



“JUMPING THROUGH HOOPS”:

A MANITOBA STUDY EXAMINING THE EXPERIENCES AND REFLECTIONS OF ABORIGINAL MOTHERS INVOLVED WITH CHILD WELFARE AND LEGAL SYSTEMS RESPECTING CHILD PROTECTION MATTERS

A project report prepared for Ka Ni Kanichik Inc. and the Steering Committee of the Family Court Diversion Project
Winnipeg, Manitoba

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July 2008

The research and production of this report was funded by Status of Women Canada. This document presents perspectives and opinions which do not represent official policies and/or opinions of the Status of Women Canada, Ka Ni Kanichik Inc. or the First Nations Child & Family Caring Society of Canada Inc.

PAINTING FEATURED BY MARK HOUSTON





ACKNOWLEDGEMENTS :

This document would not have been possible without the contribution of a number of people.

Many thanks to the mothers and grandmothers who participated in this study and courageously shared their memories, experiences, stories and insights for this project and voiced their opinions for change. The talking circles and interviews were very moving, profound and full in so many ways – each woman bravely revealed painful memories about difficult times, yet in doing so, they showed enormous strength and courage while providing great information and ideas for change. Each woman brought their own unique insights, wonderful energy and humour too – we have such deep respect for every woman who courageously stepped forward to share her situation.

Special thanks to my two research Assistants – *Adrienne Reason* and *Linda Lamirande* who each helped interview the women involved in this study and provided immeasurable insight as the project evolved.

Special thanks to *Leslie Spillett* and *Ka Ni Kanichihk* including the original and current members of the Steering Committee for guiding the project and supporting the idea for this project: *Catherine Dunn* (Catherine L. Dunn Law Office), *Margaret Haworth-Brockman* (Prairie Women's Health Centre of Excellence), *Cathy Rocke* (University of Manitoba, Aboriginal Focus Program), *Dr. Kathy Buddle Crowe* (Professor, University of Manitoba), *Tracy Booth* (Elizabeth Fry Society), *Margaret Bartlett* (Métis Child and Family Services Authority), *Ron Bewski* (Province of Manitoba, Family Conciliation) and *Rhonda Cameron* (mother, student and community advocate).

Miigwetch to *Margaret Haworth-Brockman*, the Executive Director and staff of the Prairie Women's Health Centre of Excellence including the two external reviewers for assisting in the Ethics Review related to this project.

Miigwetch in particular to *Corbin Shangreaux*, Executive Director of Animikii Ozoson Inc. for use of the picture that appears on the front cover of this report, which we used for many PowerPoint presentations and other reports in relation to this project. The painting of the mother and baby is the work of Aboriginal artist *Markus Houston*. I would also like to acknowledge the assistance of *Kelly MacDonald* who shared the research she conducted with Aboriginal mothers in British Columbia.

The Research Team would like to respectfully recognize that this research and resulting report took place on the lands of the First Peoples of Canada; and lastly,

This research was supported by a research grant from Status of Women Canada. We gratefully acknowledge this contribution, without which this work would not have been possible.

Ka Ni Kanichihk Inc. is a registered, non-profit; community based Aboriginal human services organization governed by a council inclusive of First Nation and Métis peoples in Winnipeg. *Ka Ni Kanichihk* is committed to developing and delivering a range of programs and services that focus on wholeness and wellness and that builds on individual's assets (gifts) and resilience. *Ka Ni Kanichihk's* mandate is to provide a range of culturally relevant education, training and employment, leadership and community development, as well as healing and wellness programs and services that are rooted in the restoration and reclamation of Indigenous cultures. *Ka Ni Kanichihk* means "those who lead" in the Inineu (Cree) language.

Suggested Citation: Bennett, M. (2008). *Jumping Through Hoops: A Manitoba Study Examining Experiences and Reflections of Aboriginal Mothers Involved with the Child Welfare and Legal Systems Respecting Child Protection Matters*. A report prepared for *Ka Ni Kanichihk Inc.* and the Steering Committee of the Family Court Diversion Project. Winnipeg, MB: *Ka Ni Kanichihk Inc.* Available online at: <http://www.kanikanichihk.ca> and <http://www.fncairingsociety.ca>.

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ISBN # 978-0-9783134-1-8

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ABSTRACT

In recent years, courts have increasingly moved toward the implementation of alternative responses for non-violent crimes such as mediation, diversion, restorative practices and sentencing circles before considering the justice system. Unfortunately, the child welfare system has not instituted these same types of approaches despite the fact that Aboriginal women and their children are overrepresented in child welfare and family court processes. Alternative, non-adversarial approaches (like Family Group Conferencing for example) have been promoted within the area of family law and child welfare in other provinces and countries (for instance, the Province of British Columbia has statutory family conferencing and mediations provisions, see Section 22 of its *Child & Family Services Act*). However, such alternative measures and procedures unfortunately are not mandated, enshrined or practised through Manitoba's child welfare legislation. Moreover, very little research exists regarding Aboriginal mothers' experiences with the child welfare and court systems in Manitoba. Ka Ni Kanichihk Inc., an urban Aboriginal organization in Winnipeg undertook a review of the experiences of Aboriginal mothers involved with child welfare in Manitoba with the intent of eventually implementing alternative dispute resolutions for Aboriginal mothers/families. This paper describes the experiences of Aboriginal mothers and grandmothers dealing with the Manitoba child welfare system and family courts regarding child protection matters. Jumping through hoops is a prominent perspective that emerged from the Aboriginal mothers' stories and reflections about their experiences with child welfare and family court systems. Specifically, this report provides a demographic overview of the mothers and grandmothers involved in this study and ends with a number of solutions identified by the mothers and grandmothers about how the child welfare and family court systems can be improved to work better for Aboriginal women and children. While these recommendations appear to advocate "tinkering" with the system, it may be partially due to the fact that Aboriginal mothers (and arguably extends to social workers') lack of knowledge about the range of alternative dispute mechanisms available. The research methods in this study draw upon interviews and talking circles conducted with Aboriginal women, as well as interviews conducted with community advocates and lawyers (who represented Aboriginal mothers in child protection matters) during the months of March to June 2007.

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EXECUTIVE SUMMARY

CHAPTER ONE:

PROJECT OVERVIEW

The Family Court Diversion Project was designed to examine the experiences of Aboriginal mothers involved with the child welfare and legal system. The objective of the FCDP is to inform efforts to provide alternative pathways for Aboriginal families to resolve child protection matters outside of court intervention in child protection matters. The project was sponsored by Ka Ni Kanichihk Inc. and received funding (from 2005-2007) from the Status of Women Canada in 2005-2007.

A steering committee comprised of various organizational peers from community based organizations and stakeholders within Manitoba oversaw the activities related to this study. In addition to the sponsoring organization (Ka Ni Kanichihk), the steering committee included representatives from: Manitoba Justice, Child and Family Services authorities, the legal profession, child health/social work, relevant university faculties, Manitoba women's organizations, and related community organizations such as women's shelters and an experiential mother.

This project describes the experiences of Aboriginal mothers regarding encounters with child welfare and the family courts in Manitoba respecting child protection interventions. This research project specifically addresses knowledge gaps around the process and outcomes of Aboriginal women's experiences and involvement with the child welfare system.

The research questions for this study were:

- To describe and analyze the experiences of Métis, First Nations, Inuit and other Aboriginal women who are or have been involved in child welfare/protection cases before the courts in Manitoba.
- To examine the experience and understanding of service providers and other advocates

working with Métis, First Nations, Inuit and other Aboriginal women involved in child welfare/ protection cases in the courts in Manitoba.

- To examine the experience of lawyers tasked with representing Métis, First Nations, Inuit and other Aboriginal women involved in child welfare/ protection case before the courts in Manitoba.
- To seek ideas and suggested solutions to inform less adversarial and intrusive approaches to deal with child protection matters involving Métis, First Nations, Inuit and other Aboriginal women and children.

This research takes a phenomenological approach to understanding the lived experience and perceptions about child welfare and legal systems experiences through the personal lens of Aboriginal mothers and grandmothers. Phenomenology is about the essential meanings individuals give to their experiences as well as the social construction of group realities. This theoretical approach focused on exploring how Aboriginal women make sense of their experiences with child welfare and legal systems and how this experience was transformed into consciousness, from both individual and shared meanings. To gather such data, one must undertake in-depth interviews with people who have directly experienced the phenomenon of interest; that is, they have a “lived experience” as opposed to second hand experience.

This research was undertaken using qualitative approaches in its fact finding. A variety of methods were used to collect data to help understand Aboriginal mothers' experiences, including:

- a. Conducting a literature review;
- b. Creation of a survey based personal information form (for statistical and background information on the Métis, First Nations, Inuit and other Aboriginal women invited to participate in this study);

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- c. Conducting one-on-one interviews with Aboriginal mothers who have been at risk of having, or have had, their children apprehended because of child protection concerns;
- d. Facilitating a series of non-traditional talking circles with Aboriginal women about their court and child welfare experiences.

The interviews and talking circles also centered on capturing ideas and solutions for change. Focusing on how these changes could be implemented to create greater awareness about Aboriginal mothers' experiences with the child welfare and court systems and how best to influence change in the way the child welfare system responds to Aboriginal mothers when intervening in child protection situations.

The research methods and findings draw upon interviews and talking circles that were conducted with 32 Aboriginal women, and interviews conducted with 5 community advocates and 6 lawyers during the months of March to June 2007.

This report therefore honours Aboriginal mothers' stories as data that can stand on its own as pure descriptions of experience. This report is based on stories and narratives that offer especially translucent windows into the experience of Aboriginal mothers' and their involvement and interactions with social and legal systems as constructed by those who have power over the lived experiences of Aboriginal peoples, families and communities.

CHAPTER TWO:

LITERATURE REVIEW

An extensive literature review was conducted to identify knowledge relating to the research questions. In addition to understanding Aboriginal mothers' experiences and the context of their lives, the review canvassed literature on alternative responses to child protection/child welfare dispositions and the role of legal representation for Aboriginal mothers in child protection cases before the courts. The review looked specifically at the role of alternative dispute mechanisms used in the child welfare context in addition to mediation and Family Group Conferencing. The literature reviewed for this chapter is organized into the following seven (7) themes:

- The Context of Aboriginal women's Lives;
- Child Welfare and Family Court Experiences of Aboriginal Women in Canada;

- Alternative Forms of Dispute Resolutions in the Child Welfare Context;
- Mediation in Child Protection Cases;
- Family Group Conferencing and Family Group Decision Making in Child Protection;
- Access to Legal Counsel; and
- Shifting Services to Reflect Alternative Response Models

The section reviewing the context of Aboriginal women's in the first part of this chapter focuses on six specific issues that many Aboriginal mothers face. This section provides a framework for understanding the extent and the complexity of Aboriginal mothers' lives and their experiences with the child welfare and court systems within Canada today. These include:

- Impact of colonization, culture loss and marginalization of Aboriginal Women;
- Higher rates of Aboriginal mother led families;
- Poverty;
- Drug and alcohol misuse/abuse;
- Domestic violence; and
- Housing/mobility issues.

CHAPTER THREE:

DEMOGRAPHIC CHARACTERISTICS OF ABORIGINAL MOTHERS/ GRANDMOTHERS INVOLVED IN THIS STUDY

Chapter three focuses on the statistical demographic characteristics of the Aboriginal women who participated in this study. The instrument developed for collecting this information was called the "Personal Information Form." While this form is characterized as personal, it did not include any identifying information such as name, address or phone numbers but rather collects information on characteristics such as Aboriginal women's marital status, Aboriginal community identification, number of children, age ranges, income levels, etc. The document was 8 pages in length and was comprised of 39 questions. The personal information form was completed by all the mothers/grandmothers prior to being interviewed or participating in each of the 3 talking circles.

Generally it can be concluded that many of the Aboriginal mothers participating in this study were in their middle years with the majority being in the 41-50 age range. This means that many of the women,

in addition to being mothers also identified as being grandmothers. A larger sampling of First Nations versus Métis and non-status Aboriginal women participated. The women reported a strong affiliation with their Aboriginal cultural identity indicating that for the most part their Aboriginal culture fully shapes their identity. The majority of the women identified growing up with their birth families but it was also recognized that many reported growing up in a multitude of family arrangements from adoption to foster care to step-family arrangements. Many women indicated that their families were impacted by the abuses in Residential School. Participants spoke primarily English with a small percentage reporting the ability to speak an Aboriginal language.

Of curious note is the finding that a large percentage of the women participating in the study were university educated although there is no indication at what stage they are at in their education as this was not investigated. Over half of the women reported being single parents or single parents living without partners. The majority of the participants who participated in this study live in Winnipeg.

The women reported having an average size family of two children although the majority reported having larger families ranging in sizes from 3 to 7 children. Most of the women did not characterize their children as having any health or disability issues although a few acknowledge their children were diagnosed with special needs and recognized that this might be a concern.

Over half of the mothers/grandmothers stated they were involved with child welfare as children and youth. The majority of the mothers/grandmothers relied upon Legal Aid lawyers to help them with their children protection matters.

The economic factors illustrate that many of the women, despite the higher percentage of university educated women, were living and raising children with an income under \$20,000 per annum. They are underemployed and rely primarily upon public transportation to get around. Many report having had difficulty finding housing and making ends meet.

Participants courageously reported struggling with addiction issues at some point in their lives and as a result were involved in a numerous parenting and community based programming to satisfy child and family services expectations. The women report using various community based resources that serve primarily Aboriginal peoples.

Recruitment efforts proved to be quite successful with the majority of the women reporting that they had

heard about the study from seeing the recruitment poster or through friends and learning about the study from program advocates or through social workers involved with their families.

Lastly, the demographic data from this study needs to be interpreted with caution. The tabulated results from the Personal Information Form may be susceptible to misinterpretation. The data, therefore, does not indicate or represent a true demographic picture for all Aboriginal women within the Province. Instead, the information needs to be viewed as "being a snapshot of the demographics of the Aboriginal mothers and grandmothers who chose to participate in this particular study" and is provided to bring background contextual understanding to the collective experiences of these specific participants.

CHAPTER FOUR:

VOICES AND PERSPECTIVES OF ABORIGINAL MOTHERS AND GRANDMOTHERS

Over the course of four months during the spring and summer of 2007, the Research Team interviewed thirty-two mothers, who reported being involved with the child welfare system in Manitoba at some point in their lives. The interviews took place in many different settings. Members of the Research Team met mothers in their homes or the mothers met with the members of the Research Team at their offices or they met at neutral and safe locations within the community where the mother resided. The interviews took place in Winnipeg and in The Pas, Manitoba. In addition, three Talking Circles were held with a small collective of Aboriginal mothers in both Winnipeg and in The Pas, Manitoba. We developed an open ended questionnaire with a number of questions as a guide to prompt Aboriginal mothers and grandmothers in telling their stories of being engaged with child and family service agencies and frontline social work staff.

This chapter focuses on what mothers and grandmothers shared with the Research Team. The voices, perspectives, emotions and experience of Aboriginal mothers/grandmothers are the heart and soul of this document. The chapter is organized in a unique way in that the voices and the perspectives of the Aboriginal mothers take center stage. It is important to note that researchers did not validate the views presented by the women but simply accepted them in their own voice. The interviews and talking circles conducted for this study yielded almost 500 pages of text once they were transcribed.

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The transcripts of these interviews and talking circles abound with rich narratives and dialogue that occurred between members of the Research Team and the mothers and grandmothers in this study. The purpose of laying out the data in this way is to ensure that readers get a sense of what the mothers in this study had to say about their experiences and their state of mind in reflecting back on these experiences. In doing so, the perspective of the researcher has been minimized while the individual and collective voices of the mothers in this study have been amplified. This narrative approach obliges readers to hear and listen to the voices and perspectives of Aboriginal mothers.

The transcript of Aboriginal mothers/grandmothers' narrative accounts of their experience with child welfare was organized into six specific themes areas. Some of the themes also included related subthemes. The themes and subthemes identified in this chapter are organized as follows:

- How mothers came into contact with child welfare;
 - through self-referral
 - through reports made by others
 - through other system referrals
- Understanding the background context of mothers/grandmothers lives;
- Experiences with the child welfare system;
- treatment experienced by child welfare staff and supervisors
 - Aboriginal social workers
 - racism
 - importance of culture
 - false accusations
 - monitoring by CFS
 - triggering anger
 - bringing witnesses to meetings
 - child welfare expectations and programming
 - visitation arrangements
 - impact on removal of children
- Mothers/Grandmothers Emotional Insights;
 - acknowledging mistakes
 - emotions
 - how mothers coped with intervention
- The experience with Legal Aid and lawyers;
 - lack of awareness regarding rights
 - negative and positive perspectives about their lawyers

- courtroom impressions and experiences
- lack of courtroom supports and advocates
- Knowledge of alternative dispute resolutions.

CHAPTER FIVE:

ADVOCATES' PERSPECTIVES ON THE EXPERIENCES OF ABORIGINAL MOTHERS AND GRANDMOTHERS

This chapter highlights the perspectives and experiences of community advocates who worked with Aboriginal mothers involved with child and family service agencies. Five advocates were interviewed during the summer and early fall of 2007. The Research Team developed an open ended questionnaire with a number of questions as a guide to help the team understand the issues and barriers experienced by advocates in helping Aboriginal mothers and grandmothers dealing with child and family service agencies and frontline staff. A copy of the questions posed to the advocates is in Appendix H. This small group of advocates each had upwards of 18+ years of experience working with families including Aboriginal mothers and grandmothers in dealing with child welfare staff and Legal Aid lawyers where child protection issues were present. As with the Aboriginal women, the views presented here were not validated but simply accepted as presented. Once again, we have drawn extensively from their narratives in bringing to life the views and perspectives of the individuals who act as liaisons between Aboriginal mothers and grandmothers and the child welfare and legal systems.

The transcript of advocates narrative accounts of their experience helping Aboriginal mothers involved with child welfare was organized into ---- specific themes areas. The themes identified in this chapter were organized in the following manner:

- Understanding the issues;
- Accessing supports and program resources;
- Reflecting on culture;
- Lawyers, language and courts;
- Implementing alternative solutions;

CHAPTER SIX:

LAWYERS’ PERSPECTIVES ON REPRESENTING ABORIGINAL MOTHERS AND GRANDMOTHERS

This chapter focuses on interviews conducted with six lawyers working in either private practice or under contract through Legal Aid respecting their understanding of the child protection issues facing Aboriginal mothers and/or grandmothers using an open ended questionnaire (see Appendix E). Given the workload and busy schedules of these lawyers, the interviews conducted were relatively short allowing the researcher to capture only general perspectives on various issues and concerns that stand out in the cases where the lawyers have legally represented Aboriginal mothers and grandmothers in child protection cases before the courts.

From a review of the written transcripts of their interviews, we have been able to draw generously from their experiences and as a result quote extensively from their comments. Their perspectives provide insight into some of the challenges faced by both Aboriginal mothers/grandmothers and their legal representatives when involved in child protection matters. Given the lawyers’ own schedule constraints, the timeframes of the project and the amount of time allotted for the interviews, many of the lawyers pointed out there was just not enough time in which to cover all aspects of the complexities of the issues they face in representing mothers in child protection cases.

Although the lawyers provide valuable comments which could inform policy and practice the small sample size means their feedback cannot be interpreted as being representative of the population of child protection lawyers in Manitoba.

The participating lawyers each had upwards of 20+ individual years of experience working in family practice primarily with child protection cases. Through a review of the transcript of the lawyers’ narrative accounts of their experience representing Aboriginal mothers/grandmothers in child protection was organized into seven themes. These themes are identified as follows:

- Overrepresentation and systematic biases;
- Navigating and understanding child welfare and legal processes;
- Legal aid challenges;
- Accessing resources;

- The role of courts in child protection cases;
- Knowledge of alternative dispute resolutions in child welfare; and
- Ideas, suggestions and solutions for change.

CHAPTER SEVEN:

MOTHERS AND GRANDMOTHERS RECOMMENDATIONS AND SOLUTIONS FOR CHANGE

This study gave Aboriginal mothers an opportunity to voice their experiences and to suggest simple changes and solutions for helping mothers understand the child welfare system. In Chapter 7 the following recommendations were formulated from a combination of responses provided by the mothers during the talking circles and interviews augmented by the research teams’ observations, analyses of the findings and knowledge of the child welfare system. There are 7 recommendations in all.

1. Development of an Aboriginal Mothers’ Advocates Office/Institute: This would involve the development of a formal organization to assist Aboriginal mothers navigate all the aspects and complexities of the new child welfare system in the Province of Manitoba.
2. Establishment of Training Program for the Aboriginal Mothers’ Advocates: The Aboriginal Mother’s Advocates Office would, in addition to other purposes, be responsible for training Aboriginal mothers to become advocates for the proposed Aboriginal Mothers’ Advocates Office. It was suggested by the mothers in this study that advocates be mothers who have intimate knowledge and experience dealing with the child welfare and legal systems.
3. Development of a Child Welfare Manual on Understanding the Child Welfare and Legal Systems: Development of a manual outlining what Aboriginal mother’s can expect in terms of the child welfare/court processes including: 1) time lines; 2) user friendly terms and definitions; 3) information on the legal process; 4) information on how to access legal counsel; and 5) information on access to programs and treatment resources for Aboriginal mothers involved with the child welfare system.
4. Development of Mothers’ Support Groups: Development of support groups for Aboriginal mothers/grandmothers involved with the child

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welfare system. These support groups would meet monthly and act as an information and support forum for women to meet and learn from other women with similar experiences.

5. Courtroom Advocates: Other than lawyers, the mothers in this study suggested that in addition to the Aboriginal Mother Advocates and lawyers, close family, friends and other supporters should be allowed into courtrooms.
6. Development of a Website: The website would include information about the Aboriginal Mother's Advocates Office, courtroom advocates, training opportunities, calendar of activities for the support groups and a listing the resources, programs and treatment options available to Aboriginal mothers/grandmothers within the Province of Manitoba. A listing and link to the contact information of lawyers who specialize in child welfare matters should also be included.
7. Development of Anthology of Aboriginal mothers/grandmothers' Stories and Experiences: There are very few resources that celebrate what it means to be an Aboriginal mother and grandmother. The last recommendation would see the creation of a book that focuses on providing Aboriginal mothers and grandmothers with a chance to share stories from their perspectives on mothering.

The economic and logistical feasibility of these recommendations need to be explored. These recommendations appear to be fairly easy to carry out in subsequent phases of this study. Lastly, it was suggested that as many experiential Aboriginal mothers as possible should be involved in exploring, developing and implementing these recommendations to ensure Aboriginal mothers feel consulted, empowered and given the opportunity to be a part of the solutions and changes for the empowerment of all Aboriginal mothers, grandmothers and their children and grandchildren. Elders must also be involved at every stage of developing these recommendations. As a last suggestion, Aboriginal mentors and Elders must be involved to assist mothers and grandmothers carry out and bring to life the seven recommendations.

CHAPTER EIGHT:

CLOSING REFLECTIONS, NEXT STEPS AND CONCLUSION

The Research Team focused and reflected on specific aspects that became evident during and

after the conclusion of the project. The next steps associated with this project are discussed followed by a conclusion reflecting on the need to protect and recognize the contributions of Aboriginal mothers to the Aboriginal populations and to social fabric of Canadian society at large.

Why is this research important? A just society is measured by the way it treats its citizens. The voices of these mothers and the narratives about their experiences with the child welfare system within Manitoba has been missing for far too long from the literature and the book shelves of our child welfare authorities and higher learning institutions – these preliminary findings contribute to evidentiary research that can help child welfare administrators, policy makers, front line staff and funders assess and tailor their services towards developing more conscientious services that will engage Aboriginal mothers, children and families in a more participatory manner that ensures cultural appropriateness and respect for human experiences. Aboriginal child welfare agencies in particular must not forget their roots and the role of cultural values and principles in carrying out their protection mandates.

Child welfare, especially in the context of Aboriginal child welfare, cannot be complicit in continuing to ignore the rights of Aboriginal parents because to do so, they are ignoring the rights of Aboriginal children. Children do not come into and exist in the world all by themselves. We only have to look at the experiences of children who went through the Residential School system to understand the gravity of importance that Aboriginal mothers present for the wellbeing of their children and successive generations. The residential school system ripped children from the bosoms of their mothers, fathers and successive generations of children have never been the same. Countless generations of Aboriginal families have not grown to be as spiritual, intellectual, emotional and as physically healthy as the Creator intended when the gift of children were bestowed on Aboriginal nations.

The importance and sacredness of mothers as life givers was lost to our cultures and through the process of assimilation, subjugation and marginalization the importance and sacredness of Aboriginal motherhood was diminished. It is time that we honour our mothers again to help them get back to understanding, feeling and experiencing the true beauty and sacredness of their roles and contributions to humanity, the world and more importantly to their own cultural nations despite their human frailties. It is the right and just thing to do. And yes, there are times that children must

be protected but mothers need to be protected too so that they learn over the course of their lives how better to protect and keep safe the children they brought into this world. It is difficult to understand how to do this when mothers are not allowed to experience success as a mother when her children are taken away from home by the state. But more importantly, we need to ensure that fathers understand too the importance of their role and participation in the lives of the children they helped create. Aboriginal mothers should not have to shoulder the responsibility of raising children and dealing with the child welfare system all by themselves as the majority of Aboriginal mothers currently are left to do. The burden of dealing with child welfare must be shared and it is hoped that governments will recognize that only when Aboriginal mothers, fathers, families and communities are given adequate resources for health, education, housing, respite and supports will we see healthier and safer Aboriginal children. Healthier and safer Aboriginal children after all eventually grow to be nurturing, conscientious parents. In the process of protecting Aboriginal children we must ensure that the sacredness and essential importance of Aboriginal motherhood continues to be transmitted from generation to generation. There is much work yet to be done to make Manitoba's child protection and court systems less adversarial, more inclusive, humane and democratic as well as respectful of the diversity of Aboriginal women's perspectives, experiences and worldviews.