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## Submission to the Department of Justice on the Review of the *Family Abuse Intervention Act*

February 10, 2021

As the Representative for Children and Youth, I am pleased to provide this submission to the Department of Justice on the review of the *Family Abuse Intervention Act* (FAIA).

This submission is written on behalf of the Representative for Children and Youth's Office (RCYO) and is informed by the United Nations *Convention on the Rights of the Child*,<sup>1</sup> an international human rights agreement that sets out all of the rights young people have and the obligations that governments have in supporting these rights. As a signatory to the United Nations *Convention on the Rights of the Child*, Canada has agreed to uphold child rights, making it necessary for all levels of government, including the Government of Nunavut, to take steps to include child specific rights in legislation in order to best support young people.

It is the role of my office to take every opportunity to ensure that the best interests of young people and their rights are at the forefront of all government initiatives. The RCYO makes these recommendations to the Department of Justice in support of young people's rights and in accordance with our legal duty to make recommendations on child and youth-related legislation, pursuant to Section 3 of the *Representative for Children and Youth Act*.<sup>2</sup>

This submission restates the questions posed in the Department of Justice's letter of January 8, 2021 in italics, and provides responses under each.

### ***1. How familiar are you with the Family Abuse Intervention Act (FAIA)?***

Our office's familiarity with the FAIA is limited. The RCYO does not provide direct services to children and youth in the same way a social worker, teacher, nurse, mental health worker, or probation officer would. Instead, the RCYO provides advocacy support to children, youth, and their families through two of our program areas, individual advocacy and systemic advocacy. Individual advocacy primarily works to resolve situations where a person has a complaint about a department's service or is unable to receive a service for a young person and/or their family. Systemic advocacy works to resolve issues when there are factors within a government department that may be at the root of the issue; the issue may continue to occur if not addressed; and the issue may affect many young people and/or their families.

Upon review of our individual advocacy cases, our office was involved with one case connected to the FAIA. In the case, a parent had made an application for an Emergency Protection Order (EPO) to protect their children from the other parent's inappropriate behavior. The EPO application was not successful and the parent was directed to obtain assistance from a Community Social Services Worker (CSSW). While our direct experience with the FAIA is limited, we have worked on a number of individual advocacy cases where family violence was a primary concern. To our knowledge, the remedies available under the FAIA were not utilized in these cases and, instead, the families and children involved were relocated to shelters outside of their communities.

Within our systemic advocacy program, we do not currently have any systemic issues connected to the FAIA. In February 2020, the RCYO had discussed with the Department of Justice the reliance upon CSSWs to fulfill the role of Community Justice Outreach Workers (CJOW), who are responsible for supporting applications under the FAIA.

## **2. What are your thoughts regarding FAIA?**

The FAIA speaks to the “right of every individual in Nunavut to a full and productive life, free from harm and fear of harm”.<sup>3</sup> This aligns with article 19 of the United Nations *Convention on the Rights of the Child*, which lays out children’s right to protection from all forms of violence. Children have the right to protection from physical and emotional hurt, mistreatment, abuse, and neglect by their parents or anyone else who looks after them.<sup>4</sup>

The RCYO supports the FAIA’s aim to “provide remedies that prevent family abuse before a serious crime occurs”.<sup>5</sup> However, even before a ‘serious’ crime occurs, family violence may have severe and long-lasting effects on children. Children living in homes where there is violence face the following:

- An increased risk of becoming victims of abuse themselves;
- A significant risk of ever-increasing harm to their physical, emotional and social development;
- An increased likelihood of being affected by violence as adults, either as victims or as perpetrators.<sup>6</sup>

The most recent *Family Abuse Intervention Act (FAIA) Annual Report 2019-2020*<sup>7</sup> notes that there were 44 EPOs applied for and granted in Nunavut, and one Community Intervention Order (CIO). EPOs are used when the risks of violence are imminent, and CIOs are used in non-emergency situations. The children residing in homes where EPOs have been granted are living with, and are likely aware of, violence in the home. The RCYO is pleased to note that, in the FAIA, EPOs and Assistance Orders can include provisions that recommend a child attend specified counselling.<sup>a</sup> These provisions acknowledge the impact of the situation on any involved young people and support their rights, as laid out in articles 24 and 39 of the United Nations *Convention on the Rights of the Child*, to the highest attainable standard of health, and, for those who have been victims of hurt, neglect, or abuse, the right to rehabilitation. While it appears that counselling for a child could be ordered under section 17(2)(d)<sup>b</sup> of the FAIA, unlike

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<sup>a</sup> See section 7(2)(j) and section 18(2)(l) of the *Family Abuse Intervention Act*

<sup>b</sup> Section 17(2)(d) of the FAIA notes that the content of a CIO may include “any other provision that the designated justice of the peace considers necessary or advisable to provide both for the protection of the applicant and any other specified person and for the integrity of the family.”

with EPOs and Assistance Orders, the Act does not explicitly note that a CIO may include a provision recommending a child attend specified counselling.

**Recommendation #1:**

**The *Family Abuse Intervention Act* clearly state that a Community Intervention Order may include a provision recommending that a child attend specified counselling.**

Section 4(i) of the FAIA states, “members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their interests are being made”.<sup>8</sup> The RCYO interprets this section to align with article 12 of the United Nations *Convention on the Rights of the Child*, which speaks to children’s right to have their voice heard in matters affecting them, although those administering the Act may not.

As outlined in section 7(2)(h) of the FAIA, a justice of the peace may include a provision in the EPO granting the applicant temporary custody of a child for a specified period of time. Section 9(1) of the FAIA states that an EPO prevails over any existing order made under a number of other pieces of legislation, including the *Child and Family Services Act* (CFSA), although the EPO is subject to and varied by any subsequent orders made under that legislation. It has been noted that “there have also been conflicts between social workers and women who have been granted exclusive custody of their children through EPOs”.<sup>9</sup> It is imperative that decision makers consider the safety and opinions of children when determining who will care for them, even in emergencies. Section 35(d) of the FAIA states that justices of the peace and judges are to consider “the best interests of the applicant and any child that may be affected by the order”,<sup>10</sup> yet does not explicitly state that they should seek the child’s opinion when making these decisions.

**Recommendation #2:**

**The *Family Abuse Intervention Act* explicitly state that every affected young person must be granted an opportunity to express their opinion and have it considered when decisions about them are being made under the Act.**

Although the FAIA does mention the best interests of the child, it does not specifically reference the United Nations *Convention on the Rights of the Child*. Other Nunavut statutes such as the CFSA, the *Representative for Children and Youth Act* (RCYA), and the recently amended *Education Act* directly reference the United Nations *Convention on the Rights of the Child*. The RCYO will continue to call on the Government of Nunavut to include the United Nations *Convention on the Rights of the Child* in all legislation affecting young Nunavummiut.

**Recommendation #3:**

**The *Family Abuse Intervention Act* include commitment to the United Nations *Convention on the Rights of the Child* as a guiding principle in the administration and interpretation of the Act.**

The most recent FAIA Annual Report states that CJOWs were trained in the importance of Duty to Report under the CFSA. The FAIA is silent on this duty, despite section 7(3)(p) of the *Child and Family Services Act* laying out that exposure to family violence invokes a duty to report.<sup>11</sup> The RCYO understands that it is not necessary to repeat a legal obligation from one statute in a second statute. However, given the conflicts referred to several paragraphs above between CSSWs and successful EPO applicants, and the fact that individuals tend to be knowledgeable of legislation that most impacts their work, a reference to the Duty to Report in the FAIA would ensure all relevant service providers are notified when children are exposed to, or victims of, violence and abuse.

**Recommendation #4:**

**The *Family Abuse Intervention Act* reference the Duty to Report, as laid out in section 8 of the *Child and Family Services Act*.**

Section 25(1) of the FAIA clarifies that an applicant for a remedy under the Act may only be made by a person who has attained the age of 14 years, although this can be done without a next friend or guardian *ad litem*. The RCYO supports the FAIA's approach to ensuring minors, 14 years of age and older, have the ability to make an application for abuse intervention. However, in our work, we often see younger children who have clear ideas of their needs, particularly as they relate to safety and protection. Introducing the concept of mature minors into the FAIA could reduce barriers that children younger than the age of 14 face, should they wish to make an application under the Act.

**Recommendation #5:**

**That section 25 of the *Family Abuse Intervention Act* be amended to allow mature minors younger than the age of 14 years to make an application for abuse intervention.**

**3. How effective do you feel FAIA is at addressing family abuse within communities?**

In the RCYO's most recent annual report, I spoke about my experience in my first year as the Representative for Children and Youth. I highlighted the three most prominent things brought to my attention, two of which were:

That by not acknowledging and addressing the abuse that some children experience it is being condoned; and that there is an accepted complacency that this is "just the way of the North" and action does not need to be taking to address arising problems.<sup>12</sup>

While my comments in the report speak specifically to abuse that children experience, this extends to their experiences of being witnesses to violence. Further, my comments that "young people as a vulnerable group are depending on us, the adults in their lives, to do what is best for them. This includes government decision makers"<sup>13</sup> continue to ring true; we must address all forms of violence that impact children and ensure their best interests are at the forefront of all decision making. The low number of CIOs reported in the *Family Abuse Intervention Act (FAIA) Annual Report 2019-2020*,<sup>14</sup> indicates that presently, there is little being done to proactively protect children before "the need is urgent, and the risks are imminent."<sup>15</sup> Further, young Nunavummiut spent 4,304 nights at family violence shelters, and not in their own homes, in the 2019-2020 fiscal year.<sup>16</sup> For these reasons, it appears that there is significant room for improvement with respect to the effectiveness of the FAIA in addressing family abuse.

**4. What changes would you like to see with FAIA?**

See recommendations made under Question #2.

**5. Are you familiar with Community Intervention Orders? If yes, how can we encourage more Nunavummiut to apply for Community Intervention Orders?**

No, we have not had any concerns brought to our attention regarding CIOs and therefore are not familiar with them.

**6. What barriers do you think exist for Nunavummiut to access support for family abuse? How can supports be made more accessible?**

As discussed in the Legislative Assembly of Nunavut, the RCMP inform children and youth about aspects of the FAIA and what it can do to protect them.<sup>17</sup> In our February 2020 proactive meeting with the Department of Justice, departmental staff advised that the Community Justice Specialists travel to communities to give presentations in communities, including in schools.

In our report, *Our Minds Matter: A Youth-Informed Review of Mental Health Services for Young Nunavummiut*<sup>18</sup> (*Our Minds Matter*), released in May 2019, young people were clear in their message that a lack of awareness as to where they could seek mental health services was a major barrier to doing so. Just as they require information to access mental health services, children and youth must possess an awareness of the FAIA in order to be able to seek a remedy under this Act. Increasing the information available to them may increase their access to safety, protection, and support.

As outlined above, the duty to report exists for all Nunavummiut when children have been exposed to family violence. When a Department of Justice employee upholds their duty to report a child who may be in need of protection, a family can be connected with a CSSW to put a safety plan in place, in addition to the remedies available under the FAIA. Alternatively, CSSWs could provide families with information about the FAIA and the remedies available under that Act, when appropriate. Collaboration between Government of Nunavut departments increases the chances that families, and children, are aware of and can access the supports and protection available to them when exposed to family violence.

### **7. What do you think is needed in Nunavut to respond to family abuse?**

In order to respond to family violence, families, communities, organizations, and governments must first learn to recognize its warning signs and acknowledge when it occurs. Acknowledging that family violence is a problem will allow families and communities to collaborate and openly discuss the problem to then determine community-based solutions and supports for victims and those who are engaging in violence.

Any response to family violence must consider the safety and protection of children and youth involved, for it has been noted that, “some of the biggest victims of domestic violence are the smallest”.<sup>19</sup> Further, when responding to family violence, it is important and urgent that services for children and youth be coordinated, and that they receive holistic care. When a young person is the victim of or witness to family violence, we encourage the Department of Justice to work with colleagues at the Department of Family Services, the Department of Health, and the Department of Education to provide adequate support, safety, and protection. We also encourage departments to work collaboratively to support families before crises occur. Fulfilling Recommendation #14 of *Our Minds Matter*, which states, in part, that the Government of Nunavut “develop and implement an interdepartmental service coordination protocol for the delivery of child and youth-related services”<sup>20</sup> would assist in doing so.

**8. Are there any other thoughts or suggestions regarding FAIA you would like to share?**

We encourage the Department to consider carefully, in a systematic and structured manner, the impact that the existing FAIA, and any revisions to it, will have on children and youth in the territory.

**Recommendation #6:**

**The Department of Justice implement a Child Rights Impact Assessment (CRIA) to consider the direct or indirect, intended or unintended, short-, medium-, or long-term consequences that any revisions to the existing *Family Abuse Intervention Act* will have on the children and youth of Nunavut.**

As stated in the RCYO's 2018-2019 Annual Report, "policy makers cannot identify the barriers to fulfilling children's rights if they do not hear from children about the existence and nature of those barriers."<sup>21</sup>

**Recommendation #7:**

**That the Department of Justice seek input directly from children and youth to inform the department's review of the *Family Abuse Intervention Act*.**

**Conclusion**

The RCYO makes this submission in the spirit of collaboration, and in support of *aajiiqatigiinniq*, decision making through discussion and consensus, and *pijitsirniq*, serving and providing for family and community. The seven recommendations are made in support of Nunavut taking this opportunity to meet Canada's international commitment to the United Nations *Convention on the Rights of the Child*, particularly:

**Article 3:** The right to the protection of the best interests of the child;

**Article 4:** The right to the protection of children's rights;

**Article 12:** The right to your opinion heard and considered;

**Article 19:** The right to be protected from all forms of abuse and neglect;

**Article 24:** The right to the highest attainable standard of health;

**Article 39:** The right to help if hurt, neglected, or abused;

**Article 42:** The right to know your rights.



Thank you for the opportunity to contribute to this important work. I look forward to following how the Department of Justice responds to these recommendations. I am available to meet with you to discuss the RCYO's submission or to provide more information about child rights and the work of our office.

Yours sincerely,



Jane Bates  
Representative for Children and Youth

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