

TRANSFORMING CHILD WELFARE LEGISLATION IN MANITOBA

Opportunities to Improve Outcomes for Children and Youth

Report of the Legislative Review Committee

September 2018



Available in alternate formats upon request.

2. That youth aging out of CFS care have priority access to programs and supports that will help them successfully transition to independence.

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“I think there should be another (different) resource system available for them [youth]. There should be a different entity to do this work, which should incorporate ceremonies and teachings as well – ensure youth get priority services.”

- Service provider

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“Not enough life skills are being provided to children 18 and 21 transitioning out of care.”

- Child Welfare Survey Respondent

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3. That the legislation ensure youth who have been in the care of CFS are eligible to receive culturally safe supports up to 25 years of age. The legislation should allow for supports, either through mandated or non-mandated services. Youth who are 18 to 25 years of age should have the option of opting back into an extension agreement to access supports if they deem further growing is necessary. The language used in the legislation should allow for the reconsideration by a young adult of their decision not to enter into an extension agreement at any point, up to the age of 25.
 4. Youth should have direct and meaningful input into planning their futures, although the maturity level of the youth needs to be considered in determining plans. The legislation should provide youth between the ages of 16 and 18 with more input and involvement in their transition plans. Youth-driven transition plans, based on their specific needs, interests and realities, and with direct involvement and support from their family, fosters greater personal choice and accountability.

Theme 8: Youth Rights

The current CFS Act allows for the views of children, aged 12 years and older, to be considered in decision-making processes. The committee repeatedly heard that young people feel they have little ability to influence the adults around them who have the power to make decisions about where they live and with whom they spend their time.

It is important for teenagers within the system to be heard and, within the legislation, they should be entitled to certain rights. However, at this point in the review process, the committee is not prepared to recommend that youth should have a final say in decisions affecting their care.

In addition to the recommendations in the previous section on transition supports for youth, the committee proposes the following recommendations on the topic of youth rights:

1. That independent Family Advocates be established for each of the CFS Authorities'/Secretariats' governing bodies, in order to protect youth rights.
2. That the legislation contemplate court-appointed advocates or guardians ad litem to represent their rights. See Appendix B for a relevant excerpt from Nova Scotia's legislation.

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*United Nations Convention on the Rights of the Child – Article 12.2 –
“[Children shall] be provided the opportunity to be heard in any judicial
and administrative proceedings affecting the child, either directly, or
through a representative or an appropriate body, in a manner that is
consistent with the procedural rules of national law.”*
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Theme 9: Governance

During the presentations, the committee heard that many communities are of the opinion that the CFS system is flawed and not meeting the needs of First Nations, Inuit and Metis children.

A complete review of the processes related to accountability and governance in the CFS legislation, regulations and standards must be done immediately, with the goal of developing a more effective governance model for services in each community.

The new governance model for services to Indigenous children should be Indigenous-led and reflect the reality of the majority of children in care in Manitoba, and that it continue to be a devolved system of authority. The sector must reflect the people that it serves.

In amending the legislation, the committee asks that Indigenous leadership be represented in the review of changes that are being made, and that legal representation from these groups have an opportunity to assess the proposed changes before they are implemented in the legislation.

The committee also wishes to offer the following observation, not a recommendation, as it relates to the concept of governance in the child welfare system:

- First Nations leaders are currently negotiating child welfare services and rights with the federal government and while it is generally recognized that this process will take longer than the provincial review of legislation, it is important to recognize that these two reviews are taking place concurrently. Throughout the discussions, it is imperative that the changes and agreements made in this process can complement and potentially even strengthen the work being done at the federal level.

Finally, it is important to re-emphasize, that the changes proposed in this document are only an interim measure. The committee's long-term goal for child welfare reform is to create legislation that enables Indigenous peoples to have their own child welfare system that respects their right to self-determination.

The committee proposes the following recommendations on governance:

1. That a complete review of the responsibility, role and authority of the All Nations Coordinated Response (ANCR) Network be conducted, to ensure that the organization is fulfilling its original mandate. Input received has suggested that the community wants ANCR to focus its role as an intake and referral organization that provides strong, seamless front-end services and operates under clear roles, responsibilities and timelines that work in the best interests of families.

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Phoenix Sinclair Inquiry Report - Volume # 1

Recommendation: That ANCR – whose role is triage and delivery of short-term services – no longer provide family enhancement services but should transfer families who need services to a family services unit, as soon as possible...This will avoid disruptions in service for families whose needs cannot be effectively met within ANCR's limited time frame.

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2. That the Manitoba government formally engage with Indigenous leadership to further discuss the concept of transitioning CFS Authorities so they become Secretariats of MKO, MMF and SCO. This will require significant amendments to the existing Child and Family Services Authorities Act. This process should include a governance review aimed at reducing duplication and overlap of services and responsibilities.
3. That Leadership Council meet quarterly, and that each council member have an opportunity to put forth agenda items in advance of each meeting. Minutes from meetings should be made public.

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Truth and Reconciliation Report - Principle # 9: "Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources."

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4. The creation of a common table of federal, provincial and Indigenous that meets regularly and coordinates child welfare efforts is encouraged.

Theme 10: Accountability

Accountability helps Manitobans ensure that government, CFS Authorities and agencies, as well as other stakeholders, fulfill their responsibilities. In the CFS system, where

decisions about the protection, continuing care (permanency) and wellbeing of children and families are being made every day, accountability is very important.

The committee proposes the following recommendations on accountability:

1. That amendments made to CFS legislation be written in plain language. The flow between sections of statutes and regulations also needs to be improved.

“Legislation should be clear, concise, and written or defined in plain language.”

– Survey respondent

2. That a mandatory, legislated review of child welfare legislation take place every three years, and that the Southern Chiefs Organization (SCO), the Manitoba Keewatinowi Okimakinak (MKO), and the Manitoba Metis Federation (MMF) be empowered and resourced to appoint members to sit on independent committees tasked with reviewing child welfare legislation. Committees should also include community representatives.
3. That a key purpose of the legislative review be to evaluate the effect of the legislation on First Nations, Metis and Inuit children, families and communities, and that the results of the legislative review be made public and published in plain language.

Theme 11: Confidentiality

While children and families involved with the CFS system need to have their privacy respected, there are times when the careful sharing of information is beneficial (e.g., when planning or providing services for the child). Greater

communication and information sharing helps build a stronger mutual understanding. In this theme, the committee focused its efforts on developing suggestions that reduce the barriers for sharing information.

The committee proposes the following recommendations on confidentiality:

1. The current CFS act has not been updated or reviewed for many years, and as a result, the terminology and the references to confidentiality and privacy issues are outdated. In response, a complete review should be done to ensure the terminology and references are up-to-date and accurate. More specifically, Section 76 of the CFS act should be updated to reflect current laws on privacy and confidentiality. This section should also be amended so as not to hinder the implementation of this report’s recommendations.
2. In line with the relatively new [Protecting Children \(Information Sharing\) Act](#), the CFS act should be amended to allow for responsible and timely sharing of information within clearly identified criteria – for example, provided that the sharing of information is being done to enhance care or care planning. Any person, agency or organization that is seeking to support a child and family should be given relevant information. Internet Service Providers (ISPs) should be compelled to provide information related to CFS investigations.
3. Former children in care who are now adults must be able to receive a full copy of their CFS file. The act must ensure that people have a right to their own records. Redactions should only be confined to referral sources (e.g., informants) and third party information on other victims.

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***United Nations Convention on the Rights of the Child (UNCRC) –
Article 8.1 – “State Parties undertake to respect the right of the child
to preserve his or her identity, including nationality, name and family
relations as recognized by law, without unlawful interference.”***

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4. Adults should be allowed to access their own family records and consent to the release of information. Parents should also be allowed to access and share information from their child’s file, when it is considered to be in the child’s best interests.
5. The Manitoba government should enter into negotiations with Indigenous governments to develop agreements for the collection, use and access to information about them. Such agreements would ensure the collective and individual privacy rights of First Nations, Metis and Inuit people are acknowledged and respected and ensure that Ownership, Control, Access and Possession (OCAP) principles are followed.

6. A statute of limitations of no more than seven years should exist in the act, so that a record in the system is eventually absolved. This process should be initiated by an application to have one's record eliminated. The process should allow for an application to be denied only in specific circumstances involving an active and continuing threat to child safety, protection and wellbeing.

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“When a child comes into the system under the Child and Family Services Information System, they’re there forever...it follows them...and the parent is criminalized forever.”

- CFS worker in northern MB

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Theme 12: Other Recommendations

In addition to the original themes that were identified for the Legislative Review, feedback collected from individuals, communities and organizations, helped to introduce new topics and specific recommendations that the committee wanted to make sure were not overlooked in this report. While committee members recognize that some of these recommendations may fall outside of the scope of legislation, they wanted to honour the time and efforts spent by numerous stakeholders who brought these important issues to their attention.

Funding

The current funding structure for child welfare services provides incentives in the wrong places by providing funding based on the number of open cases and children in care.

1. The committee recommends that a complete audit of the existing funding structure be conducted to evaluate the flow of money from the funding source to intended recipients.
2. A new funding structure that is focused on reunification must be equitable (e.g., south versus north, reserve versus urban, Indigenous versus non-Indigenous, newcomer versus non-newcomer, and large versus small organizations). Equity in programming must be a core principle of service delivery.
3. The revised funding structure needs to focus on outcomes and processes that ensures everyone is accountable for results. As part of the process, a system of checks and balances needs to be

created within the funding system to enable the tracking of funds, and ensure that the money is reaching the intended service recipients: children, youth, families and communities.

4. As noted in the Phoenix Sinclair Inquiry, the capacity of community-based organizations needs to be enhanced with sustained long-term funding for the delivery of holistic services, and with a particular emphasis on supporting Indigenous-led organizations and programs that promote cultural identity in Indigenous communities.
5. Jordan's Principle must be properly implemented in Manitoba. To protect and ensure the well-being of children, the Manitoba government must take an active lead in the implementation of Jordan's Principle. In the field, agencies must be required to provide supports immediately and be concerned about who pays for the supports once the safety of the child is in place.

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Truth and Reconciliation – Call to Action #3
“We call upon all levels of government to fully implement Jordan’s Principle”
.....

6. The CFS system should ensure there is a seamless transfer of funds when a child's case is moved from a Designated Intake Agency to another CFS agency that is responsible for providing ongoing services and supports.

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United Nations Declaration on the Rights of Indigenous Peoples – Article 5
“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

Legal/Incorporated Status of CFS Agencies

Any barriers that may prevent a mandated CFS agency from engaging with, or accepting monetary and non-monetary contributions from the community to support children in care must be removed. The legal/incorporated status of all CFS agencies (including Winnipeg Child and Family Services) should be consistent.

Profit-Based Entities

That all possible steps should be taken by agencies to avoid using for-profit entities offering or delivering services for children in CFS care. This includes foster homes and group care resources. For-profit entities should only be used in limited and defined circumstances when service is necessary and alternative providers are unavailable.

Child and Family Services Information System (CFSIS)

That a review of CFSIS be done with an emphasis on developing a more modernized information system. That the government address the current challenges of CFSIS, which leads to front line workers spending too much time inputting information, thus impairing their ability to provide direct care and support services to children. The current CFSIS system should be replaced with a system that provides essential information in a user-friendly process and format.

Birth Alerts

That the current birth alert process be replaced by community-based and culturally-safe services to identify and assist at-risk parents during and after pregnancies.

Protection from Liability for Child Protection Workers

All child protection workers should be granted protection from liability for anything done or omitted in good faith, while exercising their powers, duties or functions. That a provision on protection from liability, similar to the provision found in British Columbia's legislation, be adopted in Manitoba (see Appendix B for an excerpt).

Authority Determination Protocol

The Authority Determination Protocol (ADP), and the requirement to select an Authority of service creates conflict and unwarranted competition within the system. The protocol is also irrelevant in some isolated communities and is known to further complicate an already burdensome bureaucratic process. If possible from a constitutional perspective, the legislation should be reformed to eliminate the current ADP process and replace it with an automatic process of fast and effective referrals to culturally safe Authorities/Secretariats. Choice should be allowed only when a parent or guardian makes a proactive and specific request for an application to be serviced by a different CFS Authority.

Foster Parent Appeals Process

After much consideration and extensive discussion on the topic, it is recommended that the foster parent appeals process be replaced with a new and child-centred conflict resolution process that is led by a neutral and independent party, and ensures all affected individuals, including children, have a voice at the table. Using the new definition of family, which includes foster parents, the committee recommends that child-centred alternate dispute resolution mechanisms be used as the primary format for conflict resolution.

Section 4 – Conclusion

Among Canadian provinces, Manitoba has the highest rate of children in care and there is an urgent and undeniable need to make changes to the CFS system, in order to create better outcomes for children and youth. The committee is pleased that the Manitoba government has made child welfare reform a priority, and asked for this legislative review to be conducted.

Committee members do not wish their efforts to become another report that is filed for consideration. Additionally, the committee wants to make it clear that the recommendations in this report are only a starting point towards meaningful, long-term child welfare reform.

As a next step, the committee proposes that the Manitoba government work together in partnership with Indigenous leaders and other

key stakeholders to ensure that any amendments to child welfare legislation respond to and reflect the priorities of their communities and empower families and communities to care for their children.

Collectively, Manitobans can create an improved environment where children and youth feel safe, cared for, valued and loved.

Appendix A: Sources of Information

**** The committee sincerely thanks these organization and individuals who supported its work.
If there are errors or omission, please accept our apologies.*

Presentations

**** Note: The majority of presenters submitted written versions of their presentations*

1. Fearless R2W – Aboriginal Youth Opportunities
2. The Metis Child and Family Services Authority and The Manitoba Metis Federation (joint presentation)
3. The Advocate for Children and Youth
4. First Nations of Northern Manitoba Child and Family Services Authority, the Kinosao Sipi Minisowin Agency and Island Lake First Nation Family Services (joint presentation)
5. Ma Mawi Wi Chi Itata Centre Inc.
6. The General Child and Family Services Authority
7. Winnipeg Child and Family Services
8. The Nisichawayasihk Cree Nation (NCN) Family and Community Wellness Centre
9. Manitoba Keewatinowi Okimakanak Inc
10. Awasis Agency of Northern Manitoba
11. Nikan Awasisak Agency Inc.
12. Marymound (northern office)
13. VOICES: Manitoba's Youth In Care Network
14. Child and Family All Nations Coordinated Response Network (ANCR)
15. Metis Community Liaison Department – Manitoba Metis Federation
16. Grandmothers Paynter and Maytwayashing
17. Michif Child and Family Services
18. Metis Child, Family and Community Services
19. Metis Provincial Youth Council
20. Southern Chiefs' Organization
21. The Hub (Community Mobilization Westman)
22. Child and Family Services of Western Manitoba
23. Grandmother Rita Cullen and Minister Mayer, Manitoba Metis Federation
24. Southern First Nations Network of Care
25. Peguis Child and Family Services
26. Dakota Ojibway Child and Family Services

Written submissions

27. Addictions Foundation of Manitoba
28. Advocate for Children and Youth – A document outlining the voices of Youth
29. Faculty of Social Work – University of Manitoba
30. Manitoba College of Social Workers
31. Manitoba Adolescent Treatment Centre
32. Manitoba Centre for Health Policy
33. Siloam Mission
34. Manitoba Foster Families Network
35. Council of Child Care Treatment Centres
36. The Canadian Centre for Child Protection
37. Southeast Child and Family Services
38. West Region Child and Family Services
39. The Manitoba Association of Friendship Centres
40. Grandmothers from northern Manitoba (Opaskwayak Cree Nation)
41. The Adoption Council of Canada (based in Ottawa)
42. Anonymous individual (submission sent to committee Chair, Mr. Micklefield)
43. Bruce Unfried (submission sent to committee vice chair, Mr. Armbruster)

Survey respondents: 1,506

Appendix B: Excerpts – Legislative Provisions

Employment Standards Regulation (Manitoba)

“Family member” — expanded definition

22) For the purpose of the definition “family member” in subsection 59.2(1) of the Code, a person is a family member of an employee if the person is:

- (a) a brother, sister, step-brother, step-sister, uncle, aunt, nephew, niece, grandchild or grandparent of the employee or of the employee’s spouse or common-law partner;
- (b) a parent of the employee’s spouse or common-law partner;
- (c) a current or former foster parent of the employee or of the employee’s spouse or common-law partner;
- (d) a current or former foster child, ward or guardian of the employee or of the employee’s spouse or common-law partner;
- (e) the spouse or common-law partner of a person mentioned in any of clauses (a) to (d); or
- (f) any other person whom the employee considers to be like a close relative, whether or not they are related by blood, adoption, marriage or common-law relationship.

Alberta’s Child, Youth and Family Enhancement Act

Interpretation

(2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:

- (a) the child has been abandoned or lost;
- (b) the guardian of the child is dead and the child has no other guardian;
- (c) the child is neglected by the guardian;
- (d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;
- (e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;
- (f) the child has been emotionally injured by the guardian of the child;
- (g) the guardian of the child is unable or unwilling to protect the child from emotional injury;
- (h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment.

(2.1) For the purposes of subsection (2)(c), a child is “neglected” if the guardian

- (a) is unable or unwilling to provide the child with the necessities of life,
- (b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child, or
- (c) is unable or unwilling to provide the child with adequate care or supervision.

(3) For the purposes of this Act,

- (a) a child is “emotionally injured”
 - (i) if there is impairment of the child’s mental or emotional functioning or development, and
 - (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of:
 - (A) rejection,
 - (A.1) emotional, social, cognitive or physiological neglect,
 - (B) deprivation of affection or cognitive stimulation;
 - (C) exposure to domestic violence or severe domestic disharmony;
 - (D) inappropriate criticism, threats, humiliation, accusations or expectations of or toward the child;
 - (E) the mental or emotional condition of the guardian of the child or of anyone living in the same residence as the child;
 - (F) chronic alcohol or drug abuse by the guardian or by anyone living in the same residence as the child;
- (b) a child is physically injured if there is substantial and observable injury to any part of the child’s body as a result of the non-accidental application of force or an agent to the child’s body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;
- (c) a child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behaviour including prostitution related activities.

Nova Scotia’s Children and Family Services Act

Disposition Order (section 42.1.3)

Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether:

- (a) it is possible to place the child with a relative, neighbour or other member of the child’s community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person; and
- (b) where the child is or is entitled to be an aboriginal child, it is possible to place the child within the child’s community.

Child as party and appointment of guardian (section 37)

(1) A child who is sixteen years of age or more is a party to a proceeding unless the court otherwise orders and, if a party, is, upon the request of the child, entitled to counsel for the purposes of a proceeding.

(2) A child who is twelve years of age or more shall receive notice of a proceeding and, upon request by the child at any stage of the proceeding, the court may order that the child be made a party to the proceeding, where the court determines that such status is desirable to protect the child's interests.

(2A) Where the court orders that a child under sixteen years of age be made a party to a proceeding, the court shall appoint a guardian *ad litem* for the child.

(3) Upon the application of a party or on its own motion, the court may, at any stage of a proceeding, order that a guardian *ad litem* be appointed for a child who is the subject of the proceeding and, where the child is not a party to the proceeding, that the child be made a party to the proceeding, if the court determines that such a guardian is desirable to protect the child's interests and, where the child is sixteen years of age or more, that the child is not capable of instructing counsel.

(4) Where a child is represented by counsel or a guardian *ad litem* pursuant to this Section, the Minister shall in accordance with the regulations, pay the reasonable fees and disbursements of the counsel or guardian as the case may be, including the reasonable fees and disbursements of counsel for the guardian.

British Columbia's Child, Family and Community Service Act

Protection from liability

101 No person is personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of

- (a) a power, duty or function conferred under this Act, or
- (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Act.

End notes

- ¹ Brownell M, Chartier M, Au W, MacWilliam L, Schultz J, Guenette W, Valdivia J. *The Educational Outcomes of Children in Care in Manitoba* Winnipeg, MB. Manitoba Centre for Health Policy, June 2015.
- ² Brownell M, De Coster C, Penfold R, Derksen S, Au W, Schultz J, Dahl M. *Manitoba Child Health Atlas Update*. Manitoba Centre for Health Policy, Winnipeg, MB: November 2008.
- ³ Katz L, Au W, Singal D, Brownell M, Roos N, Martens PJ, Chateau D, Enns MW, Kozyrskyj AL, Sareen J. Suicide and suicide attempts in children and adolescents in the child welfare system. *Canadian Medical Association Journal*, 2011; 183 (17):1977-1981.
- ⁴ Hook, J.L., & Courtney, M.E. (2011). Employment outcomes of former foster youth as young adults: The importance of human, personal, and social capital. *Children and Youth Services Review*, 33: 1855-1865.
- ⁵ Ontario's Provincial Advocate for Children and Youth (April 2017) "Exploring Youth Outcomes after Aging-Out of Care." Report written by Jane Kovarikova.
- ⁶ Curry, S.R., & Abrams, L.S. (2015). Housing and social support for youth aging-out of foster care: State of the research literature and directions for future inquiry. *Child Adolescent Social Work Journal*, 32:143–153.
- ⁷ Dworsky, A., & Courtney, M.E. (2009). Homelessness and the transition from foster care to adulthood. *Child Welfare*, 88(4): 23-56.
- ⁸ Wall-Wieler E, Roos LL, Bolton J, et al Maternal health and social outcomes after having a child taken into care: population-based longitudinal cohort study using linkable administrative data *J Epidemiol Community Health* Published Online First: 05 October 2017.
- ⁹ The themes outlined in the Child Welfare Discussion Paper were: Community Involvement; when a child is in need of Protection; Culturally Sensitive Safety Assessments; Planning for a child who has come into care; Supports for youth Transitioning out of care as they reach adulthood; youth rights; accountability; and confidentiality. As the review proceeded and information was obtained, the Committee decided to include additional themes and recommendations to this report; they are: Legal Purpose Statement and Guiding Principles; Legal Definitions; and Governance. The final part of the report includes other (additional) recommendation.
- ¹⁰ What is Indigenous Cultural Safety—and Why Should I Care about It? Here to Help website www.heretohelp.bc.ca/visions/indigenous-people-vol11/what-is-indigenous-cultural-safety-and-why-should-i-care-about-it (accessed online - May 2018).