

-Draft 2-

POLITICAL LEADERSHIP MEMORANDUM OF UNDERSTANDING

Between:

The First Nations Summit
and
The Union of BC Indian Chiefs
and
The BC Assembly of First Nations
and
The Métis Nation BC
and
The United Native Nations
and
The Province of British Columbia
and
The Government of Canada

JAMC MOU
RENEWAL -
PROPOSED MOU

WHEREAS:

- A. The Parties acknowledge a collaborative relationship was made possible through the mutual agreement among the Aboriginal Leadership of British Columbia, as expressed through the historic Tsawwassen Accord (June 11, 2002).
- B. On September 9, 2002 the Province of British Columbia and Aboriginal Political leaders agreed to enter into a Memorandum of Understanding for Aboriginal Children that recognizes that First Nations, the Métis Nation, Inuit and other Aboriginal Peoples have inherent rights with respect to and jurisdiction over the safety and well being of their children and families, regardless of residency.
- C. The aspirations and intent of the 2002 Memorandum of Understanding for Aboriginal Children were not fully realized and as a result of this, the working relationship as outlined in clause B has been expanded to include the Government of Canada and other Aboriginal partners; this MOU serves as a renewed commitment to this relationship.
- D. The Parties agree that an Aboriginal Child & Family Service Plan is necessary to improve the safety and well-being of Aboriginal children, families and communities.
- E. Child and family services for Aboriginal people encompass the physical, spiritual, mental, economic, emotional, environmental, social and cultural wellness of the individual, family and community and needs to be addressed holistically, but for the purposes of this Memorandum of Understanding, the focus is on child and family services.

- F. The Parties acknowledge and agree that First Nations, the Métis Nation, Inuit and other Aboriginal communities require support, including the necessary capacity and resources, to enable them to develop and deliver a full range of child and family services.
- G. The Parties acknowledge that planning, policy and program development, implementation, evaluation and decision-making must be undertaken jointly and severally between the provincial and federal governments, First Nations, the Métis Nation, Inuit and other Aboriginal communities.
- H. The Parties recognize that services to children, families and communities will be culturally appropriate as defined by the Aboriginal communities.

Therefore the Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, the following terms mean:

- Aboriginal Child and Family Service Plan
- Aboriginal Operational Partners
- Equitable Access
- MCFD Leadership Team
- Reciprocal Relationship
- Technical Working Group

2. PURPOSES

2.1 The purpose of this MOU is to:

- a) Establish an on-going forum to carry out a collaborative and coordinated partnership for improving the safety and well-being of Aboriginal children, families and their communities; and
- b) Advocate for and support a framework for the development and transfer of a full range of child and family services currently provided by the provincial Crown to Aboriginal governance structures; and
- c) Formalize the distinct relationships between the Aboriginal Political Leadership, ~~Aboriginal Operational Partners~~ and the Crown; and
- d) Support the establishment of and utilize the Independent Provincial Aboriginal Secretariat to ensure the coordination, linkage and integration between the parties identified in clause 1.1c; and

- e) Establish processes, mechanisms and means to ensure Reciprocal Relationships; and

3. Roles and Responsibilities

- 3.1 The Parties acknowledge and respect established and evolving jurisdictional and fiduciary relationships and responsibilities, and will seek to remove impediments to progress.
- 3.2 The Parties recognize that Aboriginal communities need to be partners in the design, delivery and implementation of child and family services through a coordinated approach to improve Aboriginal child and family service outcomes as identified by the expressed needs of Aboriginal communities.
- 3.3 The Parties recognize their collective responsibility and leadership role in improving the safety and well-being of Aboriginal children, families and communities.
- 3.4 The Parties recognize the importance of engaging the expertise of Aboriginal communities and Aboriginal Operational Partners in developing and implementing a detailed Aboriginal Child and Family Service Plan.
- 3.5 The Parties will advance fundamental issues and develop solutions related to Aboriginal child and family services and the transfer of responsibility for service delivery to an Aboriginal governance structure through continued dialogue, negotiations, and action plans.

4. Priorities and Actions

- 4.1 The Parties agree to the following eight areas of collaboration:

- a) **Governance and Relationships**

- The Parties will collaboratively ensure the control by Aboriginal peoples of planning, decision-making, implementation and accountability mechanisms, concerning child and family services for Aboriginal communities, and to establish effective mechanisms for working with governments so that child and family services are better aligned with the needs of Aboriginal communities as defined by Aboriginal communities. Control by Aboriginal people may include Aboriginal Authorities.

- b) **Child and Family Services Prevention and Protection**

- The Parties will work together to improve the safety and well-being of Aboriginal children, families and communities across the full continuum of prevention and child protection services.

- c) **Equitable Child & Family Services**

The Parties seek to provide **Equitable Access** to child and family services that meet the needs of Aboriginal communities, and ensure that equitable and culturally appropriate services as defined by the Aboriginal communities are provided.

Comment [SD1]: Equitable in this context does not necessarily mean equal as it is felt that additional resources may be required in some communities in order for there to be an improvement in service delivery.

d) Information Resources and Management

The Parties will work together to develop the data and information necessary to improve child and family services and to monitor and report on the status of child and family service and Aboriginal children-in-care information for Aboriginal communities in BC.

e) Reciprocal Accountability

Each Party has their own accountabilities for services to Aboriginal children, families and communities; and are collectively committed to their mutual accountability to the deliverables of the MOU and supporting the activities associated with it.

f) Independent Provincial Aboriginal Secretariat

The Parties agree to use the Independent Provincial Aboriginal Secretariat to carry out activities related to this MOU.

g) Aboriginal Director

The Parties support the establishment of an independent, duly empowered Director for Aboriginal children, families and communities to be a member of the MCFD Leadership Team. ~~Therefore, the Aboriginal Director would be responsible to legislative authority, but would act on behalf of the Aboriginal community as member of the MCFD Leadership Team.~~

Comment [SD2]: Key message is that the Aboriginal community wants a representative in the Leadership Team for Aboriginal child and family services; appoint an Aboriginal Director that would be equivalent to the Provincial Director.

h) Dialogue and Communication

The Parties agree to establish and resource regular opportunities to discuss matters identified by the Aboriginal Political, Crown and Aboriginal Operational Partners.

- 4.2 The Parties agree to discuss other priorities and actions which may be identified from time to time, including innovative Aboriginal child and family service initiatives.
- 4.3 The Parties agree to discuss potential changes to legislation, regulations, standards, policies, programs and services impacting Aboriginal children, families and communities.
- 4.4 The Parties agree to develop and implement a conflict resolution protocol and a decision-making protocol.

5. Performance Tracking and Indicators

Comment [SD3]: Initially the indicators measured political MOU by operational standards, group recommends tying the MOU w/ political measures hence the changes made to this section.

5.1 The Parties commit to tracking progress using the following performance indicators including, but not limited to:

- a) Accountable governance structures in place; and
- b) Ratio of protection services is declining in relation to an increase in preventative services; and
- c) Aboriginal community has equitable child and family services; and
- d) Information management and resources are in place; and
- e) Accountability at all levels for child and family service delivery; and
- f) Aboriginal Secretariat established and operational; and
- g) Meaningful involvement in the MCFD Leadership Team; and
- h) Implementation of recommendations put forward by independent reviews; and
- i) Political forum established to ensure open communication and transparency; and
- j) Development and enactment of new legislation
- k) A fair distribution of resources provided for achieving the purposes of this Memorandum of Understanding
- l) Plans supported by the Parties are adequately resourced.

5.2 The Parties agree to consider other performance indicators which may also assist in tracking progress to providing equitable services to Aboriginal children, families and communities.

6. Funding & Resources

6.1 The Parties agree to negotiate adequate funding and support for all of the activities of the Aboriginal Political Leadership, Aboriginal Operational Partners and the ~~Technical Working Group(s)~~, including the establishment of an Independent Provincial Aboriginal Secretariat and reimbursement for expenses in accordance with government financial policy.

6.2 The Parties will provide adequate funding for the implementation of activities and action plans intended to achieve the purposes of this memorandum, subject to annual allocations by Treasury Board.

7. Special Clauses

7.1 The Parties wish to maintain an ongoing government-to-government relationship that does not derogate from or displace the bilateral nation-to-nation relationship between

Aboriginal Peoples and the Government of Canada or from the Crown's fiduciary obligation to Aboriginal Peoples

- 7.2 This MOU is not intended to limit or replace any treaty, interim measures or other negotiations that any of the Parties may be involved in.
- 7.3 Nothing in this MOU shall be interpreted in a manner, which extinguishes, abrogates or diminishes Aboriginal or treaty rights, including Aboriginal title, which are protected under section 35 of the *Constitution Act, 1982*.
- 7.4 Nothing in this MOU shall be interpreted in a manner which diminishes or fetters the statutory responsibilities of the Minister of Children and Family Development or which conflicts with the Minister's duties as a member of the Executive Council of the Province of British Columbia.
- 7.5 Nothing in this MOU shall be interpreted in a manner which fetters the discretion of the Minister of Indian Affairs and Northern Development to contribute to the support of child and family services for Indian children and families on-reserve.
- 7.6 Nothing in this MOU shall be interpreted in a manner that undermines or limits the rights and responsibilities or the participating Aboriginal governments and organizations and their respective Aboriginal Policy Tables to address issues or urgent concern with any level of government.
- 7.7 The dialogue process under this MOU is not intended to displace the obligation of the Crown to consult with Aboriginal governments, nor an Aboriginal government's right to dialogue with the Crown.
- 7.8 Nothing in this MOU shall be interpreted in a manner that implies endorsement or acceptance of provincial legislation and policies by the participating Aboriginal governments and organizations.

8. Annual Review

- 8.1 The Parties agree to undertake an annual review to be completed within 60 days of the anniversary of this MOU to ensure that it meets the needs of Aboriginal children, families and communities as defined by Aboriginal communities.
- 8.2 In carrying out the purposes, responsibilities, priorities and actions, as outlined in this MOU and actions as outlined in the supporting Addendum, the Parties agree to assess their progress on an annual basis.
- 8.3 As may be identified in the annual review, the Parties agree to implement the necessary mechanisms deemed necessary to meet the needs of Aboriginal children, families and communities.

9. Term

- 9.1 Any Party to this MOU may request that the MOU be reviewed, replaced, or amended by providing six (6) months written notice to the other Parties.

9.2 A process to review, amend, or replace this MOU must be undertaken within a timeframe agreed to by all Parties at the commencement of that process.

9.3 The Parties agree that this MOU shall be in effect for 5 years until September 9, 2012 or until all Parties agree that the goals of the MOU have been met.

MOU Draft Definitions

ABORIGINAL AUTHORITIES: an organization created by the BC Ministry for Children and Family Development to deliver child and family support and services including administrative services, policy development, and service allocation, and particularly services previously provided by MCFD including, Family Development, Early Childhood Development, Childcare, Youth Justice, Child and Youth Mental Health, Child Protection and Adoption.

ABORIGINAL COMMISSIONER: independent and appointed member to the MCFD leadership team representing the interests of Aboriginal people in the design of culturally appropriate policies affecting operations, practice, training, funding, planning, and evaluation of Child and Family Services Prevention and Protection.

ABORIGINAL CHILD AND FAMILY SERVICE PLAN: a plan jointly established by the signatories of the political leadership Memorandum of Understanding that encompasses areas of collaboration including Governance relationships, Child and Family Services Prevention and Protection, Equitable Child and Family Services, Information Resources and Management, Reciprocal Accountability, an independent Provincial Aboriginal Secretariat, the establishment of an Aboriginal Commissioner, and Dialogue and Communication.

ABORIGINAL OPERATIONAL PARTNERS: the parties representing Aboriginal Service Providers, Aboriginal Delegated Agencies and Regional Planning Committees.

ABORIGINAL POLITICAL LEADERSHIP: the parties representing the First Nations Summit, the Union of BC Indian Chiefs, the BC Assembly of First Nations, The Métis Nation BC, and the United Native Nations.

EQUITABLE ACCESS: having equal access to services that are ordinarily available to any other resident in similar circumstances.

EQUITABLE SERVICES: having equal services that are ordinarily available to any other resident in similar circumstances.

EQUITABLE RESOURCES: having equal resources that are ordinarily available to any other resident in similar circumstances.

MCFD LEADERSHIP TEAM:

PROVINCIAL ABORIGINAL SECRETARIAT: the administrative and technical support body for the signatories to the Memorandum of Understanding and the Aboriginal operational service providers.

RECIPROCAL RELATIONSHIP: parties that share a common goal, interest, stake and accountability.

POSITION PAPER RELATING TO AN ABORIGINAL COMMISSIONER**Rationale for an Aboriginal Commissioner**

1. It is widely acknowledged that Aboriginal people have the inherent responsibility to receive services from their own organizations.
2. It is also widely acknowledged that the status quo -- of the Ministry providing child welfare services to Aboriginal people -- cannot continue, given the egregious practices of the past and the poor practices that continue to this day. Aboriginal people are in the process of regaining control over the legislation, policies, planning, delivery, and evaluation of child welfare services for their communities.
3. An Aboriginal Commissioner would provide the authority necessary to help ensure that the aspirations of Aboriginal people for their children are achieved.

Role of the Aboriginal Commissioner

The Aboriginal Commissioner will:

- Sit as an equal partner on the MCFD Leadership Team;
- Lead the advocacy for and empowerment of Aboriginal children, families and communities;
- Represent the interests of Aboriginal people in the design of culturally appropriate policies affecting operations, practice, training, funding, planning, and evaluation;
- Represent Aboriginal interests in deliberations with federal and provincial governments (e.g. National Policy Review);
- As a member of MCFD Leadership Team, provide a forum for cultural input to legislation, policies and standards;
- Work with Agency Directors and Aboriginal communities to reduce the number of children in care; and
- Oversee transfer of files and associated funding from MCFD to Aboriginal agencies;

Selection

The Aboriginal Commissioner will be chosen by a JAMC process from a list of candidates identified with experience in operational policy, procedures and practice.

CONCLUSION

The establishment of a Commissioner responsible for Aboriginal children is of paramount importance regardless of future ministry directions. MCFD needs to consider an Aboriginal Commissioner as an integral part of its Leadership Team.