

## FORUM

### LOST VISION:

#### *Children and the Ministry for Children and Families*

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**B**ritish Columbia's child welfare system underwent a radical change of direction as a result of the Gove Inquiry into Child Protection and the measures taken by the provincial government to implement its recommendations. Basically, a vision of a child welfare system that recognized and built on community and family strength was replaced by one that relied on administrative expertise, reorganization, and investigation.

#### INTRODUCTION

The foundations of the state's responsibility for child welfare are broad. There is the common-law responsibility of the court to support actions taken in *parens patriae* (McIntyre 1993) and the United Nations *Declaration of the Rights of the Child* (United Nations 1989). There are accepted state roles in the form of legislation and social programs, ranging from provisions for day care, to schooling, to child protection (to mention but a few). Debate concerning the role of the state has centred not on its overall obligation to children but on the boundary between the family and state, and the means that the state should apply to achieve its legitimate objectives.

The role and obligations of the state in child protection have been controversial. Although great concern is expressed when children have been abused, similar concerns arise when social workers have removed children from families without sufficient cause. The means open to social workers to ensure the safety of children are all problematic. When the child remains with the parents and support services are provided to the family home, no absolute assurance can be given that abuse will not recur. On the other hand, no organization or surrogate

parent has been found that can fully replace the bond that children have with their natural parents. Furthermore, systemic and individual abuse can take place within the alternative care that government provides.

Policy changes have usually been made by governments following either a community review or a judicial inquiry. In recent years British Columbia has had both. A review conducted by two community panels (the non-Aboriginal community panel and the Aboriginal community panel) in 1991-2 reported in *Making Changes* (British Columbia 1992b) and *Liberating Our Children: Liberating our Nations* (British Columbia 1992a) was followed in 1994-5 by the *Gove Inquiry into Child Protection* (Gove 1995). Both have had a major impact on British Columbia's child welfare legislation and on the administration of child welfare services. This impact can be illustrated by the sequence of events occurring during the development and implementation of the Child, Family and Community Services Act, 1994, and documented in three research reports (Durie and Armitage 1995, 1997; and Mitchell, Absolon, and Armitage 1996). Many events were unexpected, and the end results appear to have contradicted the vision and ideas that dominated at the beginning of the process.

#### HISTORY TO 1991

The history of child welfare policy in British Columbia extends back to the turn of the century. The first statute establishing state authority was the Infants Act, 1901. It was succeeded by the Protection of Children Act, 1939, which remained the governing legislation for more than forty years. Dissatisfaction with the 1939 act was apparent in the early 1970s due to, among other things, its moralistic tone, inattention to due process, and lack of recognition of First Nations (Callahan and Wharf 1982). Reform was initiated through the work of the Royal Commission on Family and Children's Law (Berger 1975), which was appointed by the 1972-5 Barrett (New Democratic Party) government. The recommendations of the report had a major effect on child welfare policy in Canada and elsewhere, but in British Columbia the report was viewed by the Bennett (Social Credit) government elected in 1975 as a partisan political document. Attempts to implement reform based on the ideas and concepts of the Berger Report failed. The most antiquated features of the 1939 act were dealt with in the Family and Child Services Act, 1981, but the major changes envisaged by Berger were unfulfilled.

The 1981 act was never accepted by professional opinion inside or outside the ministry (Cruikshank 1985), although its residual, interventionist, and authoritarian nature was thoroughly documented (Barnhorst 1986). Nevertheless, the process of moving away from the 1981 act was difficult and slow. The formal process of policy review and change began only in 1991, initiated by Norm Jacobson (Social Credit). The review was concluded in 1992, by which time a New Democratic Party government had been elected and Joan Smallwood had been appointed Minister of Social Services. Smallwood's appointment ensured that the review would take place through a broadly based community panel. In addition, Smallwood accepted the request of the Aboriginal members that they hold independent hearings with Aboriginal communities and produce their own report.

#### THE COMMUNITY PANELS' VISION

The central assumption of *Making Changes* and *Liberating Our Children* was that children are entitled to safe, attentive, and loving parents who have sufficient resources to provide for them to community standards. Where these elements are present, society and its social agencies should leave the responsibilities of parenthood to the privacy and individuality of the family. Where they are not present the state and community have a responsibility to work within the same values to assist parents and protect the child. The existence of the two reports recognized the need to think independently about the needs of the First Nations communities and to respect their autonomy and views. They are found in the introduction to the First Nations report *Liberating Our Children: Liberating Our Nations* (British Columbia 1992a):

The first step of writing the wrongs done to us is to limit the authority to interfere in the lives of our families, and to provide remedies other than the removal of our children from our Nations. This must be accompanied by the financial resources we require to heal the wounds inflicted upon us. (p. viii)

The two reports provide a vision of and a guide to a new child welfare system developed in 1992, after ten years of pressure for change and a year of intensive public consultation.

The visions of both reports led to a concern with general issues of social policy rather than with technical issues of child welfare law or practice. In *Making Changes* the first set of recommendations deal

with poverty and the second set deal with the need for community development. In *Liberating Our Children* the existence of cultural chauvinism (racism) and the imposition of European law (colonialism) are identified as the main problems that must be solved. In both cases the authors' detailed recommendations for child welfare law and practice were framed within these broader considerations. The legal and technical features of child welfare or child protection policy were not assumed to ensure the general welfare of children.

#### THE 1994 LEGISLATION

In 1994, Joy McPhail, who had succeeded Joan Smallwood as Minister of Social Services, introduced two acts into the legislature: The Child, Family and Community Services Act (CFCSA), or Bill 45; and The Child, Youth and Family Advocacy Act (CYFAA), or Bill 46. The CFCSA, 1994, was a major break from the narrow mandate of the 1981 act. It offered a set of guiding principles for child welfare, including recognizing the family home as the preferred environment for childrearing; the family's right to support services; a principle of "least intrusion"; protection for the cultural identity of Aboriginal children; the importance of kinship and extended family ties; respect for cultural, racial, and religious heritage; and the involvement of communities (including Aboriginal communities) in the planning and delivery of services. Furthermore, many of these principles were given specific form in legislation that recognized the "best interests" of the child in terms that respected the cultural identity of First Nations, strengthened due process, provided provisions for family conferences, included provision for services to youth and young adults, set out a statement of rights of children in care and the means to pursue them, established provisions for alternative dispute resolution, and set out new rights of confidentiality and disclosure (Durie and Armitage 1995, 42-4). In some regards the legislation did not go as far as the community panels had recommended: a legislative commitment to community governance and an overriding responsibility to respect the independence and integrity of First Nations were not included.

The CYFAA ensured that children, youths, and families had appropriate complaint and review processes open to them at all stages, and it provided a new officer of the legislature – the child, youth, and family advocate – with a mandate to act as a "watchdog" and make recommendations on policy, practice, and services. Although limited to the operation of the CFCSA, the advocacy legislation was seen as a step

towards the comprehensive, government-wide advocacy for children and youths that the non-Aboriginal community panel had recommended.

Together the two acts met important parts of the vision expressed in the community panels' reports and accorded with what has been referred to as an "institutional" view of family and child welfare legislation and services. That is to say, they incorporated within them most of the features that have been accepted in other Canadian jurisdictions (Armitage 1993, 62).

#### THE GOVE INQUIRY AND ITS IMPACT

While this progressive legislation was being developed the credibility of the Ministry of Social Services was being undermined. In 1992, five-year-old Matthew Vaudreuil died in Vancouver. His mother, Verna Vaudreuil, was found guilty of manslaughter. The ministry had had extensive contact with Verna and Matthew and was criticized for not preventing Matthew's death.

In response, Justice Gove was appointed to inquire into the circumstances surrounding the death of Matthew Vaudreuil and to make recommendations "on the adequacy of services, and policies and practices, including training and workload, of the Ministry" (Gove 1995, vol. 1, 274). The announcement was made on the day that the CFCSA was tabled in the legislature. Whereas the process leading up to the passage of the CYFAA and CFCSA had been based in a broad view of child and family needs, the Gove Inquiry focused on the ministry's failure to protect Matthew. Joyce Rigaux, Superintendent of Child Welfare, sought to explain how the ministry had balanced the protection of the child with the need to support parents. For this she was attacked by the Gove Inquiry and then scapegoated by the government, which found an unrelated reason to dismiss her.

By questioning the role of family support, the inquiry cast doubt on the underlying philosophy of the new legislation – its emphasis on support services and family processes. In his interim report Justice Gove (March 1995) recommended that the guiding principles of the CFCSA should be changed to ensure that the child's safety and well-being be the paramount concern in child protection. In June 1995 the CFCSA was amended as Gove had suggested.

The Gove Inquiry report was received in November 1995. It adopted the central principle that paramount attention be given to the need of the individual child. The ministry's failure to prevent Matthew's death was framed in technical and administrative terms, and recom-

recommendations were developed accordingly. The first set of recommendations (1-94) gave extensive attention to information systems, risk assessment, case management, supervision, social work, and related professional training as well as to ensuring that the welfare of the individual child was paramount in legislation. The second set of recommendations (95-118) took the process a step further by recommending a complete reorganization of children's services. A single ministry for all children's services was proposed, along with an emphasis on children's service centres, multidisciplinary teams, and provisions for community government on the part of regional child welfare boards. Gove proposed the appointment of a transition commissioner to oversee the process of change.

A single ministry was not part of the community panels' recommendations: the non-Aboriginal community panel favoured a common philosophy and values that would link the child-serving ministries (British Columbia 1992b, 184), while the Aboriginal community panel favoured service integration within First Nations (British Columbia 1992a, 97-8). The idea of creating a single ministry has a history of its own, being first suggested by the *Commission on Emotional and Learning Disorders in Children Report* (1970) and by the Office of the Ombudsman in *Public Report No. 22, Public Services to Children, Youth and Their Families in British Columbia* (British Columbia 1990). Until incorporated into the Gove Inquiry these proposals went unheeded, probably because the administrative turmoil (and costs) of such a large-scale reorganization seemed unjustified by the expected results.

The CGCSA was proclaimed in limited form in January 1996. The sections not proclaimed included those on family conferences, on service agreements with a child's kin (when they provide care), and on youth services. These sections were integral to the philosophical foundation of the legislation. The reason given by the ministry for their exclusion was the need for additional resources. However, the ministry's resources had been increased by fifty positions in 1994 and by 180 positions in 1995, specifically to "change the way child welfare is delivered in this province."<sup>1</sup> These resources were used to strengthen the ministry's response to the issues raised by the Gove Inquiry rather than for their intended purpose (Durie and Armitage 1997, 55-7).

The recommendation of the Gove Inquiry added explicit weight to this shift of priorities:

<sup>1</sup> Electronic message from Deputy Minister to all Ministry Staff, 31 May 1995.

Recommendation 1. The family group conference should not be used for children who are in need of protection. (Gove 1995, Vol. II, 48).

It also diluted the importance of kinship for Aboriginal people by substituting cultural heritage for a commitment to cultural identity:

Recommendation 78. The distinction in the best interests test of the new Act between "cultural heritage" and "cultural identity" should be eliminated by repealing s.4(2) of the *Child Family and Community Services Act* (Gove 1995, Vol. II, 218).

#### IMPLEMENTING GOVE'S RECOMMENDATIONS

With the proclamation of the CYFAA and CFCSA, Cynthia Morton was appointed transition commissioner, with the expectation that she would have three years to evaluate and introduce the organizational changes Gove had proposed. However, in the summer of 1996 the Ministry of Social Services was again enmeshed in controversy over the deaths of children. To end the controversy, the premier, Glen Clark, requested that the transition commissioner table an early final report. The report (Morton 1996) recommended that the government implement the reorganization sections of the Gove recommendations immediately, replacing the Ministry of Social Services with a new Ministry for Children and Families. This the government did. The recommendations from both the community panels and the Gove Inquiry concerning community governance were dropped, centralizing all power in the new ministry. It brought together services for children and youth previously provided through five ministries: Social Services, Health, Attorney General, Womens' Equality, and Education. At the same time its creation severed the long-standing connection with income assistance and, by shifting responsibility for youth services to the Ministry of Education, Skills, and Training, ended plans to introduce integrated income support and youth service programming.

Penny Priddy, formerly Minister for Women's Equality, was appointed minister, and Bob Plecas was appointed deputy minister. The appointment of Plecas as deputy minister was filled with political and administrative significance. Plecas had held a series of deputy ministerial appointments, including deputy minister to the premier, during the Social Credit years. Because of his close association with the 1983 restraint program and other Social Credit policies, he had

not been retained when the government changed in 1991. He had no experience in social services but was a tough, proven administrator.

With the creation of the new Ministry for Children and Families, reorganization and staffing became the overwhelming agenda. At the working level, the development of child welfare practice has been redefined in such administrative and technical terms as multidisciplinary team work, risk assessment, and contract service reorganization. The attention to social conditions and to the realities of family life that was central to the vision of both community panels has been forgotten.

#### ABORIGINAL CHILD WELFARE

The Aboriginal community panel envisaged a new approach to child welfare policy – one in which the distinctive Aboriginal historical experience would be recognized and an Aboriginal right to self-determination would be acknowledged. This included recognizing that Aboriginal children constituted the majority (51.6 per cent) of all children in care by court order (British Columbia 1992a, 1). For the future, policies were proposed that began with the principle of respecting Aboriginal communities.

The Gove Inquiry did not deal with an Aboriginal child. As a result, its relationship to the particular circumstances of Aboriginal children and communities was peripheral (Schmidt 1997). Where the inquiry did deal with issues important to the Aboriginal community (e.g., Recommendation 78 [cited above]), it was unsympathetic to the vision of the Aboriginal community panel.

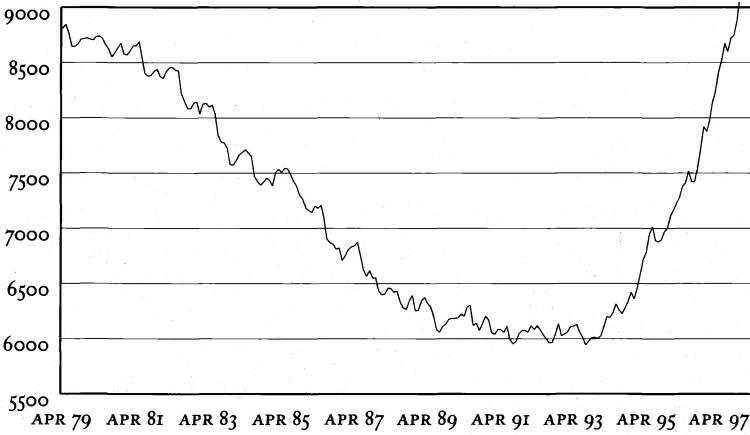
Gove's recommendations were drafted with a central focus on the non-Aboriginal service system he had studied. As a result, the Ministry for Children and Families concentrated its attention on changes in the non-Aboriginal community and service system. Its training plans and risk assessment tools had then to be "adapted" for use in Aboriginal communities, where services would be provided through "delegated" authority. This administrative sequence acknowledged that neither training plans nor assessment instruments fit Aboriginal conditions; however, it was considered that the problem could be solved by introducing references to culture and by changing a paragraph here, a procedure there. In this the Ministry for Children and Families reverted to the cultural impositions that have characterized the treatment of First Nations children and families since the passage of the Indian Act, 1876 (Kline 1992; Armitage 1993).



CHILDREN AND SOCIAL WORKERS

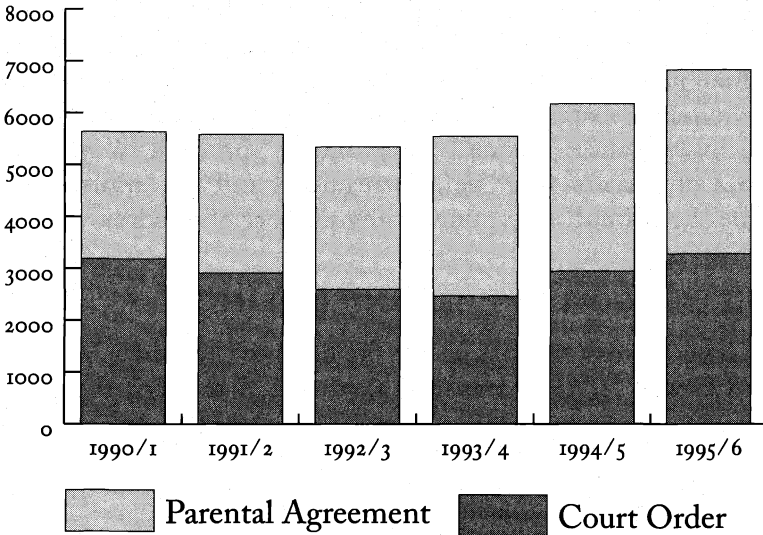
During the period of reform, significant changes have occurred in the number of children in care and in the way they are admitted to care.

**TABLE 1**  
*Children in Care, April 1979 - June 1997*



Source: Data Analysis Branch, Ministry for Children and Families, 1997.

**TABLE 2**  
*Annual Admission of Children and Youth to Care 1990/1-1995/6, By Type of Admission*



Source: Durie and Armitage 1995, 27.

Table 1 shows that the total number of children in care declined steadily from 1979 to 1993. This decline cannot be explained demographically. The ratio of children in care<sup>2</sup> to all children fell in every year, from 11.5/1000 in 1981 to 7.5/1000 in 1993. This decline was reversed suddenly in 1994; by early 1998 the ratio was 10.5/1000. The impact of the Gove Inquiry appears to be clear.

There were also important changes in the way that admission to care occurred. Between 1990 and 1993 the number of children admitted to care fell slightly, a decline explained by the reduced use of court orders. This reflects the emphasis that the Ministry of Children and Families attached to family support during the period when the community panels were working and the new acts were being designed. In the period between 1994 and 1996 the number of children in care began to increase, and the use of court orders increased sharply. The change accorded with the emphasis the Gove Inquiry placed on eliminating "risk" to individual children. It was also a direct result of the new act's "paramountcy" clause and of disciplinary action against social workers when there was any sign that children may not have been apprehended quickly enough. In the fall of 1996 in Nelson, shortly after the new ministry had been formed, two social workers (a supervisor and a manager) were suspended without pay, pending the results of an inquiry into their failure to prevent the death of a child (*Vancouver Sun*, 8 November 1996). This sent a clear message to all social workers that eliminating the risk of harm to the child would be the standard by which their practice would be judged.

The result of this message was that children who could have been with their parents were placed in foster care. The vision of a supportive and community-based approach to child welfare practice was replaced by an investigation-oriented and punitive approach in which the realities of parents' lives were disregarded and the ministry itself became the "parent" for an increasing number of children.

#### BLAME, THE GOVE INQUIRY, AND ITS EFFECTS

The Gove Inquiry laid blame for the death of Matthew Vaudreuil. Justice Gove's letter of transmittal, threaded through the inquiry

<sup>2</sup> The ratio of children in care to all children is a widely used measure of the intrusiveness of child welfare systems. The ratio in the western Canadian provinces (including British Columbia) has been high in comparison to eastern Canadian provinces. Ontario has a rate of around 4.5/1000; internationally, the UK rate is of the order of 3.0/1000. A principal factor underlying the high western Canadian rates has been the proportion of Aboriginal children in the population.

report as a record of his “personal observations and impressions” (Gove 1995, vol. 1, p. 2), illustrates this particularly clearly:

First I tell the story of Matthew from his perspective, as though the services provided to him and to his family were *for* him – in other words child centred. Regrettably, this was seldom the case ...

Although the ministry’s legal and financial authority was to provide services to protect Matthew, services were in fact directed to the benefit of his mother. The ministry, its employees and contractors lost sight of why a child protection service exist, and who they were supposed to be protecting. (Ibid., 6)

I regret to report that even as the ministry failed Matthew in life, it failed him in death. (Ibid., 154)

Reviews of their [children’s] deaths have not led to significant improvements in our child protection system. Children are still killed, and we do not seem to learn from our mistakes. (Ibid., 207)

Matthew’s Story is filled with examples of decisions based on social worker’s self interest, Verna Vaudreuil’s interest or the ministry’s interest, rather than Matthew’s interest. (Gove 1995, vol. 2, 293)

In making blame a central feature of his inquiry, Justice Gove followed a pattern that has consistently accompanied processes of judicial inquiry.

In Manitoba, Justice Giesbrecht, who conducted the inquiry into the death of foster child Lester Desjarlais, explained the dilemma he faced when preparing his report (Teichroeb 1997). He agonized over the uncomfortable task of writing a highly critical report about Dakota Ojibway Child and Family Services (DOCFS). From his years at family court, he knew many of the same problems existed in the non-Aboriginal child welfare system. Singling out DOCFS would inevitably offend some people, but the bottom line, which Giesbrecht returned to again and again, was that children that were taken into care deserved nurturing and protection: “What is clear to me is that Lester Desjarlais had the right to expect more,” he wrote. “His family let him down: his community let him down: his leaders let him down: then the very agency that was mandated to protect him let him down and the government chose not to notice. Lester deserved something better”<sup>3</sup>

In the United Kingdom, Peter Reder (1993) reported on the results of thirty-six inquiries that had taken place during the 1970s and 1980s following incidents of child abuse. In conclusion he wrote:

Parton (1981) suggests that a moral panic ensues at the news of a child being severely abused. Representatives of society, such as social

<sup>3</sup> Giesbrecht, cited in Teichroeb 1997, 193-4.

workers, easily become the receptacle of public upset and rage that these events have not been stopped. Outcries in the media and recurrent public inquiries maintain the unreal beliefs that all child abuse and child manslaughter can be prevented and that it is only because of bad practice that professionals fail to eradicate it ...

Inquiry panels have tended to focus their investigations on professional practice and so the social or psychological circumstances surrounding the child's death are often missed from the reports. Hallett (1989) suggests that in criticizing the actions of individuals, the basic social order remains unchanged. She means by this that no consideration is given to the process of socialization which leads adults to harm children, or to the harsh and depriving conditions in which many of the families live. (Reder 1993, 18)

The judicial experience of making judgements and dispensing sentences under the terms of criminal law encourages such an approach. In the end, the judge is not asked to consider the underlying circumstances that have contributed to the crime but to limit attention to the acts committed, the motives of those who committed them, and the punishment that the law considers appropriate.

Callahan and Callahan (1997) analyzed the transcripts of the Gove Inquiry and compared them with the press coverage. They concluded:

After examining literally thousands of pages of transcript and hundreds of articles, we have come to a simple conclusion. The very first article written about the case, at the sentencing of the mother for the death [of Matthew Vaudreuil] and long before the inquiry began, set the tone for all that followed. The story told in the press is one of an evil mother who cared more for herself, her boy friends and her seedy life style than for her child. According to this account, many social workers knew about the mother's wholly inadequate care but did nothing about it. Extended family members and friends urged social workers to intervene but workers still did nothing, insulting and dismissing those that tried to help. When the child died, social workers tried to cover up their ineffectiveness by changing case records. Even the top child welfare worker in the province, the superintendent of child welfare, was portrayed as having altered a report on the child's death, putting her ministry in a much more favourable light with her changes. (42)

By presenting the transcript evidence in this way, the press overlooked a much more complex picture – that of a mother of modest ability who cared a lot and tried to cope with a system that offered her short-term training rather than long-term support. They may even have

overlooked the actions that actually occurred in the last weeks of Matthew's life (54). The press story fed anger against "bad mothers" and "incompetent social workers."

The point is not that judicial inquiries have no place in child welfare processes but that they, and the press coverage that feeds off them, provide a poor forum for policy-making. Inevitably the anger of the moment is reflected in the conclusions drawn. A balanced view that recognizes the social circumstances of parents and the limits of child welfare practice is lost. Also lost is the fact that child deaths are rare events and are unrepresentative of most child protection practice (Trocmé and Lindsey 1996).

The emphasis on management and administration that followed from the Gove Inquiry fits the same mould. If one assumes that children's deaths can be prevented by competent social work practice, then the challenge for administrators is to ensure that competent practice takes place. Hire the right staff, get the training right, get the systems right, ensure that the staff do their work, and all will be well. Unfortunately, there is ample evidence that such an approach is wrong. Parents often act in desperation rather than in premeditation, and social workers have limited ability to predict behaviour and limited opportunity to improve the circumstances under which children are growing up. The effect of thinking otherwise is to establish a self-reinforcing cycle in which ministers claim to fix problems that are unfixable. In so doing they reinforce the unfounded impression that a solution to the problems that concern the public can be found by attending more closely to the individual actions of workers and their clients.

## CONCLUSIONS

My principal conclusion regarding child welfare reform in British Columbia is that the period of progressive change that can be traced back to the Berger Royal Commission is over. There were two notable achievements: (1) the CFCSA is a statute that is broadly in line, in its thought and approach, to similar statutes in effect in other provinces, and (2) the CYFAA provides an independent statutory base for the work of the child, youth, and family advocate in her/his capacity as a watchdog for individuals and as a public commentator on how families and children are being served.

Ideas and visions that went beyond these achievements were lost. Gove succeeded in diverting public attention from structural issues

and reasserted the illusion of being able to provide for the protection of children through improved management and professional process. The establishment of the new Ministry for Children and Families and the appointment of Plecas as its first deputy confirmed the shift of priorities. It was especially discouraging that these changes took place during a period of NDP governance, when there were high hopes of progressive change in public understanding and social policy.

While the number of families and children in poverty continues to increase (Canadian Council on Social Development 1997) there is now (1998) no visible policy that connects the child welfare field to issues of child poverty. The sections of the new act CFCSA supporting family conferences are not proclaimed, and there is no way to ensure that the extended family is involved in planning for the child. Professional dominance is increasing in the name of multidisciplinary approaches and a stress on "risk" assessment. There are no means by which youths can be treated as independent persons. Instead of more children being supported in their own homes, more children are being admitted to care by court order. Instead of increased respect for social workers there is decreased respect for them and an increased emphasis on discipline and punishment. Instead of the development of grounded theory there is an emphasis on organization and management. Instead of an increase in community involvement there is a declared policy not to introduce community governance. Finally, there is no set of concerted policies to ensure that all Aboriginal children are provided and cared for by their own nations.

The Ministry for Children and Families has been denied the opportunity to tackle the problem of child abuse at its structural roots, while being held accountable for the impossible task of bringing it to a halt. The problem is one that cannot be dealt with by legislation. Nor will any reorganization of children's services be effective. The Ministry for Children and Families needs to be modest in its objectives and humble in its achievements. It needs to shift its focus away from administrative and organizational change and to be realistic about what can be achieved with the theories and practices available to its social workers. It needs to listen to staff and support them in the difficult environment in which they work. It needs to revisit the recommendations of the community panels and reflect again on their vision.

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## COMMENTARY

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RICHARD SULLIVAN

Andrew Armitage makes much of the "vision" of child welfare advanced by the community panels appointed to review child welfare in British Columbia in 1991-2. Indeed, the extensive consultative process undertaken by the community panels revitalized the discourse on child welfare. A vision, however, is but a fleeting apparition when the means and will to give it substance are absent. Professor Armitage's argument that the retreat from a progressive vision of community-based, locally accountable service systems is a consequence of the Gove Inquiry is problematic for several reasons. It oversimplifies the relationship between the Gove Inquiry and the implementation of the Child, Family and Community Services Act. In so doing, his argument reproduces two false dichotomies: one between locally accountable services and administrative expertise, the other between family support and child protection. In addition, he sustains a notion of community and its capacity to supplant the need for protective services, even though there is scant evidence for this in Canadian history. Finally, he advances the correct but questionable argument for parallel systems of child welfare for First Nations children, as though separate systems had any prospect of being equal.

The community panels' vision of a family support system that guards against poverty while it protects children and corrects the historic wrongs of colonialism is laudable, utopian, and sadly out of step with the harsh reality of contemporary Canada. All of us who advocated legislation that would establish "need" as the mandatory threshold for the "right" to preventive service wanted a statutory link between assessed need and service provision. We were swimming against the current in a meaner, leaner Canada, where the link between local need and federal/provincial dollar-matching was severed with the demise of the Canada Assistance Plan; instead, the residualism that is our tradition was reasserted with a vengeance in the 1990s. Similarly, the vision of a community willing and able to get involved in the lives of its neighbour's children runs contrary to the reality of increasing geographical mobility and social disconnection among young families in the global economy.

It is precisely because communities couldn't or wouldn't take responsibility for all the children in their midst that a residual and gradually professionalized system of child protection developed.

Andrew Armitage correctly identifies the boundary between family and state as a contentious obstacle to proactive community involvement in the lives of children. This elusive boundary is a cultural artefact that affects neighbours as much as it affects public servants. In fact, it is arguable that if neighbours were more willing, then public servants might be less compelled to breach the boundary at a point where prospects for remediation are already diminished. At that point, however, what is required is not solely the well-meaning, supportive involvement of volunteers, but also the expert assessment of the relationship between presenting problems, family and community resources, and available service methods and outcomes. What is required is not a dichotomy between community-based approaches on the one hand and administrative and clinical expertise on the other, but, rather, a service delivery model that bridges them. To that end, the present reorganization, including local contract reorganization, may be a positive move towards better service accountability.

Armitage constructs an equally fallacious and even more problematic dichotomy to make family support and child protection incompatible. The problems associated with this dichotomy predate the Gove Inquiry and are not alleviated by either Gove's or Armitage's recommendations. These problems are themselves artefacts of an earlier cycle of reform motivated by principles echoed in the community panels' reports.

For the past two decades the principle that has most influenced child welfare practice is permanency. Most often termed "permanency planning," the intent of this principle is to ensure that service planning for families and children is guided by children's developmental time frames. It means that making a permanent placement for children cannot be delayed beyond a specified date that is commensurate with children's developmental needs and sense of time. Under the best of circumstances, it implies a respect for the permanency of children's kinship and attachments. It also means that when conditions in children's homes prevent immediate reunification, those conditions have to be remedied within a reasonable period – usually eighteen months. Since the retrenchment that began in the 1980s, however, waiting lists for appropriate services have meant that the needs of many families cannot be met within a reasonable time frame.

Permanency has not been a feature of many families' connection to their communities in recent years. Often the most transient families are those in greatest need of assistance. In the absence of the resources

to sustain communities and families, permanency planning often became an excuse for moving children into public guardianship. As a result, the unintended consequences of the permanency planning movement spawned a re-examination that led to the family preservation movement. The recommendations of the community panel reflect the strength of that movement.

At its best family preservation builds on the assessment of family strengths, capacities, and risks as well as on the evaluation of services designed to alleviate those risks. Assessments based on the developmental needs and capacities of family members and the realistic appraisal of community resources may also sometimes necessitate an early decision to separate children and parents. Both family support and child protection are sometimes appropriate in the same family at different times. Full-time parenting is beyond some families' current capacity, and there are people who will never be able to parent safely no matter how much support is afforded them. In the latter instance, alternative placement should be the immediate goal. Sound decision-making in these diverse circumstances rests on the social worker's ability to make a comprehensive assessment of family functioning; environmental assets and liabilities; and, most important, the child's developmental status, emotional security, and physical safety. This is not the job of paraprofessionals or inexperienced or untrained social workers. At the height of the permanency planning movement, some jurisdictions made a Master of Social Work degree the entry level for social workers involved in child protection. Meanwhile, in British Columbia the Bachelor of Social Work has only recently become a requirement for employment in child protection.

Over the last few years, some of the earlier successes of the permanency movement have begun to reverse. More very young children have come into care, and a pattern of repeat short-term care has emerged. Foster care re-entry has contributed significantly to child-in-care rates. The stability and continuity sought by the permanency movement has been eroded. In British Columbia, permanent orders have barely slowed the rate of placement turnover for children in care, particularly with regard to older children and those with special needs. Efforts to hold families together with insufficient resources have sometimes resulted in multiple admissions to care by new providers with each placement – a stark reversal of the effort to achieve permanency.

Rising reports of child abuse and neglect among increasingly debilitated poor families have stretched response systems past their ability to respond competently and comprehensively. Public-sector services

have come under attack by parent groups and professionals to the point where a siege mentality has developed in some quarters. The erosion of a non-blaming, developmentally focused approach to a continuum of care from prevention to permanency planning has been so complete that we are now on the verge of a return to an Elizabethan approach to providing poor services to poor people.

The most compelling question in child protection today is how to generate a public commitment to getting the job done well. Our system of protecting children is ineffective for the same reason that one in five Canadian children lives in poverty: children have not been a priority of either planning or public spending. The connection between child neglect and poverty is irrefutable, yet we compromise the developmental prospects of our children even while we find the money for politically popular mega-projects. If children were a priority, then we would have zero tolerance for both the abuse and neglect of children and the unemployment of their parents. The problem does not derive from a single judicial inquiry or a single political regime. It is part of a sustained tradition in Canadian social welfare – a tradition unlikely to change ahead of the political will to change it.

A heritage of marginalization is not the unique endowment of First Nations; however, the legacy of colonialism has imposed a set of problems different in both kind and degree from those faced by other British Columbians. It is improbable, however, that Canadians will be any more generous in mandating funding for parallel First Nations systems of child welfare than they have been in settling land claims. While various surveys have indicated support for the principle of self-determination, the willingness to foot the bill for a separate system of services has not been tested.

The existence of two or more separate child welfare systems would not be unique in Canadian history. It has been less than three decades since the amalgamation of Roman Catholic and Protestant children's aid societies in British Columbia. There were reasons then for their merger into a single, secular public service. Any future segregation of services would do well to keep an eye to history while endeavouring to ensure equity in the standards of protection afforded to First Nations and other children. Those who would suggest halving the resource dollars attached to child welfare services and transferring them under First Nations jurisdiction would do well to consider the infrastructural needs of the systems they propose and the capacity of 5 per cent of the population to deliver on those needs. In at least the

short run, many First Nations would have to contract services outside their own nations. Separate but equal is an improbable proposition, and historic precedents are not promising.

Professor Armitage's final conclusion, that the period of progressive change in child welfare is over, is not supported by his own evidence. There was no such period. There have been some progressive visions for comprehensive change, most notably articulated by the Berger Commission in the 1970s and the community panels in the 1990s, but these visions were never implemented as a coherent plan; rather, the progress of reform in child welfare has been incremental, sometimes emphasizing family process and sometimes emphasizing technology and administration. Neither emphasis is devoid of merit if put to the paramount purpose of protecting children. That is, after all, the most defensible justification for public spending to support families. Not all changes in the delivery of protective services can be characterized as belonging to either a progressive or a regressive period.

The typical course of institutional reform repeats itself time and again. At one point, reform is initiated to correct ineffective or destructive practices or to reverse the unintended consequences of institutional arrangements. If properly implemented and resourced, the reforms may flourish for a time. Acceptance leads to complacency and inflexibility in response to infinitely variable human problems. Unintended negative consequences proliferate in the face of constantly changing circumstances. Eventually, pressure for a new reform builds and the cycle continues.

In the long run, neither the Gove Inquiry nor the reports of the community panels may have an enduring effect on the delivery of child welfare services in British Columbia. History predicts a pattern of incremental movements and reversals. More probably, we will not get the system we deserve but the system we are prepared to pay for.

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## COMMENTARY

KELLY A. MACDONALD

Throughout there are references to aboriginal child welfare, and two of the research papers specifically explore related issues. However, the report does not attempt to examine how aboriginal communities ought to practice child welfare, as I recognize that many aboriginal peoples either are, or in the process of becoming, responsible for child protection and child welfare generally within their communities. As I say later in the report, the larger community has much to learn from the traditional ways in which the first peoples of this province cared for their children before Europeans arrived. (Gove, Executive Summary, 1995, 6).

Andrew Armitage provides a concise overview and assessment of the impact of the Gove Inquiry into Child Protection. My commentary expands upon and clarifies Armitage's discussion of the impact of the Gove Inquiry report on Aboriginal child welfare.<sup>1</sup>

<sup>1</sup> The term "Aboriginal" includes Status Indians (both on and off reserve), Metis, and non-status Indians. Specific reference may be made to First Nations to denote status Indians on reserve.

Gove's words (see above) have been ignored, but the impact of his report has been profound.

As Armitage points out, the Gove Inquiry was an investigation into the death of a non-Aboriginal child. Other than Recommendation 78, discussed by Armitage, and Recommendation 77, the report makes little reference to Aboriginal children and families – an exclusion of great concern to First Nations and Aboriginal communities. The Gove Inquiry has had a resonating effect on the delivery of services by First Nations and Aboriginal child and family serving agencies.

As Armitage shows, the majority (51.6 per cent) of children in care by court order are Aboriginal.<sup>2</sup> Unfortunately, the number of Aboriginal children in care has remained consistently high for many years. Surely the demographic profile of children in care should have caused the Gove Inquiry to place significant emphasis on the needs of Aboriginal children, their families, and their communities. It did not.

#### CHILD, FAMILY, AND THE COMMUNITY SERVICES ACT (CFCSA)

Armitage provided a brief synopsis of the development of the new Child, Family and Community Services Act, 1994. As he points out, the Aboriginal community was provided an opportunity for input into the legislative reform. The report *Liberating Our Children: Liberating Our Nations* (British Columbia 1992) incorporated the comments and recommendations provided at province-wide community forums. Some of those recommendations were incorporated into legislation. However, as Armitage notes, the legislation did not go far enough for many in the Aboriginal community and did not respect the independence and integrity of First Nations. In fact, some First Nations service-delivery providers and political representatives argue that even *Liberating Our Children* did not incorporate all the significant recommendations advanced at the community forums.

Moreover, the legislation was prepared "in house." First Nations technical and political representatives had little if any opportunity for active involvement and participation in its drafting. The door was kept firmly shut to major players in the First Nations community. Ironically, as Armitage points out, the main problems identified in *Liberating Our Children* are "the existence of cultural chauvinism

<sup>2</sup> In her report the Ombudsman notes that although First Nations account for only 5 per cent of British Columbia's population, over 30 per cent of children in care are Aboriginal. North of Williams Lake, over 50 per cent of children in care are Aboriginal.

(racism) and the imposition of European Law (colonialism).” Keeping First Nations at a distance while drafting the legislation did little to rectify these historical and contemporary problems.

#### THE GOVE INQUIRY

The Gove Inquiry made two recommendations that deal specifically with Aboriginal children. Recommendation 77, not mentioned by Armitage, deals with the issue of determining Aboriginal ancestry. Gove considered it important to:

1. Define “aboriginal ancestry” so that the Ministry will know who to notify;
2. Require the court to canvass the issue at early proceedings ... and make a determination where warranted that the parent or child is of “aboriginal ancestry” (Gove, 1995, vol. 2, 218).

As the Ombudsman, Dulcie McCallum, correctly argued (in her 1998 review of the implementation of Gove’s recommendations), the repealed *Family and Child Service Act* only applied to status First Nations, and this was “a source of irritation to First Nations, who feel that the special considerations contemplated in the new legislation should apply to all aboriginal people.” The approach taken in the new act, the *CFCSA*, is that of “self definition.” Fortunately, Recommendation 77 has not been implemented, and the ombudsperson suggests that it not be.

Had Recommendation 77 been implemented, it could have had the effect of violating the International Convention on the Rights of the Child. The convention guarantees the right, under Article 30, of children of indigenous origin to enjoy their own culture. In fact, there is a litany of case law and literature arguing against using state intervention to define who we are as indigenous peoples.<sup>3</sup> Ostensibly for the purposes of administrative efficiency, Gove’s recommendation reflects yet another form of colonialist oppression. The Ombudsman wisely concludes that that “implementation of Gove’s Recommendation would be counterproductive and inconsistent with the principles of self-determination” (1998, 16).

Gove’s Recommendation 78, briefly covered in Armitage’s article, was that Section 4(2) of the *CFCSA* should be repealed. Section 4(2) articulates one aspect of the “best interests test” and reads as follows:

<sup>3</sup> See, for instance, *Lovelace v. Canada*, 36 UN GAOR Supp. (No. 40), Annex 18 at 166, UN Doc. A/36/40. See Absolon, Herbert, MacDonald 1996.



“If the child is an aboriginal child, the importance of preserving the child’s cultural identity must be considered in determining the child’s best interests.” Armitage notes that Recommendation 78 is unsympathetic to the vision of the Aboriginal community panel. That is an understatement. There is a significant literature on the Eurocentric application of the best interests test by the judiciary – to the detriment of both Aboriginal children and communities.<sup>4</sup> The effects of this test have been characterized by some commentators as cultural genocide.<sup>5</sup>

### COLLECTING DUST

Reading Gove’s recommendations regarding Aboriginal children and looking at the report as a whole (with its noticeable exclusion of any significant reference to First Nations and Aboriginal communities), it would be logical to conclude that the inquiry had not been provided with research or advice from the Aboriginal community. This is not the case. As Judge Gove noted in the quote that introduces this commentary, two background papers were prepared for the inquiry. The most significant was *Overview and Analysis of First Nations Child and Family Services in BC* (Herbert 1995). I assisted Elaine Herbert,<sup>6</sup> a fellow Aboriginal scholar, in preparing the latter. It provides a comprehensive overview of the delivery of child and family services by both First Nations agencies and Aboriginal/urban agencies. Among other subjects, it explores ways of redefining the “best interests” ideology; of working towards a habilitative versus safety-net model of service delivery; of creating cultural and community ownership of child welfare programs; and of defining First Nations, provincial, and federal jurisdictions. Armitage did not mention this background paper, and it is readily apparent that Gove did not use it.

Herbert’s paper covers the issue of “jurisdiction,” an important matter in my area of practice. First Nations child and family serving agencies staff (on reserve) are delegated pursuant to provincial legislation (the CFCSA) to administer sections of the act. The federal government funds child and family serving agencies under a generic national funding formula (which does not take into account differing regional statutory requirements). The jurisdictional division of responsibilities between the federal and provincial governments relates to an age-old constitutional debate over which has statutory and fiscal responsibility

<sup>4</sup> See MacDonald 1997 for a synopsis of the literature on best interests.

<sup>5</sup> See Monture 1989.

<sup>6</sup> Elaine Herbert, Shuswap Nation, bsw, msw, and PhD candidate.

for children and families on reserve. As many scholars, practitioners, and community members have pointed out, this debate has led to a paucity of services being provided to Aboriginal children and families on reserve and has resulted in many First Nations children "falling through the cracks." It is a national disgrace that, because of race and place of residence, First Nations children receive less than those in similar circumstances off reserve.

First Nations agencies across Canada have argued that the funding they receive for services is inadequate. Preventive services are especially underfunded, yet the thrust of the CFCSA is towards "less intrusive measures." The implementation of Gove's recommendations has added even more strain to already inadequate resources. Funding was inadequate for First Nations agencies delivering services under the former legislation (which was approximately twelve pages long), now agencies are being asked to use the same funds to administer the CFCSA (which is sixty-six pages long, not including amendments) and to respond to Gove. The federal government has neither reviewed nor adjusted its funding formula in response either to Gove or to the proclamation of the CFCSA. Nor has the province provided the additional resources agencies require in order to comply with provincial legislation and to respond to Gove.

## CONCLUSION

It was naive of Gove to believe that his recommendations would not have an impact on First Nations agencies. It was naive of Gove to assume that all Aboriginal communities are on reserve: a significant number of Aboriginal children live off reserve and are affected by his recommendations. The impact of Gove is that the Ministry of Children and Families has effectively ignored *Liberating Our Children* and its important analysis of a child welfare system premised on cultural chauvinism and colonialism. Despite all that has been written,<sup>7</sup> despite Judge Kimmelman's (1985) statement, made over ten years ago, that "the road to hell was paved with good intentions and the paving contractor was the child welfare system," Aboriginal children continue to fall prey to a system that does not incorporate their existence into its policy-making and planning. A child welfare system that ignores its history repeats its mistakes.

<sup>7</sup>Ibid. note 5.

I sit as a member of the Children's Commission Multi-Disciplinary Team, which reviews child fatalities. A disturbing number of those deaths are of Aboriginal children, and a disturbing number of those children have not had the benefit of adequate, culturally appropriate resources. I struggle with my role on the Children's Commission Multi-Disciplinary Team but continue to hope that my presence will have some impact. I will continue as long as my energy and conscience allow.

I acknowledge Armitage for raising the impact of Gove on Aboriginal child welfare. There is much more that he, or I, could say. In particular, an article could be devoted to the impact of the Children's Commission on ministry practice. It is unreasonable for Armitage to suggest that the ministry shift its focus away from administrative and organizational change when it has the spectre of the Children's Commission (a body recommended by Gove) overseeing and intruding into its daily practice. That discussion is for another day.

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## REPLY

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ANDREW ARMITAGE

First of all, thanks to Richard Sullivan and Kelly MacDonald for their thoughtful comments and to the editors of *BC Studies* for providing a forum for a discussion of contemporary social policy changes.

Sullivan anchors his comments around the concept of a "vision" for children and child welfare. He thinks that I have overstated the case for the existence of a vision and have not faced up to the fiscal and ideological realities of the 1990s. Yet "visions," "ideas," and "ideals" are the central features of Western social policy. From the nineteenth century to the present they have been a potent expression of a search for a society in which principles of equity and social justice temper the individualistic, alienating, and unequal social conditions generated by the economic marketplace. Thus the tension between the vision and "the harsher realities of contemporary Canada" was expected, while the disappointment comes in seeing that, even under a period of NDP government, the latter appeared to have overcome the former.

In drawing attention to the extent to which the vision of the community panels was set aside by the impact of the Gove Inquiry I did not intend to imply that this inquiry was the only source of opposition. My point, rather, was that it came at a sensitive time, in the midst of an incomplete process of policy change. It was thus influential in destabilizing the process of change, which, in turn, intensified the need for political and administrative control. "Risk" had to be reduced, but it was not the risk to children that became the driving force informing change so much as the risk to politicians facing repeated criticism for their lack of decisive action.

In my article I did not intend to reproduce simplistic dichotomies either between local services and administrative expertise or between family support and child protection. Administrative expertise is essential to all social policy processes, whether local or national. Indeed, it is at the level of administrative and professional services that the vision of social reformers is either achieved or relegated to the scrap heap of failed ideas.

In the conduct of child welfare, family support and child protection are closely related to each other. The more resources that can be put into family support the lower the risk to children and the fewer the instances when children have to be removed from their parents. As the costs of alternative resources for children are always much higher

than the costs of family support, the costs of the former can consume resources that could have gone to the latter. The problem in obtaining a balance between the two approaches is that, in each, risk has different characteristics. In the family support approach the risk is that a child will be left in her/his home and abuse and neglect will continue; in the child protection approach the risk is that the family and the child's life will be unnecessarily disrupted and that the alternative care system will fail to meet the child's needs.

Sullivan's discussion of "permanency planning" draws attention to the problems that are faced by the care system after children have been removed from their parents. Although such approaches have sought to provide a permanent plan, they have been notable in their lack of success.

The Gove Inquiry drew attention to the risks in the family support approach and led to the rapid increase in the number of children in care. As a result of this, resources that could have been used to strengthen the family and, thereby, reduce the risk to children have been consumed in a futile attempt to eliminate risk whatever the cost. Furthermore the lessons regarding the weakness of the alternative care system were forgotten. Consequently we have a seriously unbalanced system. We need to re-establish the position of family support services and to respect the judgement of the social workers who decide which risks to incur.

It is not possible to discuss the contemporary child welfare system without considering its historical and cultural roots in the social policy dilemmas of twentieth-century Western society. Colonialism and the assumption that Western ways of dealing with family problems were superior to First Nation ones made it possible to impose these ways of thinking on Aboriginal peoples. As MacDonald points out, the resulting process was "the Eurocentric application of the best interests test by the judiciary – to the detriment of both Aboriginal children and communities."

The case for separate Aboriginal child welfare systems rests in the need to reverse this historic imposition and to restore to Aboriginal communities the right to make policy decisions within their own cultural context. MacDonald makes this case, reiterating arguments that were presented in *Liberating Our Children* but that were ignored by Gove, despite the work of Herbert and others. Sullivan appears not to understand the primary importance of acknowledging this point of departure in all discussions of the application of child welfare

systems to First Nations peoples; instead, he concentrates on the political and administrative issues that separate systems entail.

Sullivan may be right to doubt that Aboriginal and non-Aboriginal systems will really be equal. Although social justice would suggest that resources should be transferred on a proportional basis to First Nations systems, social justice does not always prevail. It is also true that smaller separate systems will not be able to offer the specialized resources that larger ones can. However, neither of these arguments can negate the principle of self-government without reintroducing the Eurocentric and imposed system that was rejected in *Liberating Our Children*.

In drawing their commentaries to a close both Sullivan and MacDonald look to the future. Sullivan agrees with me that the present period has become a time of regression but doubts that a period of progressive change ever existed. MacDonald, too, doubts that the new Ministry for Children and Families can move beyond its administrative and organizational pre-occupations.

However, my purpose in writing was to articulate the position of those who continue to think that the two community panels provided a good reading of public and professional opinion in both the mainstream and Aboriginal communities. Since the original article was written, a new minister for children and families, Lois Boone, and a new deputy minister, Michael Corbeil, a social worker, have been appointed. Perhaps their appointments signal a move to reflect again on the vision of the community panels.