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Moving forward: Identifying barriers and pathways to permanency for Indigenous children and youth in British Columbia through custom adoption.

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Executive Summary

Introduction

The number of Indigenous children in care continues to grow, there is a crisis, and the issue of permanency remains problematic. Currently, approximately 60% of the children in care in British Columbia are Indigenous. Indigenous children remain in care longer and are 20 times less likely to be adopted if in care of a delegated Aboriginal agency (RCY Forum Report, 2015, pg. 2-4). This is happening in a context where many Indigenous leaders have called for a moratorium on the adoption of their children.

A forever family is something all children should be entitled to, and unfortunately too many Indigenous children languish in the care system with no permanent attachment to a caregiver, their community or culture. Although adoption from the western perspective isn't widely accepted in the Indigenous community, custom adoption can be a successful pathway to permanency in that there is an attachment to family, community and culture. There is no disconnection from a birth family or community in custom adoption¹. Considering the provision for custom adoption in legislation, and policies and practice standards developed to protect Indigenous children, custom adoption isn't being utilized in British Columbia. This report explores the barriers and potential solutions to this problem.

Methods

An exploratory survey was developed to elicit the opinions of Indigenous and non-Indigenous adoption experts in British Columbia (see Appendix A). The survey specifically asked the participants their opinion on the barriers and the pathways to the use of custom adoptions. In addition, a conceptual framework, the Pathways to Permanency framework (Appendix D) was developed to assist both interviewees and attendees at a 2015 Reconciliation and Permanency forum so each group could better understand the legislation, practice standards and policies that are currently available when making permanency decisions for Indigenous children. The tool was developed to facilitate conversations and for my client to utilize as part of

¹ Custom adoption – Custom adoption is a term that is recognized as meaning the cultural practices of Aboriginal peoples to raise a child, by a person who is not the child's parent, according to the custom of the First Nations and/or Aboriginal community of the child.

an outreach strategy with First Nation stakeholders. The framework is a deliverable for this project, and will continue to be used by the Office of The Representative for Children and Youth (RCY) in their work related to Indigenous Child Welfare.

Findings

This section of the report identifies the participant's responses to the primary research questions:

- What are the barriers to the use of customary adoption as a means of finding permanency for Indigenous children and youth?
- How can customary adoption be encouraged and supported for Indigenous children and youth?

Barriers to the use of custom adoption are captured in the first section, followed by the identified solutions to how custom adoption can be encouraged and supported. Although the data was diverse, which isn't surprising considering the participants, some common themes did emerge. As the thematic analysis unfolded, an overarching theme of racism became clear as a barrier to the use of custom adoption. This is a significant finding; racism isn't easily discussed or easily acknowledged. Funding inequities, professional indifference, mistrusting historical relationships between government and Indigenous communities and barriers to legislation were all captured under the category of racism. The data collected also revealed a misunderstanding or lack of understanding of the current provision of custom adoption (sec 46) in the Adoption Act 1996. This confirmed my professional experience, in which I continue to come across social workers, managers and executive who have little to no understanding of custom adoption. What did surprise me was that this particular group of participants had a level of misunderstanding that I didn't anticipate. Most of the participants have a significant level of experience related to Indigenous child welfare.

Solutions identified from the data collected included, indigenizing the child welfare system, encouraging and increasing focus on Indigenous child welfare with Indigenous leadership and new Indigenous adoption legislation.

Conclusion and Recommendations

Based on my personal and professional experience, custom adoption is an underused but positive permanency solution for Indigenous children and youth who are in care today, as it can

ensure connection to family, community and culture is maintained. I bring my personal experience as an adoptive mom, a sibling to my brother who was adopted as a baby to a non-Indigenous family, and a witness to my father's experience in a traditional Indigenous caregiving situation. In addition, my career has been dedicated to improving outcomes for Indigenous children and youth. I have worked in this field for close to 20 years, and have direct experience with the practice of adoption, permanency planning and oversight of those systems and practices.

The Western model of adoption has not been well accepted by many Indigenous communities. There are a number of reasons for this, which includes:

- A mistrustful relationship between government and Indigenous communities, leaders and families
- Historical and systemic racist practices and policies (residential school, 60's scoop) that contributed to the disproportionate numbers of Indigenous children in care.

The data collected confirms that racism is the most significant barrier to custom adoption being utilized as a permanency option for Indigenous children and youth. Solutions are identified and they call for some significant shifts in the way Indigenous child welfare is delivered. Solutions include the call for Indigenous leaders to come forward and prioritize Indigenous child welfare and the Indigenization of the child welfare system.

The findings and analysis led to the following recommendations:

Administrative:

1. MCFD implement the RCY Recommendation Three from Finding Forever Families: A Review of the Provincial Adoption System,(2014) that states: That MCFD make legislative changes to require and support external oversight and public reporting of adoption or alternative permanency plans on an annual basis;
2. First Nations communities claim back responsibility for customary adoption practices in community. This will involve working with provincial and federal levels of government with the purpose to assisting them to understand and to acknowledge Indigenous primacy in this area This can also serve as the foundation for building a strong working relationship between nations and both levels of government;
3. Government implement Recommendation one of the RCY report When Talk Trumped Services: A Decade of Lost Opportunity for Aboriginal Children and Youth in British Columbia(2013) that states: That the government of British Columbia with the leadership of the Attorney General develop an explicit policy for negotiation of jurisdictional transfer and exercise of governmental powers over child welfare;

4. Government funds Indigenous leaders, families, children/youth, and social workers to participate in reconciliation events. The funding for the events needs to come from the federal government, as provincial MCFD budget needs to be service focused;
5. Indigenous leaders identify representatives to become part of a committee that would help direct, develop and implement reconciliation events
6. Federal and provincial governments acknowledge the existing customary adoption practices that are currently used in Indigenous communities, and ensure an equitable funding model is developed to ensure that families that choose custom adoption receive funding that is equitable with non-Indigenous families that have chosen a Western adoption;
7. Federal government implement the Human Rights Tribunal financial remedies that address funding inequities for delegated Aboriginal agencies. These include funding all provinces for prevention work(can include kinship, custom adoption, etc.), and the identification of a funding model that replaces Directive 20-1;
8. Government work with First Nations Leadership, communities and families, and identify an advisory committee of Indigenous leaders who will have responsibility for advocating changes to the existing child welfare system, and ensure that Indigenous child welfare is prioritized and funded appropriately. The federal government should fund this advisory committee;
9. Government immediately recruit an Indigenous Deputy Minister at MCFD, which would have responsibility for the current Indigenous children in care and potentially lead a transition process over Indigenous ownership over child and family services. The Indigenous Deputy Minister would work alongside the current Deputy Minister who would be responsible for non-Indigenous child welfare.

Training:

1. Ministry for Children and Family Development (MCFD) immediately develop an education and awareness plan for their staff, DAA staff and Indigenous communities and leadership that utilizes the Pathways to Permanency framework developed as part of this research;
2. MCFD develop a cultural safety training program that includes anti-racism training for all employees, informed by Indigenous communities, families and children;
3. Provincial government provide training opportunities and/or funding for delegated Aboriginal agency staff to obtain the necessary tools to provide kinship care, adoption and custom adoption permanency placements for their children;

Research:

1. Federal and provincial governments fund Indigenous communities to gather information on nation specific customary adoption practices in order to understand the diversity and difference between each First Nation in BC. This could include an in-depth analysis of 2-3 nations;
2. Government fund an Indigenous organization or researcher to review Indigenous legislative options in other jurisdictions, including US, New Zealand and Australia. And advise on whether a national legislation is more appropriate than nation specific legislation;
3. Government present the above noted research and engage with Indigenous communities on ways to develop and implement Indigenous adoption legislation.

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1. Introduction²

One of the critical foundational components of healthy child development is the building of a sense of connectedness and permanency (Carriere, 2005; Fournier & Crey, 1997; Leake, Potter, Lucero, Gardner & Deserly, 2012; Yellow Horse Brave Heart, 1999). This begins with attachment to caregivers and continues into strong connections with community, culture and the broader society. Attachment to caregivers, community, culture and the broader society is distinct from how attachment is defined from a non-Indigenous worldview. The non-Indigenous definition is born from Bowlby's work on early attachment, which theorized that a healthy attachment was a continuous, intimate relationship with one caregiver, primarily the mother (Bretherton, 1992). Bowlby's work was significant in that it contributed to sensitivity to infant signals and its role in the development of infant-mother attachment (see Barth et al, 2005; Slater, 2007; Ussher et al., 2016).

In contrast, Carriere and Richardson (2009) use the word "connectedness" to describe what attachment means from an Indigenous worldview. They suggest that connectedness is broader than the Western view in that it is grounded in a person's whole environment rather than an attachment to one or two people. The distinction between these worldviews is significant. These different worldviews become an area of conflict when practitioners are making best interest or permanency decisions for Indigenous children in that the lens through which the decisions are made may not capture the richness of the Indigenous sense of connection. The child is connected to a community and not just a few individuals, but this may be misunderstood as a lack of attachment through a Western way of understanding attachment. This can result in the removal of Indigenous children from their families because the families do not appear through Western eyes to be "attaching" to their children.

² ***Definitions: Throughout this paper I use the words Indigenous, Aboriginal and First Nations. Aboriginal as used in relation to the legislation (CFCSA 1997 and Adoption Act 1996) in British Columbia. First Nations is used specifically when describing a specific nation and Indigenous is used most commonly. Indigenous is widely accepted amongst academia as the current respectful terminology with respect to Canada's Indigenous population.***

The issues related to the confusion between the non-Indigenous and Indigenous worldviews of attachment and connectedness, respectively is the focus of this project and are related to permanency and adoption decisions of Indigenous children made by child welfare practitioners in British Columbia. This is described in further detail later on.

Children who experience a sense of permanency are more likely to become healthy adults while those who do not or who have their sense of ongoing connection disrupted often struggle in childhood and into adulthood (Carriere, 2005; Carriere, 2007; Fournier & Crey, 1997; Simi & Matusitz, 2016; Yellow Horse Brave Heart, 1999). In this report, I discuss permanency as it relates to child welfare using the definition that “permanency in child welfare means a legally enduring, nurturing family for every child.” (RCY 2015, Glossary) Struggles with permanency have a major influence on life outcomes.

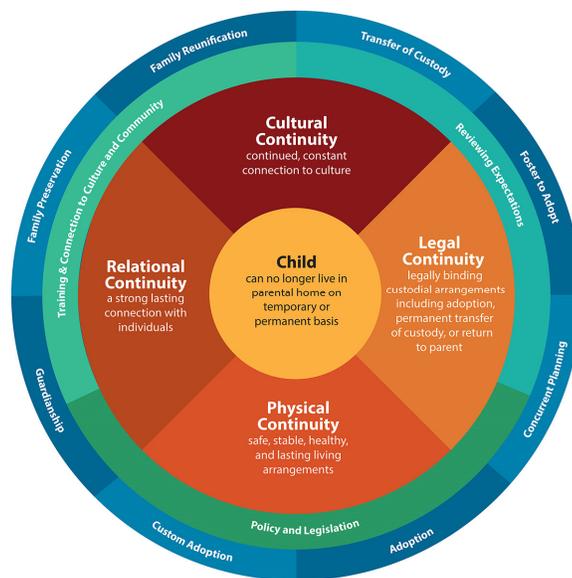
It is long known and well established that historical and ongoing colonial practices in Canada have created significant disruption in the lives of Indigenous people (Crichlow, 2003; de Leeuw, 2009; Royal Commission on Aboriginal Peoples, 1996). Among the most devastating was the trauma created by the residential schools and what has been labeled the 60’s Scoop (Bombay, 2014; Bombay, Matheson & Anisman, 2011; DeGagne’, 2007; Fournier & Crey, 1997). These concerted efforts of forced assimilation collectively removed generations of Indigenous children from their families, communities and cultures. They created problems for individuals and have had long-term multi-generational negative consequences for families and communities (Charles & DeGagne’, 2012).

One of the outcomes of these practices has been a disproportionate number of children in state care drifting in the system without any sense or permanency or connection. This is reflected in the current crisis in British Columbia where more than 60% of children in care are Indigenous. Further, they remain in care longer than their non-Indigenous peers and are 20 times less likely to be adopted if they are in the care of a delegated Aboriginal agency versus in care of the MCFD. (RCYBC 2015, pg. 2-4). While there appears to be general agreement that these

numbers are unacceptable, there remains a lack of consensual agreement about how to reduce them (RCYBC, 2014).

The issue of a disproportionate number of Indigenous children in government care is compounded by ongoing conflicts about how Indigenous communities and governments in various Canadian jurisdictions view the pathways to permanency. Some of these conflicts are related to cultural differences about how permanency should and can be achieved, and to the unintentional barriers created by ill-informed or misguided policies and legislation. Indeed, there are numerous pathways to permanency (see Figure 1). One way to achieve permanency is through what is called custom adoption. This project identifies and examines barriers and pathways to permanency by exploring the perspectives of both Indigenous and non-Indigenous experts in child welfare about custom adoption, in an effort to learn about the current challenges and solutions to supporting Indigenous children and youth in British Columbia.

Figure 1: Permanency to Pathways Framework



a. General Problem

The removal of Indigenous children from their families and communities through the residential schools and the 60's Scoop and the ongoing removal of youth has had a significant negative impact on Indigenous people and has created a great deal of mistrust towards non-Indigenous "child serving" systems. There is a significant historical context to the practice of

adoption in the BC Indigenous community that has contributed to a negative connotation of the idea of adoption amongst many community members and leaders.

Indigenous leadership has long called for the British Columbia government to declare a moratorium on the “adoption” of their children by non-Indigenous families (Carriere, 2007). The government introduced new legislation in 1997 (CFCSA 1997 Section 71, see Appendix D) that was intended to alleviate the concerns of Indigenous leaders. It was also meant to give Indigenous children an experience of permanence and connectedness. The new legislation was to ensure that children were not lost to their heritage and home community, and that their relationships with the family, community and culture were left intact even if an adoption order was granted to a non-Indigenous family. The BC legislation is also in compliance with the United Nations Convention on the Rights of Child where Article 30 of the Convention states, “[I]n those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exists, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.” Still, in spite of these overarching legislations, the number of Indigenous children available for adoption remains high, and they continue to be adopted by non-Indigenous families (RCYBC, 2015). The provisions of these legislations, by themselves have not been effective. For example:

- In 2015/16, there were 158 Aboriginal children placed for adoption. Of these, 81 were placed in Aboriginal homes (51%), while 77 were placed in non-Aboriginal homes (49%).
- So far during 2016/17, 18 Aboriginal children were placed for adoption. Of these, 10 were placed in Aboriginal homes (56%) while 8 were placed in non-Aboriginal homes (44%)
(Source: Adoption Management System (AMS) July 19, 2016)

Unfortunately, much of the child welfare practice does not appear to be in compliance with the legislation. There is an administrative scenario that may explain the lack of compliance. For example, when an Indigenous child is initially placed with a non-Indigenous foster parent, there will be multiple attempts, often over multiple years to try work with the birth family to return the child home. When this fails and a permanent order is sought, there is a long-winded process that may take as many as eight or nine years before permanency or adoption is finalized.

Given the length of time the child has lived with the non-Indigenous family has formed, a mutual bond and psychological attachment between at least one caretaker and the child, the foster parents understandably apply to adopt. If the foster placement is stable, there is a high likelihood that no Indigenous family will be considered so the worker applies for an exception to policy (CFS Standard 20 AOPSI 11 and 15). The application for an exception to policy then goes to an Exceptions Committee. As will be explained, this committee can make an exception to current practice and allow an Indigenous child to be adopted by a non-Indigenous family.

A more in- depth look at the Exceptions Committee is detailed later. For now it is worth mentioning that, close to 90% of the time, the exception to policy is approved.³ As a result, the child may have the benefit of a stable environment in the short term but will not necessarily have a connection to the birth community and culture. This also contributes to the ongoing loss of children by First Nations communities. The blatant assimilation practices of the residential schools and the 60's Scoop may be over, but the loss of children continues through these practices.

There are a number of ways to create permanency for Indigenous children and youth. These will be briefly mentioned in the Pathways to Permanency conceptual framework (See Figure 1). The Pathway to Permanency that is the focus of this project is custom adoption. According to Poitras and Zlotkin (2013) custom adoptions are:

Cultural practices of Aboriginal peoples to raise a child, by a person who is not the child's parent, according to the custom of the First Nation and/or the Aboriginal community of the child (p.6)

Custom adoption makes provision for the future care of a child but also emphasizes Indigenous customs and the Aboriginal community as critical features of the child's upbringing. Custom adoptions are distinct from the more common form of adoption based on English law which is understood to be "an arrangement that is exceptional where a child, who has no caregivers, is permanently placed with a family" (p.8). Here, in keeping with Bowlby's notion of attachment, the Western concern is about replacing and making provision for a caregiver, not ensuring connection with a culture and community. This is the most common form of

³ Personal experience as Chair and committee member from 2002-2013

permanency sought for both Indigenous and non-Indigenous children. However, this is problematic from an Indigenous perspective because there is no connection to the family, community or culture.

Although custom adoptions are recognized under the current legislation (Adoption Act 1996), and in spite of the disproportionately high number of Indigenous children and youth in permanent (RCYBC, 2015), few custom adoptions have occurred in British Columbia (RCYBC, 2015). For example, on April 30, 2015 there were 1046 children in care waiting for adoption. Of which 612 (58%) were Indigenous and 434 (42%) were non-Indigenous. There were 4090 children and youth in permanent care of which 2613 (64%) were Indigenous and 1477 (36%) were non-Indigenous. Of this total number, 1290 had adoption plans 670 Indigenous (52%) and 620 (48%) non-Indigenous) and 2800 with non-adoption after care plans 1943 Indigenous (69%) and 857 non-Indigenous (31%) (MCFD, 2015) Not only are there disproportionately more Indigenous children and youth in care but the disproportion becomes even more accentuated when the path to adoption is considered, where, as previously noted, an Indigenous child in care of a delegated agency is twenty times less likely to be adopted than a non-Indigenous child in MCFD care (RCYBC 2015).

Given these statistics, if the goal of a forever family is to be achieved for Indigenous children and youth, then every possible route to permanency that retains connection to the birth family and culture has to be considered. The focus of this project is to explore why custom adoption is not fully utilized as a way to achieve permanency for indigenous children. A secondary question is to explore how to increase ways for Indigenous children to find permanency through custom adoption.

b. Project Objectives and Research Questions

The following are the Primary Research Questions:

1. What are the barriers to the use of customary adoption as a means of finding permanency for Indigenous children and youth?

2. How can customary adoption be encouraged and supported for Indigenous children and youth?

c. Client

My client is the Office of the Representative for Children and Youth. The Representative for Children and Youth is Dr. Mary Ellen Turpel-Lafond; she is the first Representative and is currently serving her second five- year term. The office was established in 2007 on a recommendation resulting from the Hughes Review (2005) of British Columbia’s child welfare system. The Representative is independent, bipartisan and reports to the Legislative Assembly. The Representative’s mandate includes:

- The ability to advocate on behalf of children and youth and young adults to improve their understanding of and access to designated services;
- The ability to monitor, review, audit and report publicly on designated services for children and youth;
- The ability to conduct reviews and investigations into the critical injuries and deaths of children and youth receiving reviewable services (RCYBC website, 2016).

d. Situate Myself

I bring personal and professional experience to this research project. First, I am an Indigenous woman from the Snuneymuxw and Hupacasath First Nations on Vancouver Island BC. My Indian name is Aa ap waa iik. It loosely translates to, “The one who says the right words about chiefly business”. To me, there is no more “chiefly business” than Indigenous child welfare, and more specifically working towards better outcomes for Indigenous children and youth. While completing this project, I tried to ground myself in my Indigenous name, and consider my history, my family’s, experience and how we can immediately support children and youth in care today, immediately. It is my argument, based on personal and professional experience, that custom adoption is the best way to achieve better outcomes for children and youth currently in care. I will explain why I believe this to be the case.

I have worked for almost 20 years in the field of Indigenous child welfare, and currently have the privilege and honor to work as the Deputy Representative at the Office of the Representative for Children and Youth. Prior to this, I was the designated Director for Aboriginal children in care of the Ministry for Children and Family Development. I am also an adoptive parent to three amazing children who are also Indigenous. I have a brother, who was adopted out as an infant to a non-Indigenous family, during the time of what has been identified at the “sixties scoop”. My brother has been recently reunited with our family and it has been a positive and healing process for all of us. We knew all our lives that we had a brother who had been adopted, and my father had a deep desire to reunite with him.

In 2009, my father’s wish came true and we were reunited with Joel. He was welcomed into our community, received his Indian name and said he never felt more at home than at that time. He was fortunate in that he has wonderful adoptive parents and has had a wonderful life. He felt loved by his adoptive parents, married his high school sweetheart, has two daughters, completed a master’s degree and retired from the Air Force as a Lieutenant Colonel. However, he had no connection to his community, or to being First Nations. He was told he was Metis and that our father had passed away in the war. So although he had wonderful adoptive parents who gave him a positive upbringing, that connection to who he was as a First Nations man was missing. My father had been sick for many years, and passed away shortly after reuniting with his first son. I am positive that he was waiting to be reunited before he could go in peace into the next world.

I also want to share a bit of my father’s experience with traditional caregiving that could have been considered a custom adoption. My father’s parents were from the Snuneymuxw First Nation and the Hupacasath First Nation. His parents separated and my father remained with his mother on the Hupacasath First Nation. His mother struggled with poverty and other issues relating to being an Indigenous woman who had been to residential school. In order to earn money, she would go to Seattle to berry pick for months at a time. My grandfather worked on fishing boats and was often away for months. If these situations that my father found him in had happened today child welfare may have removed him and placed him with non-Indigenous caregivers. However, on the Snuneymuxw First Nation, Ellen White, also known as Kwulasulwut, had a home that took in many of the children from their community. She was a traditional midwife and was the mother to five birth children. She accepted my father into her

home whenever he needed to stay. My father spent many years with Kwulasulwut, called her mom and was part of the family in every way. There was no stigma associated with my father moving between homes. Kwulasulwut did not receive financial support for helping to raise my father; this was her role in the community. To this day, Grandma White is part of our family, and accepts us as her grandchildren. I meet people from up and down the Island who spent time living in her home, and we estimate she took in around 50 children. This is an example of what custom adoption can look like—a permanency arrangement where Indigenous children can retain connection with community and culture. As will be explained below, such arrangements need to be supported financially, as many of our communities struggle with intolerable levels of poverty. Creating an expectation that families can take on additional children without the financial support that non-Indigenous caregivers receive is an example of systemic racism.

2. Literature Review

The literature review will provide a summary of:

1. what is known about custom adoption,
2. How it relates to non-Indigenous adoption in Canada, and
3. An overview of the pertinent current legal and procedural process in British Columbia.

I searched academic databases, websites and asked key contacts I knew if they were aware of any literature on the topic. Given the importance of permanency to young people, I was surprised at how little has actually been published on the topic.

a. Custom Adoption

As mentioned, custom adoption is an Indigenous cultural practice dating back to the earliest times whereby the responsibilities for the care of a child is transferred from one adult to another (Baldassi, 2006; Decaluwe et al., 2015; Lomax, 1997; Morse, 1980; Poitras & Zlotkin, 2013). Custom adoptions vary from nation to nation but have as a common feature the need to provide stability, permanence and connection for a child who otherwise cannot be provided for by their parent(s) because of death, illness or other issues. This form of adoption might also take place with a relative with whom the child had a unique or special relationship and who would then

assume responsibility for the child (Betsy Lomax as quoted in Lomax, 1997, p. 198.). However, the adoption of a child could also be done by a non-relative. Chief Robert Michell explained in Lomax (1997) that:

....any person or persons who care for a child is the parent of that child even if there is no biological relationship between the child and the person or persons who cared for that child. The only necessity for establishing a relationship is the protection and care of the child (p. 198).

Custom adoption was never extinguished as a right or a practice (Lomax, 1997), yet there are relatively few custom adoptions in British Columbia (RYCBC, 2015). There are a variety of reasons for this.

e. Reasons for not taking up Custom Adoption

1. Mistrust. Lack of official recognition not the least being the mistrust communities have towards the government and the various sanctioned adoption processes. When there is mistrust between the government and community, it is less likely that prospective adoptive parents would come forward and express an interest in the custom adoption process. At this time, families must apply through the Supreme Court of British Columbia if they want the custom adoption recognized. This requires that they approach the Ministry for Children and Family Development and enter into an application process for court. It may be that the prospective adoptive family is concerned about how they are perceived and whether they may be judged too harshly, based on the historical relationship between government and communities. The forced removal of children through adoption during the 60's Scoop and in subsequent years is a living wound in many communities. In fact, many Indigenous people don't use the word adoption because of the negative association it has with the destruction of individuals, families, communities and culture (RCYCBC, 2015). In addition, this project found that many of the Indigenous participants didn't fully understand what custom adoption meant. This lack of understanding is consistent to what was found at the Forum 2015, (*A Forum for Change, Reconciliation for Today's First Nations, Métis & Aboriginal Children Through Custom Adoption and Lifelong Family and Tribal*

*Connection*⁴) that the Representative for Children and Youth co-hosted with the 23 delegated Aboriginal agencies (DAA) in BC and the Ministry for Children and Family Development (MCFD). MCFD staff and community members either had a different understanding of what custom adoption meant, likely reflecting their unique worldviews, or no understanding.

2. Complicated Process. Although the rights associated with custom adoption were not extinguished, the process has become complicated in many Canadian jurisdictions because of the statutory laws associated with mainstream adoption. While custom adoption is in principle protected under s.35 of the constitution, there is a concern that statutory adoption laws have weakened or limited adoption as traditionally practiced by communities (Baldassi, 2006). While court decisions have generally supported custom adoption, this has not been without serious attempts at restricting or narrowing the practice (Baldassi, 2006; Lomax, 1997). In the following section I will speculate on why these restrictions may be so.

3. Lost Understandings. Most of the efforts are a reflection of the very different way that adoption is understood in Indigenous and non-Indigenous communities in Canada. English adoption practices may have originally had much in common with traditional Indigenous customs but this changed significantly in the 1800s (Baldassi, 2006). At that time legislation promoted and enforced “modern” adoption practices that included the extinction of parental rights of the biological parents and the enforcement of secrecy regarding the biological and family origins of the child (Baldassi, 2006; Strong,-Boag, 2006; Ward, 1996). During this period, adoption was considered on the best- interests- of –the- child principle. Prior to this time, adoption, although usually informal, could occur for reasons similar to the ones practiced in Indigenous communities where significant connection with the child was a valid reason for adoption (Pinchbeck & Hewitt, 2009).

The differences between statutory and customary adoption are significant. In customary adoptions there is no practice of secrecy (Baldassi, 2006; Lomax 1997). In Indigenous culture children are usually aware of all members of their families. Rather than “belonging” to one set of

⁴ Source: Focus Groups and Presentations 2015

parents, the children are connected to both their biological and adoptive parents. As well, customary adoptions have at their core an emphasis on connection to culture and community. They are permanent in this sense although the child may move back and forth between homes and families (Baldassi, 2006). Customary adoptions are concerned with the best interests of the family and community, not solely the best interests of the child. In a culture that values the collective, decisions about the child are considered more in the context of family and community.

3) An overview of the pertinent current legal and procedural processes in British Columbia. Despite the non-extinction of customary adoption under the Constitution, the provincial government in British Columbia has formally tied this form of adoption to statute. Section 46 of the *Adoption Act* (1996) states that:

On application, the court may recognize that an adoption of a person affected by the custom of an Indian band or Aboriginal community has the effect of an adoption under this Act.

This provision is weak and unclear. Working in the field for almost twenty years, and I continue to come across practitioners, managers and executive who have no understanding of what custom adoption means under this legislation, never mind the steps required to complete a custom adoption.

The *Adoption Act* also does speak to the involvement of the Indigenous community in planning. For example, Section 3(2) Best interests of child states, “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.” The provision, although vague, does create space for including community in planning for their children. However, in practice involvement and planning can be interpreted in unique ways by social workers. Updated legislation is necessary, and needs to be informed by families who are impacted by the legislation and Indigenous leaders and communities.

The provision for custom adoption under the current Adoption Act is a positive development; however at this time the Ministry for Children and Family Development (MCFD) has no record of even one custom adoption (personal communication August 2, 2016). There are

many reasons for this, and some are explored through this project. It's a significant concern that the provision has been in the Act for a number of years (since 1996), and it doesn't appear that government is exploring what barriers exist and what legislative changes are required to ensure that provision is utilized and custom adoption is a viable, culturally appropriate permanency option for Indigenous children.

Anecdotal information provides many examples of traditional or custom adoptions throughout First Nations that are not registered with MCFD. In the field of Aboriginal child welfare, most practitioners, through their work and relationships with community, are aware of traditional or custom adoptions in the community. In my professional experience at MCFD and RCYBC, I have become aware of some examples of traditional or custom adoptions. Most communities identify families that have raised their family members or children from the community. Often these families are known as community caregivers, and the child or youth may move between this home and their biological family.

In addition to the Adoption Act (1996), the Child Family and Community Services Act (1997) speaks to the importance of placing Indigenous children with families, community or another Indigenous family before a social worker can consider a placement of a non-Indigenous family. If the child is an Aboriginal child, Section 71(3) requires the director must give priority to placing the child as follows:

- (a) With the child's extended family or within the child's Aboriginal cultural community;
- (b) With another Aboriginal family, if the child cannot be safely placed under paragraph(a);
- (c) In accordance with subsection (2), if the child cannot be safely placed under paragraphs (a) or (b) of this subsection.

The standards and policy (see Appendix D, Pathways to Permanency framework) both in the MCFD Practice Standards and the Delegated Aboriginal Agencies Aboriginal Operational Practice Standards and Indicators (AOPSI) support the provision of customary adoption in the CFCSA and the Adoption Act. The protocols require a social worker to have fully explored all possible placement options as described in the priority placement policy. If a non-Indigenous family is being considered, an application must be made for an exception to the policy. The

exception must document all steps to consider possible family, community and other Indigenous family placement possibilities. It's a significant piece of work, as it should be. The requirement to document the work that practitioners must undertake before considering a non-Indigenous placement for an Indigenous child is significant. The work should reflect a positive practice that clearly demonstrates full consideration of Indigenous caregivers as the policy and legislation dictate. From my experience working in Indigenous child welfare, and as Chair of the Exceptions Committee for a number of years, practitioners are often exploring family placements at the adoption stage of planning, rather than when a child first comes into care or even at the stage when the child comes into permanent care. This is problematic because the child has likely been in a temporary foster placement for a significant number of years, and often has lost all connection to the community. Even if family does come forward at this stage, it creates a challenging decision for the committee and practitioners, since the child would now be psychologically attached to the non-indigenous family, as previously discussed. Permanency must be decided much earlier on if custom adoption is to be a possibility. If untimely decision-making continues, it is likely that the number of Indigenous children being placed with non-Indigenous caregivers will continue, or Indigenous youth will "drift" in foster care without any permanency option, and age out of the foster care system at the age of nineteen. This is an idea that will be explored in the recommendation of this report.

f. Exceptions Committee

Following the requirement for documentation on priority placements, the social worker must include a cultural plan with the child's Indigenous community and prospective non-Indigenous adoptive parents. This cultural plan is part of the written submission that is sent to the Exceptions Committee. The exception must finally include a summary of how this non-Indigenous family will meet the child's unique cultural needs. This submission is then presented to the Exceptions Committee, an internal MCFD committee that is comprised of:

- Director of Adoption,
- the Designated Director of the DAA,
- MCFD staff, and
- External Indigenous community members.

The Committee either approves the exception to policy or asks for more information on the submission. Rarely is the submission rejected (Chair and committee member from 2002-2013). The Exceptions Committee (established in 1996) was a response to the Indigenous community and leaders concerns about the large number of their children being placed with non-Indigenous caregivers. The number of adoptions of Indigenous children to Indigenous family has seen small increases (See above noted text). However, there is still much concern over the number of Indigenous children being placed with non-Indigenous families.

Tying custom adoptions to a court process, as is done in British Columbia, can be a disincentive for the use of custom adoption (Balassi, 2007; Poitras & Zlotkin, 2013). The cost and the time it takes to get a ruling may make the process unattractive to many communities. This is compounded by the lack of trust many communities have for statutory adoptions and the courts. There is also concern that any court involvement with customary adoptions may limit rights and responsibilities associated with customary law (Poitras & Zlotkin, 2013). Building on these possible barriers, this project will identify other challenges as well as ways in which the number of custom adoptions can be increased.

[g. Pathways to Permanency Framework](#)

The conceptual framework for understanding the pathways to permanency was developed by this writer for the Forum for Change conference held April 2015 in Nanaimo. This event, co-sponsored by the Representative for Children and Youth, the British Columbia Ministry of Children and Family Development, and the Directors Forum of the 23 delegated First Nations, Métis and Indigenous Child and Service Agencies brought together elders, chiefs and leaders, youth, community members, professionals and senior government officials to create concrete change for the purpose of ensuring that Indigenous youth in care in British Columbia find forever families (RCYBC, 2015). The objective of the Forum was to facilitate dialogue that would “begin to repair this disconnect – reflecting the belief that through building common understandings of *why* shifts in permanency planning are needed and *how* those shifts may be made, the essential groundwork may be laid to implementing long overdue concrete action”

(2015, pg.3) Prior to the Forum and for the purposes of facilitating dialogue and demystifying process, the researcher developed a conceptual model (see Figure 1) that includes relevant legislative, practice standards and policies that support pathways to permanency. The framework helps facilitate dialogue related to how adoption can look different for Indigenous children, and what communities, family and leaders can expect. This framework was used to demonstrate to leaders and communities that there are significant , practice standards and policies under the current child welfare and adoption legislation will allow for involvement and planning from Indigenous communities, and that there is a priority on placing Indigenous children with Indigenous families. These provisions can hold the ministry to account when making permanency decisions for Indigenous children and youth.

In addition, the framework provides a diagrammatic representation to show the relationship of the child to various factors considered in permanency decisions. With the child at the centre, every decision begins with the child's interest in mind. The next circle defines the four factors related to permanency- relational, cultural, physical and legal. Relational permanency relates to a strong, lasting connection to the individuals in a child's life. These could include relationships with birth family, foster family, friends and other significant individuals. Cultural permanency can be achieved with a strong, continuous connection to the child's family, community and unique culture. Examples of this include the child participating in naming and other ceremonies unique to their nation and a continuous relationship with extended birth family that is respected and encouraged by the adoptive parents. The result of cultural permanency is a child or youth who is secure in his or her unique identity and who can become a full, participating member of their nation. Physical permanency is demonstrated when the child or youth has a lasting, healthy and stable living environment. That can be achieved through a number of pathways, including foster to adopt, western adoption or a transfer of custody from the parent or guardian to another adult. Finally, legal permanency is achieved through legally binding custodial arrangements. These can include adoption, custom adoption and transfer of custody. The next two circles describe the tools available to reach permanency and some of the permanency options, including custom adoption, foster to adopt, and adoption (Western model).

At Indigenous child welfare forums or gatherings, the discussion is often future-focused on significant and timely changes to the child welfare system, including the discussion on self-

governance. The discussions can be political and focused on treaties and other longer term initiatives that would see nations take their inherent responsibility for Indigenous child welfare in their communities. These are important discussions; however, there also needs to be a focus on the Indigenous children in care right now. We can't lose another generation of children and youth while discussions on longer term solutions are debated. The intent of the Pathways to Permanency framework was to demonstrate to community, leaders and social workers the importance of policies and legislation that facilitate community involvement in the priority placement of Indigenous children with their families, extended family and their community. Further, the framework was developed to show that immediate provisions within a number of policies, practice standards and legislation support Indigenous peoples to be involved in planning and to place their children with their family, extended family or community. The plan is to continue to share the framework and utilize it as staff from the Representative's office meets with individual nations to discuss these important issues. Government has prioritized permanency options for children and youth in care, and the RCYBC office wanted a visual tool that could be used to facilitate dialogue with communities.

The discussions, youth panel, presentations and anecdotal information findings from the Forum show there are many pathways to Indigenous permanency placements, though these are not being utilized as we would hope. It remains that permanency is a dream rather than a reality for far too many Indigenous children and youth in care. There is a growing commitment to making this come true although it is clear that more options have to be actively pursued if this is to occur. As mentioned, all children need a sense of permanence and connection.

The most moving presentation at the Forum was the youth panel, where all described their desire for permanency and connection. The RCY follow-up report and action plan noted that "[a] number of the youth also expressed in visible and powerful ways the painful – and in many ways beautiful – movement from living in unsafe and unwanted environments, to family settings of trust and connection." (2015, p. 4) This poignant quote demonstrates the real desire of youth to be placed permanently in family settings where they can develop trust and connection. Many of the youth discussed the disconnection they felt in foster homes and never feeling secure in the temporary placement in a foster home. There was a lot of emotion as youth described how it felt to go from that insecure feeling to feeling wanted and loved in a permanent family home. It

was the best education for those of who work in this field. I can talk and write about what permanency means, but nothing is more powerful than hearing from the youth themselves. The room was completely silent during the youth panel and there was hardly a dry eye in the room.

[See Figure 1. Pathways to Permanency Framework](#)

The inner circle in the framework represents the child who is in either temporary or permanent in care. As seen in the second circle, (for the child to achieve permanency) there needs to be cultural, relational, and physical continuity. Cultural continuity requires processes that ensure the child has continued and constant connection to their culture. Cultural continuity is what uniquely characterizes custom adoption. The traditional and ceremonial aspects of a custom adoption facilitate cultural continuity in a way that isn't as likely in a western adoption process. Relational continuity requires strong and lasting connections with significant individuals in the child's life. For physical continuity there needs to be safe, stable, healthy and lasting living arrangements. Legal continuity involves legally binding custodial arrangements, including adoption, custom adoption, and permanent transfer of custody or return to parent. It's important to note that the framework doesn't give more importance to legal, cultural, relational or physical continuity. All are needed for optimal development. Often, it appears that cultural continuity hasn't had the same importance in planning or best interest decision making in child welfare. The next circle includes the mechanisms that contribute to the required continuity.

The outer circle is comprised of the different pathways to permanency for Indigenous children and youth. All are possible within current legislation and policies, although as previously mentioned custom adoption is rarely used in British Columbia. This is surprising given that it is the traditional way in which Indigenous young people would have been "adopted" for millennia. It is not surprising given the suppression of Indigenous culture and communities in the past few hundred years. It is currently the most underutilized of the pathways for permanency, and it is the argument of this project that cultural adoption is the most promising in terms of helping Indigenous children and youth achieve permanence with connection to family, community and culture. This project examines the barriers to the implementation of custom adoptions and ways in which it can be implemented.

3. Methodology

An exploratory survey was developed to elicit the opinions of Indigenous and non-Indigenous adoption experts in British Columbia (see Appendix A). The survey specifically asked the participants their opinion on the barriers and the pathways to the use of custom adoptions.

I developed a conceptual framework, the Pathways to Permanency framework(Appendix D) as a tool to assist attendees at the Forum in 2015 and for interviewees to better understand the legislative, practice standards and policies that are currently available when making permanency decisions for Indigenous children and youth. Part of the framework also includes a circle that situates the child at the center of permanency planning. Then concentric circles lead the reader through permanency options and the types of permanency. The tool was developed to facilitate conversations and for my client to utilize as part of an outreach strategy with First Nations communities. The intent of the outreach is for RCY staff to meet with individual nations, their community leaders and families and potentially MCFD staff, and create dialogue on the immediate permanency options that can be used when making decisions for their children and youth in care.

a. Participants

In this study I used a purposeful sampling method to recruit participants. I chose purposeful sampling because it allowed for the collection of a great deal of rich information from people knowledgeable about the topic (Breen, 2010). Participants were primarily drawn from those people who attended the Forum, although I also recruited participants who were known to me and had experience and what I considered expertise in the field of Indigenous child welfare. Participants at the Forum reflected a range of “stakeholders” who have knowledge about and an interest in furthering permanency for children and youth. I approached people directly to see if they would be willing to complete the survey. I did not have any difficulty finding participants as this is an area in which a number of people have shown a deep interest and commitment. It is also a timely topic.

Customary adoption is not widely discussed in British Columbia or other Canadian or international jurisdictions. There are traditional knowledge-holders in the communities. There

are also specialists in adoption in the province. However, there are significantly fewer people who could be identified as having specialized knowledge regarding at least some aspect of customary adoption who are familiar with Indigenous and non-Indigenous adoption practices and policies. As such, specific people who are known to have an understanding about current and custom adoption were asked to take part in the study. While it cannot be claimed that they are a representative sample, they do reflect a range of “stakeholders” who have an interest in furthering permanency for children and youth.

I surveyed eight people. Given this is an exploratory study; this was a sufficient number to be able to generate a rich response. To ensure confidentiality of the participants, only general information is provided about them.

ROLE	NATION	Participant Number
Advocate	Cree	1
Senior Service Provider	Coast Salish	2
Elder/ Adoptive and Foster parent	Coast Salish	3
Advocate	Non-Indigenous	4
Service Provider/ Foster Parent	Cree	5
Former Youth in Care/Researcher	Coast Salish	6
Advocate	Metis	7
Researcher/Advocate	Non-Indigenous	8

b. Data Analysis

i. Thematic Analysis

Since this is an exploratory project with a small number of participants, I used a thematic analysis to understand the responses of the participants. This was used to analyze and report the data I collected during the study. This is a commonly used method to uncover the meanings of data collected (Braun and Clark, 2006; Patton, 2002; Riessman, 2008). Thematic analysis serves as a means of seeing, a way of making sense of what you see, and a manner of analyzing the data you see (Boyatzis, 1998). It is a systematic way to organize data into apparent themes that arise from the data as it is analyzed. The importance of a given theme is not related to frequency of response from participants but rather to its substantive significance or consistency of themes amongst the participants in the study (Patton, 2002). Themes are also significant if they expand

or deepen our knowledge and understanding about the issue being studied (Patton, 2002; Floersch & Longhofer, 2010).

In my study I read through the data a number of times until I was familiar with what people were saying about the issues related to custom adoption. I then went through each transcript and pulled out what appeared to me to be the key points and observations being made by each participant, these became by draft themes. After I read through each one and identified draft themes, I then went back and repeated the process to make sure I identified the same themes upon reflection. Once I had done this for each participant, I compared the themes amongst the participants. As mentioned, I didn't look for frequency of the themes amongst the participants but instead looked for substantive significance through consistency.

I have an above average amount of knowledge about custom adoption so I was also able to compare the themes with my own knowledge and what is mentioned in the limited literature on the topic. This allowed me to identify themes that generally reinforce what is known and others that will add to our understanding of custom adoption. To ensure that I was staying true to the data, I also had one of my project sponsors read the transcripts and use the same process I used to see if he identified the same themes. This data- and- theme checking minimized any bias that I may have had that could have negatively influenced my analysis (Pieters & Dornig, 2011). After discussions with him and a more general talk with my other project sponsor, each of whom validated my analysis, I was confident that there was an acceptable level of consistency and congruency with the themes I had identified. My two sponsors and I were in agreement that the themes fell under the two broad categories of barriers and solutions. Under barriers there were two themes: racism *and* legislation. Under racism there were three sub-themes of funding inequities, professional indifference and the *historical relationship between First Nations and government/mistrust*. Under the general category of solutions there were the themes of *Indigenization, Indigenous leadership and legislation*. Upon reaching this consensus, I then wrote up the results and the discussion section. I had my sponsors read t my written analysis and findings to ensure I stayed true to the data. There was agreement by both that there was congruency with their understanding and my written analysis and findings.

c. Limitations

This is an exploratory study with a limited number of participants focused on a specific topic in British Columbia. It will not be generalizable to a larger population or outside the local jurisdiction. However, given the limited number of people in this province with expertise in this specific area, it will have application to future discussions in British Columbia. It may help inform discussions in other jurisdictions.

Upon reflection, while completing this research, it became evident that the drafted questions generated responses that addressed the political issues related to custom adoption, rather than practice issue. It is also likely that that practice issues did not surface, due to the unknowns of custom adoption in British Columbia, and the vagueness in the Adoption Act (1996).

This research doesn't explicitly identify family composition when discussing custom adoption. It is not for this researcher to dictate family composition to nations; however it is my belief that all family compositions would be considered by nations, inclusive of same sex families, single parent families, grandparents as parents, etc. There isn't necessarily a concept of a nuclear family in Indigenous communities/nations.

Finally, personal and professional bias could impact this research. I am an adoptive parent and have spent my career in the field of Indigenous child welfare. I also come to this work as an Indigenous woman with values and a history that guide my work. I consistently checked in with both my clients and supervisor to ensure my personal bias wasn't steering this project in a particular direction. As previously mentioned, I had my client review my thematic analysis, in addition to my analysis to help mitigate my professional and personal bias. I do believe that some bias will be present in everything we do, and that isn't necessarily negative.

d. Ethical and/ or Research Review

The University of Victoria Human Research Ethics Board gave approval for the study.

4. Findings

This section of the paper is divided into two sections that reflect the two broad research questions. The first section provides an analysis of the participants' opinions on barriers that hamper or block the use of customary adoption. The second section focuses upon how customary adoption can be encouraged and supported. Following the findings, there is discussion section and conclusions with recommendations.

a. Barriers

As has been claimed previously in this report, custom adoption is not a widely used pathway to permanency for Indigenous youth in British Columbia even though there are provisions in existing provincial adoption legislation. The study participants have identified a number of reasons why they believe that customary adoption does not happen. The identified barriers could almost all be tracked back to racism. A lack of funding, lack of political will and even mistrust can all be captured under the umbrella of racism. Racism could be further broken down to what was identified as systemic racism, professional indifference or historical racism; however, they all come back to the larger umbrella word, racism. Another common and significant barrier was the legislation, whether it was a lack of clarity, lack of access or lack of knowledge on the specific provisions in the legislation. Examination of these barriers begins to provide an understanding of why customary adoption is generally not used in British Columbia, despite provisions in the Adoption Act.

i.) Racism

a) Funding inequities

Indigenous people have been historically discriminated against in British Columbia and Canada as result of colonization. This discrimination took many forms, including systematic and extensive attempts by the provincial and federal governments to suppress and eliminate Indigenous culture. It is no surprise that most of the participants identified racism as a barrier to moving forward. Racism included systemic racism, professional indifference and a lack of funding and resources. While the blatant racism of past decades may have decreased, there still remains a significant difference between how Indigenous and non-Indigenous people are treated

in British Columbia. Indigenous people and their cultural practices continue to be devalued. This participant makes the connection between racism and systemic and structural barriers.

The following quotes identify the barriers related to racism raised by participants:

I believe the [low] rate of adoption . . . of first nation's kinship reflects the structural racism in the system, and the systemic failure to invest in kinship placement and support indigenous systems of care. I feel the barriers to change have been very high and deeply embedded ideas about how indigenous families are lesser than or incapable of managing issues plague systems of care disadvantaging these children and families from fair treatment and targeted supports. The system of judgment and shame toward indigenous families is deeply embedded and pervades the systems of care, largely because indigenous practices have not been upheld or respected, and reclaiming some of these practices is often seen as laughable or not serious. (1)

Another participant confirms and specifies the problems with the current way the delegated agencies are funded and operated:

The adversarial history with MCFD, underfunding for on-reserve children from the federal government (which means under-resourced Delegated Agency DAAs), and systemic racism creates additional barriers. (8)

This same participant explains how the lack of appropriate tools and an overall lack of support are creating barriers for the delegated Aboriginal agencies:

The (delegated) agencies have been treated as second rate contractors by MCFD and have not been supported to do kinship as they've had limited tools and scope to support this work. Furthermore, often the staff at DAAs are cast offs from MCFD and lack cultural and other training to do this work, they are predominantly non-Indigenous and looking for a way out of the provincial services into an agency model for work satisfaction reasons. Furthermore, this work is not rewarded or recognized as a priority so it isn't given significance it requires. (1)

We see the way systemic barriers impact the experience of agency staff as they try and do this work. They feel it's unrewarded and not a priority. This is interesting because government

identified permanency, including permanency for Indigenous children and youth as a priority approximately two years ago. Government needs to ask why agencies would still feel that the work isn't recognized as a priority. The lack of cultural training of the non-Indigenous workers in DAAs reinforces and perpetuates the structural barriers. This participant believes that a major barrier is current funding practices by a government that perceives Indigenous people do not have the capacity to provide services in their own communities is a major barrier:

Only one DAA in British Columbia has adoption delegation. MCFD is not willing to provide funding to support adoption delegation planning and MCFD is not willing to fund adoption delegation social workers for [delegated] Agencies. MCFD has only approved the funding for one DAA adoption program – all others denied. Delegated agencies need the authority and resources to create their own cultural custom adoption programs and kinship care systems. (7)

This participant expands how these funding policies work.

I'm also concerned about the financial disincentive DAAs face around permanency. I suspected this may be an issue and since then I've heard MCFD staff talk about this too. DAA funding is partially based upon the number of (children) in their care, so some DAAs that are struggling financially may have to close their doors if they achieve permanency for enough children. (8)

Disincentives built into the funding formulas for the delegated agencies discourage finding permanent solutions for children. As discussed in this report, delegated Aboriginal agencies receive funding based on the number of children they take into care. There is currently no funding for prevention or custom adoption.⁵

Another participant tells about the lack of financial support for young people and adoptive families:

One of the barriers is the absence of positive policies and practices to make post adoption assistance real, to make sure kinship is supported even when families are in poverty or experience economic strains due to the intergenerational issues their families and communities have experienced. (1)

⁵ one exception, is Lalum' utul' Smun'eem (Cowichan Tribes) Child and Family Services

2.) Professional Indifference

Racism is not always overt. A lack of action or ongoing passivity can be as damaging to children and communities as any open racist act. One participant observed the lack of attention given to the permanency needs of Indigenous children:

It is interesting to note that [the permanency] issue has not come up in advocacy files, as it is my feeling that MCFD are not pursuing [customary adoption?] ~~this~~ with intent on behalf of Aboriginal children.

Another participant mentioned issue of custom adoption appears to be of little or no importance to people:

Nobody is talking about it, I haven't heard about this in years, I talked about this as a foster parent, but no one was interested. (3)

This participant believes that:

There seems to be a lack of purposeful intent and planning on the part of MCFD and DAA (4)

The RCY report, *Paige's Story: Abuse, Indifference and a Young Life Discarded* (2015) speak to professional indifference and how it is evidenced more often in relation to Indigenous children in care and is evidently ingrained and needs to be immediately changed. She found evidence of professional indifference in a number of her reports. Social workers often don't know what to do, and can sometimes norm the poor outcomes for Indigenous children and ignore standards and policies that have been put in place to protect Aboriginal children in care of MCFD(2015, pg. 8)

3.) Historical Relationship between First Nations and Government/Mistrust

The historical and current systemic racism creates mistrust of the child protection system amongst Indigenous people. This participant identifies the fear and mistrust of adoption in response to the historical removal of large numbers of Indigenous children:

Unfortunately, [on] the subject of adoption, the term has turned to a word of fear, from horrific practice, residential schools, sixties scoop till today's practice, the word adoption has brought fear and stigma to our families and we have lost our way of traditional caregiving and, because of colonization we lost our tradition of watching our own children. Our people aren't lining up to do this; it's too westernized, and the stigma and fear of who is conducting the assessment. It's still child welfare to them. (2)

This participant describes why there is mistrust around adoption planning:

The trauma of the past, and especially the 'sixties scoop' in (creates problems) this context because adoption is still a dirty word for some Aboriginal people and communities. (8)

The fear felt by many Indigenous people also creates a great deal of mistrust in child welfare authorities and deters indigenous people from engaging in any discussions regarding adoption:

Adoption is still a dirty word in some communities and there is resistance to participate in the process in some communities and by some potential parents. (8)

A central issue seems to be a lack of valuing Indigenous ways as described by one participant:

Cultural ways of raising our children [are] not respected... Each community has their way of taking care of kids, aunties, grandmas, whoever and however their traditions tell them. We need to respect all ways we do it. (3)

This participant believes the power of the fear created by the government and societal oppression of generations of Indigenous people is a significant barrier:

Fear-lots of fear of involvement, fear of history, pretty tough to process and come through the other side without being skeptical. (5)

Any effort to find new ways of dealing with the barriers will also involve finding ways to increase the number of Indigenous people who are willing to adopt. According to this participant the lack of indigenous adoptive families is a significant barrier:

There are not enough Aboriginal caregivers. Aboriginal people continue to be reluctant to engage in formal processes with MCFD and DAA's due to historical issues that have led to a complete breakdown in trust . . . these processes are not cultural[ly] sensitive or responsive to different family/caregiving scenarios.(4)

The overrepresentation of Indigenous children in state care means that it will be difficult to find enough Indigenous adoptive families to parent the current children in care. This participant is not confident that this problem can be overcome:

There aren't enough Aboriginal prospective adoptive parents coming forward to meet the need. Nonetheless, since Aboriginal children are vastly over-represented in the child welfare system, there will probably never be enough appropriate Aboriginal adoption placements and therefore a role for non-Aboriginal families in the adoption of Aboriginal children. (8)

There is also political fear on the part of government of repeating past mistakes and appearing racist. In this case the fear leads to inaction. As this participant states, this is simply a subtler form of racism in which children do not achieve the permanent outcomes they need because of a fear by the system of being culturally insensitive:

Government is afraid to place many of our kids for adoption. So they remain in foster care. Each community could have a protocol for custom adoption...Government is too cautious with our kids, they don't want to offend or they don't know what to do, so leave the kids in foster care. (3)

Another participant saw the need for communities to deal with the issues associated with historical oppression in order to build healthier communities:

I think healing has to occur in the communities, reconciling the trauma of the past, and an agreement to work towards permanency for their children in care when return to parents is not in a child's best interests (8)

The mistrust between Indigenous peoples and government, more specifically MCFD leads to a lack of action by MCFD and a paralyzing inability for Indigenous communities and families to engage. This level of mistrust is also related to the professional indifference that was commented on previously. Government staff may

have a fear of the unknown and rather than acting, just ignore community, or policies and standards for Indigenous children and families.

ii.) Legislation

Many of the participants raised legislation as a barrier to moving forward. There was confusion around the provisions available, and concern was raised that existing legislation did not go far enough in supporting Indigenous communities.

This participant may be unaware of the legislative option in the current Adoption Act, 1996, however, may be suggesting that it shouldn't be limited as only a legislative option:

Custom adoption is not a legislative option. Custom adoption is a traditional right supported and guided by the laws of the nation. Custom adoptions come from the values, teachings, processes, and protocols of the nation. (7)

This participant isn't aware of current legislation that recognizes custom adoption in BC. I was surprised that from the group of participants I chose, there was still misunderstanding on the current legislation. This is a significant issue because these participants have been immersed in this field for a number of years. And although anecdotally I knew that many misunderstood what legislative provisions were available, I was still surprised that this group misunderstood the current custom adoption provision in the Adoption Act 1996.

A barrier that exists is our traditional or custom adoption models that we had, aren't legally recognized in legal day, linear based legal issue, through Western court of law, instead of traditional law (2)

This participant acknowledges how far legislation has come, and identifies the practice as the barrier.

I believe that while the legislation has come a long way in recognizing the need for Aboriginal children to find permanency in Aboriginal homes, the actual practice and mindset within the agencies has not caught up or been fostered enough for the change. The next section of the findings (Solutions) describes some ideas to remedy these legislative inadequacies and I make some recommendations in the Conclusion.

Discussion:

As the participants have shared, there are a number of problems with the current funding model for DAAs and post-adoptive supports. The DAAs have been underfunded compared to the government- run child welfare system. There is also a significant disincentive built into the general funding formula for the DAAs in that they often only receive funds for children in care. Adoption would mean a loss of funds for organizations that are already underfunded. This can have a destabilizing influence on ongoing programs.

An example of the way systemic shaming and devaluing of Indigenous people and culture operates is the differential funding for Indigenous youth receiving on-reserve child welfare services. On reserves, delegated Aboriginal agencies are funded federally to provide child welfare services to their member children and families. In contrast, the province funds the Ministry of Children and Family development for the same services to non-Indigenous children and families and Indigenous children who reside off-reserve. A funding discrepancy was identified by a number of reports⁶ noting that the on- reserve agencies received less funding for the same service provided by provincial ministries. This is even direr, when considering that colonization and intergenerational trauma have created higher child welfare needs for Indigenous children compared to their non-Indigenous peers (Blackstock, 2011).

After promises by the federal government to remedy the situation went unanswered, Dr. Cindy Blackstock, the Executive Director of The First Nations Child and Family Caring, together with the Assembly of First Nations filed a complaint with the Human Rights Tribunal (2007) “alleging the Government of Canada is discriminating against First Nation children on the basis of race and national ethnic origin.” (Blackstock, 2011) The Tribunal found in favor of the complainant and has recommended a number of remedies, including immediately addressing the funding gap.

⁶ (First Nations Child and Family Services review, Auditor General report 2008, Wen De report, Blackstock, Prakash, Loxely and Wein 2005),

In addition to the underfunding of delegated Aboriginal agencies that Blackstock has been addressing, the way agencies receive funding from the Federal government is also problematic. Directive 20-1 is the funding formula policy the federal government has relied on for over twenty years. That policy dictates how agencies are reimbursed for services. At this time, agencies receive operational funding based on children coming into care. This means delegated Aboriginal agency only receives money for children in care; they do not receive money for preventing children from coming into care. In British Columbia, there are no prevention dollars. There have been multiple promises by the federal government to fund prevention to on- reserve delegated agencies; however, to date the promises have not been realized. One of the participants raises the issue of not receiving financial support or the tools required to practice kinship placements. The other piece, which has been raised by others, is the lack of political will or what is later referred to as professional indifference. The ability to continue to ignore these issues, not fund them and not give the agencies the tools to do the work is a form of professional indifference.

Training is a significant issue, and the responsibility and funding should not lie solely with the delegated Aboriginal agency. Their budgets are limited, and as previously noted underfunded, resulting in a lack of capacity to train non-Indigenous staff or MCFD staff.

At first glance, one would not necessarily see that training is included under the finding of racism. However, based on the participants' comments on training and how they related to systemic racism, it was decided that training fit best here. One of the participants noted that there were "deeply imbedded" beliefs about Indigenous people and practices, and that training wasn't provided due to some of these beliefs.

Participants note that custom adoption isn't part of the child welfare narrative. "Nobody is talking" and "no one was interested" are significant statements. This is interpreted as a devaluing of cultural processes and a lack of understanding. Even if it's just the lack of understanding, the issue of no clear definition of custom adoption it demonstrates further devaluing by not exploring and proactively addressing an issue when it's raised. Why was "no one interested" when the foster parent talked about it? This inaction is at the crux of professional indifference. Professional indifference prevents social workers and leadership from

understanding what custom adoption is and what it means, although there has been a provision in the legislation since 1996. If social workers don't understand what it is, as professionals, working in a field where more than half their clients are Indigenous, they need to proactively engage and figure it out. RCY states, "Most individuals involved with permanency planning for Aboriginal children are unaware of custom adoption or do not understanding the legal nuances. (2014, pg. 36) She further states that, "There is no evidence that the ministry has any identified program or direction that supports custom adoption as a viable permanency plan for Aboriginal children. Furthermore, there is almost no expertise in tribal customs and practices in MCFD, a sad statement for a ministry dealing with a majority of Aboriginal children in care." (2014, pg.36)

If the reference in the legislation (section 46 Adoption Act 1996) is vague, then policy staff should be addressing and working with communities on how to bring clarity to the legislation. Social workers and MCFD executive can also approach communities and leadership to help them understand what custom adoption means to their nation.

Historical and current racism experienced by Indigenous people in British Columbia and Canada has been significant. In addition to the racist acts of individuals, governments at all levels have engaged in oppressive activities that dehumanized Indigenous people and attempted to destroy their cultures, communities and traditional ways of life (Bombay, 2014). Indian residential schools, in which over 130,000 children were removed from their families and communities and placed in abusive environments, destroyed their connection with who they were as people and with their previously intact families. (Bombay, Matheson & Anisman, 2011; Charles & DeGagne', 2012; DeGagne', 2007). Indigenous families were torn apart by these actions; subsequent large- scale adoption of Indigenous children to non-Indigenous families further destroyed the children's cultural connections.

Racism persists today with the lack of adherence to treaties. The underfunding of child welfare, health and educational services are all current examples of ongoing racism as are such issues as the limited access to clean water and proper housing in many Indigenous communities. These differences between how Indigenous people and non-Indigenous people are treated are undisputable examples of ongoing system racism. The disproportionate number of Indigenous children in care, the differences in the adoption rates between Indigenous and non-Indigenous

children, the discrepancy in the treatment of Indigenous children in care, the deficits in the funding of the DAAs, and the differential access to services between children served by MCFD and those served by the DAAs are manifestations of systemic racism. Racism isn't an easy word to use, and can create further distrust between government and Indigenous communities. However, the argument can be made that unless we name it what it is, we can never really move away from it and move forward. This project has recommended reconciliation events as a step in moving forward. Acknowledging that racism exists today and is not something that happened in the past can be the initial step towards reconciliation. The potential problem that I see is in the acknowledgement of racism. That's a difficult word for well-meaning non-Indigenous social workers, managers, executive and those who work in this field.

Mistrust based on the historical relationship and racism was raised numerous times by participants. Even with custom adoption in the legislation, there is a Westernized application process that Indigenous families' likely mistrust, due to issues related to colonization, residential schools and the sixties scoop. This history is complicated, and as previously mentioned, much reconciliation has to happen before these issues are resolved. Reconciliation can be legislative change, self-governance, and most immediately can start with social workers using the framework to facilitate dialogue. The need for reconciliation cannot be understated. There is mistrust due to historical relationships and historical practices; however, as identified in these surveys and other reports, there remains a level of systemic racism that also prevents communities from trusting government. Until this is addressed in a significant and respectful way we will not see any real change.

The fact that communities see adoption in the same light as they see child protection speaks volumes. It speaks to why Indigenous families don't come forward as prospective adoptive parents and why communities' don't engage with government. We need to build a level of trust, and engaging in reconciliation events can help build trust.

The lack of Indigenous families coming forward is significant. It's important for government and Indigenous leaders to come together to solve this issue. The disproportionate number of Indigenous children in care means it's unlikely for all of these children to be placed with Indigenous caregivers. Therefore, those that do come forward need to feel supported and that the process and environment is culturally safe. In addition, reconciliation occurs before

indigenous leaders and communities feel safe placing some Indigenous children with non-Indigenous caregivers for the sake of permanency. There is anecdotal information that there have been some situations where a nation has adopted the entire non-Indigenous family into their community as part of the adoption of one of their children into the non-Indigenous family. Obviously, a level of trust and openness had to be created for this to be successful.

MCFD has implemented some steps to alleviate concerns about losing cultural continuity when placing an Indigenous child with a non-Indigenous caregiver, with the development and requirement of a cultural plan. Research on the efficacy of cultural plans and their success at ensuring cultural continuity is maintained is needed, and is recommended as a further area of research.

The data showed a belief that some government circles feel Indigenous communities do not have the capacity to run their own child welfare services. This belief adds to the inertia regarding taking action on customary adoption. It is seen by some that there is no point beginning any dialogue if the communities don't have the ability to be active participants in the adoptive process. This is further complicated by the increasing rejection of the authority of the provincial and federal governments by Indigenous nations who maintain that they and they alone are responsible for their children. Little action is likely to occur until these attitudinal and jurisdictional issues are resolved. It will require a great deal of negotiation, reconciliation and action to develop the necessary agreements to resolve these issues.

There are a number of issues related to legislation in BC. Most concerning is that the provision for custom adoption has been in the BC Adoption Act, section 46, since 1996 and there is a lack of awareness by those working in the field of Indigenous child welfare. This is consistent with what the Representative found in her 2014 review of the BC adoption system (RCY, *Finding Forever Families: A Review of the Provincial Adoption System*). For this reason, the Representative requested that a visual tool be developed to demonstrate the legislative, practice standard and policies that currently support permanency for Indigenous children. The framework doesn't identify what legislation could look like, nor does it address self-governance. These are important discussions that require time and strong consideration. They also need to be driven by First Nations leadership and community. The Representative wanted the framework to

speak to what we can do today, through current legislation, practice standards and policies that will support permanency for Indigenous children waiting in care. These children can't wait for new Indigenous-led legislation or self-governance to be realized. Again, that doesn't mean that the important work of self-governance and Indigenous legislation should not continue. In fact, it should be a priority and take place concurrent to educating and utilizing permanency planning options available today.

b. Solutions

The participants identified a range of barriers that work against the development of permanent solutions for Indigenous children. It should be noted, though, that the participants identified numerous ways in which the barriers could be decreased or removed. This section summarizes the participants suggested solutions. The solutions fall into some of the same categories as the barriers did. Legislative solutions were identified, as well as the need for Indigenous ownership over child and family services. For Indigenous ownership to move forward, participants identified the need for government to decrease its role in the system.

i) Indigenization

The participants were clear that the way to ensure permanency for Indigenous children was through the Indigenization of the child welfare system. They believe the current system does little to promote the best interests of the Indigenous child and that Indigenous communities need to take control of child welfare services. This process of Indigenization will require the current child welfare authorities to actively work to improve how they interact with Indigenous communities. As this participant stated:

I believe the first barrier is for MCFD to actually understand and embrace the meaning of Indigenization. What should naturally flow from that full and complete understanding is making the commitment to do so which would then necessitate a solid and logical plan of action. This would have to a multi-faceted approach and certainly wouldn't be a quick fix. However, there would have to be complete buy in from First Nations communities. This would be preceded by the long process of government officials actually going into communities, sitting down and listening to the very real and historical concerns. (6)

It was clear from the participants that there was one core value that should be at the centre of all decisions regarding Indigenous children. One participant stated:

I think whether you are First Nation's leadership or MCFD, best interest should be focus.

Of note is that best interest is the catalyst for decision- making in child welfare. It becomes problematic when two worldviews interpret best interest very differently. A western view of best interest may not take into account cultural continuity in the way Indigenous peoples do. This participant didn't raise the issues that are related to best interest. However, it is discussed in the literature review and the conclusion.

A values-based system will need to take into account safety and permanence. This participant suggested that both are possible in an effective system:

Government is concerned with safety, and rightly so, but they should be concerned with permanency too. (Children need) real homes, homes with family and where they are loved. (3)

The same participant identified that the government has to learn from the communities in a spirit of openness:

(They have to become comfortable) taking a back seat and learning from nations about what custom adoption is. Really work with us in partnership, working together to redefine (and) be open to change. MCFD (have to) challenge themselves on their ideas on cultural adoption. We are too ingrained in mainstream adoption, and if you don't fit, we don't know what to do? (6)

This participant further explained this position by describing what type of program is needed to ensure the rights of children are respected:

What needs to be in place is a positive and united program to make kinship placement a priority and to fund and support it adequately, focused on the rights of indigenous kids to be raised within their family systems. (1)

This participant believes it is critical to:

Transform the rights, laws, customs, values and beliefs of Aboriginal peoples into a practice framework that is culturally respectful, culturally driven and driven by the inherent right for every child to know who they are, where they come from and to be connected to (and) blanketed by their people and not by practice and policies that is not our own. (7)

Another participant noted that many delegated agencies will have to work at completing their own process of Indigenization. Simply being a delegated agency does not guarantee that the practices they undertake are culturally relevant:

DAA's (are) pushing cultural (practices) but...not all DAA are supportive of permanency planning... We have been practicing permanency long before contact. We did permanency at the longhouse, however to move forward there are DAA's governance and leadership (issues). We have to find a way to incorporate the child not losing their contact, regardless who cares for or who permanency cares for that child... (Change) has to be supported internally by communities; cultural continuity has to be promised. Ministry has to realize more than one way to do it. (2)

Another participant expanded on this issue by noting that while the delegated agencies are central to Indigenization, a lot of work remains to be done:

Delegated agencies ~~to~~ have to be successful, and "work". They are seen as [an] answer (but) they don't want to upset their community. If the community doesn't support old way of doing adoption, they might not support adoption, and because agency wants to be successful they won't question or push adoption. Too touchy of a subject. Adoption is dirty word. They are happy to support foster parent and never take that extra step to adoption or supporting adoptive parents. Every child deserves a home, deserves love and not long time foster parents... (They need) to change how they practice, I was involved in delegation, I got disgusted. It went around and around. Too much talk. Not child centered. Who wants to be in care all their lives, no family? It's awful. (3)

This reorganization of how child welfare services are provided would require that the government accept the primacy of communities while assisting in the dismantling the current system and supporting a process to replace it with more flexible and responsive systems. This participant suggested that:

MCFD needs to recognize that this work needs to be led by the communities. Adoption and permanency cannot be centralized. Resources must be attached to this process.

Create nation-based Aboriginal permanency frameworks. Create a provincial Aboriginal Adoption program supported by Aboriginal Leadership that is separate from MCFD. Remove this work from the Adoptive Parents Association of BC. (7)

This theme of by the government needing to let go of the current broken ways of dealing with Indigenous children was brought up by a number of participants. This participant stated that if things are to change, then:

MCFD will have [to] let go... let Nations determine permanency. Support Indigenous child care law, approaches and practice. Engage in a reconciliation process with communities. MCFD must acknowledge their system is broken and not working. It is time to rebuild; not keep renovating. They must be open to supporting cultural practices that have been there since time immortal. Deal with systemic racism in practice. Have actions and practice support (so) that family is not the preferred placement, but the ONLY placement and remove all barriers to bring children home and keep them connected. (7)

It was further suggested by the same participant that the government needed to do a number of things as part of this process:

(They need to) educate themselves of custom adoption. Allow the nations to provide direction and recognize inherent authority. Provide the resources to get the work done. Focus on the inherent rights of children. Start providing supports to “Families” and “communities” instead of “contracted services.” Recognize that every child has and deserves a permanent plan – stop doing this from a reactionary place, exclusive of family...Eliminate the foster care system and create “family caring” systems...Partnership planning needs to occur. The diversity of Nations laws needs to be acknowledged and respected. MCFD must engage in discussions with Leadership to make custom adoption work. (MCFD needs to) seriously take action on (the) lost generations of kids to the MCFD system. (7)

ii) Indigenous Leadership

The participants did not put all of the responsibility for change upon the government and the delegated agencies. They also believe that if lasting change is to occur, then Indigenous leaders and communities have to become active members in the process. Indigenization and leadership are closely related, and in order to have Indigenization there is an obvious need for strong Indigenous leadership. This participant put the onus on leaders to be at the forefront of action:

(I'm) not sure they can do much at present as they are stuck. Need to work with feds and push this work, at least the DAAs and leadership can do that. They should make it a priority and understand that children have rights to a family and that we need to be organized to recognize that and take it seriously. (1)

This leadership will need to take many forms. This participant suggested that advocacy is an important first step:

First Nations Leadership can help lead the conversation in their communities about permanency and the need for their children to have forever families. They can also lobby for changes to legislation that would put more control and ability for their communities so they can take more responsibility and achieve better outcomes for their children. (8)

Another participant stated that the leadership should put a greater focus on improving the lives of children:

Our leadership can carve a path. They need to make our kids a priority though. They have ability to do that and set this agenda and create reform for kids; show some leadership in this area. Don't be afraid of back lash in supporting kids, supporting adoption. Being a true leader is to be willing and able to set agenda on something like this. Make a change, lots of talk but not much action from leaders. We need to hold our leaders accountable to this. (5)

It is also considered important that the leadership work within their own communities but also pressure the government to address the issue:

Make sure that they put their resources behind this endeavour and to solicit support from their respective communities so that it can be a possibility. I also believe that any First Nations person in a leadership role has to constantly be putting the pressure on MCFD so that this issue does not fall to the back burner. (6)

This participant stated that Indigenous people who had knowledge in the area needed to be at the forefront of providing:

. . . [e]ducation to political leaders, lots of education around the importance of permanency, we need to educate leadership that permanence is best interest of child. Which includes cultural competence instead of a fear based, grand standing us vs. them approach. We need to get to place of trust. (2)

iii) Legislation

A number of participants saw a need for more than just a review of the legislation. This participant called for an entirely new act focused solely upon Indigenous adoption. A change in Indigenous adoption legislation builds on the two other solutions, Indigenization and Indigenous leadership. Before legislative changes can be considered, Indigenous leadership requires with a clear path towards Indigenization.

(There is a) need for an Aboriginal Adoption Act (which is) independent of MCFD (and) guided by the Nations leadership that supports kinship/adoptive placements. (You) can amend current legislation, but it is “practice” that’s the issue! (7)

Part of the required changes will involve a revision or replacement of current adoption laws and policies. This participant recommended that:

For a custom adoption to be recognized by the courts under the Adoption Act, the family must first successfully receive transfer of custody of the child under section 54.1 of the CFCS Act. If this process were streamlined so the family did not have to go to court twice, I suspect there would be greater use of this provision. With greater numbers of custom adoptions occurring, hopefully Aboriginal communities would gain more pride and ownership around seeking permanency for their children and more would occur in the future. (8)

Another participant noted that the current process has to be changed because it is difficult to master:

At the grassroots level, the actual Application to Adopt process can be cumbersome for some Aboriginal families...I can see the task as more than a little daunting for most people. (6)

This participant suggested that:

MCFD should review the legislation, policies and standards in consultation with their Aboriginal partners to see if the process cannot be streamlined -Aboriginal children are less likely to achieve permanency and if they do they take much longer than their non-- Aboriginal peers. (8)

Part of the building of a new system has to involve addressing the negative connotation in the word adoption has for many Indigenous people. As one participant noted:

(There is) lots of fear in the communities, the word adoption isn’t welcomed, (so) new language is needed, culturally strong language. Let’s take on community definition of custom adoption. (It) might be different; all is valid (5)

This participant believes that:

DAAAs need more training and the ability to do transfers of custody, and perhaps obtain adoption delegation. With legislative changes could perhaps make it easier for them to practice custom adoption without having to go through the adoption delegation process.

(8)

If successful change is to occur, then government has to recognize and understand there are multiple pathways to permanency, just as there are multiple customs amongst Indigenous communities. As this participant states:

Custom adoption is “nation specific” – and adheres to (traditional) law. The practices, protocols, and ceremonies regarding adoption are Nation based, and are unique to each Nation. The cultural difference between Nations must be acknowledged, respected and utilized. (7)

5. Discussion

There is a crisis in Indigenous child welfare. The statistics speak for themselves, and have been noted previously. Indigenous leadership has to be at the forefront of action. This will require leadership in the communities and in dealings with government. This also means there needs to be full understanding on the part of leadership about what a responsive Indigenous child welfare system will look like for each of their communities. This can best be achieved by the active participation of community members in the process. Those with traditional knowledge about caring for children and such practices as custom adoption need to be given the opportunity to teach others how a new way of working can happen. This will require an almost complete reversal of how child welfare services are run, from the current system of top- down decision-making to one of community ownership. This means communities will have to deal with the issues associated with historical oppressions before they can build healthier communities. This requires appropriate supports and resources from both the provincial and federal governments.

A fundamental change that must occur is a restructuring of the current system so Indigenous communities can gain significant control of the child welfare system as it pertains to their children and families. This will require the Indigenization of child and family services in such a manner that the government acknowledges the primacy and diversity of communities. This will require the flexibility on the part of government and a willingness to go beyond a singular, unitary response to Indigenous people.

Beyond the government response, a number of actions need to be undertaken by communities to take control of the child welfare system. The first is the full Indigenization of the DAAs. Being a delegated agency in itself does not guarantee that their practices are culturally relevant (RCYBC, 2013). Labelling a practice as Indigenous does not mean its underlying values or the application of it reflects an Indigenous worldview. Words in themselves do not trump appropriate action (RCYBC, 2013). The underfunding of the DAAs has meant that many have not had the time nor the resources to develop practices reflective of the traditional values of the communities they serve (RCYBC 2014b). Change will require that the DAAs reflect their communities rather than being underfunded imitations of the current government- run system.

The question of best interest was raised, however not with respect to the Indigenous worldview of best interest versus the non-Indigenous worldview. Perhaps the questions resulted in the more surface answer rather than an in-depth response on the opposing worldviews and how those worldviews clash when making child welfare decisions for Indigenous children and families. The literature review introduces conflict between the Western concept of attachment and the Indigenous view of connectedness and the problem this creates when decisions are made about Indigenous children by non-Indigenous professionals who may not understand the differences. Given this clash of worldviews, it makes sense that participants recommended an Indigenous child welfare system as a solution eliminating or at least lessening the negative consequences of the clash so children who live in an Indigenous world are not inappropriately removed from their families.

It is interesting to note that one of the participants commented on governments' lack of focus on permanency. Government would likely argue that there is a focus on permanency;

however, this raises the distinction between the two worldviews. Often, from my experience as a front-line social worker, once the child safety concerns are addressed, planning for children can come to a halt. Social workers try to manage difficult caseloads, and the priority is safety. Once a child is in a foster home, the worker feels the child is safe and a permanency placement might not be considered for some time. As discussed earlier, this is often what happens before an exception to policy is considered. I believe this participant is suggesting that if government values a child's need for permanency and a loving permanent home with family, then those decisions must happen in a timely fashion.

At this time, there is no mechanism in place to oversee or hold government accountable for timely permanence decisions. This is the reason the Representative recommended (RCY report 2014) external oversight that would review all permanency plans for children in permanent care on an annual basis. The review would require social workers to document all steps taken to ensure a timely decision, and if permanency isn't being considered that a rationale or justification is presented to the oversight body (pg. 78). To date, MCFD has not moved forward on this recommendation.

The current system is clearly broken in many ways (RCYBC, 2015, 2014b). There is a fear that government rather than engaging in meaningful dialogue backed by appropriate funds for the required resources, will simply abdicate their responsibility in this area. Indeed, there is a history of unilateral decision making and abdication of responsibility on the part of government guised as dialogue (RCYBC, 2013). The dumping of responsibility should not be confused with the Indigenization of the system, regardless of the words that can be wrapped around the process. Control of the child welfare system by Indigenous communities without the provision of significant funds could result in the re-creation of a broken system that has even fewer resources than the current one.

It's clear that participants agree that Indigenous leaders need to lead and direct a way forward in the field of Indigenous child welfare, more specifically permanency planning/custom adoption. They see leadership as advocating with government for resources and ensuring that the issue remains as a priority in the community and with government. There is a clear consensus

that leadership need to prioritize and move forward with a sense of urgency. The participants noted the potential conflicts that may be raised, but that leadership remains steadfast and not be “afraid of backlash”. It’s difficult to imagine that leaders would receive backlash for standing with children; however, considering the complexities identified, including self-governance, it’s not unrealistic to expect some push back.

One of the participants raised the issue of educating Indigenous leaders, and in fact that is why the RCY office co-hosted the Forum for Change in Nanaimo, and why the Pathways to Permanency conceptual framework was developed. The Pathways to Permanency framework is an immediate solution, and as such is a recommendation made as a result of the findings in this report. The Framework is a visual tool that gives leaders, communities and families an opportunity to understand the current pathways to permanency that exist today for Indigenous children who are currently in care.

The legislative changes that participants have suggested are likely longer- term solutions. Some complications weren’t raised by the participants, and they are significant. Nation- specific legislation was suggested; however, in British Columbia that would prove complicated with approximately 203 First Nations. In addition, much of the Indigenous population in BC is off-reserve and urban based. Which legislation would apply to these groups? In the US, there is national legislation, and that may be a viable option. US Congress passed the Indian Child Welfare Act in 1978, after years of hearings that identified the systemic removal of Indian children from Indian families (source ICWA presentation, Bureau of Indian Affairs). Many of the issues identified by participants in this research were reasons why the US decided to pass national legislation. It is concerning that the same issues were likely present in 1978 in the US and in Canada, but we have yet to act.

Another complication is the lack of research on Aboriginal child welfare legislation (Sinha & Kozlowski, 2013). As can be seen by the literature review and the views of the participants there is a need to fill in the knowledge gaps in this area so we can make more informed decisions.

Although custom adoption it is recognized in the current provincial adoption legislation its widespread use will need to involve a revision or replacement of current adoption laws and policies to reflect how custom adoption was in various communities. The most effective route may be the creation of an entirely new act focused solely upon Indigenous adoption.

6. Conclusions

The goal of all adults should be to ensure that children develop and maintain a sense of permanence in their lives. It is through this sense of permanence that children become who they are and who they can become. Significant numbers of Indigenous children who are not experiencing permanence as a result of the historic and current oppression of Indigenous people. This is worsened by a current child welfare system that often is part of the problem rather than part of the solution. The changes that have been recommended through the findings of this project can seem overwhelming and time consuming. That cannot result in continued inaction; we need to respond to the current crisis in Indigenous child welfare immediately. The Representative identified the need for immediate action, so that the Indigenous children and youth in care now can achieve permanency while the long- term actions take place. As a result, the Pathways to Permanency conceptual framework was developed. MCFD can immediately embark on an education and awareness campaign so that staff, communities, leaders and family are fully aware of the current tools available to them. RCY staff currently utilizes the framework in discussions with these groups.

There are many pathways to permanence. Custom adoption will only become a variable option if there are significant changes in how the child welfare system is currently conceptualized and operated. The findings and literature review clearly show that the provision in the current legislation is weak, misunderstood and rarely used. The current broken system cannot continue, nor, can there be an offloading of responsibility onto Indigenous communities. Through the active and purposeful engagement and ownership by Indigenous communities in the

development of a new and meaningful process build upon traditional values, Indigenous children will have the opportunity to achieve permanency.

This will require government to let go of current practices and ways of interacting, and acknowledge the primacy of Indigenous communities in having responsibility for their children. This will mean a major change in attitude about how they interact with Indigenous people and the provision of the needed resources. The lives of children and the future of communities are at stake. In order for a major change in attitude to happen, reconciliation between government and Indigenous communities must occur. The federal government should take responsibility for the funding of these events. Reconciliation won't occur or won't be meaningful unless government acknowledges that racism exists today. It is difficult to acknowledge and accept responsibility for racism, a word filled with many emotions and negativity. This won't be easy; there likely will be some backlash and defensiveness. That will be part of the process and should not prevent government from moving forward, it will be part of the process. Reconciliation can create the space required for Indigenous leadership and the Indigenization of the child welfare system. As noted in the findings and discussion, racism exists in the funding inequities, legislation and a culture that permits professional indifference. All these areas will have to be addressed in order for the required significant change that is being recommended to the child welfare system.

7. Recommendations

Administrative

- MCFD implement the RCY Recommendation Three from Finding Forever Families: A Review of the Provincial Adoption System that states: That MCFD make legislative changes to require and support external oversight and public reporting of adoption or alternative permanency plans on an annual basis;
- First Nations communities claim back responsibility for customary adoption practices in community. This will involve working with both levels of government with the purpose to assisting them to understand and to acknowledge Indigenous primacy in this area This can also serve as the foundation for building a strong working relationship between nations and both levels of government;
- Government implement Recommendation One of the RCY Report When Talk Trumped Services: A Decade of Lost Opportunity for Aboriginal Children and Youth in British Columbia that states: That the government of British Columbia with the leadership of the Attorney General develop an explicit policy for negotiation of jurisdictional transfer and exercise of governmental powers over child welfare;
- Government brings together Indigenous leaders, families, children/youth, and social workers to participate in reconciliation events. The funding for the events needs to come from the federal government, as provincial MCFD budget needs to be service focused;
- Indigenous leaders identify representatives to become part of a committee that would help direct, develop and implement reconciliation events.
- Federal and provincial governments acknowledge the existing customary adoption practices that are currently used in Indigenous communities, and ensure an equitable funding model is developed to ensure that families that choose custom adoption receive funding that is equitable with non-Indigenous families that have chosen a Western adoption;
- Federal government implement the Human Rights Tribunal financial remedies that address funding inequities for delegated Aboriginal agencies. These include funding all provinces for prevention work(can include kinship, custom adoption, etc.), and the identification of a funding model that replaces Directive 20-1;
- Government work with First Nations Leadership, communities and families, and identify an advisory committee of Indigenous leaders who will have responsibility for advocating changes to the existing child welfare system, and ensure that Indigenous child welfare is prioritized and funded appropriately. The federal government should fund this advisory committee;
- Government immediately recruit an Indigenous Deputy Minister at MCFD, which would have responsibility for the current Indigenous children in care and potentially lead a transition process over Indigenous ownership over child and family services. The Indigenous Deputy Minister would work alongside the current Deputy Minister who would be responsible for non-Indigenous child welfare

Training

- MCFD immediately develop an education and awareness plan for their staff, DAA staff and Indigenous communities and leadership that utilizes the Pathways to Permanency framework developed as part of this research;
- Provincial government provide training opportunities and/or funding for delegated Aboriginal agency staff to obtain the necessary tools to provide kinship care, adoption and custom adoption permanency placements for their children;

- MCFD develop a strong cultural safety training program for all employees, the program should be informed by Indigenous communities, families and children;

Research:

- Federal and provincial governments fund Indigenous communities to gather information on nation specific customary adoption practices in order to understand the diversity and difference between each First Nation in BC. This could include an in-depth analysis of 2-3 nations
- Government fund an Indigenous organization or researcher to review Indigenous legislative options in other jurisdictions, including US, New Zealand and Australia. And advise on whether a national legislation is more appropriate then nation specific legislation;
- Government present the above noted research and engage with Indigenous communities on ways to develop and implement Indigenous adoption legislation.

a. Areas for further research

- Government to engage with Metis communities to better understand custom adoption traditions and practices in their unique community
- Government engages with a researcher to research how effective Cultural Plans are in keeping Indigenous children connected to their family, community and culture when placed with a non-Indigenous caregiver.

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9. Appendices

Appendix A: Questionnaire

1. Please give some background on yourself and your role
2. Can you give a definition of Custom Adoption?
3. Are you aware of any cultural differences among First Nations communities on Custom Adoption?
4. In your experience why do you think there continues to be a high rate of Indigenous children being adopted to non - Indigenous families, despite strong legislation, policies and standards?
5. What if any legislative changes would you recommend (Last update was 1996/7)
6. Please share your understanding of what Custom Adoption is.
 - a) What barriers currently exists to fully realizing this form of permanency for Aboriginal children
 - b) What needs to be in place to make Custom Adoption a viable option for Indigenous children, families and communities?
7. Are you aware of any other jurisdictions where there is a successful utilization of Custom Adoption or other traditional permanency options that we could build on?
8. What do the Delegated Aboriginal Agencies (20x less likely to be adopted in care of DAA versus MCFD) need to do to move this work forward?
9. What does MCFD need to do to move this work forward?
10. What can the DAA and MCFD do together to move this work forward?
11. And what role should First Nations leadership take in moving the permanency agenda forward?
12. How optimistic are you that will see an increase in customary adoption in the next 5 years? Please explain your answer.
13. Do you have any additional comments/thoughts?

Appendix B: Recruitment Email

As you are aware, I'm conducting a study as part of the requirements for my graduate degree in Dispute Resolution at the University of Victoria to determine the barriers Aboriginal and non-Aboriginal permanency experts in British Columbia believe get in the way of the full utilization of Custom Adoption and what can be done to increase the number? As part of this I will be surveying experts in the area of child welfare, specifically to ask their opinion on the barriers to permanency. Given your expertise in the area, I'm contacting you to see if you are willing to participate in the study. It should only take approximately fifteen minutes of your time to complete the survey. If you are willing to participate please respond to this email and let me know.

Please note that I am currently employed at the Office of the Representative for Children and Youth, as the Deputy Representative. My role as a student at the University, conducting research is separate from my role and responsibilities as the Deputy Representative. I have obtained supervision by Dr. Grant Charles, Visiting Scholar at the RCY, to ensure there is a separation between my academic role and Deputy role. Information on the office can be obtained at www.rcybc.ca.

If you have concerns about my dual role, you are not obliged to complete the survey and may ask to leave the process at any time.

Appendix C: Definitions

Definitions:

Adoption: Adoption is the legal and social process whereby a person becomes the parent of a child. In terms of law, the adoptive parents have the same responsibility to an adopted child as a birth child

Adoption Act: Legislation enacted in 1996 that governs private, public and inter-country adoption in British Columbia

Child, Family and Community Services Act: Legislation enacted in 1996 which governs child protection in British Columbia

Custom Adoption: Custom Adoption is a term recognized as meaning the cultural practices of Aboriginal peoples to raise a child, by a person who is not the child's parent, according to the custom of the First Nations and/or Aboriginal community of the child.

Delegated Aboriginal Agency: Through delegation agreements, the Provincial Director of Child Protection gives authority to Aboriginal agencies, and their employees, to undertake administration of all or parts of the CFCSA Act. The amount of responsibility undertaken by each agency is the result of negotiations between the ministry and the Aboriginal community served by the agency, and the level of delegation provided by the Director.

Director of Adoption: A person designated by the Minister of Children and Family Development under section 76.1 of the Adoption Act. The Director may delegate any or all of his or her powers, duties and responsibilities under the Act.

Exceptions Committee: The Exceptions Committee is a ministry body that receives requests from social workers for approval to place Aboriginal children in a non-Aboriginal adoption placement. An exception to ministry policies prioritizing Aboriginal placements is required when an Aboriginal adoptive family cannot be found so an appropriate non-Aboriginal family can be considered.

Permanency : Permanency is child welfare means a legally enduring, nurturing family for every child. Permanency is generally considered to have four dimensions, Legal, Relational, Cultural and Physical.⁷

⁷ Source: RCY Report Finding Forever Families : A Review of the Provincial Adoption System June 2014

Appendix D Pathways to Permanency conceptual framework