



**Legal  
Services  
Society**

Providing legal aid  
in British Columbia  
since 1979

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Office of the Executive Director

February 2, 2006

Mr. Ted Hughes, Q.C.  
**B.C. CHILDREN AND YOUTH REVIEW**  
PO Box 9732 Stn Prov Govt  
Victoria BC V8W 9S2

Dear Mr. Hughes:

The Legal Services Society ("LSS") is responding to your call for public submissions on the subject of key areas of B.C.'s child protection system.

As you are aware, LSS is a non-profit organization which offers legal aid to people with low incomes in BC. Legal aid services range from legal information and advice to legal representation. Clients receive the type of service that is most likely to help them resolve their legal problems.

An eligible<sup>1</sup> parent or party to a proceeding<sup>2</sup> under the *Child, Family and Community Service Act* (CFCSA) may receive representation where:

- a child<sup>3</sup> is taken into care;
- representation is required to deal with custody and access issues related to a child in care;
- a child has not been taken into care but there is a threat of removal and the actions of MCFD indicate that removal may be imminent; or
- the parent/party to a proceeding and MCFD have reached a proposed plan of care for a child and the client requires legal advice before (or after) signing a voluntary agreement.

As well, LSS provides legal advice to children over 12 who are the subject of consent orders, wards of MCFD and consenting to an adoption, or consenting to the permanent transfer of their custody to a party who is not their parent. In addition, LSS provides legal advice to adult third parties who intend to take custody of a child under the CFCSA.

LSS provides advice and/or representation in 2,500 CFCSA cases per year.<sup>4</sup>

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<sup>1</sup> In order to be eligible for legal aid, an applicant must qualify financially. Financial guidelines are posted on the LSS webpage at <http://www.lss.bc.ca/>.

<sup>2</sup> A party to a proceeding must be a member of the child's immediate family, a relative or individual who has lived with the child in a parental or custodial relationship or who has an ongoing relationship with the child; or a member of the community who has a cultural or traditional responsibility towards the child.

<sup>3</sup> Throughout this submission, reference to a "child" includes children, "parent" includes parents, and "family member" includes family members.

<sup>4</sup> This number represents referrals for representation for LSS clients and does not match the number of children apprehended by MCFD or the number of CFCSA proceedings in court. This number does not include clients assisted by Family Duty Counsel.



## Submission

The following submission reflects LSS's general experience in its role of providing legal advice/representation support for eligible people in the following areas:

- general profile of the applicants;
- child apprehension matters;
- alternate arrangements;
- section 60 *Child, Family and Community Service Act* (CFCSA) independent advice; and
- regional variations.

## General Profile of Applicants

Of the approximately 2,500 CFCSA cases that LSS deals with annually, 37% involve Aboriginal clients. Given that Aboriginal children represent 8% of the British Columbia population<sup>5</sup> but account for 40% of the children in care, they are overrepresented in CFCSA cases. It is clear that child protection in Aboriginal families raises important and complex issues. It is, however, beyond the scope of this submission to address these issues.

The LSS caseload represents a significant majority of the cases proceeding before the court. That so many CFCSA cases are legally aided reflects the fundamental connection between poverty and child protection. These factors need to be considered in assessing the impact of any changes to the child protection system which place greater resource burdens on families with limited means.

## Child Apprehension Matters

Reflecting the importance of child protection, the courts have a central supervisory role in CFCSA matters. This, combined with the complex nature of the issues involved, means it is critical that legal counsel assist parents through the CFCSA process.

While the role of counsel is generally respected, there are times when legal assistance for a parent involved in CFCSA proceedings is discouraged by social workers. This is particularly true when consensual resolutions are under consideration. Consequently, parents without legal counsel may not understand their rights or the process in which they are involved. This may result in arrangements which the parties cannot realistically fulfill.

## Alternate Agreements

LSS has seen an increase in cases where family members, other than the parents of the child, are seeking interim, temporary, or full-time custody of the child. Many of these cases arise from MCFD involvement.

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<sup>5</sup> Ministry of Children and Family Development, *Services to Aboriginal Children and Families* 2002



However, once a child has been placed with a family member through a consent order under the *Family Relations Act* (FRA), MCFD is not obligated to provide support services or resources to that family member or child unless such services and resources are specifically provided for in the order.

Under the CFCSA, the Director may enter into a kith and kin agreement with a family member to look after a child. The Director may, in the agreement, commit to contribute to the child's support while the child is in the family member's care, but is not obligated to do so.

These custody orders, consent orders, and kith and kin agreements often benefit MCFD financially because it can avoid litigation and/or the obligation to provide support services or resources to the family members caring for the child. Although circumstances sometimes support these types of orders and agreements, these should not be used as a mechanism to reduce MCFD responsibilities and obligations to the child, parent, or family member.

Many CFCSA cases generate related FRA proceedings for which LSS provides legal representation. This results in LSS providing funding for family litigation which should really be the responsibility of the MCFD. In LSS's experience, these cases often pit family members against each other which generates divisions within the family, rather than strengthening the family unit to deal with the best interests of the child. Changing this situation may require more flexible approaches to providing families with resources and to setting reliable expectations, with the objective of avoiding apprehension or third party custody orders.

#### Section 60 CFCSA Independent Advice

LSS manages referrals for independent legal advice to children and third parties in relation to negotiated alternate placement agreements. In 2005, LSS received 41 referrals from MCFD for LSS to provide this type of independent legal advice (ILA). This low rate of ILA assistance is a concern. LSS is aware of many cases where the provision of independent legal advice to children is actively discouraged.

Independent legal advice for parties to negotiated alternate placement agreements allows them to make informed decisions. As an example, many people are unaware of the fact that when a third party enters into a negotiated alternate placement, that person is no longer entitled to ministry support and services. This is the kind of information they would receive when given independent legal advice.

#### Regional Variations

From LSS's experience with clients involved with MCFD and/or CFCSA proceedings, ministry policy objectives do not always translate into practice. This has resulted in significant regional variations in the services or resources available to MCFD clients. By way of example, the use of mediation in LSS CFCSA cases varies significantly throughout



the province. Surrey, which housed a mediation pilot program, accounts for 25% of the mediation conducted in LSS funded CFCSA cases in the last three years. The next highest location in BC is Victoria, which accounts for 8% of the mediations conducted. There are numerous locations where there has only been one mediation on a LSS funded CFCSA case in the last three years.

#### Conclusion

LSS strongly supports MCFD objectives to protect children while leaving them within their immediate or extended family; the use of consensual dispute resolution mechanisms which enable families to participate in developing care plans; and the use of community resources to support families who face difficulties in raising children.

It must be recognized, however, that to be effective adequate funds and personnel within the ministry and community organizations must be provided to ensure required services and resources are available to make the ministry policy objectives work in practice. As well, legislative measures implemented for the best interests of the child should be utilized for that purpose and not used to circumvent the provision of resources and services needed by families and children to help them move forward.

LSS appreciates the opportunity to provide you with our input.

All of which is respectfully submitted this 2<sup>nd</sup> day of February, 2006.

Cordially,

Mark Benton  
Executive Director