1982, R.S.C.
- Constitution Act, 1867*, R.S.C. 1985, App II, No.5
- Constitution Act, 1982*, being Schedule B of the *Constitution Act, 1982* (U.K.), 1982, c.11
- Child and Family Services Act*, Manitoba, C.C.S.M. c-80, 1985.
- Child and Family Services Act*, Ontario, R.S.O. c. C.11, 1990.
- Child & Family Services Authorities Act*, C.C.S.M. c-90
- Child, Youth and Family Services Act*, 2017 S.O. 2017, c 14, Schedule 1.
- Customary Care Code*, Wabaseemoong Independent Nations, September 2017.
- Indian Act*, R.S.C. 1985, c. I-5
- Indian Act*, R.S.C. 1951, c. 29
- Indian Child Welfare Act of 1978*, 25 U.S.C. ss 1901-63.
- Minisiwin Winiswaywin, MKO Family Law, January 2000.
- The Paypom Treaty, of October 1873.
- Treaty No. 3, Between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions, Queen's Printer, Ottawa, 1966. Cat. No. Ci 72-0366.
- United Nations General Assembly, "*Convention on the Rights of the Child*", 20 November 1989, United Nations, Treaty Series, vol 1577.
- United Nations Declaration of the Rights of Indigenous Peoples, GA Res 61/295 (Annex).
- United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021 c. 14

JURISPRUDENCE

- Mahe v Alberta*, (SCC), [1990] 1 SCR 342
- Racine v Woods* (SCC), [1983] 2 SCR 173
- Reference re *An Act Respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5
- Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis, 2022 QCCA 185
- St. Catherine's Milling & Lumber Co. v R.*, (1886), 10 OR 196 (HC); [1887] 13 SCR 577; [1888] UKPC 70 (JCPC).

- The First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, 2016 CHRT 2
- The First Nations Child and Family Caring Society of Canada v Attorney General of Canada*, 2018 CHRT 4

SECONDARY SOURCES: MONOGRAPHS

- Avery-Kinew, Kathi, Fred Kelly and Diane M. Kelly, *"The Creator Placed Us Here; Timeline of Significant Events of the Anishinaabeg in Treaty #3"* (Grand Council Treaty #3, October 2013).
- Baskatawang, Leo, *"Reclaiming Anishinaabe Law: Kinamaadiwin Inaakonigewin and the Treaty Right to Education"* (University of Manitoba Press, 2023).
- Bellefeuille, Gerard, Sydney Garrioch and Frances Ricks, *"Breaking the Rules: Transforming Governance in Social Services"* (Awasis Agency of Northern Manitoba, 1997).
- Blackstock, Cindy, Tara Prakash, John Loxley and Fred Wien *"Wen: de: We are Coming to the Light of Day"* First Nations Child and Family Caring Society, (2005).
- Bohaker, Heidi, *"Doodem and Council Fire: Anishinaabe Governance through Alliance"* (University of Toronto Press, 2020).
- Courchene, Dr. Dave Jr., Chief Dr. Harry Bone, Florence Paynter, Philip Paynter, Chief Katherine Whitecloud, Chief Robert Maytwayashing, Mary Maytwayashing and Gordon Walker, with contributions from the late Orianna Courchene, *"Wahbung - The Resurgence of a People: Clearing the Path for Our Survival"* (Turtle Lodge Central House of Knowledge, 2020).
- Cuthbertson, Celeste, *"Statutory Recognition of Indigenous Custom Adoption: It's Role in Strengthening Self-Governance Over Child Welfare"*, (2019) 28 Dal J Leg Stud 29.
- Dunne, Catherine, *"Sui Generis, Self-Government: the Lasting Impacts of the Doctrine of Discovery in the Reference to the Quebec Court of Appeal in Relation with An Act Respecting First Nation, Inuit and Metis Children, Youth and Families"* UBC Law Review 2023 vol 56:2 397.
- Ferris, Peter, Estelle Simard, George Simard and J Ramdatt. *"Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services"* Practices in First Nations Child Welfare Management and Governance (First Nations Caring Society, September 2005).
- Francis, Annie M., William J. Hall, David Ansong, Paul Lanier, Travis J. Albritton and Ashley McMillan, *"Implementation and effectiveness of the Indian Child Welfare Act: A systematic review"* Children and Youth Services Review, Vol 146, (March 2023), 106799.
- Friedland, Hadley, *"Reference Re, Racine v Woods: Reference as to whether the Indigenous Nations Court Ought to adopt and apply the Supreme Court of Canada's decision in Racine v Woods"* (2020) Canadian Native Law Reporter 177.
- "Reflective Frameworks: Methods for Accessing: Understanding and Applying Indigenous Laws"* Indigenous Law Journal / Volume 11, Issue 1/2012.

- Holzmann, Tim and Leo Waisberg, *"We Have One Mind and One Mouth. It is the Decision of Us All: Traditional Anishinaabe Governance of Treaty #3"* (Grand Council Treaty #3, October 2001).
- *"We Kept Our Part of the Treaty; the Anishinaabe Understanding of Treaty #3"* Grand Council Treaty #3, 2014).
- Josey, Fran Kueler and Judy McRee, *'Ayawdwasowin: pe kiwe Come Home: Indigenous Adoptee Re-Connection with Self, Family and Community'* in *"ohpikinawasowin: Growing a Child"* Implementing Indigenous Ways of Knowing with Indigenous Families, edited by Leona Makokis, Ralph Bodor, Avery Calhoun, Stephanie Tyler (Frenwood Publishing Company Limited, 2020).
- Kelly, Diane M., *"Customary Care: An Exercise in First Nations' Governance – Principles & Best Practice Guideline"* Association of Native Child & Family Service Agencies of Ontario, (2006).
- Kelly, Fred, *"Bimiiwinitisowin Omaa Akiing, Notes on the Constitution of the Nation"* Grand Council Treaty #3, (September 1998).
- "Pazaga'owin: Reclaiming Our Wings: Transition to Nationhood"* a political position paper prepared for Grand Chief Leon Jourdain, (Grand Council Treaty #3, 2000).
- "Relationships of the Grand Council as the Government of the Anishinaabe Nation in Treaty #3"* a political position paper, (Grand Council Treaty #3, August 1998).
- "Traditional Governance: The Anishinaabe Nation in Treaty #3"* Unpublished, in this author's files. (May 2001).
- Kelly, John P. *"We Are All in the Ojibway Circle"* 1977, reprinted by permission of the author in, *"From Ink Lake: Canadian Stories Selected by Michael Ondaatje"* Lester & Orpen Dennys, (1990).
- Kelly-Kinew, Peter. *"The Gift of the Eagle Whistle"* translated to German for publication in Geo Magazine, (July 1988).
- Kinew, Tobasonakwut. *"Let Them Burn the Sky, Overcoming Repression of the Sacred Use of Anishinaabe Lands"* in *"Manitowapow: Aboriginal Writings from the Land of Water"* (Highwater Press, 2011).
- "Making Relations: Citizenship as the Inherent Right of the Anishinaabe Nation of Treaty #3"* (December 17, 2011).
- "Traditional Treaty-Making and Related Protocols from an Anishinaabe Perspective"* (September 2009).
- "The Assembly of First Nations Delegation to Rome, April 25 to May 2, 2009"* written Reflections as the Anishinaabe Elder during the delegation to Pope Benedict XVI.
- Landertinger, Laura *"Child Welfare and the Imperial Management of Childhood in Settler Colonial Canada, 1880s-2000s"* Ph.D. Thesis, University of Toronto, (2017).
- Linklater, Irene, and Gilbert Smith, *"Abinoojii Omibig Igos Owin; Anishinaabe Elders Teachings on Abinoojii Caring and the Family"* (Grand Council Treaty #3, 2012).
- Lovesick, Joan A., *"The Political Evolution of the Boundary Waters Ojibwa: Grand Council Treaty #3"*, Papers of the Twenty-Fourth Algonquian Conference (Ottawa: Carleton University) 1993, 280 – 305.

- Makokis, Leona, Ralph Bodor, Avery Calhoun, Stephanis Tyler (editors), *“ohpikinawasowin, Growing a Child: Implementing Indigenous Ways of Knowing with Indigenous Families”*, (Fernwood Publishing, 2020).
- Metallic, Naomi Walqwan, *“A Human Right to Self-Government Over First Nations Child & Family Services and Beyond: Implications of the Caring Society Case”* Journal of Law and Social Policy 28. (2018): 4-41.
- Metallic, Naomi Walqwan, Hadley Friedland and Sarah Morales. *“The Promise and Pitfalls of C-92: An Act Respecting First Nation, Inuit and Metis Children, Youth and Families”* (Yellowhead Institute, 2019).
- Miller, Cary, *“Ogimaag: Anishinaabe Leadership, 1760 – 1845”* (Lincoln, NE: University of Nebraska, 2010).
- Morris, Alexander. *“The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based”* (Fifth House Publisher, 1991).
- Ningewance, Patricia M., *“Ojibwe Thesaurus”* (Mazinaate Inc., 2020).
- “Reclaiming Our Territory, Word by Word”* (Mazinaate Inc., 2020).
- “Survival Ojibwe: Learning Conversational Ojibwe in Thirty Lessons”* (Mazinaate Inc., 2020).
- “Talking Gookom’s Language: Learning Ojibwe”* (Mazinaate Press, 2004).
- Peers, Laura and Jennifer S.H. Brown. *“There is no end to relationship among the Indians: Ojibwa Families and Kinship in Historical Perspective”* The History of the Family, An International Quarterly, Volume 4, Number 4, pages 529 – 555, (1999).
- Stark, Jason Kekek, *“Anishinaabe Inaakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin”* 82 Mont L. Review 293 (2021).
- Starr, Marlene, *“Governance Development Initiative: A Community Decision-Making Resource Tool – Implementing our Traditions”* (Grand Council Treaty #3, March 2009).
- Tanner, John, *“A Narrative of the Captivity and Adventures of John Tanner”* G. & c. & H. Carvill, 1830, (Reprinted by Ross & Haines, 1956).
- Turpel-Lafond, Mary-Ellen, *“Bill C-92, An Act Respecting First Nation, Inuit and Metis Children, Youth and Families”* A Memo prepared for the Assembly of First Nations Chiefs Committee on Children, Families and Self-Determination, (November 2020).
- Turpel-Lafond, M.E. *“Primer on Practice Shifts Required with Canada’s Act Respecting First Nations, Inuit and Metis Children, Youth and Families Act”* (Assembly of First Nations, 2019).
- Wapshkaa Ma’ingan (Aaron Mills). *“Aki, Anishinaabek, kaye tahsh Crown”* Indigenous Law Journal / Volume 9, Issue 1/2010.

SECONDARY SOURCES: GOVERNMENT REPORTS

- Cantrell, Deb, Marion Roberts and David Barnes of Lough Barnes Consulting Group, *“A Formal Customary Care, A Practise Guide to Principles, Processes and Best Practices”* (Ministry of Children and Youth Services, Ontario, 2013).

Framework Agreement between Grand Council Treaty #3 and Canada as represented by the Minister of Indian Affairs and Northern Development, signed May 22, 1997.

Hamilton, A.C., and C. Murray Sinclair, "Report of the Aboriginal Justice Inquiry of Manitoba *Aboriginal Justice Inquiry Report*", Volume 1, "The Justice System and Aboriginal People" (Winnipeg: Queen's Printer, Manitoba, 1991)

Report of the Royal Commission on Aboriginal Peoples (RCAP), volume 1, "*Looking Forward, Looking Back*" (Canada, 1996).

Kimelman, Edwin C., Associate Chief Judge, "*No Quiet Place*" The Final Report to M.S. Smith, Minister of Community Services, the Review Committee on Indian and Metis Adoptions and Placements (Manitoba Community Services, 1985).

The Truth and Reconciliation Commission of Canada, "*The Legacy*" Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (Canada, 2015).

SECONDARY SOURCES: INTERVIEWS, AUDIO, VISUAL, BLOGS

Bird, Louis. "*Token Elder*" Louis Bird, Interview on First Voice, CBC Radio, Sounds Like Canada, Produced by Maureen Matthews, (April 2003).

Kelly, Fred, "*Anishinaabe Sacred Law*", RHT Treaty Gathering 2022 | Fred Kelly – Anishinaabe Sacred Law, Youtube.

---"Face to Face" "*The Anishinaabe Worldview and what it Means to be an Anishnaabe Leader*" <https://www.aptnnews.ca/facetoface/elder-fred-kelly-on-the-anishinaabe-worldview-and-what-it-means-to-be-an-indigenous-leader/>, interview by Michael Hutchinson, (APTN February 3, 2016).

Kinew, Tobasonakwut, "*Anishinaabemowin*" (Recorded lectures from the University of Minnesota and Center School, Minneapolis, Minnesota, September 1998 through March 2005).

MacNeil, Kent, "The Inherent Indigenous Right of Self-Government", Ablawg.ca, (The University of Calgary Faculty of Law Blog, 2022, May 4).

<https://ablawg.ca/2022/05/04/the-inherent-indigenous-right-of-self-govenment/>

Metallic, Naiomi W., "*Extending Paramountcy to Indigenous Child Welfare Laws Does Not Offend our Constitutional Architecture or Jordan's Principle*", Ablawg.ca, (The University of Calgary Faculty of Law Blog, August 29, 2022).

<https://ablawg.ca/2022/05/29/extending/paramountcy/to/indigenous/child/welfare/laws/does/not/offend/our/constitutioanl/architecture/or/jordan's/principle>.

Treuer, Anton, '[Decolonise and re-indigenise': The Ojibwe language warrior | Indigenous Rights | Al Jazeera](#)'. Dec 19, 2019.

Wilkins, Kerry. 2022, May 17, With a Little Help from the Feds: Incorporation by Reference and Bill C-92, Ablawg.ca, The University of Calgary Faculty of Law Blog, <https://ablawg.ca/2022/05/17/with/a/little/help/from/the/feds/incorporation/by/reference/and/bill/c-p92/>

SECONDARY SOURCES: OTHER

- Blight, Shannon, Sherry Copenace, Crystal Doolittle, Larry Jourdain and Diane M. Kelly. *"Abinoojii Inakonigewin: A Catalogue of Resources to Support First Nations with Family Service System Development"* (Weechi-it-te-win Family Services, 2023).
- Grand Council Treaty #3, *"Abinoojii Omibig Igos Owin; Anishinaabe Elders Teachings on Abinoojii Caring and the Family"* Child Welfare Summit Minutes, (October 2012).
- "Bimiiwinitisowin Omaa Akiing, Governance on Our Land"* Community Consultation Feedback, (1998/99).
- "Bimiiwinitisowin Omaa Akiing, Governance on Our Land"* Newsletter Vol 2 July 2002
- "Capacity Building for Abinoojii Inakonigewin in Treaty #3 Nation"* briefing document, (January 2003).
- "Customary Care; A Traditional Anishinaabe Concept with 21st Century Accountability Structures"* (December 2003).
- "In No Case May a People Be Deprived of its Own Subsistence"* prepared for Grand Chief Robin Greene, approved by the Chiefs of Grand Council Treaty #3, (June 5, 1986).
- "Millenium Resolution"* (2000).
- "While People Sleep: Sudden Deaths in the Kenora Area"* 1973.
- Jourdain, Leon, Grand Chief of Grand Council Treaty #3, *"Bill C-7; The Tools of Self-Government or Perpetuation of the Status Quo?"* presentation to the Standing Committee on Indian Affairs and Northern Development, (undated).
- Kelly, Diane M. and Sherry Copenace, *"Abinoojii Inakonigewin: Community Engagement Guide"* (Weechi-it-te-win Family Services, October 2019).
- Kelly, Diane M., *"Abinoojii Inakonigewin: Community Engagement Process 2019/20 Report"* (Weechi-it-te-win Family Services, 2021).
- Kinew, Tobasonakwut Grand Chief, *Address to the Assembly of First Nations Constitutional Conference*, Ottawa, Ontario, (November 26, 1991).
- Remarks as Grand Council Treaty #3 Grand Chief to the Canadian Bar Association meeting on Aboriginal peoples and Taxation, Edmonton, Alberta, (April 23, 1993).
- Lovesick, Joan Ph.D. M.E.S., *"Expert Report"* for Keewatin v MNR and the AG Canada, (Ontario Court of Justice) prepared for Robet Janes, Miller Thomson LLP, July 9, 2008.
- Mandamin, Eli, Grand Chief of Grand Council Treaty #3, *"Biminidizowin Omaa Akiing"* Speaking notes from a meeting with Indian Affairs Minister Ron Irwin, July 24, 1996.
- Matthews, Maureen, Roger Roulette and Read Valentine. *"Anishinabemowin: The Language of Pimachiowin Aki"* Discussion Paper for the Pomachiowin Aki UNESCO World Heritage site proposal, (April 2010).
- Weechi-it-te-win Family Services, *"Abinoojii Inakonigewin: A Catalogue of Resources to Support First Nations with Family Service System Development"* Shannon Blight, Diane M. Kelly, Sherry Copenace, Crystal Doolittle and Larry Jourdain, contributors (2023).