

“Apprehending the Parent”
One Approach to Current Child Welfare Practice

Good afternoon members of the judiciary.
Thank you for this opportunity to address your conference on an innovative approach to child welfare that we have adopted in our community.

The child welfare system has been much maligned in the Winnipeg media lately. However, only part of the story has been told. I am here today to tell you that there are good things happening in child welfare and that there is some hope for the future.

Let me begin by putting into context the current or traditional social work practice expected of agencies under The Child & Family Services Act of Manitoba.

A case begins when an agency receives a call from a community source advising that a child may be “in need of protection” from his or her caregivers.

Section 18.4(1) of the Act requires the agency to immediately investigate the report and “take further steps as are required” by the Act or “prescribed in regulations” as the agency “considers necessary for the protection of the child”.

Section 21(1) of the Act prescribes that if the agency believes on “reasonable and probable” grounds that the child is “in need of protection” the agency may apprehend the child and take the child to a “place of

safety” and detain the child for examination and temporary care.

The Act, therefore, requires an agency to remove the child from the home at least temporarily.

Once the Agency apprehends then the options are to either keep the child in care or return the child back to the parents’ care. If the child is to remain “in care” the agency’s options are:

- to place the child in a foster home,
- to place the child in a relative’s home
- to place the child in a hospital or a treatment facility.

On some occasions the agency will return a child back to parents’ under what is called a “deemed apprehension”. This is where the child is sent back to the caregivers while the Agency awaits a hearing.

Section 26 of the Act preserves the legal status of apprehension even though the child is returned home.

The usual scenario, however, is for the child to be placed in a home or situation other than the child's own home.

For many children, foster care becomes a way of life. Children who cannot be returned home due to the parents' inabilities to provide adequate care often remain in care for months or even years. Ideally, these children should be in one stable home but the reality is that children will have three or four different foster homes during the period they are in care. We have all heard the horror stories of children bounced from foster home to foster home. In her 2004 report, Manitoba's former child advocate cited a case where a foster child had been in 69 different foster homes in her life. This sort of transient

existence is not acceptable and is not in the child's best interests.

The law as it presently stands, however, has reinforced the practice of removing a child from his or her home to allow the parents an opportunity to reform their behaviour.

This law, quite frankly, is based upon the Eurocentric legal principle that a man's home is his castle and that property rights trump personal rights.

Since we began the Wellness Center in 2000, we have been looking at ways to incorporate First Nations culture, traditions and laws into the child welfare system, a system to which we are legally and financially obligated to adhere. We challenged our staff to "think outside the box" and to come up with different approaches to dealing with the problem of

children in care becoming transient within “the system”. The number of children in care in our community, the reasons for children coming into care and the availability of resources within the community were all factors that were considered. We determined that a large number of children were coming into care as a result of alcohol and drug use by the adult caregivers in the home.

We spoke to elders about how such problems were dealt with in the community before the intervention of the provincial child and family service system. We learned that when such problems arose in the past that the head of a family group would require others in the family to gather to discuss and debate what was to be done. Various solutions would be arrived at, including the requirement that the delinquent caregiver spend some time away from the family to seek spiritual and other guidance to correct the

problem. The child remained within the family group with those best able to ensure the child's safety and well-being. When the caregiver was ready to return then the family would meet again to determine if it was time for the caregiver to re-join the family group.

This custom got us thinking about how we could do the same sort of intervention in the current system. How could we require the caregiver to face their behaviour, to reform and to return, while at the same time preserving and safeguarding the child within the family?

To understand our solution requires one to understand and acknowledge that our community is still organized along family group lines and that property is not an individual legal right but a collective legal right. Title to land within our community is vested in the Crown with the Chief and

Council having legal authority to determine who can occupy and use the land. Thus, the community as a whole owns the housing that our families occupy and the local housing authority has the legal right to say who will live in the homes. This collective property right gave us an opportunity that does not exist off-reserve in the rest of the Province. We had the ability to use property as an incentive to parents in the child welfare context.

We came up with the idea to remove the parents from the home and leave the child in the home with care givers, whether relatives or paid homemakers. The parents would be advised that they were not allowed to stay in the home and could not move back in until they had completed a treatment program and had demonstrated to the agency that they were able to parent.

In order to accomplish this “apprehension of the parent” we required and we received the full support of the Chief and Council of Nisichawayasihk Cree Nation. In March 2002, they passed a Band Council Resolution or BCR, which gave the agency the legal authority to remove from band-owned housing “*any person found to be intoxicated and unable to provide adequate care for the children under their care*”.

The BCR further provided that the person would not be allowed back into the home until the person met with the agency to discuss the reasons for removal and it further required the person to participate in devising a safety plan for the child.

The BCR is founded upon the stated values of a healthy community in which the safety of child is the paramount concern of not only the Agency but of all the persons in the community.

Since 2002 our agency has used the removal of the parent as one approach to providing for the care and safety of children who come into the agency's care. While we do not have the resources to conduct a statistical analysis of the results, I can tell you anecdotally that the impact of this approach has been positive.

We have found that parents who have been "apprehended" in this way are more likely to seek, participate in and complete drug and alcohol treatment than parents who are allowed to remain in the home continuing to drink. We have found that children whose parents are removed from the home are able to continue on with their lives in their own home, in their own beds, without the trauma of removal to another home or perhaps another community. The child continues in his or her school

without disruption. The child is able to maintain friendships and family ties because the child remains in the community. The child also sees that the person with the problem is forced to deal with the problem. The child is not being punished for circumstances that the child had no ability to control. The message to the child is powerful – that problems must be faced and not simply avoided or abandoned. The child is allowed contact with the parent so long as the parent is sober and in treatment.

If, as under the accepted social work approach, a parent is allowed to stay in the home and the child is removed then the parent will often feel victimized by the Agency and have yet another excuse to abuse alcohol. The parent continues to live in the home and receive assistance from the Band with no disruption. In other words, there are no consequences to the parent.

Under our new approach the parent would be required to meet not only with the Agency worker but also with a Local Child Care Committee. This committee is comprised of community members trained in child welfare issues. The parent is thus faced not only with the Agency but with the community as a whole.

If the parent is still unrepentant and refusing to take responsibility a recommendation will be made by the local committee requiring the parent to appear before the Council of Elders in the community. This council will have the power to impose traditional remedies in the situation. These remedies can be as minor as requiring the parent to attend for counseling or as drastic as recommending that the child be taken away from the parent on a permanent basis and given to another family member (custom adoption).

The council can also reinforce the Agency's decision to remove the parent from the home.

If the parent is forced out of the home, under our new approach, then the parent must find another place to live and another means of support. That becomes very difficult in a small community. The incentive to remain sober is great, as the parent knows that they will not only lose their child but also their home.

They seek treatment earlier and are more likely to stay in the program. In part that is a function of having nowhere else to go but in part it is a desire to change and have a better life. The parents seek treatment sooner, the parents commit to after-treatment and the family is re-united with proper supports already in place in the home.

From a cost point of view it is cheaper for the agency to keep the child in the home with 24 hour homemakers than it is to pay for foster care, transportation, family visits and all the other collateral expenses involved in removing a child from his or her home.

This approach is not used in all cases as each case must be assessed as to risk and desired outcomes. It appears to work best with young parents who are coming into contact with the agency for the first or second time. Some may call it a “scared straight” approach but as long as it works - and it does seem to work - the Agency will continue to use this approach.

We are of the view that the legal responsibility of the agency to provide for a child's care, maintenance, education and well being as prescribed by Section 25(1) of the Act, is met by this approach.

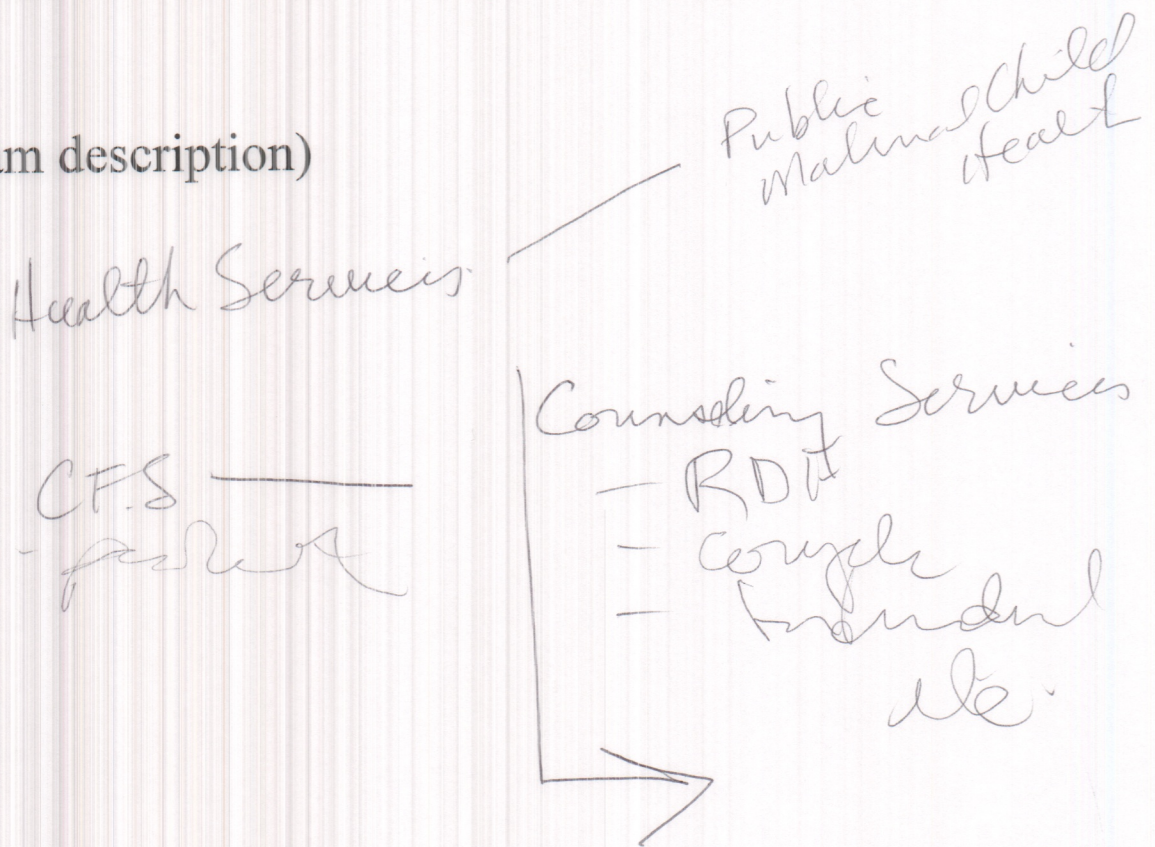
It is also important to remember that this approach is not used in isolation. It is one part of our "Circle of Care" program. This is a program that has been developed in concert with other services provided at the Wellness Centre. Each of you has been provided with a "Circle of Care" manual, which describes in detail this program.

The families that we come into contact with are those who have had a long intergenerational history with social services. In some families we are dealing with

the second and third generation CFS involvement and third and fourth generation dependence on social assistance.

The first thing we find ourselves doing with these families is to change their expectations of what "the system" can offer to them. We must first build up trust before we can put effective programming in place. This takes time, staffing and programming dollars, all of which are in very short supply.

(program description)



Our approach is not a panacea to all the problems that we face in providing child and family services to our community. We know that it works for our community.

The challenge now is to see if this approach can be translated into the larger off-reserve community.

How far are we willing to go to protect children?

Are we prepared to extend the notion of collective rights and to remove people from their property in order to ensure the safety and well being of children?

It is clear that such approaches require the support of the community and of the legal system to be effective.

It is also clear that society must begin to value the child as a cherished member with rights to personal safety, to education and to a place within loving home environment.

No doubt many of you are aware of the current accusations in the Winnipeg media that First Nations agencies are allowing “ideology” to dictate proper case planning. The “family first” approach is not a new idea nor is it exclusively an Aboriginal cultural norm. You need look no further than the Declaration of Principles of The Child and Family Services Act to find that “family first” is a policy endorsed by the Legislature of this Province. It is a common value among all peoples.

However, our approach, and that of most responsible agencies, is to first ensure the safety and well-being

of a child before contemplating a placement or a return of a child to any home. It is our responsibility as the temporary guardians of the child to ensure that a child is safe. If that means the removal of a parent from a home then that is what must be done.

The Legislature of Manitoba has declared as one of the principles which should guide the Court in child protection proceedings that:

“Children have a right to a continuous family environment in which they can flourish.”

We have strived with our current practices to fulfill that principle.

I wish to thank the Associate Chief Judge Murray Thompson for his kind invitation to address your conference.

I would be happy to answer your questions.