

March 20, 1996

**MEMORANDUM OF UNDERSTANDING**  
(For the Funding of Child Protection Services for Indian Children)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
as represented by the Minister of Social Services

("British Columbia")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister  
of Indian Affairs and Northern Development

("Canada")

**1.0 PURPOSE**

1.1 The purpose of this document is to clarify the roles of the parties and set out the present understanding between the parties pertaining to the financing of certain child protection services to certain Indian persons, as more particularly outlined in this Memorandum.

**2.0 DEFINITIONS**

2.1 All words which are defined in the Act and are used in this Memorandum and are not otherwise defined have the same meaning as ascribed to them in the Act.

2.2 In this Memorandum the following words shall have the meanings ascribed to them:

- a) "Act" means the *Indian Act* and all regulations made thereunder, all as amended or replaced from time to time;
- b) "Caregiver" means a person with whom a child is placed by a Director and who, by agreement with the Director, has assumed responsibility for the child's day-to-day care;
- c) "CFCSA" means the *Child, Family and Community Service Act*, S.B.C. 1994, c. 27, as amended or replaced from time to time;
- d) "Child in Care" means an Indian who is under nineteen years of age and who is in the custody, care or guardianship of the Director;
- e) "Child in Care Costs" means the money paid by Canada to British Columbia for each Eligible Child as more particularly set out in Section 5.2;

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- f) "Child Protection Services" means those services outlined in Appendix "D"
- g) "Director" means director as defined in the CFCSA;
- h) "Educational or Training Program" means educational instruction at a secondary school or at a post-secondary or vocational program of a university, college, technical institute or activity centre for the handicapped;
- i) "Eligible Child" means a child who is registered as an Indian under the Act and who:
  - i) as of August 31, 1995, was a Child in Care residing with a Parent who resided on a reserve at the time of that Child in Care becoming such;
  - ii) was a Child in Care who became such on or after September 1, 1995 and was residing with a Parent who was an On Reserve Resident at the time of that Child in Care becoming such; and
  - iii) until March 31, 1996, was a Child in Care on August 31, 1995, who, at the time of the Child in Care becoming such, was residing with a Parent who had not resided off reserve for a continuous period of one year or more without having received income assistance.
- j) "Memorandum" means this agreement and all appendices attached to it.
- k) "MSS" means British Columbia's Ministry of Social Services.
- l) "On Reserve Resident" means an Indian who is ordinarily resident on a reserve and shall include an Indian who is temporarily off reserve:
  - i) while obtaining health services, including health services provided by a "hospital" and "licensed hospital" (both as defined in the *Hospital Act*, R.S.B.C. 1979 c. 176); "community care facility" (as defined in the *Community Care Facility Act*, R.S.B.C. 1979 c.57), "private mental hospital" and "Provincial mental health facility" (both as defined in the *Mental Health Act*, R.S.B.C. 1979 c. 256) and a "home for special care" (as defined in the *Canada Assistance Plan*, R.S.C. 1985 c. C-1);
  - ii) while attending a provincially-recognized and approved drug and alcohol treatment centre, shelter for battered persons and other community care homes;
  - iii) while serving a criminal sentence imposed by a court, including incarceration at a "correction centre" (as defined in the *Correction Act*, R.S.B.C. 1979, c.

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70), a "penitentiary" or a "community-based residential facility" (both as defined in the *Corrections and Conditional Release Act*, R.S.C. 1985 c. C-44.6), a "place of temporary detention" (as defined in the *Young Offenders Act*, R.S.C. 1980 c. Y-1), or committed to custody under the *Young Offenders (British Columbia) Act*, R.S.B.C. 1979, c. 438) until such sentence is served; and

- iv) while attending an Educational or Training Program full time, as determined by the educational or training institution, and includes any period off the reserve during school breaks and for periods of up to four months unless the individual does not return to school at the end of the period;
- m) "Parent" means:
  - i) the mother of a child, if she has custody of the child;
  - ii) the father of a child, if he has custody of the child;
  - iii) a person to whom custody of a child has been granted by a court of competent jurisdiction or by an agreement; or
  - iv) a person with whom a child resides and who stands in the place of the child's mother or father,

but does not include a Caregiver or a Director. For further clarity, if more than one person above has custody of a child, the Parent is only the person with whom the child resides most often.

### 3.0 INTERPRETATION

3.1 The following rules apply to the interpretation of the words "ordinarily resident" as that phrase is used in this Memorandum:

- a) the question as to where a person is ordinarily resident shall be determined by reference to all of the facts of the case;
- b) the place of ordinary residence of a person is the place of habitation or home and, where a person usually sleeps in one place and has meals or is employed in another place, the place of his ordinary residence is where that person sleeps; and
- c) a person can have one place of ordinary residence only, and that person shall retain such place or ordinary residence until another is acquired.

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3.2 Residency of a Child in Care is determined by reference to where the Child in Care's Parent is ordinarily resident when the child becomes a Child in Care.

#### 4.0 SERVICES AND ELIGIBILITY

4.1 British Columbia shall administer the CFCSA for the benefit of Indian persons under the age of nineteen and Canada shall reimburse British Columbia for the cost of Child Protection Services for any Eligible Child.

4.2 British Columbia shall submit to Canada a notice of admission into care for each Child in Care it considers to be an Eligible Child in the form currently understood to be used by the parties. Such notice shall also include all information necessary for Canada to determine if the Child in Care is an Eligible Child under this Memorandum.

4.3 Based on the information provided by British Columbia pursuant to Section 4.2, Canada will determine if the Child in Care qualifies as an Eligible Child and notify British Columbia of such determination.

4.4 Canada shall determine whether a Child in Care is registered, or is entitled to be registered as an Indian under the terms of the Act.

4.5 If, pursuant to Sections 4.3 and 4.4, Canada determines that a Child in Care is not an Eligible Child solely as a result of such child not being registered as an Indian, but such child is entitled to be registered as an Indian, British Columbia may submit the required forms in use by Canada for the registration of such child as an Indian.

4.6 If, pursuant to Section 4.3, Canada determines that a Child in Care is not an Eligible Child and British Columbia disagrees with such determination, then the parties agree to use their best efforts through the exchange of relevant information to reach a mutually agreeable determination based on such information. Where, despite best efforts, agreement is not reached, the parties will establish a process for resolving the dispute.

#### 5.0 COSTS

5.1 Canada agrees that it shall be financially responsible for every Eligible Child to the extent set out in this Memorandum. For better clarity, the parties' financial responsibilities are set out in Appendix A to this Memorandum.

5.2 Canada shall pay British Columbia money for each Eligible Child under the per diem system as presently understood between the parties (which, for clarity, is set out in Appendices "B" and "C") after British Columbia has submitted an account pursuant to Section 6.1.

5.3 Canada shall also pay British Columbia money for each Eligible Child, who has become so

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by operation of Section 4.5, under the per diem system as presently understood between the parties on a retroactive basis up to April 1st of the previous fiscal year or when such child became a Child in Care, whichever is less.

#### 6.0 ADMINISTRATION

- 6.1 British Columbia shall submit, monthly in arrears, an account for payment of Child in Care Costs for every Eligible Child. This account shall include the name of each Eligible Child, the Eligible Child's band, the number of days during that month that the Eligible Child was such, and the type of placement resource.
- 6.3 Information pertaining to an Eligible Child shall be provided by a Director to Canada or the band of the Eligible Child upon written request by either, subject to privacy legislation requirements, if, in the opinion of a Director, it is in the best interest of the Eligible Child to release the information.
- 6.4 Information pertaining to an Eligible Child shall be provided by a Director to the Parent of the Eligible Child upon written request by the Parent, subject to privacy legislation requirements.
- 6.5 Canada may request an audit be carried out by an independent auditor of British Columbia's records pertaining to Child in Care Costs for each Eligible Child.

#### 7.0 GENERAL

- 7.1 This Memorandum is not intended to be legally binding or to create legally enforceable rights between the parties.
- 7.2 Every reference to a party to this Memorandum shall include the Minister, Deputy Minister, officials and representatives of that party
- 7.3 Any notice, payment or information to be given to one of the parties may be sent, marked "PROTECTED", to the following addresses or fax numbers:

To British Columbia: Director of Financial Services and Comptroller,  
Financial Services Division  
Ministry of Social Services  
2nd Floor, 727 Fisgard St.  
Victoria, BC, V8V 1X4

Fax: (604) 356-9637

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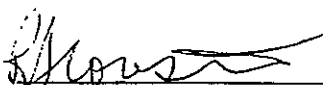
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To Canada: Director - Funding Services  
Indian and Northern Affairs Canada  
300 - 1550 Alberni Street  
Vancouver, BC, V6G 3C5

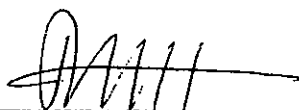
Fax: (604) 666-2046

- 7.4 Either party may advise the other by notice in writing of any change in either its address or fax number.
- 7.5 This Memorandum shall remain in effect until terminated by either party giving the other party at least six months written notice. The parties shall make final adjustments within one year of termination of this memorandum.
- 7.6 The parties agree that this Memorandum may only be amended by mutual written consent of the parties.
- 7.7 Since the implementation of the CFCSA may affect the cost and range of Child Protection Services, as defined in Appendix "D", provided to an Eligible Child, both parties shall review the impact of the CFCSA on the Child in Care Costs and Child Protection Services.

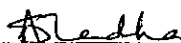
Witness that the parties have executed this Memorandum this 28 day of MARCH, 1996.



Witness to the signature of  
the Minister of Social Services



For the Minister of Social Services by the Minister's  
authorized signatory



Witness to the signature of  
the Minister of Indian Affairs  
and Northern Development



For the Minister of Indian Affairs and Northern  
Development by the Minister's authorized signatory