SASKATCHEWAN
advocate
FOR CHILDREN & YOUTH

IN THEIR SUFFICIENT INTEREST?

Special Investigation Report

April 2023

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LETTER OF TRANSMITTAL

April 4, 2023

The Honourable Randy Weekes
Speaker of the Legislative Assembly
Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Dear Mr. Speaker:

Pursuant to section 14(2) and in accordance with section 28 of *The Advocate for Children and Youth Act*, it is my duty and privilege to submit to you and members of the Legislative Assembly of Saskatchewan this special report, entitled *In Their Sufficient Interest?*

Respectfully,

Lisa Broda, PhD
Advocate for Children and Youth

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1.0 Introduction

The Saskatchewan Advocate for Children and Youth office works to advance the rights, interests, and well-being of young people across Saskatchewan who receive services from a government ministry, agency, or publicly-funded health entity. As an independent office of the legislature, the Advocate acts as a voice for young people to address issues and gaps in services that affect the rights and well-being of children. The Advocate's mandate is defined in accordance with ***The Advocate for Children and Youth Act***, which sets out the legislative authority and responsibility of our office. The Act guides the delivery of our core functions which include advocacy, investigations, public education, and research.

Our work is grounded in the United Nations Convention on the Rights of the Child (UNCRC), ratified by Canada in 1991 and the Children and Youth First Principles adopted by the Government of Saskatchewan in 2009, affirming its commitment to uphold the UNCRC. The UNCRC outlines 54 rights of children which are simplified into the eight Children and Youth First Principles that include the right to be safe and protected, to participate and be heard, to have their best interests be given paramount consideration in all decisions, to have the importance of their life history, spiritual and cultural preferences and views be considered, and to be treated as the primary client in all child-serving systems.

The priorities of the Advocate include the principles of reconciliation aimed at building awareness of the long-term consequences and harm caused to Indigenous peoples, respecting Indigenous beliefs, cultures, traditions, and world views, and taking action to ensure respect and protection for the rights of Indigenous children, youth, and families. Our work aligns with the United Nations Declaration on the Rights of Indigenous Peoples which calls on governments to ensure Indigenous children are afforded special protections. Our work is also underpinned by the Touchstones of Hope for Indigenous children, youth, and families, which promotes reconciliation in child-serving systems through recognition of self-determination, respect for culture and language, non-discrimination, redress of structural inequalities, and the need for a holistic approach to repairing harms of the past.

Our review has found a history of ongoing concerns regarding children in PSI care, including children who are left unchecked, children who deeply struggle due to unmet needs and, in several cases, children who have suffered maltreatment.

2.0 Purpose and Methodology

In 2022, the Advocate triggered a systemic review of the Ministry of Social Services' Person of Sufficient Interest (PSI) program to better understand the persistent issues and gaps in this program as it pertains to the services children receive when placed in this stream of care. This stems from multiple issues our office uncovered relating to our advocacy and investigative work. This report was completed in accordance with *The Advocate for Children and Youth Act*. It highlights longstanding issues impacting children and youth placed in this program and that which infringe on their rights according to the United Nations Convention on the Rights of the Child.

The Advocate agrees that when children cannot remain with their parents, extended families must be supported to safely care for these children. While the intention of the PSI program aims to safely care for these children, our work and our review of the program illustrate that it is marked with a history of ongoing concerns regarding children in PSI care, including children who are left unchecked, children who deeply struggle due to unmet needs and, in several cases, children who have suffered maltreatment. The Advocate continues to receive notifications related to deaths and injuries, and an increasing number of calls for assistance related to the PSI program.

Our report observes that the legal authority for the PSI program has remained unchanged since *The Child and Family Services Act* was passed in 1989 and amendments to this part of the Act have stalled. In 2010, the Child Welfare Review recommended that government develop court-recognized custom adoption processes to address issues of permanency for Indigenous children. The lack of comprehensive legislative reform has prevented the development of a culturally sensitive option to support children being with their families. It also resulted in considerable and increased reliance on the PSI program. In addition to the gaps in services and concerns overall about the PSI program, the legislative inertia was also the impetus for the Advocate's investigation and report.

The findings and recommendations have been shared with the Ministry of Social Services (the Ministry) and their response to the recommendations is included in this report. The Advocate is pleased the Ministry accepted all but one recommendation which pertains to increasing its services to PSI children to age 21 to align with the Ministry's Alternative and Foster Care programs. Not accepting this recommendation serves to perpetuate a discriminatory condition for those children and youth who are in the PSI program.

This investigation included a review of legislation, policies, and services related to the provision of the PSI program, an examination of Ministry statistics and interviews with the Ministry and First Nations Child and Family Service Agency staff about program delivery. The Advocate also consulted with our office's Elder Advisory Council for guidance and advice. The development of the PSI program was explored as it evolved to become the Ministry's key mechanism to deliver a kinship care service in Saskatchewan. This report does not represent a comprehensive program evaluation, which could determine whether the program is meeting its goals and objectives.

3.0 Defining the Person of Sufficient Interest Program

The PSI program is intended to provide a child, who requires protective services and cannot remain with their parent(s), with a long-term, safe and healthy placement with extended family or another person with whom there is a connection. The Ministry identifies, assesses, and approves persons who may become a PSI guardian and makes recommendations to the court for a PSI order as provided for by *The Child and Family Services Act*. While the court can make a legal order for a definite term, most orders are for an indefinite term and place the child in the custody of a guardian until they are 18 years old.

Once the court order is made, the Ministry provides financial maintenance and any other supports identified for the care of the child based on a signed agreement completed annually with the PSI guardian. The program differs from other forms of placements, such as Alternative Care or Foster Care, because in this stream of care, the Ministry is no longer the guardian of the child or youth and therefore no longer involved, and staff are not required to see or provide direct case management services to the child. It is also different from adoption, which is final and severs parental rights. Under a PSI order, however, a parent can apply to the court to have their child returned to their care.

4.0 Kinship Care and the PSI Program

Kinship care is defined as children not living with their parent(s) but cared for by a relative or a person with whom the child has an emotional bond. Kinship care is given increased priority by national and international child welfare agencies due to family preservation policies that emphasize keeping children connected to their communities and cultural heritage, legal requirements that prioritize placement of children with families, and a reduction in foster home resources.[1] Research shows that children placed with extended families have increased well-being, placement stability, and fewer incidents of abuse than children in Foster Care.[2,3]

In Saskatchewan's child welfare system, kinship care is known as Place of Safety (for short-term care or while an assessment of the resource is occurring), Alternative Care (where the Ministry remains the guardian of the child) and PSI care (where the caregiver becomes the guardian rather than the Ministry).

[1] Wheal, A (2001) Family and Friend who are carers: A framework for success. In: Kinship care: the placement choice for children and young people (pp. 21-28). Lyme Regis, UK: Russell House

[2] Gardner, S. (2019) Family systems and kinship care: Challenges and Opportunities, Wood's Home Journal Evidence to Practice, VOLUME 3, ISSUE 1, WINTER 2019

[3] Bell, T & Romano, E. (2017) Permanency and safety among children in foster family care and kinship care: A scoping review. Trauma, Violence and Abuse, Vol 18(3) 268-286 – cited in Gardner

5.0 Historical Context of the PSI Program

Over the past 10 years, the Saskatchewan Advocate for Children and Youth has consistently identified how the PSI program can negatively impact a child's legal rights and highlighted these issues in a submission to the Child Welfare Review in 2010. Since then, the Advocate voiced the need for broad changes to the PSI program as the legislative framework did not meet the program's needs and requested the Ministry to develop a court-recognized custom adoption program as recommended by the Child Welfare Review.

In 2013, the Ministry completed a review of the program (with consultation from the Advocate) and found there was widespread confusion about the Ministry's legal and ethical responsibility to PSI families and the type of supports the Ministry ought to provide beyond financial maintenance. Although the Ministry made several policy changes to the program, significant legislative changes did not occur and are not being considered at this time.

[...] the Saskatchewan Advocate for Children and Youth has consistently identified how the PSI program can negatively impact a child's legal rights.

Further, there is now federal legislation passed in January 2020 – *An Act respecting First Nations, Inuit and Métis children, youth and families* – which establishes factors that must be considered in determining an Indigenous child's best interest and the minimum national standards that every service provider for Indigenous children will need to meet. This Act will also have implications for the delivery of the PSI program.

Without further legislative action, there will continue to be serious gaps and rights infringements which is deeply concerning given the increased reliance and use of the PSI program, as is illustrated in the statistics of children in care.

Although the Ministry made several policy changes to the program, significant legislative changes did not occur and are not being considered at this time.

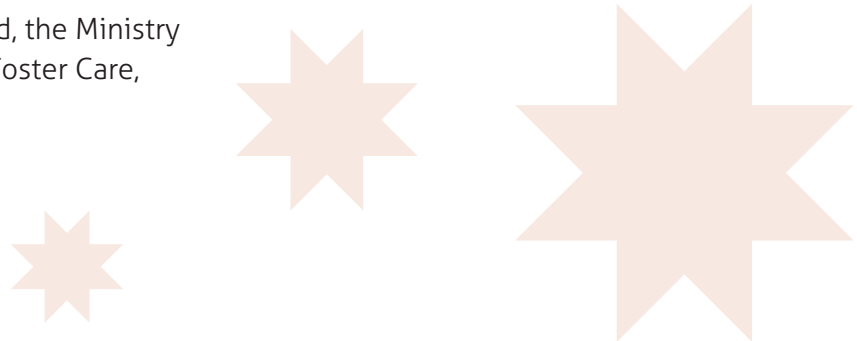
6.0 Current Context of Children in PSI Care

6.1 Process of How a Child Comes into PSI Care

The Ministry's Children's Services Manual contains specific policies regarding children in out-of-home care and provides the principles that guide the application of these policies. When a child cannot live with their parent(s) and are taken into the Ministry's care, the placement selection policy[4] prioritizes placement with extended family. Staff must consider the wishes of the parents and child (where feasible) and the capacity of the proposed caregiver to meet the child's needs. Extended family includes relatives, godparents, stepparents, or other adults who are important in the child's life such as foster parents[5] or family friends.

For Indigenous children, placement priorities beyond the extended family include any other family from the same First Nation or another First Nation with a similar cultural or linguistic heritage or any other Indigenous family. This also applies to Métis children and families. These placement priorities align with the new federal legislation, *An Act respecting First Nations, Inuit and Métis children, youth and families*. Where extended family cannot be identified, the Ministry may place a child in a group home, Foster Care, or a specialized treatment program.

An extended family placement usually begins with a Place of Safety assessment. This abbreviated assessment can be completed within a day to allow a child(ren) to be placed almost immediately without remaining in emergency Foster or group home care while a detailed assessment of the home is being completed. Once a child has resided in an extended family placement (known as Alternative Care) for a minimum period of six months (or longer) and reunification with their parent is unlikely at that time, the Ministry may recommend to a court that the extended family be designated as a Person of Sufficient Interest to become the child's legal guardian. This recommendation is dependent on many factors including whether there has been any progress in the plan to reunify the child with their parent(s), the extended family's interest in becoming a PSI caregiver and the safety, stability, and suitability of the placement.



[4] Children's Services Manual, 2.3 - Placement Selection

[5] On March 31, 2021, there were 33 providers who were providing care to both foster children and children placed with them under a PSI order.

6.2 Numbers of Children in Extended Family Care, Age Ranges, and Constitutional Status

Ministry statistics illustrate that the number of children in out-of-home care has risen from 4,701 in 2017 to 5,552 in 2021. In 2021, children in extended family placements represented 59.8% (or 3,318 children) of all placements and this has increased by approximately 4% from five years earlier.

Children in PSI placements have consistently represented about one-third of all children in out-of-home care over the past five years with an increase from 1,553 in 2017 to 1,876 in 2021. The increase of children in PSI care is not seen in other types of out-of-home placements such as Foster Care or group home care.

Placement in Out-of-Home Care (OOHC)

Date	Extended Family*		Foster Care		Group Home		Other		OOHC	First Nations Agency Transfers
	#	%	#	%	#	%	#	%	#	#
03/31/2017	2,614	55.6	952	20.25	655	13.93	480	10.21	**4,701**	348
03/31/2018	2,813	57.4	924	18.86	696	14.21	466	9.51	**4,899**	358
03/31/2019	2,861	57.6	856	17.24	734	14.79	513	10.33	**4,964**	341
03/31/2020	3,063	59.6	888	17.28	684	13.31	505	9.82	**5,140**	302
03/31/2021	3,318	59.8	910	16.39	762	13.72	562	10.12	**5,552**	312

* In the above chart, the category of Extended Family represents the combined total of Alternative Care, Place of Safety, and PSI.

Categories of Extended Family Care

Date	Alternative Care		Place of Safety		PSI		Totals	
	#	%	#	%	#	%	#	%**
03/31/2017	420	8.93	641	13.64	1,553	33.04	**2,614**	**55.6**
03/31/2018	399	8.14	764	15.60	1,650	33.68	**2,813**	**57.4**
03/31/2019	400	8.06	744	14.99	1,717	34.59	**2,861**	**57.6**
03/31/2020	488	9.49	761	14.81	1,814	35.29	**3,063**	**59.6**
03/31/2021*	588	10.59	854	15.38	1,876	33.79***	**3,318**	**59.8**

* Figures represent point-in-time counts at the end of March 31, 2021, based on Ministry placement type data. First Nations Agency transfers are excluded.
** Percentages are calculated using all out-of-home placements as found in the first chart.
*** The percentage of PSI placements in 2021 decreased and may be attributed to the increase of the total number of children in out-of-home care.

The percentage of Alternative Care and Place of Safety (POS) placements also increased by approximately 2% over the previous five years with 588 Alternative Care placements and 854 POS placements in 2021. The percentage of foster home placements has decreased by about 4%, while group home placements have been stable between 13% to 14% of all placements over the past five years.

As of March 31, 2021, there were 1,322 POS homes, 489 Alternative Care Providers and 1,171 PSI guardians. The Ministry's PSI review found there were 857 PSI providers in 2012, representing a significant increased use of this resource over the last nine years.[6]

Placement Type for Children in Out-of-Home Care by Age Group

	Ages 0-5		Ages 6-11		Ages 12-17		>17*		Totals
	#	%	#	%	#	%	#	%	
POS	381	44.61%	282	33.02%	187	21.90%	4	0.47%	**854**
Alternative Care	225	38.27%	205	34.86%	146	24.83%	12	2.04%	**588**
PSI	282	15.03%	814	43.39%	717	38.22%	63	3.36%	**1,876**
Totals	**888**	**26.76%**	**1,301**	**39.21%**	**1,050**	**31.65%**	**79**	**2.38%**	**3,322**

* The over the age of 17 category is unusually high because the government temporarily extended supports to youth over age 17 and beyond expiry of their court order until June 2021 due to the pandemic.

Most children in a PSI placement are aged six years and older whereas younger children (0-5 years) are in POS placements which suggests that a younger child will be reunified with their parent and not require longer term care. Approximately 100 children age out of PSI care annually.

Indigenous children represent most of the children in extended family care with almost 90% of children in PSI care being of Indigenous ancestry.

Self-Identified Constitutional Status of Children in Out-of-Home Care (as of March 31, 2021)

	POS		Alternative Care		PSI		Total
	#	%	#	%	#	%	
Indigenous*	608	71.19%	477	81.12%	1,661	88.54%	2,746
Non-Indigenous	246	28.81%	111	18.88%	215	11.46%	572
Total	**854**	**25.74%**	**588**	**17.72%**	**1,876**	**56.54%**	**3,318**

* Indigenous includes Status Indian, Non-Status Indian, Métis, and Inuit and includes transfers to First Nations Agencies.

6 The Ministry indicated that the numbers of homes represented could be affected by delayed data entry meaning homes may show open even if children are no longer residing there.

7.0 Contextualizing the Issues

The Advocate for Children and Youth case file analysis and interviews with Ministry and First Nations Child and Family Service Agency staff were instrumental in identifying a myriad of issues affecting the rights and interests of children. The following categorizes the issues into four broad areas:

PLACEMENT, ASSESSMENT AND COURT PROCESSES

- Emphasis on family placements using the POS process may lead to unsuitable placements (including families with no prior relationship to the child), limit the search for other resources and result in multiple moves.
- The extended family assessment process may not adequately deal with issues of intergenerational trauma or prior child welfare involvement experienced by many extended families.
- Staff training about intergenerational trauma does not ensure competency in applying the knowledge in assessments or services for extended families.
- Many extended families may not understand the meaning of a PSI order and the reduced services they and the child will receive.
- The permanency planning process for a PSI order does not fully consider the impact on the child in terms of the loss of direct services and extension of support to age 21 and does not guarantee the child is consulted about their placement or the decision to seek a PSI order.
- A child's rights and interests may not be independently represented in a court proceeding where a PSI order is recommended.

CASE MANAGEMENT SERVICES

- Although the Ministry remains involved due to the financial support provided to the PSI caregiver, except for an Annual Review, there are no other case management responsibilities.
- The Annual Agreement with a PSI guardian does not include provisions to protect children's rights.
- Too much time between contact and Annual Reviews does not allow for identifying children's needs that evolve with each year, nor does it allow for identifying support for the caregiver. The review process can be delayed due to casework priorities and high PSI caseloads.
- Limited case management service inhibits the development of a relationship between the guardian and casework staff and prevents opportunities for early intervention to avoid placement disruption (meaning the child cannot return to the PSI home). Placement disruption often occurs due to the guardian's inability to manage a child's challenging behaviours.

CASE MANAGEMENT CHALLENGES

- Quality of care concerns about a PSI guardian that do not meet the threshold for a child abuse investigation may go unaddressed even though the Ministry is providing funding for the child's care.
- Children in PSI care may lose contact with their parents, siblings, or significant others as they are dependent on their guardians to make these decisions or arrange contact. Ministry staff cannot enforce contact requirements in court orders which require family contact. Court processes to seek contact are intimidating to parents or others.
- Contrary to Alternative Care or Foster Care, youth in PSI care are not eligible for an extension of services to provide them with supports and services to age 21 and many require this support. Specifically, with permanent wards and long-term wards, the Ministry can remain involved and offer supports to children up to the age of 21 but, in the PSI program, all Ministry involvement and support is discontinued at 18 years of age.
- When placements break down for PSI youth (aged 16 or 17 years old), services are usually provided through a voluntary program. If vulnerable youth are not capable of complying with the program's terms, they forfeit entitlement to any supports and services.
- The Ministry does not collect ongoing data on the reasons that a PSI placement may be disrupted which prevents analysis of the program's effectiveness.

LEGAL AND OTHER DILEMMAS

- Without definition in *The Child and Family Services Act*, the 'lesser' form of guardianship under a PSI order means their rights and responsibilities are open to interpretation.
- There is a lack of clarity about the Ministry's responsibility to apply for a change or termination of a PSI order when circumstances indicate it may be in the child's best interest.
- When PSI children and families move out of province, there is significant risk that their supports and services will be negatively affected and there is a lack of understanding about PSI orders in other jurisdictions.
- Parents of children in PSI care face extreme difficulty in having their children returned if life circumstances have substantively changed to warrant a return, compromising any chance for reunification due to legal challenges the parents face.

8.0 Best Interests and Rights Analysis

The rights of young people ought to be at the fore of the decisions made in their interests. **Article 3** of the United Nations Convention on the Rights of the Child (UNCRC) gives children the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions about them. The UNCRC General Comment[7] (which helps interpret best interests) explains that decision-making processes need to include an evaluation of the possible impacts (negative and positive) on the child and that the reasons for a decision show the rights have been explicitly considered.

The term 'Shall be a primary consideration' means there is a conscious effort to give priority to the child's interests in all circumstances but especially when an action has an undeniable impact on the children concerned. There is no question that the decision to place a child with an extended family member and make a recommendation to a court that they become their legal guardian has an 'undeniable impact' and should be done in consideration of all the rights and best interests of the child as articulated in the UNCRC.

While Ministry policy cites a child's best interests as the guide to decision making, the process lacks procedural guidelines to ensure that all legal options for supporting the child now and into the future are carefully examined and weighed. This policy gap significantly undermines the type of best interest assessment contemplated in the UNCRC that should be undertaken when recommendations are being made that affect the child's legal status.

While Ministry policy cites a child's best interests as the guide to decision making, the process lacks procedural guidelines to ensure that all legal options for supporting the child now and into the future are carefully examined and weighed.

The best interest assessment also must consider other elements that are linked to the general principles of the UNCRC. These elements include the child's views, the child's identity, preservation of the family environment and maintaining relationships, the care, protection and safety of the child, and the child's situation of vulnerability.

UNCRC ARTICLES

Article 3: Protection of the best interests of the child
Article 8: Preservation of identity
Article 9: Protection from separation from parents
Article 12: Freedom of opinion and expression
Article 19: Protection from abuse and neglect
Article 20: Protection for orphaned and separated children

[7] The United Nations Convention on the Rights of the Child General Comment No. 14 found at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf

8.1 The Child's Views

Article 12 of the UNCRC affords the right of children to express their views in every decision that affects them and the opportunity to be heard in any administrative or judicial forum either directly or through a representative. Children cannot be deprived of these rights even if they are incredibly young or have disabilities, and measures must be established that guarantee a child's role in the decision-making process to allow them to influence the determination of what is in their best interests. This right of expression is also found in *An Act respecting First Nations, Inuit and Métis children, youth and families* which states that children have the right to exercise their views and preferences in decisions that affect them and to do so without discrimination.

Examination of the Ministry's process that leads to a child coming into the care of a PSI guardian reveals instances where measures to incorporate a child's voice may be overlooked in case management decisions. While placement policy requires that a child's wishes be considered when contemplating a resource, there is no documentation required to explain how this was done among all the factors that were considered to support the placement.

A child's wishes are to be captured in the assessment of the extended family, however, once a child is placed, the ongoing assessment of the child and the case plan for the child's family do not include specific sections outlining the child's views. These assessments document the permanency plan for the child and require formal approval by a manager if a child has been in cumulative care for 18 months.

Examination of the Ministry's process that leads to a child coming into the care of a PSI guardian reveals instances where measures to incorporate a child's voice may be overlooked in case management decisions.

Although policy states managers must consider a child's wishes in approving the case plan, it is not clear how this is achieved. Further, there is no procedure or policy that speaks to consulting with the child (age appropriate) prior to the application to the court to explain how a change in guardianship would affect them.

Children cannot be a party to child protection court proceedings where decisions about a PSI order are made and there are no policy guidelines outlining when or if to seek legal counsel for a child when an application to the court for a PSI order is being made. While staff generally know about the role of the Counsel for Children to represent a child's interests or views in court, this policy gap undermines the child's right for their voice to be heard in a court proceeding.[8] Such representation may also be critical to assist the court in understanding the child's wishes with respect to ongoing access or visitation with biological parents, extended family, or significant others such as siblings.

[8] The Counsel for Children program (Ministry of Justice) offers lawyers free of charge to a young person or child involved in child protection proceedings to ensure that the child or young person's best interests are considered fully in negotiations, mediations, and court proceedings.

8.2 The Child's Identity

A child's identity is tied to their unique characteristics (sex, sexual orientation, nationality, religion, culture, personality) and the right of the child to preserve their identity is guaranteed by **Article 8** of the UNCRC. Prioritizing placement with extended family respects those rights and assists in maintaining continuity in the child's upbringing and ethnic, religious, cultural, and linguistic background.

The Ministry's cultural planning policy serves to preserve a child's identity and offers case management assistance with registration of the child with the appropriate Indigenous registry. These tasks are to be completed prior to a PSI order and follow-up on the progress of the plan is required during the Annual Review with financial support available if needed. These policies serve to respect the child's identity rights but are dependent upon the PSI guardian's commitment to adhere to the plan on behalf of the child. The current Annual Agreement with the PSI guardian makes no reference to cultural planning and policy and does not speak to a further reconsideration or revision of the plan with the PSI guardian and the child which could broaden or improve opportunities to preserve the child's identity. The current agreement is under review and changes may address this issue.

The UNCRC General Comment No. 11 provides advice related to Indigenous children and their rights under the UNCRC and speaks to the naming of Indigenous children as their parent's choice in accordance with their cultural traditions and the right to preserve their identity. There is currently no legal guidance about whether a PSI caregiver may change the child's name. The current Ministry PSI guide provided to prospective PSI guardians states that the PSI caregiver has the right to make decisions as to what they consider in the child's best interest, in all aspects of the child's life, which impinge on the child's right to their given name which is part of their identity. We acknowledge the Ministry has drafted new policy to address issues of the child's identity, and this policy should be implemented in the coming months.

[...] policies [...] are dependent upon the PSI guardian's commitment to adhere to the plan on behalf of the child.

8.3 Preservation of the Family Environment and Maintaining Relationship

Article 9 of the UNCRC recognizes the family as the natural environment for the well-being of children and the right of the child to family life is protected. Where there is risk of safety to the child, and separation is necessary, state parties shall respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis except if it is contrary to the child's best interest. The UNCRC General Comment No. 14 interprets family in the broad sense and includes not only parents, but adoptive and extended family, which would include a PSI guardian. It also speaks to ensuring that the child maintains linkages and relations with his or her parents and family (siblings, relatives, and others with whom they have a strong relationship).

A substantive and evidenced concern about the PSI program is its potential for reducing the child's connection with parents, family relations, or significant others. The Advocate and Ministry staff report that children, and particularly youth when a PSI placement breaks down, will often 'run' to their biological parental homes as their circumstances in PSI care change. Maintaining these relationships can prevent 'risky running behaviours' and provide opportunities for reunification with the original family unit and the identification of other resources for the child.

Although the assessment of the extended family explores their willingness to maintain the child's connections, an updated assessment is not required before an application for a PSI order. Current policy speaks to creating a plan with the PSI guardian to address family connection, but policy changes are required to ensure this provision is incorporated into agreements whenever feasible.

Ministry policy provides financial support to facilitate visitation but is silent about how to manage requests for contact. Another mechanism to protect a child's right to preserve family relationships is through a court order that contains provisions for contact. Although these conditions are not enforceable by the Ministry, staff report these can be influential in discussions with a PSI guardian. However, there is limited policy guidance about whether to include contact conditions when a PSI order is recommended. These policy gaps may result in considerable differences in service delivery and affect the child's right to have parental contact in situations where it is safe.

Another aspect of family preservation involves reunification of a child in PSI care with their biological parent when there is agreement by the PSI guardian. Opinions vary about whether case management services could be offered to facilitate reunification, and this remains the subject of legal interpretation about the Ministry's responsibility for variance or termination of PSI orders. Recognition of a child's best interests would suggest that such services ought to be offered without identifying the family as requiring child protection services and/or apprehension of the child on a voluntary or preventative services basis.

An Act respecting First Nations, Inuit and Métis children, youth and families speaks to the requirement to conduct assessments on an ongoing basis to determine if it would be appropriate to place a child with their parent or another adult member of the child's family. While a PSI order achieves the placement of a child with extended family, it inhibits ongoing assessments that could potentially support reunification with the child's biological or natural parents. Parents who have already experienced loss of their children and have limited means are likely to be intimidated by any further legal process.

8.4 The Care, Protection, and Safety of the Child

Article 20 of the UNCRC states that a child who is temporarily or permanently deprived of their family shall be entitled to special protection provided by the State. Alternative care should be provided, and due regard should be given to the desirability of continuity in the child's upbringing and ethnic, religious, cultural, and linguistic background. As the Ministry seeks to identify and assess potential caregivers to become extended family caregivers and PSI guardians, there is a substantial onus to ensure that the alternative care placement can meet all the child's needs – including their basic physical needs, and emotional needs for affection – and that any recommendation for a PSI order examines future needs and capacity.

The priority of family placement and avoidance of ongoing group or foster home care can create a sense of urgency to place a child with the first available – instead of the most suitable – family resource. Once placement occurs, the search for other family resources typically ends, preventing consideration of other family resources that may be more suitable to meet the child's needs. The POS process is completed quickly without time for the extended family to fully understand the implications of the child's placement. Training for extended families is only offered on a case-by-case basis without a specific program developed to meet their unique needs and assist them in fully understanding the meaning of a PSI order.

Improvements to assessment guides and staff training have occurred; however, there is a lack of evaluation about whether these initiatives will lead to competency in screening extended families and addressing issues of intergenerational trauma. Unresolved trauma can leave caregivers and guardians at higher risk of child maltreatment when confronted with parenting challenges.[9,10]

Working through this complex and sensitive issue requires a major commitment to reconciliation on the part of the Ministry. For instance, the Truth and Reconciliation Call to Action #1 requires that all child welfare decision makers consider the impacts of the residential school experience on children and their caregivers. Further, the United Nations Guidelines for the Alternative Care of Children calls for the decision-making process to be conducted by qualified professionals, based on rigorous assessments and for adequate resources, training and recognition of professionals responsible for determining the best form of alternative care.[11]

The Ministry's range of financial supports and services to PSI guardians align with **Article 3** of the UNCRC to the extent that these services are identified by Ministry staff (given limited caseworker involvement), and the guardian is receptive to any additional support when the child's needs are significant. A new initiative called the Extended Family Support program is available to PSI guardians, but the program has been restrained by resource challenges particularly in rural and remote areas. At present, the Ministry does not collect data on the causes of placement disruption and this hampers evaluation of the value of its new initiatives and the PSI program in general.

9 Van Wert, M; Anreiter, I; Fallon, B.; Sokolowski, M; Intergenerational Transmission of Child Abuse and Neglect: A Transdisciplinary Analysis; Gender and the Genome, February 18, 2019.

10 Bombay, A; Matheson, K; Anisman, H: The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma: Transcult Psychiatry. 2014.

11 https://www.refworld.org/docid/4c3acd162.html - UN General Assembly Guidelines for Alternative Care

Observations by Ministry staff suggest that placement disruptions typically occur when children age and guardians are unable to manage their behaviours. Beyond age 15, services are limited, voluntary, and can place a youth at risk if they do not have capacity to make good choices. Current policy guidelines do not support taking these youth into Foster Care unless there are exceptional circumstances such as the potential for serious harm. These guidelines are a reflection of current limitations in *The Child and Family Services Act*[12], as a child is defined as a person under 16 years of age. Policy enhancements could offer greater protection by including additional factors such as the death of their PSI guardian as a reason to take the youth into care.

Article 19 of the UNCRC speaks to the rights of the child to protection from all forms of abuse while in the care of parents, guardians, or any other person. These measures must include programs to provide support for the child and those who have care of the child, as well as forms of prevention, investigation, treatment, and follow-up on allegations of child maltreatment.

The unique characteristic of the PSI program means that guardians are funded through agreement to provide for the care and needs of the child. When concerns arise about the quality of care that do not meet the threshold of child protection involvement, staff have expressed various opinions about whether they can raise these issues and are clear that they cannot speak to the child without the PSI guardian's permission. This creates an ethical and legal dilemma regarding how the Ministry can ensure that the terms of the agreement are being met without making specific inquiries.

The absence of any guidelines leaves decision-making to the 'judgement call' of the worker or supervisor. Unaddressed concerns can escalate into family crisis, risk of abuse or placement disruption and prevent any opportunity to identify resources that may benefit the PSI guardian and child. A child's rights perspective would suggest that all steps should be taken to protect the child from all forms of abuse and the existence of an agreement provides a legitimate basis upon which to make inquiries.

[...] guardians are funded through agreement to provide for the care and needs of the child. When concerns arise about the quality of care that do not meet the threshold of child protection involvement, staff [...] are clear that they cannot speak to the child without the PSI guardian's permission.

[12] Legislative amendments to *The Child and Family Services Act* are currently being considered to change the definition of a child to a person up to age 18.

8.5 The Child's Situation of Vulnerability

This element of a child's best interest reinforces the importance of considering the child's unique situation of vulnerability and requires an individualized assessment of each child's history from birth. It suggests that regular reviews by multidisciplinary teams are completed and that reasonable accommodation throughout a child's development process be provided. The Ministry's case assessment process speaks to the child's situation of vulnerability as it identifies the child's needs and how those needs are being addressed with ongoing assessments required. This assessment process does not continue after a child is in PSI care and is reliant upon the guardian to identify and request additional support and services that they consider necessary.

Consequently, a child's situation of vulnerability prior to a PSI order must be a significant factor in considering whether a recommendation supporting a PSI order should be made. Ministry policy does not provide specific factors to consider in assessing the appropriateness of a PSI order and where a child has significant needs, the decision to apply for a PSI order is questionable. The absence of such guidelines is a significant gap in protecting a child's right to care, safety and protection.

Another major concern relates to the Ministry's longstanding position that its policy cannot require that a child in PSI care be seen unless the guardian agrees because they are considered the parent. Although the Ministry has intentions to change its policy to require that the child is seen, case management services necessitate only yearly contact and this lack of contact limits support for guardians who may not have the understanding or information required to ensure the child receives all the supports and services that may be available to them.

Agreements are not enforceable except for withdrawal of funding which would have significant impact and increase the child's vulnerability. Clarity about the rights and responsibilities of the Ministry and PSI guardian in policy would help; however, legislative changes that define guardianship when a PSI order is made could address this longstanding issue and provide a legal basis for operationalizing the PSI program.

9.0 Findings

The information gathered during this review considers the following findings about the PSI program and a child in PSI care:

- the child has experienced trauma including the loss of their parent;
- the number of children in PSI care has increased significantly over the past five years;
- the child is likely Indigenous and six years of age or older;
- during their time in out-of-home care, the child has experienced two or more placements;
- the Ministry will assess their PSI guardian without the same rigor as an adoptive or foster home and their guardian has likely experienced intergenerational trauma;
- there is no guarantee that the child's voice is heard in the decisions made by the Ministry, or their best interests were independently represented in court when making decisions affecting the remainder of their childhood;
- the child's ongoing contact with their natural parents or other extended family members or community is dependent upon their PSI guardian who makes decisions in all aspect of their lives;
- the child's access to special needs or supports is also dependent on their PSI guardian who receives funding for their care;
- the child has no direct contact with a caseworker to express their views or ask for supports;
- concerns about the quality of their care may not be addressed unless they are serious enough to require child protection involvement;
- at age 16, if the child is unable to remain with their PSI guardian, they may be offered voluntary support services that could be withdrawn if they are unable to follow through with an agreement;
- the child's legal rights to an inheritance (in the case where their PSI guardian dies without a will) and to retention of their name from birth is not known; and,
- the child is not entitled to any ongoing supports or services from the Ministry of Social Services once they turn 18 years old.

Our analysis of the PSI program demonstrates how its policies, procedures and service delivery gaps negatively affect a child's rights and best interests. Significant areas of concern relate to placement and permanent planning policies, the assessment of PSI guardians, limited case management support, services for PSI youth, lack of reunification support and other legal issues. Our findings indicate that immediate changes to the program are needed to support children being with family and ensure their rights are protected.

[...] immediate changes to the program are needed to support children being with family and ensure their rights are protected.

10.0 Recommendations

Our report – including the findings and recommendations – was shared with the Ministry of Social Services. This step is dictated in *The Advocate for Children and Youth Act* and is referred to as procedural fairness to ensure the Ministry has an opportunity to respond to recommendations before they become final. The Ministry has accepted the first seven recommendations and rejected recommendation eight. Our office is now monitoring the Ministry's implementation of the recommendations and will be part of the consultation process on the parameters of an in-depth qualitative review as required in Recommendation 7.

RECOMMENDATION 1

That the Ministry of Social Services review and amend its current permanency planning policies and procedures to incorporate the elements of a best interest assessment as required by the UNCRC when recommending a permanency plan for a child or youth.

RECOMMENDATION 2

That the Ministry of Social Services take steps to develop staff competency in assessing extended family caregivers and ensure this competency includes the ability to identify and address issues of intergenerational trauma as part of the assessment process.

RECOMMENDATION 3

That the Ministry of Social Services develop procedures to ensure potential PSI guardians have a complete understanding of their role and responsibilities prior to a recommendation for a PSI order.

RECOMMENDATION 4

That the Ministry of Social Services review and amend its case planning processes to ensure that a child's wishes are collected and documented in all assessments and that a child is consulted (as appropriate given age or maturity) prior to an application for a PSI order.

RECOMMENDATION 5

That the Ministry of Social Services develop policy regarding the appropriateness of legal representation for children for court proceedings and the inclusion of recommendations to the court pertaining to maintaining parental and sibling contact when a PSI order is recommended.

RECOMMENDATION 6

That the Ministry of Social Services revise its policies and procedures to require additional oversight and prevent overcrowding of a foster home when there is a recommendation for a foster parent to become a PSI for a child in their care.

RECOMMENDATION 7

That the Ministry of Social Services complete a comprehensive qualitative review of its PSI program to evaluate whether this program is meeting its objective of permanency and a safe, stable, and healthy placement. The review should be guided by a Child's Rights Impact Assessment[13] to ensure that a child's rights and well-being are of primary consideration in the development of a comprehensive policy framework that will also address the following issues as identified in this report:

- The need to give definition to the rights of the child in the PSI program;

[13] http://criacommunity.org/what-is-cria/ "CRIA is a systematic process to take potential impacts on children into account in policy, legislation and other administrative decisions."

- Adequacy of the Annual Review process in addressing the needs of the child;
- Training and support for PSI guardians including the potential for additional financial compensation for guardians who take specialized training to care for high-needs children;
- Management of quality care concerns;
- Management of requests from biological parents, siblings, other family members or significant others for contact or reunification with a child in PSI care;
- Management of placement breakdowns/ disruptions for PSI youth aged 16 or 17 years old; and,
- Mechanisms to address non-compliance with PSI agreements.

RECOMMENDATION 8

That the Ministry of Social Services amend *The Child and Family Services Act* to provide an extension of services to children in PSI care to age 21.

11.0 Conclusion

For young people who cannot be with their biological parents, there is a high and reasonable expectation that the government ought to make good decisions on behalf of these children given their special circumstances. Our review has highlighted that the Ministry of Social Services places a significant reliance on the PSI program to meet its goal[14] that children are placed with extended family. As of March 31, 2021, a third of all out-of-home placements were with PSI guardians and PSI guardians represented over half of all extended family placements, indicating that the Ministry is making gains on its goal. Yet, this goal leaves this group of children and their PSI caregivers with only limited supports and services compared to Alternative Care and Foster Care. Ultimately, this leaves PSI caregivers, and the children and youth under their care, vulnerable to program instability and disruption.

The Ministry has recently tabled amendments to *The Child and Family Services Act*, however, has declined to consider any changes to the sections pertaining to the Person of Sufficient Interest program. The absence of legislative reform in this regard illustrates a lack of commitment to Saskatchewan's Children and Youth First Principles and the rights of children under the UNCRC. It also results in the continuation of legal issues involving the definition of the rights and responsibilities of a PSI guardian which, in turn, affects the entitlements of children in PSI care.

While the aim of the PSI program is positive, it adversely impacts a child's best interests and rights. The Advocate wishes to acknowledge the acceptance of all but one of the recommendations, and if implemented in their entirety, will lead to program changes that place the best interests of all PSI children at the centre of all decisions made about them. However, the Ministry's refusal to endorse the legislative changes required as per Recommendation 8 is deeply discouraging. The government must commit to substantive and legislative changes to the PSI program to ensure equitable services and supports for all. Our children and youth deserve nothing less.

[14] The Ministry's 2020/21 Annual Report states that its use of extended family placements (Alternative and PSI care) is one performance measure to meet its goal that families are supported to safely care for their children.

The government must commit to substantive and legislative changes to the PSI program to ensure equitable services and supports for all.

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