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LAW REQUIRES OTTAWA TO ROLL OUT NATIONAL STRATEGY TO COMBAT 'ENVIRONMENTAL RACISM' WITHIN TWO YEARS

By Cristin Schmitz, (Originally published on Law360 Canada, formerly, *The Lawyer's Daily*, © LexisNexis Canada Inc.)

Calling it "a significant milestone in the fight for environmental justice," the federal Green party hailed the imminent enactment of its "groundbreaking" private member's bill that requires Ottawa to roll out within two years a "national strategy" to mitigate the harmful fallout from "environmental racism" — which the party said disproportionately exposes marginalized, racialized and Indigenous communities to environmental hazards.

At press time on June 14, 2024, the *National Strategy Respecting Environmental Racism and Environmental Justice Act* (Bill C-226) was poised to receive royal assent and become law.

The six-page private member's bill, sponsored in the House of Commons by Green party leader and environmental lawyer Elizabeth May, was passed by cross-party support in the Commons on March 29, 2023, and approved by the Senate on June 13, 2024.

> "This legislation is a testament to the power of collective action and the importance of ensuring that all voices, especially those of marginalized communities, are heard and respected in our environmental policies."

"The passage of Bill C-226 represents a commitment to addressing the long-standing and deeply entrenched issue of environmental racism in Canada," May said in a media release. "This legislation is a testament to the power of collective action and the importance of ensuring that all voices, especially those of marginalized communities, are heard and respected in our environmental policies."

Green party MP Mike Morrice added that "environmental racism is a pervasive issue that has affected too many communities for too long. With the passage of Bill C-226, we are taking concrete steps to address these injustices and work towards a Canada where everyone has access to a safe and healthy environment."

The summary in Bill C-226 says it "requires the Minister of the Environment, in consultation or cooperation with any interested persons, bodies, organizations or communities, to develop a national strategy to promote efforts across Canada to address the harm caused by environmental racism. It also provides for reporting requirements in relation to the strategy."

Notably, Bill C-226 specifies that the national strategy "must include" measures "to advance environmental justice and assess, prevent and address environmental racism," which may include "compensation for individuals or communities" and "possible amendments to federal laws, policies and programs."

Bill C-226 obliges the federal environment minister to "develop a national strategy to promote efforts across Canada to advance environmental justice and to assess, prevent and address environmental racism."

The bill does not define "environmental racism," per se.

(The Canadian Human Rights Commission describes environmental racism as "the disproportionate proximity and greater exposure of Indigenous, Black and other racialized communities to polluting industries and environmentally hazardous activities.")

However, the preamble to Bill C-226 states, among other things, that "a disproportionate number of people who live in environmentally hazardous areas are members of an Indigenous, racialized or other marginalized community"; "the establishing of environmentally hazardous sites, including landfills and polluting industries, in areas inhabited primarily by members of those communities could be considered a form of racial discrimination"; "the Government of Canada recognizes the need to advance environmental justice across Canada and the importance of continuing to work towards eliminating racism and racial discrimination in all their forms and manifestations"; and that the federal government "is committed to assessing and preventing environmental racism and to providing affected communities with the opportunity to participate in, among other things, finding solutions to address

harm caused by environmental racism."

Bill C-226 states that in developing a national strategy to advance environmental justice and address environmental racism, the minister "must consult or cooperate with any interested persons, bodies, organizations or communities — including other ministers, representatives of governments in Canada and Indigenous communities — and ensure that it is consistent with the Government of Canada's framework for the recognition and implementation of the rights of Indigenous peoples."

The bill stipulates that the strategy's content, "must include":

- a study that includes an examination of the link between race, socioeconomic status and environmental risk as well as information and statistics relating to the location of environmental hazards; and

- measures that can be taken to advance environmental justice and assess, prevent and address environmental racism, which may include possible amendments to federal laws, policies and programs; the involvement of community groups in environmental policymaking; compensation for individuals or communities; and the collection of information and statistics relating to health outcomes in communities located in proximity to environmental hazards.

Bill C-226 says that the environment minister must table the government's national strategy on environmental racism and environmental justice in Parliament within two years after the bill comes into force. Every five years after that, the minister "must, in consultation with" any interested persons, bodies, organizations or communities — including other ministers, representatives of governments in Canada and Indigenous communities — "prepare a report on the effectiveness of the national strategy that sets out the minister's conclusions and recommendations" and table it in Parliament.

The bill's sponsor in the Senate, non-affiliated Senator Dr. Mary Jane McCallum, a First Nations social justice advocate, noted that the bill "has had a long journey" into law, with earlier iterations going back to February 2020.

"Having finally passed through both Houses of Parliament, today is truly a momentous occasion for so many First Nations, Inuit, Black and other racialized communities across Canada," she said in a June 13 statement. "These are the communities, and the people, who have historically been targeted to live in so-called sacrifice zones, or areas surrounding resource extraction and energy-generating sites that contend with harsh and brutal outcomes,"

McCallum said, "The insidious and often hidden impacts of environmental racism enable such discrimination to thrive with little awareness or knowledge of the Canadian public. For countless First Nations communities, this results in compounding deleterious impacts from resource extractive operations which include the wanton destruction of traditional lands; the pollution of previously pristine lands, waters, and air; a negative effect on our cultures, traditions, and governance structures; and an adverse impact on the livelihood and well-being of impacted peoples, communities, and all our relations."

The Green party, which has two MPs in the House of Commons, noted Bill C-226 is the third piece of Green legislation to be enacted. The other two laws are the *Lyme Disease Act* and a bill banning the keeping of whales and dolphins in captivity.

"Very few private members' bills ever become law," the party noted in its media release. "Greens have established new laws in pursuit of social justice, supporting marginalized communities, helping Canadians struggling with a devastating disease whose prevalence has increased due to climate change, and for marine mammals and animal rights."

DOLLARS AND CENTS: BUDGETING TO ACCESS JUSTICE

By Bo Kruk and Sharon Roberts,
(Originally published on Law360 Canada, formerly, *The Lawyer's Daily*,

Amidst an ongoing crisis of "access to justice" — which was decried by entertainer Robin Williams, among others, 40 years ago — one potent, but often overlooked, means of increasing accessibility is a meaningful costs award.

Typically, an allocation of costs is framed by a court's distinct rules. Rules outline factors courts may consider when determining costs (e.g., Rules 10.31 and 10.33 of the *Alberta Rules of Court*, Alta Reg 124/2010; Rule 400(3) of the *Federal Courts Rules*, SOR/98-106).

The Supreme Court outlined in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, that the "modern" approach to cost awards seeks to go further than merely compensating the successful party. Costs awards can promote settlement, help guard against frivolous litigation and foster access to justice.

Yet, the court's vision for furthering access to justice through costs awards in *Okanagan* was narrow: the majority found that a court's discretion to award costs can help relieve the "harsh consequence of paying the other side's costs" for a public interest litigant — but only in highly exceptional cases. This narrow vision of the "modern" approach to costs was echoed by the Alberta Court of Appeal over a decade later, in *PricewaterhouseCoopers Inc v. Perpetual Energy Inc.*, 2021 ABCA 16: "Costs awards are designed to partially indemnify the successful party for the legal expenses incurred during the litigation. Party and party costs awards are deliberately set so that they do not fully indemnify the successful party."

This take on the "modern" approach to costs awards raises a fundamental question about the 21st-century justice system. If partial indemnification is the baseline

> “If partial indemnification is the baseline and elevated costs awards are only available in limited circumstances, how “accessible” is justice”

and elevated costs awards are only available in limited circumstances, how “accessible” is justice, particularly for public interest litigants or even persons of modest or limited means, whether defending an unmeritorious claim or advancing a meritorious one?

At least in Alberta, there is hope. The Court of Appeal in *McAllister v. Calgary (City)*, 2021 ABCA 25, undertook a comprehensive review and summary of costs awards in the province. It held that the general principle of cost awards is to indemnify the successful party by 40-50 per cent — i.e., a “reasonable guideline” to interpreting the operative phrase “reasonable and proper costs” in the *Alberta Rules of Court*. However, the court recognized that the appropriate level of indemnification may be higher or lower, depending on the unique circumstances of a case.

A growing body of jurisprudence is pushing a functional approach to costs awards further. Courts have recognized that litigation can take many different forms and assessed costs against parties whose positions lack merit. In *Ho v. Lau Estate*, 2023 ABKB 15, Justice Lema expanded on Justice Thomas Wakeling’s concurring judgement in *Pillar Resource Services Inc v. PrimeWest Energy Inc.*, 2017 ABCA 19, to find that “‘maintain[ing] positions or bring[ing] applications that are patently indefensible-the likelihood they will succeed is very low’ can amount to [litigation misconduct].” In *Earth Drilling Co. Ltd. v. Keystone Drilling Corp.*, 2023 ABKB 17, Justice Lema distilled the principle further: “Lack of merit can affect the level of costs.”

In *Plastk Financial and Rewards Inc. v. Digital Commerce Bank*, 2023 ABKB 272, Justice Douglas Mah built on the approach initiated by Justice Michael Lema. In that case, Plastk brought an application to enforce a mandatory injunction that was previously granted earlier that year after Digital Commerce Bank unilaterally terminated the very services that were the subject matter of the mandatory injunction. Justice Mah awarded Plastk column 5 costs, with a multiplier of 3, having found that its application was unnecessary; DC Bank bore the onus to seek clarification from the court “before ploughing ahead, rather than force Plastk to enforce the [mandatory injunction].”

More recently, the *McAllister* principles were further developed in Barkwell v. McDonald, 2023 ABCA 87, which reinforced that bald assertions of amounts a party claims as costs are insufficient. Any amounts claimed in costs must be substantiated by evidence (see, e.g., 102125001 *Saskatchewan Ltd v. Hutchings*, 2024 ABKB 110).

In the most recent data from the National Self-Represented Litigants Project, 43.5 per cent of survey participants reported an annual income under $30,000. While vulnerable criminal and civil justice system participants often qualify for services such as legal aid or structured pro bono programs, those services are often subject to funding reductions. Loss of funding, and corresponding impacts on program budgets, lead to events like the 2022 Alberta Legal Aid work stoppage.

If the growing body of jurisprudence offers an indication, perhaps a broader adoption of this functional or "modern" approach to costs will, in time, promote the principles that the Supreme Court of Canada articulated in *Okanagan Indian Band*, and recognize the necessity of adequately funding legal aid programs.

SCC RULES ON INTERPLAY OF INFORMER PRIVILEGE AND OPEN COURTS IN SO-CALLED SECRET TRIAL CASE

By Cristin Schmitz, (Originally published on Law360 Canada, formerly, *The Lawyer's Daily*, © LexisNexis Canada Inc.)

The Supreme Court of Canada says no "secret" trial occurred during the *in-camera* prosecution of a confidential police informer in Quebec, but it has ordered 9-0 that a redacted trial judgment should be made public, which contains no information that might identify the police informer in breach of what the top court has previously described as the "extremely broad and powerful" informer privilege.

The top court's *per curiam* ruling on June 7, 2024, elaborates on how courts are to handle the interplay between confidential informer privilege — which is near-absolute — and the open court principle, in the context of a notorious Quebec case involving a confidential police informer who was convicted on criminal charges at a closed-door criminal trial several years ago: *CBC et al. v. Named Person*, 2024 SCC 21.

The court said its indexed 67-page judgment aims to "guide trial judges who must proceed *in camera*, in order to ensure that they accommodate the open court principle to the greatest extent possible."

After conviction, the informer, referred to as the "named person" in the Supreme Court's judgment, obtained a stay of proceeding for abuse of process at a closed-door conviction appeal hearing at the Quebec Court of Appeal. The existence of the criminal case only came to light nearly a month later in the appeal panel's heavily redacted judgment on the conviction appeal, which sealed all the information in the appeal record, including the unredacted trial judgment below: *Designated person v. R.*, 2022 QCCA 406.

In a second related ruling afterward, the appeal panel dismissed motions to review its confidentiality orders that had sealed the unredacted version of its appellate judgment and all information in the appeal record on the basis that it would be impracticable to reveal any of the case information while still preserving the near-absolute privilege that shields a police informer's identity: *Designated person v. R.*, 2022 QCCA 984.

(Informer privilege shields from disclosure any information that might identify the confidential informer, except in those rare criminal cases when the defence can show that privileged information must be disclosed because the accused's innocence is at stake).

The Supreme Court of Canada's decision allows in part the appeals of CBC, La Presse Inc., MediaQMI Inc., other Quebec-based media organizations and the Attorney General of Quebec, who sought to lift the appeal court's sweeping confidentiality orders, in whole or in part.

The appellants urged that the appeal court had been overly restrictive in suppressing information about the underlying proceedings and that the panel erred in determining that it would be unworkable to partially unseal the court record and still preserve the informer privilege. The sealed appeal court file shields, among other things, the nature of the charges and the identities of the prosecuting authority, the judicial district, the trial judge and the prosecuting and defence counsel.

The case caused an uproar within Quebec's legal community and shocked the public when its existence was first revealed on March 23, 2022, by the Quebec Court of Appeal's redacted reasons on the conviction appeal, following its Feb. 28, 2022, decision allowing the informer's appeal, and entering a stay of proceedings.

In ordering the case back to the Quebec Court of Appeal to make public a redacted version of the trial judgment included in the appeal record — after the appeal court consults the parties in the criminal case on a proposal for partial unsealing and redaction — the Supreme Court took pains to clarify that "no secret trial was held in this case."

Rather, the criminal proceeding against the accused informer began and moved forward publicly until the accused filed a motion to stay proceedings, based in part on the state's abusive conduct toward them as a police informer. It was then that the trial judge granted a joint request by the parties to hear the stay motion *in camera*. No notice was given to the media because the judge considered that revealing anything about the motion, including its existence, would likely compromise the accused police informer's anonymity. The motion was dismissed in a non-public written judgment, which had no file number. The hearing was *in camera*, and the witnesses had been examined out of court, with the parties asking the judge to decide on the basis of transcripts.

As the Court of Appeal put it, "no trace of this trial exists, except in the memories of the individuals involved."

The Supreme Court said that the controversy around the case arose after the Court of Appeal released its conviction appeal judgment in March 2022, in which the panel "misguidedly denounced the holding of a 'secret trial.'"

The controversy "was largely due to the gap between what the public knew and what it did not know, combined with the effect of the unfortunate expression used by the Court of Appeal," the Supreme Court said, calling the situation "unfortunate" and avoidable.

"That expression could in fact have suggested that Named Person had been convicted following a secret criminal proceeding," the top court observed. "That state of affairs alarmed the public and the media. It also jeopardized public confidence in the justice system. But to be clear, no secret trial was held in this case. As can be seen from the Court of Appeal's second decision in July 2022, the criminal proceeding against Named Person began and moved forward publicly until Named Person filed a motion for a stay of proceedings based in part on the state's abusive conduct toward them as a police informer."

The Supreme Court said the controversy could have been avoided, first and foremost, if the trial judge had proceeded *in camera* by creating a parallel proceeding for the stay of proceedings/abuse of process motion "completely separate from the criminal proceeding in which Named Person had been appearing publicly until that time."

"The magnitude of the controversy could also have been limited if the Court of Appeal had not used the expression 'secret trial' to describe what were actually *in camera* hearings held in a proceeding that began and initially moved forward publicly. In addition to being inaccurate, this expression is needlessly alarming and has no basis in Canadian law."

The top court reiterated the continued applicability of the procedure and "guiding rule" set out by the Supreme Court 17 years ago in *Named Person v. Vancouver Sun*, 2007 SCC 43. In an extradition case involving a claim of informer privilege, the top court held that once informer privilege is found, "the question that the judge must ask is this: Is a totally *in camera* proceeding justified on the basis that only an *in camera* proceeding will properly protect the informer privilege, or will sufficient protection be possible via other means, such as a partial *in camera* proceeding, or some other option?"

In the CBC case, the Supreme Court said it wanted to "reiterate the relevance of the *Vancouver Sun* procedure and the importance of rigorously applying its guiding rule requiring a court to protect informer privilege while minimizing, as much as possible, any impairment of the open court principle."

"For this purpose, the courts must be flexible and creative," the court stipulated. "What is in issue is the maintenance of public confidence in the administration of justice and respect for the rule of law."

The Supreme Court went on to note, in fairness to the Court of Appeal, that the appeal panel had been in a difficult position because the conviction appeal that came before it did not relate in any way to the trial judge's confidentiality orders below. Moreover, despite the errors, "all of the justice system participants involved were in good faith and acted with integrity. They were all motivated by a sincere desire to protect Named Person's anonymity, as was their duty."

The Supreme Court noted that "in this context, we can only commend [the Quebec Court of Appeal's] decision to proactively champion the open court principle and the democratic ideals underlying it by opening a record at its court office and making public a redacted version of its judgment of February 28, 2022."

Given the particular circumstances of the case, "the Court of Appeal had no choice but to redact its judgments as heavily as it did," the Supreme Court ruled. "It was therefore correct to dismiss the motions for total or partial disclosure of the information that had been kept confidential up to that time."

However, the appeal court erred in upholding its order that the entire appeal record be sealed, the top court concluded. "It should have made public a redacted version of the trial judgment, because redacting that decision was an entirely feasible undertaking that did not compromise [the] Named Person's anonymity and that accommodated the open court principle."

The Supreme Court's reasons for judgment underscore the "paramount" importance to democracy of open and transparent courts.

> "When justice is rendered in secret, without leaving any trace, respect for the rule of law is jeopardized and public confidence in the administration of justice may be shaken,"

"When justice is rendered in secret, without leaving any trace, respect for the rule of law is jeopardized and public confidence in the administration of justice may be shaken," the court wrote.

"The open court principle allows a society to guard against such risks, which erode the very foundations of democracy. By ensuring the accountability of the judiciary, court openness supports an administration of justice that is impartial, fair and in accordance with the rule of law. It also helps the public gain a better understanding of the justice system and its participants, which can only enhance public confidence in their integrity. Court openness is therefore of paramount importance to our democracy — an importance that is also reflected in the constitutional protection afforded to it in Canada."

"The very concept of 'secret trial' does not exist in Canada," the Supreme Court said.

However, "the cardinal principle of court openness may be tempered where the circumstances of a case so require," the court remarked. "Various confidentiality orders may be made … up to and including an order that all hearings be held *in camera* … But it is well established that 'secret trials,' those that leave no trace, are not part of the range of possible measures."

The court said that because of the fundamental importance of court openness, confidentiality orders limiting it can be made by the courts "only in rare circumstances. These exceptions are predicated on the idea that openness cannot prevail if the ends of justice, or the interests that openness is meant to protect, would be better served in some other way."

In order for a police informer's anonymity to be protected, the court said it is "necessary and desirable" that judges have the discretion to determine whether it is in the interests of justice to issue a notice to interested third parties advising them that the privilege has been claimed and that confidentiality orders are being contemplated.

"The existence of a discretion to issue a notice provides the court with the flexibility needed to ensure that, in each case, justice is served by adopting a procedure that is as consistent as possible with court openness without risking a breach of informer privilege," the court explained. "Well settled jurisprudence unequivocally recognizes the importance of preserving this discretion, and there is no reason to depart from these precedents."

The court also declined "to depart from the current state of the law, under which as much information as possible should be disclosed to interested third parties, but never any information that might compromise the police informer's anonymity."

The Supreme Court said it is not appropriate for information directly identifying the informer to be protected differently than information that is seemingly innocuous but may indirectly identify the informer. "The disclosure of such privileged information to interested third parties or their representatives, even subject to undertakings of confidentiality, would unduly expand the circle of privilege, thus undermining the dual objectives of the informer privilege rule."

The court said that where an informer is on trial, and the informer asserts their status in a proceeding that began publicly in which they face charges that do not cause them to lose their status, and the informer police relationship is central to the proceedings, "the appropriate way to protect the informer's anonymity will generally be to proceed totally *in camera*."

"But even in these most confidential of cases, it is possible and even essential to protect the informer's anonymity while still favouring confidentiality orders that do not entirely or indefinitely conceal the existence of the *in camera* hearing and of any decision rendered as a result," the court said.

"This may require some creativity and perhaps some administrative arrangements, but at least one approach can be taken," it advised. "This approach involves creating a parallel proceeding that is completely separate from the public proceeding in which informer privilege is initially invoked. The record for the parallel proceeding thereby created, though sealed, will have its own record number. Subject to the redaction of information that might tend to reveal the informer's identity, it will generally be possible for the proceeding to be on the court's docket and hearing roll and for a public judgment to be released."

The top court said this "solution makes it possible to disclose at least a minimum amount of information to interested third parties, including the news media, that wish to file a motion for review of the confidentiality orders."

Christian Leblanc of Fasken in Montreal, who represented the media appellants with Patricia Hénault and Isabelle Kalar, told Law360 Canada that "we favourably welcome the judgment. I think for us, it's a huge gain for freedom of expression and the right of the public to know what happens in our court system."

While the court said there was no secret trial, it did say there was a proceeding that was kept secret and that should not have been the case, Leblanc said. "And again, the court didn't stop there and went further and said that every court proceeding should be recorded somewhere, and … there is a difference between having an in-camera hearing and knowing there's one and not knowing at all that something is happening in front of our court."

One takeaway, he said, is that even in informer privilege cases, "the trial judge needs to make sure that the proceeding is not completely secret. It needs to be registered [in the record]. There needs to be a court order."

The judge also needs to try to find a way to publish their judgment while preserving privilege, even if this requires redactions, "which is a great outcome because it assures us, and it prevents another situation" like we just experienced, Leblanc said.

Pierre-Luc Beauchesne, who with Simon Pierre Lavoie and Michel Déom, represented the appellant Attorney General of Quebec was not immediately available for comment.

Adam Goldenberg of Toronto's McCarthy Tétrault, who with Simon Bouthillier represented the Canadian Civil Liberties Association, one of about a dozen interveners, said that "what is frustrating about this decision is that the court is emphatic that secret trials are anathema to our system of open justice. The court is very strong in affirming the open court principle, which essentially says that justice done in secret cannot be justice in our system."

"And in the same breath, almost, the court is adamant that a secret trial did not happen here and a secret trial could not happen in Canada," Goldenberg said. "But a proceeding, including a trial, conducted entirely *in camera*, in order to protect the informer privilege would be acceptable as a matter of Canadian law. And those are assertions that are difficult to reconcile … It's a very fine distinction that the court draws between a secret proceeding and a proceeding held entirely *in camera*."

It is positive that the court "says that it should only be in exceptional cases, that notice is not given to third parties, and who those third parties are is left up to the judge in that particular case," Goldenberg said. "But the court is quite clear that the rule is you give notice and the exception is you don't, and there has to be a reason why you don't … It's a helpful clarification."

MANITOBA HANDS INDIGENOUS CHILD WELFARE OVER TO FIRST NATIONS

By Terry Davidson, (Originally published on Law360 Canada, formerly, *The Lawyer's Daily*, © LexisNexis Canada Inc.)

In what is being called a "historic" move, Manitoba's government is handing over child welfare services for Indigenous kids to First Nations leaders.

According to a recent news release, Manitoba has "signed a historic relationship declaration committing to the transfer of jurisdiction over child welfare to First Nations" governments in the province.

The transfer is a response to the Truth and Reconciliation Commission of Canada's call to reduce the number of Indigenous children in care and affirm "the right of Indigenous governments to establish and maintain their own child welfare agencies."

Premier Wab Kinew, the first Indigenous person to hold the role of provincial leader, spoke of children in care needing "connection to their families."

> "[…] our government is working with First Nations to ensure children in care maintain connection to their families, their culture and their language. Together, we can build a future in Manitoba where we don't have to come back and apologize to the next generation of children."

"Every child in our province deserves to grow up with the ability to answer who they are and where they come from," said Kinew in a statement. "That is why our government is working with First Nations to ensure children in care maintain connection to their families, their culture and their language. Together, we can build a future in Manitoba where we don't have to come back and apologize to the next generation of children."

Manitoba Families Minister Nahanni Fontaine said these children in care "do better when they're able to stay

within community and connected to culture."

"Every child in Manitoba should have supports to thrive, and we know the current child welfare system needs to do better," said Fontaine. "First Nations are best placed to care for their own children and today's declaration is an important step forward as we work collaboratively to return responsibility for child welfare."

The declaration was signed on May 13 at a meeting attended by around 40 Indigenous leaders from across the province.

The news release notes Bill C-92, federal legislation "respecting First Nations, Inuit and Métis children," which became law in 2020.

"The federal act reaffirms the authority of Indigenous nations to pass and enforce laws related to the provision of child and family services to their citizens supported by co-ordination agreements with Canada and provinces or territories," states the release.

Manitoba has one of the largest Indigenous populations in Canada: As of 2020, Indigenous people accounted for 18 per cent of its overall population — the highest of all the provinces (not including the territories, all of which boasted higher numbers), according to a Department of Indigenous Services report to Parliament.

Manitoba's news release notes that, as of March 31, 2023, 91 per cent of the 8,990 kids in care in the province were Indigenous.

Law360 Canada asked a government spokesperson if Manitoba would play any role at all following the transfer of welfare services.

“Federal legislation provides for the transfer of child welfare services to Indigenous governments as they develop laws and sign trilateral co-ordination agreements over time,” they said in an email statement. “Indigenous governments will develop their own oversight mechanisms in accordance with customary traditions and laws. Similarly, Indigenous governments will determine who will deliver services and what training will be provided.”

They were asked how Manitoba’s child welfare system will be impacted, and if there will be any staff layoffs.

The answer to this was not made entirely clear.

“The size of the provincial child welfare system is expected to reduce over time as services and staff transfer to provide services developed by Indigenous governments,” they said as part of their statement.

Chief Gordon Bluesky, of Brokenhead Ojibway Nation, said Indigenous “language, culture, and traditional ways of life will serve as the foundation for our programming.”

“We will ensure our people have access to adequate capital infrastructure to support their needs,” said Bluesky. “We will continue to uplift and support one another as we exercise our treaty and inherent rights, creating our own child and family services law that will benefit future generations to come.”

This is not the first time Manitoba has made a move such as this.

Last year, the government entered its “first co-ordination agreement” with Peguis First Nation. In their statement to Law360 Canada, the government spokesperson called Peguis First Nation “the first Indigenous government in Manitoba and the third across Canada to sign a trilateral co-ordination agreement.”

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