Court File No.: T- 333-11

FEDERAL COURT OF CANADA

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY

Applicant

- and -

CANADIAN HUMAN RIGHTS TRIBUNAL,
ASSEMBLY OF FIRST NATIONS,
CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
ATTORNEY GENERAL OF CANADA

Respondents

AFFIDAVIT OF CINDY BLACKSTOCK

I, Cindy Blackstock, of the City of Ottawa, in the Province of Ontario, make oath and say as follows:

1. I am the Executive Director of the First Nations Child and Family Caring Society of Canada ("FNCFCS" or "Caring Society"), and as such I have knowledge of the matters in which I hereinafter depose.

2. The Caring Society is a non-profit organization committed to research, policy development, professional development and advocacy, on behalf of First Nations

agencies that serve the well-being of Aboriginal children, youth and families in Canada.

3. On February 27, 2007, the Caring Society and the Assembly of First Nations filed a joint complaint 2006/1060 ("the Complaint") with the Canadian Human Rights Commission ("CHRC" or "the Commission"). The Complaint asserts that INAC's child and family services program results in inequitable child welfare services for Registered Indian children on reserve compared to those received by children living off reserve.

4. The Complaint also alleges that the jurisdictional disputes between and within governments adversely impact First Nations children and is discriminatory contrary to section 5 of the *Canadian Human Rights Act* ("the Act"). Attached as **Exhibit "A"** to my affidavit is a copy of the complaint.

Discrimination against First Nations' Children Living on Reserve

(a) Inequalities in INAC's Child and Family Services and Programs

5. Many government documents support the Complainants' view that First Nations children receive a lower and inequitable level of children welfare services on reserve. In June 2000, a Joint National Policy Review, conducted by INAC and the Assembly of First Nations, found that First Nations children on reserve received 22 percent less funding for child welfare than other children receive. It also identified significant problems with the structure of the formula including the lack of emphasis on least disruptive measures services and insufficient funding and policies required to achieve good, equitable and culturally appropriate social work practice. For example, it found that INAC provided few services to help children stay safely in their

home. It also found that First Nations children would be denied government services available to others due to jurisdictional disputes with the provinces. Attached as **Exhibit "B"** to my affidavit is a copy of the Joint Policy Review.

6. In 2004, a National Advisory Committee, co-chaired by the Assembly of First Nations and INAC, commissioned the Caring Society to complete a detailed review of INAC's First Nations child and family services policy and to provide recommendations for improvement. The Caring Society retained a team of over 20 leading researchers to conduct a multi-disciplinary and detailed review of INAC's First Nations child and family services program and to develop recommendations for improvement. The first report entitled "Wen:de: we are coming to the light of day" presented the research conducted in order to inform a new funding formula and policy improvements which were set out in the second report "Wen:de: the journey continues."

7. The Wen:de reports, released in 2005, confirmed the earlier findings of the Joint National Policy Review and identified key flaws and inequities in INAC's First Nations Child and Family Services Program. Specifically, the reports found that 0.67% of non Aboriginal children were in child welfare care in three sample provinces in Canada as compared to 10.23% of status Indian children. According to the reports, the dramatic over-representation of First Nations children in care was sourced in poverty, poor housing and caregiver substance misuse that could be linked back to colonization and residential schools. The reports suggested that additional and equitable funding, structured in proper ways with accompanying policy changes, would substantially improve the situation. Researchers stressed that the funding formula documented in *Wen:de: the journey continues* should be fully implemented as an interdependent program in order to achieve maximum benefit for children. Unfortunately, INAC failed to fully implement the recommended reforms even

though the federal government was reporting a surplus budget in the billions of dollars at the time.

8. In May 2008, the Auditor General of Canada released her report on INAC's First Nations Child and Family Service Program. The report concluded that all of INAC's programs and funding formulas for First Nations child and family services, including the enhanced prevention approach, were flawed and inequitable. The Auditor General set out recommendations for reform. Attached as **Exhibit "C"** to my affidavit is a copy of the Auditor General's Report.

9. In 2009, the Standing Committee on Public Accounts reviewed INAC's implementation of the Auditor General of Canada's 2008 recommendations for reforms. In its concluding statement the Committee notes, "Continuing to use a flawed funding formula means that First Nations child and family service agencies are often under - funded and First Nations children and families do not get the services they need." A copy of this statement is attached hereto as **Exhibit "D".**

(b) Jordan's Principle

10. Jordan's Principle is named after Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba, who died in a Winnipeg hospital at the age of 5 after spending two years unnecessarily in hospital as Canada and Manitoba argued over who should pay for his at home care. If he was a non-Aboriginal child living off reserve, he would have gone to a family home when doctors said he was ready. Sadly for Jordan, Canada and Manitoba could not agree on who should pay for services for First Nations children on reserve even when that service is available to all other children. Jordan died in 2005 at the age of 5 in the hospital never having spent a day in a family home.

11. Jordan's family and community were determined that this type of dispute never again result in a First Nations child being denied, or delayed receipt of, all government services available to all other children. Jordan's Principle was developed to honour Jordan's legacy. It is a simple concept of equity that applies when a government service is available to all other children and a jurisdictional dispute arises within or between provincial/territorial or federal governments about who should pay for services to a First Nations child on reserve. It calls on the government that is first approached to provide and immediately pay for the services required by the First Nations child and then seek reimbursement from the appropriate government department or level of government later. Jordan's Principle aims to protect innocent and vulnerable children, when they are in desperate need of government services or assistance otherwise available to non-Aboriginal children, from being tragically getting caught in the middle of red tape and jurisdictional disputes between governments.

12. A Private Member's Motion in support of Jordan's Principle passed unanimously in the House of Commons on December 12, 2007, yet many believe that this Principle has not been fully implemented and First Nations children continue to be routinely denied services available to all others. As recently as February 15, 2011, Members of Parliament at the Standing Committee on the Status of Women were questioning INAC officials about the slow, and narrow, implementation of Jordan's Principle.

13. The human rights complaint filed by the Assembly of First Nations and the Caring Society sought to assert the cultural and non-discrimination rights of First

Nations children who are adversely affected by INAC's Child and Family Services Program and the jurisdictional disputes between and within governments.

History of the Complaint at the Tribunal

14. The Canadian Human Rights Tribunal held its first preliminary case conference with respect to the Complaint on February 4, 2009. Grant Sinclair, Chairperson of the Tribunal at the time, presided over this case conference.

15. During the case conference, the Attorney General requested that the Human Rights Tribunal make preliminary determinations regarding the service and comparator issues for purposes of the discrimination analysis. Chairperson Sinclair refused to hear the motion, stating that the matter was complex and required a full hearing.

16. Over the ensuing months, the parties prepared their statements of particulars and lists of documents and potential witnesses. During this time, I began to prepare to myself to testify and helped my lawyers prepare other witnesses. I was pleased to see that the complaint was moving along smoothly.

17. On September 14, 2009, the adjudication of the complaint began. It was presided over by Chairperson Sinclair. The hearing started with my opening statement. Attached as **Exhibit "E"** to my affidavit is a copy of my opening statement. Following my opening remarks, Amnesty International and the Chiefs of

Ontario argued their request to obtain interested party status in the adjudication of the complaint. Both of their requests were granted by Chairperson Sinclair.

18. That same day, the Attorney General objected to the scheduling of further hearing dates and sought to have the hearing adjourned, arguing that the complaint was not sufficiently clear. Chairperson Sinclair refused this request.

19. Following the first day of hearing, Chairperson Sinclair issued a direction setting hearing dates for November 16-20, 2009; January 18-22, 2010; January 25-29, 2010; February 8-12, 2010 and February 15-19, 2010, for the hearing on the merits. Attached as **Exhibit "F"** to my affidavit is a copy of this direction, dated September 17, 2009. I was scheduled to be the first witness on the hearing on the merits which was scheduled to commence on November 16, 2010.

20. Given the time estimates of counsel and the scheduling of various witnesses, it was expected that these hearing dates would allow us to hear most or all of the evidence and that the hearing on the merits would be complete or near completion as of February 2010.

21. Based on the Tribunal's September 17, 2009 directive, I advised Elders, First Nations leaders, youth, social work and child rights experts and other citizens that the complaint was moving forward smoothly. Many were looking forward to learning about the child welfare programs and services provided by INAC on reserve to determine if they were discriminatory. First Nations Peoples from across the country asked me to provide them with regular updates on the progress of the case.

History of the Complaint Since Appointment of New Chairperson

22. On November 2, 2009, Shirish Chotalia assumed her appointment as the new Chairperson of the Canadian Human Rights Tribunal.

23. On November 6, 2009, four days after assuming her appointment, Chairperson Chotalia convened a case conference with all of the parties. She did not indicate the purpose for the emergency case conference.

24. During the case conference, Chairperson Chotalia asked the Attorney General lawyers whether they would be seeking to have the proceeding before the Human Rights Tribunal stayed pending the outcome of the judicial review of the decision by the Canadian Human Rights Commission to refer the Complaint to the Tribunal. After the Attorney General's counsel indicated that they would not seek a stay, Chairperson Chotalia stated that she felt that the issues needed to be narrowed. The Chairperson Chotalia then asked the Attorney General lawyers whether they were intending to seek preliminary determinations on the issues of "services" and "comparator groups". Attorney General counsel said they had no such plans. Despite these responses, and without prior notice or a request from any of the parties, the Chairperson vacated the hearing dates for the week of November 16, 2009. She indicated that she wanted further pre-hearing discovery before the case proceeded.

25. I was extremely disappointed by Chairperson Chotalia's sudden decision to vacate the dates of the hearing on the merits. I was very concerned about the impacts the delays imposed by the Chairperson would have on the very vulnerable children and families who were subject to the alleged discrimination arising from Canada's policies, programs and actions. I did not want the children to wait any longer for the adjudication of the complaint. Moreover, I had already invested

considerable time with my lawyer preparing myself and other witnesses to testify. Travel arrangements had already been made and paid for with respect to some of the witnesses and persons who had planned to attend the proceedings as observers.

26. Members of the First Nations communities and social work and child rights experts and organizations were also very concerned about the Chairperson Chotalia's decision to vacate the hearing dates without notice. To my knowledge, at least forty First Nations people from Manitoba, Nova Scotia, British Columbia, Alberta and Ontario had made plans to personally attend the proceedings during the week of November 16, 2009. Several classes of school children had also planned to attend the hearing commencing on November 16, 2009.

27. On November 9, 2009, the Caring Society's lawyer, Paul Champ, wrote to Chairperson Chotalia asking her to confirm that Chairperson Sinclair was seized of the complaint. He also stressed that it was essential that the complaint be heard as soon as possible. Attached as **Exhibit "G"** to my affidavit is a copy of this letter.

28. On December 4, 2009, Mr. Champ again wrote to Chairperson Chotalia to reiterate how important it was that the hearing regarding this complaint be conducted in a fair and expeditious manner. His letter emphasized that the complaint was urgent as it concerned the lives of vulnerable First Nations children, including 8,000-9,000 children on reserves, who are in state custody. A copy of this letter is attached hereto as **Exhibit "H".**

29. On December 14, 2009, another case conference was convened by the Chairperson. During this case conference, the parties also discussed the outstanding issues, such as expert evidence and how the evidence should be tendered during the hearing on the merits. The Attorney General's counsel advised the other parties

that the Respondent would be bringing motions to strike the Commission's expert reports and also a motion to strike the entire complaint on jurisdictional grounds.

30. During the case conference, the Chairperson advised the parties that the Attorney General's motions would proceed in January 2010 but the February 2010 hearing dates were not necessarily vacated. I was relieved to know the hearing dates were preserved in light of the vulnerability of the children and families.

31. On December 21, 2009, the Attorney General filed its formal notice of motion to dismiss the Complaint on a preliminary basis. The Attorney General alleged that the First Nations Child and Family Services Program was not a "service" under the *Canadian Human Rights Act* and asked the Tribunal to dismiss the case on that basis. The Attorney General also filed a notice of motion seeking to have the Commission's expert evidence excluded.

32. On December 22, 2009, the Caring Society filed a motion to amend its complaint in order to include allegations of retaliation. The notice of motion was filed with the Tribunal and served on all of parties, along with a supporting affidavit and full written submissions.

33. On December 23, 2009, Chairperson Chotalia issued a direction to the parties. The direction stated that the outstanding motions, including the Attorney General's jurisdictional motion, would be heard during the week of January 19, 2010. Chairperson Chotalia also directed the Commission, the Complainants and the interested parties to inform the Tribunal by December 30, 2009 whether they wished to proceed with the Attorney General's motion in January 2010. Attached as **Exhibit "I"** to this affidavit is a copy of these directions, dated December 23, 2009.

34. On December 30, 2009, the Caring Society's counsel wrote to the Tribunal arguing that the Attorney General's motion to dismiss was premature and that the issue of "service" needed to be determined based on a complete evidentiary record after a full hearing. Mr. Champ requested the opportunity to make submissions on the issue of prematurity during the week of January 19, 2010. Attached as **Exhibit "J"** to this affidavit is a copy of this letter. The AFN, Amnesty International, the Chiefs of Ontario, and the Commission all agreed with this proposal.

35. On January 8, 2010, Chairperson Chotalia issued a direction regarding the Attorney General's motion to dismiss the complaint. Again, without prior notice and without the consent or submissions of any of the parties, the Chairperson vacated further hearing dates, including all dates for the month of January, and February. The direction also provided the parties with a timeline, extending until April 2010, for the filing of affidavits and written submissions regarding the Attorney General's motion to dismiss the complaint. The Chairperson issued the direction without providing any of the parties with the opportunity to make submissions on whether the Attorney General's motion was premature and set no dates for the oral arguments of the motion. Attached as **Exhibit "K"** to this affidavit is a copy of this direction, dated January 8, 2010.

36. I was completely devastated by this news. In my view, the decision to vacate all of the hearing dates set back any potential resolution of this complaint, which could result in significantly improved child welfare services to vulnerable children and families living on reserves across Canada. Based on Sinclair's September 17, 2009 order, I had the expectation that the hearing on the merits would be completed by February of 2010. Now, the Attorney General's preliminary motion would not even be argued by this date.

37. On January 13, 2010, our counsel wrote to the Chairperson to raise our concerns about the decision to again adjourn the hearing without the consent of any of the parties and without having provided the parties with the opportunity to make submissions on the issue beforehand. Attached as **Exhibit "L"** to this affidavit is a copy of this letter, dated January 13, 2010. The letter expressed concerns about the Chairperson's decision to make a determination on the issue of prematurity and to prioritize the Attorney General's motion at the expense of all other motions, including the Caring Society's motion regarding the retaliation it was experiencing. The letter emphasized the concern that Chairperson Chotalia did not provide the parties with any opportunity to make submissions on the issue. Mr. Champ requested that a case conference be held in order to address these outstanding issues.

38. Chairperson Chotalia issued a direction on January 21, 2010, stating that the parties were free to make submissions on these issues during the hearing of the Attorney General's motion to dismiss the Complaint. No dates were set for the hearing of that motion.

39. By March 2010, the parties had exchanged affidavits and conducted cross examinations on the Attorney General's preliminary motion to dismiss. However, no dates for argument had been set by the Tribunal. On March 9, 2010, our counsel wrote to the Tribunal asking that dates be set for the oral arguments. Again, he stressed the urgency of the issues raised in the complaint and the vulnerability of the children and families the complaint affected. Attached as **Exhibit "M"** to this affidavit is a copy of this letter, dated March 9, 2010.

40. On March 12, 2010, the Chairperson wrote to all parties and set June 14 and 15 as the dates for the oral arguments to be heard. She also directed the parties to canvass their availability for August and September if the parties could not appear

on the June dates. On March 17, 2010, the Attorney General's counsel, Mr. Jonathan Tarlton, replied to the direction indicating that he was not available from June 10-14 to argue the motion.

41. In response to the direction and Mr. Tarlton's letter, the Commission wrote to the Tribunal to request an urgent case conference regarding scheduling. Counsel for the Assembly of First Nations also wrote to the Tribunal to stress the importance of this case proceeding in a timely manner. Similarly, on March 17, 2010, counsel for Amnesty International wrote:

> My client is deeply concerned about the continuing delays in hearing this complaint. In our respectful submission, the hearing of this complaint, and at the very least, the jurisdiction motion, should have been expedited and could have commenced months ago.
>
> The complaint involves the live if vulnerable First Nations children, who continue to suffer prejudice and irreparable harm given the delays in the hearing of this matter. Canada is continuing to breach its international human rights obligations as a result of this.
>
> [...]
>
> If Mr. Tarlton is unavailable on June 14 and 15, then other counsel for the Attorney General can be found. I note that the Attorney General has several counsel assigned to this matter. The Department of Justice is the largest law firm in the country. There is no reason why the Attorney General cannot assign other counsel to the argument of the motion.

Copies of all these letters are attached as **Exhibit "N".**

42. Following numerous exchanges between counsel, it was determined that all parties were available to argue the motion on June 2 and 3, 2010. The Tribunal agreed to these dates.

43. On June 2-3, 2010, the parties made oral arguments regarding the Attorney General's motion to dismiss the complaint on a preliminary basis. Approximately 100

individuals came to witness the Canadian Human Rights Tribunal hearings on both days, including First Nations leaders from Saskatchewan, British Columbia, Ontario and child welfare and child rights experts from across Canada. Children advocates appointed by provincial governments also attended.

44. On July 30, 2010, the Attorney General wrote to the Chairperson seeking leave to file further submissions regarding a case released by the New Brunswick Court of Appeal on the issue of comparator groups. On August 6, 2010, Daniel Poulin, counsel for the Commission, wrote to the Tribunal to oppose the Attorney General's request. He argued that the Attorney General should not be given multiple chances to revisit issues once submissions are filed and oral arguments are completed. Our counsel also wrote to oppose this request. Copies of these letters are attached hereto as **Exhibit "O".**

45. On August 10, 2010, the Chairperson directed all parties to file submissions regarding the judgement. Attached as **Exhibit "P"** to my affidavit is a copy of this direction.

46. On August 23, 2010, the Caring Society filed submissions in accordance with the Tribunal's direction. In our submissions, counsel again reiterated the urgency of the case. He asked the Chairperson to issue a "bottom line" decision on the outstanding motion as quickly as possible, with reasons to follow. Attached as **Exhibit "Q"** to my affidavit is a copy of these submissions. The Chairperson did not acknowledge or respond to his request.

47. On November 15, 2010, counsel for the Attorney General wrote to the Tribunal to again request the opportunity to file further written submissions regarding two Supreme Court of Canada cases pertaining to the division of powers and labour relations on reserves. Counsel for the Assembly of First Nations wrote to the

Tribunal on November 18, 2010, stating that if the Attorney General's request were allowed, the parties should also be given the opportunity to make submissions on the legal repercussions of Canada's signature of the United Nations Declaration on the Rights of Indigenous Peoples. Copies of these letters are attached hereto as **Exhibit "R".**

48. On November 18, 2010, the Caring Society's counsel wrote to the Tribunal Chair to oppose the request to file further submissions. In his letter, he also emphasized that granting the Attorney General's request would only cause further delays in the proceeding. He pointed out that the Tribunal's own Practice Note required members to issues decisions within four months of the hearing. Attached as **Exhibit "S"** to my affidavit are copies of this letter as well as the Tribunal's Practice Note No. 1.

49. On December 1, 2010, the Chair directed the parties to file submissions on the recent Supreme Court of Canada cases and Canada's adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Attached as **Exhibit "T"** to my affidavit is a copy of this direction.

50. On December 17, 2010, the Caring Society filed submissions in accordance with the Tribunal's direction. In the letter, our counsel specifically requested that the Chair provide a firm date on which the parties can expect the decision. He again stressed that all delays in the case contribute to First Nations children and families being deprived of adequate and culturally relevant care. Attached as **Exhibit "U"** to my affidavit is a copy of this letter, dated December 17, 2010. The Chairperson did not acknowledge or respond to this request.

51. On February 4, 2010, Caring Society's counsel wrote to the Tribunal to request that the Attorney General's motion to dismiss be determined without further delay. The letter highlighted that since the filing of the complaint, independent provincial

bodies and coroners' inquests from across Canada had concluded that the continuing inequities in child welfare services were causing First Nations children and youth Canada to be at risk. Attached as **Exhibit "V"** to my affidavit is a copy of this letter. The Chairperson did not acknowledge or respond to this request. Counsel for the Attorney General replied to this letter, stating that it did not raise any important issues that needed to be addressed by the Tribunal. This letter is attached to my affidavit as **Exhibit "W".**

52. Amnesty International and the Canadian Human Rights Commission subsequently wrote to the Tribunal expressing similar concerns about the delays to the proceedings. Copies of this correspondence is attached hereto as **Exhibit "X".**

Impact of the Delays

53. As a social worker, I find it extremely difficult to accept the delays in this case given its direct impact on the most vulnerable children and their families in the country. When I worked in a child protection agency, everything we did had to be in the best interests of the child. This often meant taking urgent action either immediately or within 24 hours of the receipt of a report. Delays in making important decisions about a child's life were generally seen as detrimental to the best interests, safety and well-being of children and their families. As such, cases involving children's rights were often heard on an urgent basis and Courts would convene just to hear these cases in order to avoid delays and possible harm to the children.

54. It is essential to understand that the children and families at the center of this case are at risk of maltreatment or are experiencing maltreatment. The failure to take expeditious action compromises the best interests of children. I have never encountered a case involving a child or children at risk that involved delays such as the ones presented in this case.

55. In my opinion as an expert in social work and the provision of child welfare services on reserves, a favourable resolution of this complaint will have a significant impact on the lives of thousands of vulnerable children across Canada. This complaint was filed four years ago and was referred to the Tribunal for adjudication in September 2008, almost two and a half years ago. Two years in a child's life is significant amount of time particularly when the child is in a very vulnerable situation. It can include some of the most special and formative periods of their lives. Those formative years can never be restored. Further delays in the resolution of this complaint will result in irreparable harm to children and their families.

56. Since the hearing on the merits has been derailed, I regularly receive multiple calls, letters and emails each week from First Nations Peoples, including parents, social workers, directors of child welfare agencies, Elders and children in care, from all over Canada expressing concern about the delays in these proceedings. Between June and September of 2010, I would often point to the Tribunal's Practice Note on the timeline for decisions when responding to inquiries from the public as to when a decision would be made on the Attorney General's motion to dismiss. However, as the Tribunal has exceeded the four month timeline by a factor of two without any explanation, I am now unsure of how to respond to inquiries from the public as to when a ruling will be forthcoming. As an example, during the week of February 14, 2011, I communicated with First Nations Peoples from New Brunswick, Manitoba, Ontario, Saskatchewan and Alberta who were concerned about the delay and the impacts that it was having on children. When I travel across the country, First Nations, child rights experts, citizens and children and youth themselves, often raise concerns about the delays in adjudicating this case and the impacts these delays have on children and families.

57. Citizens of Norway House Cree Nation, Manitoba, Jordan River Anderson's home community, are particularly concerned about these delays. Kinisao Sipi Minosowin, a First Nations child and family service agency in Norway House Cree Nation, is currently providing in home supports to over 30 children in order to keep the children in their families. The program has been very successful and the services are ensuring the children remain with their families. Unfortunately, the Government of Canada has advised Kinsao Sipi Minosowin that the federal government is cutting funding for this program effective March 31, 2011 throwing these families into crisis and placing many of these children at risk for being placed, unnecessarily into foster care as that is the only way to pay for the children's special needs given the poor structure of INAC's funding structures. Several members of the staff of the child welfare agency in that community have conveyed to me their extreme disappointment about the delays in this case. They have told me that by the time we get a decision, it will likely be too late for the children community's children.

58. First Nations Peoples across the country have told me that they are following this case because they want to learn about Canada's human rights system and decide whether or not it is an effective mechanism for First Nations citizens to assert and protect their human rights. Currently, over 7150 individuals and organizations have formally registered to follow this case on www.fnwitness.ca. With thousands of Canadians watching the case, it is essential that the judicial body entrusted with the adjudication of human rights complaints, particularly complaints involving children, properly apply the law giving due consideration to the best interests of children and principles of neutrality, fairness and efficiency.

59. I fear that the delays in these proceedings will impact on First Nations Peoples' perceptions of the Canadian Human Rights system. It certainly has eroded my faith in the *Canadian Human Rights Act* and the fairness of the processes before

the Human Rights Tribunal to adjudicate rights violations for children in vulnerable situations. On numerous occasions when I have told members of the community about the delays, they have questioned whether it is an effective means for First Nations People to assert their right to be free from discrimination. Several people have told me that the delays raise concerns about the fairness of the system and they wonder if there is any use in filing future complaints. I believe that a timely decision is necessary to ensure that First Nations peoples in Canada do not lose faith in a system designed to protect them as members of a historically disadvantaged group.

60. I make this affidavit in support of the Caring Society's application

SWORN BEFORE ME at)
The City of Ottawa, in the)
Province of Ontario, this)
28 day of February, 2011.)

Anne Lusqueu

CINDY BLACKSTOCK

Human Rights Commission Complaint Form

Your Name(s):
Regional Chief Lawrence Joseph, Assembly of First Nations
Cindy Blackstock, Executive Director, First Nations Child & Family Caring Society of Canada

Name of Organization that your Complaint is Against:
Indian and Northern Affairs Canada

Summary of Complaint:
On behalf of the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada, we are writing to file a complaint pursuant to the Human Rights Act regarding the inequitable levels of child welfare funding provided to First Nations children and families on reserve pursuant to the Indian and Northern Affairs Canada (INAC) funding formula for First Nations child and family services known as Directive 20-1, Chapter 5 (hereinafter called the Directive). This formula provides funds in two primary envelopes: 1) Maintenance (costs of children in care) and 2) Operations (personnel, office space, prevention services etc.). Maintenance is paid every time a child comes into care whereas operations funding is paid on the basis of exceeding certain population thresholds of status Indian children on reserve. There is also an adjustment in the formula for remoteness. There is substantial evidence spanning over ten years that inequitable levels of funding are contributing to the over representation of Status First Nations children in child welfare care. Moreover, we invite your office to review the Wen:de series of reports which identify the scope and nature of the over representation of First Nations children in care, documents the inequality in funding, and provides a detailed evidence-based solution to redress the inequity which is within the sole jurisdiction of the federal government to implement. Ensuring a basic level of equitable child welfare service for First Nations children on reserve and thus the observance of their human rights pursuant to the Human Rights Act, the Convention on the Rights of the Child, The Covenant on Economic, Social and Cultural Rights and the Charter of Rights and Freedoms would represent an investment of 109 million dollars in year one of the proposed multi-year funding formula. This cost represents less than one percent of the current federal surplus budget estimated at over $13 billion. As the following summary notes, the moral, economic, and social benefits of full and proper implementation of the Wen:de report recommendations are significant.

Status Indian children are drastically over represented in child welfare care. A recent report found that the 0.67% of all non Aboriginal children were in child welfare care as of May of 2005 in three sample provinces as compared to 0.31% of Métis children and 10.23% of Status Indian children. Year End Data collected by INAC (2003) indicates that 9031 status Indian children on reserve[1] were in child welfare care at the close of that year representing a 70% increase since 1995. Unfortunately, there is poor data on the numbers of status First Nations children in care off reserve as provinces/territories collect child welfare data differently but best estimates are that 30-40% of all children in care in Canada are Aboriginal. This represents approximately 23,000- 28,000 Aboriginal children and means that there are three times as many Aboriginal children in state care today than there was at the height of the residential school operations in the late 1940's.

First Nations child and family service agencies (FNCFSAs) have developed over the past 30 years to provide child welfare services to First Nations children on reserve in an effort to stem the mass removals of First Nations children from their communities by provincial child welfare authorities. These agencies, which have been recognized by the United Nations Committee on the Rights of the Child, operate pursuant to provincial child welfare statutes and are funded by INAC using the Directive 20-1[2]. FNCFSAs have long reported concerns about drastic under funding of child welfare services by the federal government particularly with regards to the statutory range of services intended to keep maltreated children safely at home known as least disruptive measures. As Directive 20-1 included an unlimited amount of funds to place children in foster care, many First

[1] Typically this data does not include children in care of First Nations operating under self government agreements
[2] With the exception of First Nations child and family FNCFSAs in Ontario which are funded under a separate funding agreement

Nations felt the lack of investment in least disruptive measures contributed to the over representation of First Nations children in care. Directive 20-1 was studied in a joint review conducted by Indian and Northern Affairs Canada (INAC) and the Assembly of First Nations in 2000. This review, known as the *Joint National Policy Review on First Nations Child and Family Services* (NPR, MacDonald $ Ladd) provides some insight into the reasons why there has been such an increase in the numbers of Registered Indian children entering into care . The review found that INAC provides funding for child welfare services only to Registered Indian children who are deemed to be "eligible children" pursuant to the Directive. An eligible child is normally characterized as a child of parents who are normally resident on reserve. Importantly, the preamble to the Directive indicates that the formula is intended to ensure that First Nations children receive a "comparable level" of service to other children in similar circumstances. Moreover, there was no evidence that the provinces step in to top up federal child welfare funding levels if the federal funding level is insufficient to meet statutory requirements of provincial child welfare legislation or to ensure an equitable level of service. There were, however, occasions where provinces provided management information or training support but there were no cases identified where the province systematically topped up inequitable funding levels created by Directive 20-1. Overall the Directive was found to provide 22% less funding per child to FNCFSAs than the average province. A key area of inadequate funding is a statutory range of services, known as least disruptive measures, that are provided to children and youth at significant risk of child maltreatment so that they can remain safely in their homes. First Nations agencies report that the numbers of children in care could be reduced if adequate and sustained funding for least disruptive measures was provided by INAC (Shangreaux, 2004). The NPR also indicates that although child welfare costs are increasing at over 6% per year there has not been a cost of living increase in the funding formula for FNCFSAs since 1995. Economic analysis conducted last year indicates that the compounded inflation losses to FNCFSAs from 1999-2005 amount to $112 million nationally.

In total, the *Joint National Policy Review on First Nations Child and Family Services* included seventeen recommendations to improve the funding formula. It has been over six years since the completion of NPR and the federal government has failed to implement any of the recommendations which would have directly benefited First Nations children on reserve. As INAC documents obtained through access to information in 2002 demonstrate, the lack of action by the federal government was not due to lack of awareness of the problem or of the solution. Documents sent between senior INAC officials confirm the level of funding in the Directive is insufficient for FNCFSAs to meet their statutory obligations under provincial child welfare laws – particularly with regard to least disruptive measures resulting in higher numbers of First Nations children entering child welfare care (INAC, 2002.)

Despite having apparently been convinced of the merits of the problem and the need for least disruptive measures, INAC maintained that additional evidence was needed to rectify the inequitable levels of funding documented in the NPR. Therefore, the First Nations Child and Family Services National Advisory Committee, co-chaired by the Assembly of First Nations and INAC, commissioned a second research project on the Directive in September of 2004. This three part research project which was completed by the First Nations Child and Family Caring Society of Canada in 2005 involved over 20 researchers representing some of the most respected experts from a variety of disciplines including: economics, law, First Nations child welfare, management information systems, community development, management and sociology. This review is documented in three volumes: 1) *Bridging Econometrics with First Nations Child and Family Service Agency Funding* 2) *Wen:de: We are Coming to the Light of Day* 3) *Wen:de: the Journey Continues,* which are all publicly available on line at www.fncfcs.com.

Findings of the Wen:de series of reports include:

- The primary reason why First Nations children come to the attention of the child welfare system is neglect. When researchers unpack the definition of "neglect", poverty, substance misuse and poor housing are the key factors contributing to the over representation of First Nations children in substantiated child welfare cases.
- The formula drastically under funds primary, secondary and tertiary child maltreatment intervention services, including least disruptive measures. These

services are vital to ensuring First Nations children have the same chance to stay safely at home with support services as other children in Canada.

- Additional funding is needed at all levels of FNCFSAs including governance, administration, policy and practice in order to provide a basic level of child welfare services equitable to those provided off reserve by the provinces.
- Overall an additional $109 million is needed in year one to redress existing funding shortfalls – representing approximately a 33% increase in the operations funding (funding not directly related to children in care) currently provided pursuant to the Directive. This represents a minimum investment to provide a basic level of equitable services comparable to those available to other Canadians, meaning that to provide anything short of this funding level is to perpetuate the inequity.
- Jurisdictional disputes between and amongst federal and provincial governments are a substantial problem with 12 FNCFSAs experiencing 393 jurisdictional disputes this past year alone. These disputes result in First Nations children on reserve being denied or delayed receipt of services that are otherwise available to Canadian children. Additionally, these disputes draw from already taxed FNCFSAs human resources as FNCFSAs staff spend an average of 54 hours per incident resolving these disputes. Jordan's Principle, a child-first solution to resolving these disputes, has been developed and endorsed by over 230 individuals and organizations. This solution is cost neutral and would ensure that children's needs are met whilst still allowing for the resolution of the dispute.
- Agencies serving less than 1000 children (and thus receive only a portion of the operations budget depending on populations levels) and agencies in remote communities require upwards adjustments in the funding formula.

INAC recently announced it will provide $25 million per year in additional First Nations child and family service funding for each of five years, which held some promise of relieving some of the cost pressures for FNCFSAs. Unfortunately, instead of targeting those dollars to benefit children, INAC allocated over $15 million per year to fund its own costs arising from increased billings for children in care (due largely to lack of investments in least disruptive measures) and to hire staff. It did allocate an additional $8.6 million per year for inflation relief for FNCFSAs, but this represents only a small portion of what is required to offset inflation losses. INAC has also stated that until it completes an evaluation of maintenance funding (funds to keep children in care) to satisfy a treasury board requirement it will not release the inflation funds for agencies. Upon questioning, INAC audit and evaluation unit was not able to identify a standard upon which it would evaluate the maintenance budget and was clearly not aware that measuring outcomes in child welfare is in the very early stages of development – even in non Aboriginal child welfare in Canada. The idea that child welfare funding to address a glaring inequality should be held back to satisfy such a poorly supported administrative requirement raises significant concerns.

The cost of perpetuating the inequities in child welfare funding are substantial – INAC maintenance costs for children in care continue to climb at over 11% per annum as there are no other options provided to agencies to keep children safely at home. Additionally, as Canada redresses the impacts of residential schools it must take steps to ensure that old funding policies which only supported children being removed from their homes are addressed.

We allege that Directive 20-1 is in contravention of Article 3 of the *Human Rights Act* in that Registered First Nations children and families resident on reserve are provided with inequitable levels of child welfare services because of their race and national ethnic origin as compared to non Aboriginal children. The discrimination is systemic and ongoing. INAC has been aware of this problem for a number of years and was presented with an evidence base of this discrimination in June of 2000 with the two *Wen:de* reports being delivered in August and October of 2005 respectively. These reports were followed by the Canadian Incidence Study Report (Mesnmimk Wasatek) in June of 2006.

Regional Chief Lawrence Joseph
Assembly of First Nations
Guy Lonechild, Vice-Chief

Cindy Blackstock, Executive Director
First Nations Child & Family Caring
Society of Canada

First Nations Child and Family Services

Joint National Policy Review
Final Report
June, 2000

Prepared for:

Assembly Of First Nations With First Nations Child And Family Service Agency Representatives In Partnership With The Department Of Indian Affairs And Northern Development

Written By:

Dr. Rose-Alma J. McDonald, Dr. Peter Ladd, et. al.

ISBN 0-919682-08-01
Assembly of First Nations/Department of Indian and Northern Affairs Development
First Nations Child and Family Service National Policy Review
2000

Printed in Canada

Credits

This National Policy Review Report was written by:
Rose-Alma J. (Dolly) McDonald, D.Ed. Mohawk; Peter Ladd, Phd., et. al.

Assembly of First Nations
Co-Chair Joint Steering Committee and Vice Chief Rick Simon; Art Dedam, Listuguj MigMaq, Director of Social Development; Marlene Bugler, Cree, National Policy Review Coordinator; Lori McGregor, Mohawk, Technical and Administrative Support

Department of Indian and Northern Affairs Development
Co-Chair Joint Steering Committee Roy Bird, Regional Director General, Saskatchewan Region; Cynthia Bennington; Kathleen Campbell, Director General, Social Policy and Programs; Jerry Lyons, National Policy Review Coordinator **Health Canada** Debbie Michelin (Health Canada Headquarters)

First Nations Child and Family Service National Policy Review Joint Steering Committee
Vice Chief Rick Simon (AFN) Co-Chair; Roy Bird (Regional Director General, Saskatchewan Region Department of Indian Affairs & Northern Development) Co-Chair; Darin Keewatin (Yellowhead Tribal Council Child & Family Services, Alberta), Cindy Blackstock (Caring for First Nations Children's Society, British Columbia), Elsie Flette (Director West Region Child & Family Services, Manitoba), Judy Levi (Coordinator Tripartite Committee, New Brunswick), Joan Glode (Executive Director MicMac Child & Family Services, Nova Scotia), Donald Horn (Director Kahnawake Community Services, Quebec), Bill Gillespie (Director Kunuwanimano Child & Family Services, Ontario), Ray Shingoose (Director Yorkton Child & Family Services, Saskatchewan), John Brown (Director General Audit and Evaluation Branch, DIAND, Headquarters), Mike Ivanski (Director General Finance DIAND Headquarters), Kathleen Campbell (Director General Social Policy and Programs, DIAND, Headquarters), Debbie Michelin (Manager, Medical Services Branch, Health Canada, Headquarters), Alain Leveillie (Sr. Policy Advisory, Quebec Region DIAND), Linda Stiller (Inter-Government Affairs BC Region)

First Nations Child and Family Service National Policy Review Policy Review Group
Marlene Bugler (National Policy Review Coordinator) Co-Chair, Jerry Lyons Co-Chair (DIAND Sr. Program Analyst Social Policy and Programs Headquarters), Darin Keewatain (Yellowhead Tribal Council Child & Family Services, Alberta), Maurice Squires (Director Nisga'a Child & Family Services, BC), Jules Picard (Social Services Coordinator, First Nations of Quebec and Labrador Health and Social Services Commission, Quebec), Walter Spence (Director Norway House Child & Family Services, Manitoba), Glen Caplin (Director Eel River Bar First Nation Child & Family Services, New Brunswick), Elizabeth Paul (Director of MicMac Family & Childrens Services, Nova Scotia), Tuesday Johnson MacDonald (Coordinator of Social Development Six Nations, Ontario), Milton McKay (Director Peter Ballentyne Child & Family Services, Saskatchewan), Brian Skabar (Sr. Policy Analyst Analyst Atlantic Region DIAND), Allain Levelier (Sr. Policy Advisor, Quebec Region DIAND), David Rydholm (Sr. Policy Advisory Ontario Region), Wayune Govereau (Sr. Negotiator/Policy Analyst Manitoba Region DIAND), Bryan Clark (Manager Funding Services Saskatchewan Region DIAND), Debbie Graham (Manager Social Development Alberta Region DIAND), Debbie Michelin (Manager Medical Services Branch Health Canada Headquarters), Vince Donoghue (Sr. Finance Office DIAND Headquarters)

First Nations Child and Family Service National Policy Review Project Management Team
Art Dedam (AFN Co-Chair), Kathleen Campbell (DIAND Co-Chair), Derald Dubois (First Nation Representative), Marlene Bugler (AFN National Policy Review Coordinator), Jerry Lyons (DIAND Senior Policy Analyst Social Policy and Programs Headquarters).

Contributing Authors
Blue Hills Training and Management, Keystone Consulting, Helen Semanganis, Poirier Communications,

Marlene Bugler, Assembly of First Nations

FIRST NATIONS CHILD AND FAMILY SERVICES NATIONAL POLICY REVIEW DRAFT FINAL REPORT TABLE OF CONTENTS

Bibliography

Executive Summary
First Nations Child and Family Services
National Policy Review

Introduction

We believe that the Creator has entrusted us with the sacred responsibility to raise our families. The future of our communities lies with our children who need to be nurtured within their families and communities (RCAP vol. 3 Chapter 2).

Traditionally the family in First Nation societies stood between the individual and the larger society. The family helped individuals understand and respond to the expectations of the society around them. It also helped engage individuals in constructive ways and discipline them when they ventured off course.

Several experiences of massive loss have disrupted First Nation families and resulted in identity problems and difficulties in functioning. In 1996, more than 10% of Aboriginal children (age 0-14) were not living with their parents. That is 7 times more compared to non-Aboriginal children. In 1996, three of every ten First Nation children resided in lone parent families, a rate roughly twice that of the non-First Nation population. Four percent of First Nation children were in the custody of Child and Family Service agencies in 1996/97. Compared to the total number of children in Canada, First Nation children are four times more likely to die from injury. For pre-school aged children, the rate is five times as great.

Expenditures to improve coverage and the quality of First Nation specific child welfare services have been increased over the years to individuals ordinarily resident on-reserve and through child-in-care costs charged back to DIAND. In 1992-93, according to RCAP, the department allocated $159.8 million to child and family services representing 78 per cent of the welfare services budget. Although this was a significant increase from expenditures a decade before, it was evident the needs of First Nation families far outweighed the modest successes afforded by the social reform of the time.

The Purpose

The purpose of this document is to provide a summary of the research that was conducted between March 1, 1999 to March 31, 2000 under the joint management of the Department of Indian Affairs and Northern Development (DIAND) and the Assembly of First Nations (AFN). In partnership the AFN (along with First Nations and First Nations Child Family Services Agencies) agreed to jointly carry out with DIAND a review of its' national policies with respect to First Nation Child and Family Services (FNCFS). This review was undertaken consistent with Canada's commitment to work with First Nations in a spirit of partnership under the auspices of the *Agenda for Action for First Nations*. The intent of review was to identify

possible improvements to current policy regarding the development and operation of FNCFS agencies that provide necessary, culturally sensitive and statutory child and family services.

Objectives Of The Study

The principal objectives of this policy review were as follows:

1) To identify and record areas of concern raised by First Nations and DIAND across Canada including, but not limited to, those areas of concern outlined in the information gathering plan, with respect to required changes to DIAND's national policy.

2) To prepare a Report that presents an analysis of the issues, outlines the responses of the parties to the review of issues and makes agreed upon recommendations for changes to DIAND's national policies. Where recommendations for changes cannot be arrived at, the Report will outline options that are reflective of both First Nations and DIAND's perspectives.

3) Recommend an Action Plan, which identifies concerns, a plan of action to address the concerns, as well as, time frames for action.

Globally the review undertook the analysis of four key areas: legislation and standards, agency governance, funding and communication issues. The work conducted on these research themes was contracted out to technical consultants who conducted the data gathering and analysis. A fifth consultant was commissioned as a synthesis writer for the final report, as well as, to facilitate the final analysis of the technical reports with the National Policy Review Team to formulate the final recommendations for the review.

Time frame For The Study

The First Nations Child and Family Services National Policy Review process began on March 1, 1999 and an interim report was provided to the Policy Review Joint Steering Committee on September 15, 1999. The completion date for the National Policy Review was June 30, 2000.

Project Description

To address the four key issue areas that were identified, various data collection methodologies were utilized. The first was surveys and interviews of individuals and organizations at the DIAND regional, provincial, provincial Child and Family Service agency, FNCFS agency and First Nation level. The second data collection methodology was a review of documents and files which included, but were not limited to, agreements for child and family service delivery between First Nations, provinces and/or DIAND, First Nation standards developed in the regions, and annual reports of the FNCFS. Finally, case studies and best practices research was conducted to identify examples of what was successfully working in the program.

The four themes are described below. A comparative analysis was conducted on various elements on each of these themes.

Agency Governance and First Nations Child and Family Services

Practices vary considerably from agency to agency and from region to region in the manner by which agencies organize themselves and conduct their business. Under current policy, in most provinces agencies are incorporated under provincial legislation and that they comply with provincial legislation and standards. Agencies are also required to provide information to DIAND and the provinces in areas determined by agreement and policy. Within these restrictions, however, there is considerable room for differences in the way agencies operate. The national policy review analyzed data to identify the impacts of these variances nationally.

Legislation and Standards and First Nations Child and Family Services

The current policy Directive 20-1 requires First Nations child and family services agencies to have delegated authority from provincial/territorial governments in order to receive funding from either DIAND or provincial authorities. The delegated authority is provided by provincial/territorial governments by virtue of provisions within the appropriate provincial/territorial legislation or by agreement. Along with the legislation are a set of standards which are developed by provincial/territorial governments to direct the manner in which the legislation is to be administered. DIAND's Directive 20-1 encourages the development of FN standards to be incorporated within provincial standards. The national policy review analyzed the impacts of the various provisions of provincial/territorial legislation and standards nationally on the effectiveness of Directive 20-1.

Communications Issues and First Nations Child and Family Services

The policy Directive 20-1 encourages the development of culturally appropriate services to First Nation persons. Further, the Guiding Principles of the Policy Review emphasize the need to involve community, parents, extended family, First Nation governments and Elders in the development and provision of service. There is also a recognition in many quarters of the need to promote greater integration of services in the community with child and family services and to develop a more holistic model of service delivery where possible at the community level. The policy review analyzed the various models of community involvement in service delivery nationally of First Nations child and family service programming

Funding Issues and First Nations Child and Family Services

Within Directive 20-1, a funding formula was developed in an effort to provide **equity, predictability and flexibility** in the funding of First Nations Child and Family Services agencies. Prior to the development of the formula, funding for agencies was inconsistent and often inequitable. The formula has been in place since fiscal year 1991/92. Since its implementation, the field of First Nations child and family services has changed dramatically with the creation of many new agencies in various provinces. With these changes, have come questions as to the continuing suitability of this funding methodology in light of current needs and expectations. The funding methodology used is a key factor in an attempt to ensure that there are adequate resources for agencies to fulfill their legislative mandate and that the funding is sufficiently flexible to allow agencies to respond to changing conditions and identified community needs. The policy review analyzed the adequacy of resources based on national data.

The Research Process

The National Policy Review was undertaken using several mechanisms to ensure maximum participation from all the agreed upon parties. These mechanisms included various levels of consultation consisting of groups of individuals from the First Nation and government side who constituted several years of expertise administratively and at the community level. The research plan for the study was developed based on seventeen issues that were identified by FNCFS agencies, the guiding principles of the National Policy Review and the priorities as identified by the Policy Review Project Team.

The Data Collection Process

The research projects started in December, 1999 and were completed in May 2000. Several revisions to the reports were required to reflect as much accurate data as possible. The observations from the reports were reviewed by the National Policy Review Project Team, analyzed and discussed. From this data the Team, specifically, the Joint Steering Committee, was responsible for determining the actions required based on each study observation followed by potential recommendations for changes. Each of the research projects had varying degrees of participation and response to surveys from FNCFS agencies, provinces and DIAND regions. This information provided enough to facilitate discussions related to recommendation development.

Findings

Governance

There are two kinds of agreements in place to facilitate the provision of child and family services to First Nation children. The first is through agreements with provincial governments to set out delegation of authority processes to First Nations agencies or representatives from the province. The second is through funding agreements with the federal government to allow First Nations to effectively carry out child and family services on reserve via Directive 20-1. FNCFS Agency

responses indicated that there were three main categories within which the governing body falls. They were: (a) Chief and Council or Chiefs of Tribal Councils; (b) Chiefs of First Nations or Tribal Councils as Board of Directors; and (c) Board of Directors.

Ultimately all of the FNCFS Agencies identified their role and responsibility as being the carrying out of day-to-day administration, case management and planning functions for child and family services. The primary role of FNCFS agencies was to implement the agreements entered into with the provincial and federal governments.

The number of employees varied greatly between agencies although the vast majority of employees were full-time. The numbers of full-time employees range from a high of 72 at the largest agency to a low of three at the smallest. The majority of the employees were case workers, social workers or child and family services workers, who carried the caseloads of the agencies. In those agencies with only a few employees, many of them were reported as serving dual roles with active caseloads and managerial responsibilities. Of the agencies surveyed, several reported that they did not receive any support to facilitate training for their employees.

Legislation and Standards

Some provincial legislation creates circumstances for the FNCFS Agencies that are inconsistent with DIAND's funding policy statement regarding the evaluation requirement. DIAND only provides funding to new FNCFS agencies for 3 year and 6 year evaluations, however, provincial legislation requires on-going evaluations.

Legislative authority regarding child and family services in Canada is vested with provinces and territories. First Nations Child and Family Services agencies derive the authority for the provision of protection and other statutory services from provincial/territorial statutes.

All provinces/territories have legislation to protect children from neglect or abuse, and to extend a range of services aimed at ensuring the safety and sound development of children who are at risk. 'Child in need of protection' is described as being a child who meets one of the specified conditions set out in the legislation as placing a child at risk. There is some variation in the descriptions of these conditions, but there is an overall correspondence of meaning and intent.

Definitions of prevention services or protection services could not be found in the legislation or standards of any province/territory. Neither DIAND nor provincial/territorial program standards provide a definition of maintenance. All provinces/territories do, however, provide extensive lists of items that are provided to, or in behalf of, children in care. The range of items varies considerably by province.

The data indicated that generally there were limited institutional facilities available to FNCFS agencies. This made out-of-province placements necessary.

First Nations have to comply with the same administrative burden created by change in provincial legislation but have not received any increased resources from DIAND to meet those responsibilities. This contradicts the principle of Directive 20-1, especially since DIAND is committed to the expansion of services on reserve to a level comparable to the services provided off reserve in similar circumstances.

Not all agreements provide for the development and implementation of First Nation standards for the delivery of services. Funding is not adequate to enable FNCFS agencies to meet expanded responsibilities under the 1996 Act. The agreements are substantially, but not entirely, in accord with the directive.

Directive 20-1 requires that FNCFS agencies, or their governing bodies, enter into agreements with provinces that provide for the delegation of statutory powers and duties to the agencies. This is also required for the exercise of those powers and duties in accordance with provincial service standards or for First Nation standards established and adopted with the concurrence of the province.

In nearly all cases it is noted there is no formal mechanism in place resulting in informal methods being deployed to address various dispute mechanisms.

Communications

The objective of the data collection was to determine the impact of Policy Directive 20-1 on communications and how agencies encourage the development of culturally appropriate services. The instrument probed the role of community members, parents and extended family, First Nations governments, Tribal Councils and of Elders in the development and delivery of FNCFS services.

On a national basis, the most common ways for community members to participate in the development of FNCFS programs and services were reported as: direct contact with the agency, public meetings, committee and volunteer work.

Promoting community involvement and an understanding of the programs was reported by 48 percent of the agencies as a challenge. Lack of resources and training was cited by 20 percent of all agencies.

Health services predominated with 60 percent of all the agencies indicating some form of communication. Police services followed with 32 percent of all agencies indicating regular contact. Schools, alcohol and drug agencies, and social agencies were each identified by 28 percent, 26 percent, and 24 percent of all FNCFS agencies respectively.

Communication and collaboration were generally not formalized among FNCFS agencies and did not show a consistent pattern across the country. Communications with other service providers tend to be direct and personal either face-to-face or by phone or fax.

With respect to relationships and communications with the federal government (DIAND) the most commonly addressed topics were either funding issues or program and management issues. This differs from the topics commonly communicated with the provincial government, which showed greater emphasis on policy and legislative issues. Sixty-six percent of all agencies identified funding as the topic most commonly addressed with the federal government.

Overall, Policy Directive 20-1 was reported as having a negative impact on communications. The policy is viewed as rigid and unilateral with little room for FNCFS input in the interpretation, or allocation of funds. FNCFS agencies noted that funding inevitably affected communications.

Funding

FNCFS Agencies are expected through their delegation of authority from the provinces, the expectations of their communities and by DIAND, to provide a comparable range of services on reserve with the funding they receive through Directive 20-1. The formula, however, provides the same level of funding to agencies regardless of how broad, intense or costly, the range of services is.

The reimbursement method of funding maintenance was intended by DIAND as a means of protecting agencies from the consequences of unexpected increases in maintenance costs. Maintenance is not defined in Directive 20-1. The evaluation conducted by DIAND in 1995 concluded that the definition of maintenance should be clarified. There have been no national changes made to the definition since that recommendation was made.

FNCFS agencies, regions and provinces, all reported that the phasing-in of operational funding did not reflect reality. In reality, agencies are expected to deliver the full range of services as soon as the agency begins operations. Consequently, the reduced funding in the early years of operations for agencies seriously limits their capacity to deliver the services expected of them. There was consensus among agencies, regions, and provinces that the concept of phasing-in should be considered for termination.

The major advantage of block funding for the FNCFS agencies is the increased ability to establish their own program and administrative priorities. There are several disadvantages of block funding from an FNCFS agency perspective. Agreements lack specific criteria by which the funding can be adjusted during the term of the agreement, and similarly they lack criteria that can be used to determine the starting budget base for a subsequent multi-year term. Currently there are several regional pilot projects under way. Further research should be undertaken to assess the merits of these pilot projects.

There is a continuing steep growth in annual spending which will see total maintenance expenditures doubling well before the end of the decade if no changes are made to the policy. There is no adjustment in the formula for cost sensitive items, increases in volume of children in care or new programs introduced by the provinces

The most contentious issue for FNCFS agencies is the definition and the method of funding maintenance costs. One solution would be to define maintenance and its corresponding funding method which could be directly linked to provincial legislation, policies and practice standards.

The policy when implemented deviates considerably from region to region. This deviation occurs to allow for circumstances that were established prior to the implementation of the directive, to align the directive to match provincial legislation, policy and practices, and to fill definitional vacuums. This phenomenon is not necessarily formally approved by DIAND. It is also not equitably or consistently applied. Furthermore, it is not necessarily consistent with the intent of the policy, nor does it always support sound social work practice.

There are no routine price adjustments incorporated in the operations formula. There appears to have been no price adjustments to the formula since the 1994/95 fiscal year.
FNCFS agencies indicated that they all thought that an adjustment for remoteness was necessary.

DIAND has been limited to 2% budgetary increases for the department while expenditures for FNCFS agencies have been rising annually at an average rate of 6.2%. The average per capita per child in care expenditure of the DIAND funded system is 22% lower than the average of the selected provinces.

There appears to be consistency across the country in the application of the formula for operations and the reporting requirements of the CFAs, Directive 20-1, and the First Nations National Reporting Guide. There is considerable variance in the definition of maintenance from region to region.

The formula does not provide a realistic amount of per organization funding for agencies serving small on-reserve populations. To agencies serving an on-reserve 0-18 population of less than 801, and particularly those that are serving even smaller populations, the formula did not provide realistic administration support.

Agencies have suggested that some form of tribunal would be helpful in resolving financial responsibility in some of the more complex case transfers.

The impact of the operations formula on agency ability to deliver a range of services is compounded by agency size and remoteness. The smaller the agency, the more difficult it is to have the staff size, or level of expertise to provide a full range of services

Directive 20-1 does not clearly address how FNCFS agencies are supposed to cope with poor social conditions in communities which most significantly contribute to the high demand for services.

Recommendations

The findings of the National Policy Review resulted in 17 final recommendations related to the four themes of the study: governance, legislation and standards, communications and funding. The review was based on the following principles:

1. ***The objective of the FNCFS Agencies is to protect and defend the well being of children, in particular, the protection of children from abuse and neglect.***

2. ***The involvement of community, parents, and extended family is a corner stone of effective and culturally sensitive, Child and Family Service delivery.***

3. ***The well being of children is the primary responsibility and obligation of the parents, the extended family and the community.***

4. ***First Nations have an interest in the well being of all of their band members, regardless of where they live.***

5. ***FNCFS programs should be based on First Nation values, customs, traditions, culture and governance.***

6. ***FNCFS programs should be responsive to community needs and realities.***

7. ***The Agencies through its financial and program administration shall be accountable to members of the First Nation(s), First Nation's leadership, and, when appropriate, the provincial and federal governments.***

8. ***FNCFS agencies should have access to effective First Nation models for design and delivery of Child and Family Services and mechanisms for sharing information on effective practices.***

9. ***This review process will in no way reduce current funding level or numbers of arrangements for First Nations Child and Family Services Agencies.***

The recommendations of this policy review are as follows:

1a. The Joint Steering Committee of the National Policy Review recognizes that Directive 20-1 is based on a philosophy of delegated authority. The new policy or Directive must be supportive of the goal of First Nations to assume full

jurisdiction over child welfare. The principles and goals of the new policy must enable self-governance and support First Nation leadership to that end consistent with the current policy of the Government of Canada as articulated in *Gathering Strength.*

1b. The new policy or directive must support the governance mechanisms of First Nations and local agencies. Primary accountability back to community and local leadership must be recognized and supported by the policy.

2. The Joint Steering Committee recognizes the need for a national process to support First Nation agencies and practitioners in delivery of services through various measures including best practices.

3. A national framework is required that will be sensitive to the variations that exist regionally in relation to legislation and standards. Tripartite tables consisting of representatives from First Nations, DIAND and the provinces/territories are required to identify issues and solutions that fit the needs of each province/territory. Some of the issues that will need to be addressed by these regional tables consist of (but are not limited to) the following:

   a) definitions of maintenance
   b) identification of essential statutory services and mechanisms for funding services
   c) definitions of target populations (as well as, the roles of federal/provincial/territorial governments related to provision of services)
   d) adjustment factors for new provincial programs and services – processes for FNCFS agencies to adjust and accommodate the impacts of changes in programs and services
   e) definition of special needs child
   f) dispute mechanisms to address non-billable children in care
   g) definition of range of services
   h) definition of financial audit and compliance comparability/reciprocity between provincial and First Nation accreditation and qualifications requirements of staff (e.g. licensing criteria)

4. DIAND, Health Canada, the provinces/territories and First Nation agencies must give priority to clarifying jurisdiction and resourcing issues related to responsibility for programming and funding for children with complex needs such as handicapped children, children with emotional and/or medical needs. Services provided to these children must incorporate the importance of cultural heritage and identity.

4. A national framework is needed that includes fundamental principles of supporting

FNCFS agencies that is sensitive to provincial/territorial variances and has mechanisms to ensure communication, accountability and dispute resolution mechanisms. This will include evaluation of the roles and capacity of all parties.

5. The funding formula inherent in Directive 20-1 is not flexible and is outdated. A methodology for funding operations must be investigated. Any new methodology should consider factors such as work load/case load analysis, national demographics and the impact on large and small agencies, and economy of scale. Some of the issues a new formula must address are:

   a) Gaps in the operations formula. A clear definition is required.
   b) Adjustments for remoteness
   c) Establishment of national standards
   d) Establishment of an average cost per caseload
   e) Establishment of caseload/workload measurement models
   f) Ways of funding a full service model of FNCFS
   g) The issue of liability
   h) Exploration of start up developmental costs
   i) Develop and maintain information systems and technological capacity.

6. The Joint Steering committee found that the funding formula does not provide adequate resources to allow FNCFS agencies to do legislated/targeted prevention, alternative programs and least disruptive/intrusive measures for children at risk. It is recommended that DINAD seek funding to support such programming as part of agency funding.

7. DIAND must pursue the necessary authorities to enable FNCFS agencies to enter into multi-year agreements or block funding as an option to contribution funding to further enhance the ability of First Nation's to deliver programs that are geared to maintaining children within their families, communities and reuniting those children-in-care with their families. This requires the development of a methodology for establishing funding levels for block funding arrangements that encompass:

   a) a methodology and authority for second generation agreements
   b) multi-year authorities for these programs with a criteria for measurement of success (DIAND) may need to go to Cabinet to get authority for this.

8. An "exceptional circumstances" funding methodology is required to respond to First Nation communities in crisis where large numbers of children are at risk. Best practices must be the basis of the development of this methodology.

9. A management information system must be developed and funded for First Nations in order to ensure the establishment of consistent, reliable data collection, analysis and reporting procedures amongst all parties (First Nation's, regions, provinces/territories

and headquarters).

10. Funding is required to assist First Nations Child and Family Service Agencies in the development of their computerization ability in terms of capacity, hardware and software.

11. Funding is required for ongoing evaluation based on a national framework with a national guideline to be developed.

13. DIAND and First Nations need to identify capital requirements for FNCFS agencies with a goal to develop a creative approach to finance First Nation child and family facilities that will enhance holistic service delivery at the community level.

14. Funding is required for ongoing standards development that will allow FNCFS agencies to address change over time.

15. Priority consideration should be given to reinstating annual cost of living adjustments as soon as possible. Consideration should also be given to address the fact that there has not been an increase in cost of living since 1995-96.

16. Phased in funding is a problem in the formula and should be based on the level of delegation from the province.

17. An immediate tripartite review (Canada, Ontario and Ontario First Nations) be undertaken in Ontario due to the implications of the 1965 Indian Welfare agreement, current changes to the funding formula and the Ontario Child Welfare Reform.

Conclusion

A new policy to replace current Directive 20-1 (Chapter 5) must be developed in a joint process that includes all stakeholders and ensures funding support for that process to the following action plan.

ACTION PLAN

Step One: Consultation and Ratification Process

- Delivery of report to AFN National Chief and DIAND Minister (June 30, 2000)
- Distribution of Report to FNCFS Agencies, First Nations, Health Canada, HRDC, DIAND regions and all provinces and territories (July 2000-August 2000)
- Presentations to: AFN National Chief, DIAND Minister, AFN Confederacy Meeting, Provincial Directors of Child Welfare and National First Nations ICFS Conference in Saskatchewan (August 2000-October 2000)

Step Two: Implementation Phase

a. Maintaining the Partnership

- Establish interim national joint committee to oversee ratification plan and to develop work plan, including identification of resources for development of new funding policy (naming delegates: June 30, 2000)
- Develop plan of action for recommendations assigned a short term implementation date by interim national joint committee (July 2000)
- Complete detailed work plan, to include terms of reference for national table and provincial tables, deliverables, time frames and required resources (September 2000)

b. Research and Data Collection

- Identify areas for additional research arising from National Policy Review
- Review and develop work plan to conduct further research
- Incorporate into detailed work plan (all by September 2000, prior to AFN Confederacy Meeting)

CHAPTER ONE
FIRST NATIONS CHILD AND FAMILY SERVICES NATIONAL POLICY REVIEW

BACKGROUND

Children hold a special place in Aboriginal and First Nation cultures. They bring a purity of vision to the world that can teach their Elders. They carry within them the gifts that manifest themselves as they become teachers, mothers, hunters, councillors, artisans and visionaries. They renew the strength of the family, clan and village and make the Elders young again with their joyful presence. (*RCAP Vol. 3 Chp. 2*)

Since the early 1980's the Department of Indian Affairs and Northern Development, First Nations and provincial governments have negotiated various types of agreements to provide First Nation managed child and family services to First Nation communities across Canada. The demand for these services has grown significantly over the decades and costs have nearly tripled since then. In 1991 a Directive was issued by DIAND when Cabinet approved a new policy and management framework for an on-reserve First Nation Child and Family Service Program. Directive 20-1 was the DIAND document that implemented this Cabinet decision. In December 1992 the child population was 135,635. On March 1994 the number of children in-care was 4,763 for which the federal government had funding responsibility.

Directive 20-1 states the department's policy regarding the administration of the First Nations Child and Family Services Program. The authority for the directive was a follow-up to the Cabinet Decision of July 27, 1989 and was issued under the authority of the Assistant Deputy Minister of Corporate Services. The directive applies to all employees both at headquarters and in the regions, in the carrying out of the department's functions in regard to the funding and support of children and family services on reserves.

The stated principles of Directive 20-1 are as follows:

1. *The department is committed to the expansion of First Nations Child and Family Services on reserve to a level comparable to the services provided off reserve in similar circumstances. This commitment is independent of and without prejudice to any related right which may or many not exist under treaties.*

2. *The department will support the creation of Indian designed, controlled and managed services.*

3. *The department will support the development of Indian standards for those services, and will work with Indian organizations to encourage their adoption by provinces/territory.*

4. *The expansion of First Nations Child and Family Services (FNCFS) will be gradual as funds become available and First Nations are prepared to negotiate the establishment of new services or the take over of existing services.*

5. *Provincial child and family services legislation is applicable on reserves and will form the basis for this expansion. It is the intention of the department to include the provinces in the process and as party to agreements.*

From a First Nation and FNCFS Agencies' perspective Directive 20-1 is restrictive and limits First Nation aspirations, positions and intents with respect to the development and delivery of services; specifically those that are First Nations defined and operated community base Child and Family Services. As a result of these concerns a Joint Review Process was designed to develop recommendations for the Minister of DIAND on changes needed to the current policy governing the FNCFS program. A proposed Action Plan for the implementation of the recommendations were developed and form a major part of this report.

PURPOSE

The purpose of this document is to provide a summary of the research that was conducted between March 1, 1999 to March 31, 2000 under the joint management of the Department of Indian Affairs and Northern Development (DIAND) and the Assembly of First Nations (AFN). In partnership the AFN (along with First Nations and First Nations Child Family Services Agencies) agreed to jointly carry out with DIAND a review of its' national policies with respect to First Nation Child and Family Services (FNCFS). This review was undertaken consistent with Canada's commitment to work with First Nations in a spirit of partnership under the auspices of the *Agenda for Action for First Nations*. The intent of review was to identify possible improvements to current policy regarding the development and operation of FNCFS agencies that provide necessary, culturally sensitive and statutory child and family services.

OBJECTIVES OF THE STUDY

The principal objectives of this study were as follows:

1) To identify and record areas of concern raised by First Nations and DIAND across Canada including, but not limited to, those areas of concern outlined in the information gathering plan, with respect to required changes to DIAND's national policy.

2) To prepare a Report that presents an analysis of the issues, outlines the responses of the parties to the review of issues and makes agreed upon recommendations for changes to DIAND's national policies. Where recommendations for changes cannot be arrived at, the Report will outline options that are reflective of both First Nations and DIAND's perspectives.

3) Recommend an Action Plan, which identifies concerns, a plan of action to address the concerns, as well as, time frames for action.

Globally the review undertook the analysis of four key areas: legislation and standards, agency governance, funding and communication issues. These themes guided the research which is summarized herein. The work conducted on these research themes was contracted out to technical consultants who conducted the data gathering and analysis. They were Keystone Consulting Services (legislation and standards), Blue Hills (MTC) Inc. (funding), Poirier Communications (communications) and Helen Semaganis (agency governance). A fifth consultant, Katenies Research and Management Services (Dr. Rose-Alma J. McDonald), was commissioned as a synthesis writer for the final report, as well as, to facilitate the final analysis of the technical reports with the National Policy Review Team to formulate the final recommendations for the review.

TIMEFRAME FOR THE STUDY

The First Nations Child and Family Services National Policy Review process began on March 1, 1999 and an interim report was provided to the Policy Review Joint Steering Committee on September 15, 1999. The purpose of this report was to indicate the status of the review and projected completion time. The completion date for the National Policy Review was originally March 31, 2000 and later extended to June 30, 2000.

PROJECT DESCRIPTION

To address the four key issue areas that were identified various data collection methodologies were utilized. The first was surveys and interviews of individuals and organizations at the DIAND regional, provincial, provincial Child and Family Service agency, FNCFS agency and First Nation level. The second data collection methodology was a review of documents and files which included, but were not limited to, agreements for child and family service delivery between First Nations, provinces and/or DIAND, First Nation standards developed in the regions, and annual reports of the FNCFS. Finally, case studies and best practices research was conducted to identify examples of what was successfully working in the program, however, needs to be conducted in this area.

The four themes are described below. A comparative analysis was conducted on various elements on each of these themes.

Agency Governance and First Nations Child and Family Services

Practices vary considerably from agency to agency and from region to region in the manner by which agencies organize themselves and conduct their business.

Under current policy, it is required that agencies in some regions be incorporated under provincial legislation and that they comply with provincial legislation and standards. Agencies are also required to provide information to DIAND and the provinces in areas determined by agreement and policy.

Within these restrictions, however, there is considerable room for differences in the way agencies operate.

Legislation and Standards and First Nations Child and Family Services

The current policy Directive 20-1 requires First Nations child and family services agencies to have delegated authority from provincial/territorial governments in order to receive funding from either DIAND or provincial authorities. The delegated authority is provided by provincial/territorial governments by virtue of provisions within the appropriate provincial/territorial legislation or by agreement.

Along with the legislation are a set of standards which are developed by provincial/territorial governments to direct the manner in which the legislation is to be administered. DIAND's Directive 20-1 encourages the development of FN standards to be incorporated within provincial standards.

Communications Issues and First Nations Child and Family Services

The policy Directive 20-1 encourages the development of culturally appropriate and culturally sensitive services to FN persons. Further, the Guiding Principles of the Policy Review emphasize the need to involve community, parents, extended family, First Nation governments and Elders in the development and provision of service.

There is also a recognition in many quarters of the need to promote greater integration of services in the community with child and family services and to develop a more holistic model of service delivery where possible and appropriate at the community level.

Funding Issues and First Nations Child and Family Services

Within Directive 20-1, a funding formula was developed in an effort to provide Equity, predictability and flexibility in the funding of First Nations Child and Family Services agencies.

Prior to the development of the formula, funding for agencies was inconsistent and often inequitable.

The formula has been in place since its implementation in fiscal year 1991/92. Since its implementation, the field of First Nations child and family services has changed dramatically with the creation of many new agencies in various provinces. With these changes, have come questions as to the continuing suitability of this funding methodology in light of current needs and expectations.

The funding methodology used is a key factor in **an attempt to ensure** that there are adequate resources for agencies to fulfill their legislative mandate and that the funding is sufficiently flexible to allow agencies to respond to changing conditions and identified community needs.

Four technical reports were produced and summarize in detail the comparative data under these themes. This report is a summary of these data.

HISTORY OF DIRECTIVE 20-1

There is no federal child welfare legislation. The federal government, therefore, entered into agreements with the provinces to deliver child welfare services on reserve. DIAND reimbursed the provinces for services based on billing agreements between the two parties for the full cost of services. Minimal services, however, were provided by the provinces to First Nation children and families.

In the 1970's and early 1980's First Nation concerns over the lack of appropriate services provided by the provinces and the alarming numbers of First Nations children being removed from their communities started a move toward First Nation take over of these services. "Ad hoc" arrangements resulted with the First Nations who wanted to take over services. Authorities, however, were not clear and funding was inconsistent.

In 1986 DIAND put a moratorium on ad hoc arrangements. No new agencies were developed in First Nation communities during this moratorium period. It was agreed however, that the ad hoc arrangements that were already in place would continue.

In 1989 DIAND started the development of the Directive 20-1 which was put into place in an attempt to provide equity, comparability and flexibility in funding agencies. Two components to the financing of FNCFS resulted. The first was operations costs, which were funded by a formula specified in the 1991 Directive. The second was maintenance costs, which were reimbursed according to actual in-care expenditures. The principles underlying the regime were:

> ***Equity amongst the FNCFS organizations, which will be funded on the same basis across Canada;***

***Comparability** between the child and family services provided to First Nation residents on-reserve and the services provided to non-First Nation individuals in comparable communities, so there is access to the same level of services;*

***Flexibility** so that FNCFS organizations can plan their services and set their own priorities based on community needs.*

A presentation was made to agencies and provincial government following the Cabinet decision to implement the policy.

In 1991 Directive 20-1 was implemented and new agencies were funded as per the formula. Under the Directive agencies had to be provincially mandated, were federally funded and services had to be First Nation delivered. The impact of the directive on pre-directive agencies were two fold. First, agencies funded at a level below the formula received increased funding upon implementation of the policy. Second, agencies funded at a level above the formula did not receive additional funding, however, their funding levels remained the same until they fell in line with the formula over time.

By 1998 DIAND records show that 91 full service agencies were in operation. Fourteen new agencies were in the developmental stages and over 70% of the on-reserve population was serviced. The total First Nation agency expenditures for 1997/98 were $195,338,000.00.

Table 1.1
Number of Agencies, First Nations Serviced and Pilot Projects by Province as of 1998 (based on DIAND statistics)

Province	Number of Agencies	Number of First Nations Served	Number of Pilot Projects
British Columbia	16	97	2
Alberta	15	34	3
Saskatchewan	15	53	2
Manitoba	9	61	3
Ontario	5	58	1
Quebec	18	27	1
New Brunswick	11	15	1
Nova Scotia	1	13	0

Prince Edward Island	0	0	0
Newfoundland	1	1	0
Total	91	359	13

GUIDING PRINCIPLES

There has been incremental increases up until 1995-96 resulting in a total increase of 11% over that period of time. Budgets are only adjusted based on population counts as per DIAND records. Directive 20-1 does not allow for any on-going increments to compensate for cost of living increases.

Since 1991 DIAND has conducted two internal reviews of the Directive. These reviews consisted of a comparative analysis of provincially funded child welfare services to federally funded child welfare agencies and concluded that First Nations agencies received significantly more funding than their provincial counterparts. First Nations agencies across the country argued that these reviews did not adequately reflect the real circumstances of FNCFS agencies.

DIAND subsequently agreed to conduct this National Policy Review in 1998. It took approximately one year from that date to negotiate the Terms of Reference for the Review. Discussions resulted in a process which would include equal representation from both DIAND, First Nations Child Welfare Agencies and the Assembly of First Nations, who would coordinate the process. It was agreed to insure maximum input into the process that each region would appoint a First Nations and DIAND representative to the various committees.

Nine guiding principles for the provision of First Nations Child and Family services in Canada also resulted from the year of deliberations and are a major piece of the Terms of Reference. They constitute the philosophy behind the program, this Review and the long-term goal for services after this Review is completed. They are as follows:

1. ***The objective of the FNCFS Agencies is to protect and defend the well being of children, in particular, the protection of children from abuse and neglect.***

2. ***The involvement of community, parents, and extended family is a corner stone of effective and culturally sensitive, Child and Family Service delivery.***

3. ***The well being of children is the primary responsibility and obligation of the parents, the extended family and the community.***

4. ***First Nations have an interest in the well being of all of their band members, regardless of where they live.***

5. ***FNCFS programs should be based on First Nation values, customs, traditions, culture and governance.***

6. ***FNCFS programs should be responsive to community needs and realities.***

7. ***The Agencies through its financial and program administration shall be accountable to members of the First Nation(s), First Nation's leadership, and, when appropriate, the provincial and federal governments.***

8. ***FNCFS agencies should have access to effective First Nation models for design and delivery of Child and Family Services and mechanisms for sharing information on effective practices.***

9. ***This review process will in no way reduce current funding level or numbers of arrangements for First Nations Child and Family Services Agencies.***

THE RESEARCH PROCESS

The National Policy Review was undertaken using several mechanisms to ensure maximum participation from all the agreed upon parties. These mechanisms included various levels of consultation consisting of groups of individuals from the First Nation and government side who constituted several years of expertise administratively and at the community level. A research plan for the study was developed based on seventeen issues that were identified by FNCFS agencies, the guiding principles of the National Policy Review and the priorities as identified by the Policy Review Group.

The draft research plan was sent out to all agencies for review and feedback and was reviewed by the Policy Review Group and the Joint Steering Committee. The draft plan was revised to accommodate suggested additions from both DIAND and First Nations representatives.

The research plan resulted in four main research components and consultants were recruited to conduct the survey, provide an analysis of information collected and provide observations from the findings. The intent of the research projects was to provide the Joint Steering Committee with information to guide their discussions on potential recommendations for changes to the Directive.

The oversight groups consisted of the following:

An oversight **Joint Steering Committee (JSC)** was developed composed of (2) Co-Chairs, eight (8) representatives of DIAND and eight (8) Agency Directors. Their role was to direct the over all work of the project, provide final approval of work plans and approval of the final report to the Minister/AFN National Chief. Their role was also to ensure that the completion of the Policy Review was timely.

The **Project Management Team (PMT)** was comprised of representatives of DIAND, the AFN and FNCFS Agencies. The PMT was Co-Chaired by the DIAND Director General of Learning, Employment and Economic Participation and the AFN Director of Social Development and consisted of three permanent members, 1 DIAND coordinator, 1 Agency Director and 1 AFN coordinator. The PMT also included support as needed from the DIAND regions, Finance Branch and FNCFS agencies. The Project Management Team was responsible for the design of the Policy Review objectives, oversight of the research activities and design and implementation of the consultation processes with First Nations organizations, DIAND regions and headquarters groups and provincial/territorial officials. The Team also oversaw the analysis of information gathered and preparation of reports to the Joint Steering Committee.

The **Policy Review Group (PRG)** was Co-Chaired by the DIAND and AFN project coordinators. The Policy Review Group consisted of 20 permanent members of whom 10 were FNCFS agency directors and 10 were DIAND representatives. The Policy Review Group provided advice on the development of the research plan, literature review, initial survey questionnaires, analysis of findings and initial recommendations and action plan.

The **Consultant(s)** assisted the **Project Management Team**, the **Joint Steering Committee** and **Policy Review Group** to carry out the research and/or consultation as required as part of the National Policy Review process. The process for identifying and engaging consultants was determined by the JSC upon recommendation(s) from the Project Management Team.

A **National Political Forum** was identified by the AFN Executive Committee, for the purpose of sharing the National Policy Review Final Report for ratification by the Chiefs in Assembly. This forum was designed to ensure the sharing of information nationally with First Nations who may wish to participate in or contribute to the study. The forum also ensured that provincial/territorial organizations contributed to the political analysis and were kept abreast of the issues related to the FNCFS and broader reform issues. Finally, the forum facilitated in a formal way the information sharing opportunities.

Specific issues to be included in the National Policy Review were as follows:

1. **Sufficiency of Current DIAND Funding levels** – Whether or not DIAND's funding of FNCFS agencies is sufficient to enable the Agencies to deliver Child and Family Services on-reserve at a level comparable to Child and Family Services provided to nearby off-reserve communities of similar size and circumstances.

2. **Definition of Maintenance** – A review regarding the definition of Maintenance.

3. **Definition of Operations** – A review regarding the definition of Operations

4. **A review of the developmental stages:** of First Nations Child and Family Services Agencies.
5. **Phase in of Operations Funding for New Agencies**- does the current policy constitute the most effective and efficient method of funding new FNCFS agencies?

6. **Review Canada's Information Exchange Requirements** –what is Canada's commitment for sharing the results of its pilots, evaluations, and the wide range of information available to DIAND, which could be of assistance to FNCFS Agencies for planning, start-up, and operations.

7. **Review Canada's Reporting Requirements** - in the context of DIAND's commitment to ensure that reporting requirements are as minimal as possible in the context of accountability for funding, reporting of results and compliance.

8. **Different types of Funding Arrangements** – what are DIAND's funding arrangements including potential new arrangements in the FNCFS area to determine the range of, and the suitability of DIAND's funding arrangements for FNCFS Agencies.

9. **Dispute Resolution Mechanisms**- Are existing dispute resolution mechanisms effective, or do they require change?

10. **Remedial Action** – Are there alternate remedial action procedures that can be taken when Agencies experience operating difficulties?

11. **Termination** – what is the policy regarding termination given Canada's commitment to work with First Nations in a spirit of partnership

12. **Funding for Unforeseen Events** – what is Canada's policy regarding FNCFS funding for unforeseen events?

13. **Eligibility** – what is Canada's policy regarding the definition of "Indian Resident on Reserve" in the context of eligibility for FNCFS services.

14. **Case Management** – what are DIAND practices in reference to current policy (i.e. no DIAND involvement in case management)?

15. **Non-Insured Health Benefits** – what is the policy regarding how, and to what extent these costs will be covered by Canada?

16. **Provincial/First Nation/Federal Agreements** – what is DIAND's policy concerning agreements that have been entered into between Canadian governments and First Nations.

17.**Children with Complex Medical Needs** -- to what extent are these costs covered by the First Nation Child and Family Services program.

THE DATA COLLECTION PROCESS

The research projects started in December, 1999 and were completed in May 2000. Several revisions to the reports were required to reflect as much accurate data as possible. The observations from the reports were reviewed by the Joint Steering Committee, analyzed and discussed. From this data the Joint Steering Committee was responsible for determining the actions required based on each study observation followed by potential recommendations for changes. Each of the research projects had varying degrees of participation and response to surveys from FNCFS agencies, provinces and DIAND regions. This information provided enough to facilitate discussions related to recommendation development.

The Project Management Team had a total of 10 meeting days in between Policy Review Group and Joint Steering Committee meetings. These meetings consisted of conference calls and various sessions in Ottawa.

The Policy Review Group had a total of 7 meetings. They identified priorities, reviewed the draft research plan, reviewed the Terms of Reference for contractors, made recommendations to the Joint Steering Committee on the research plan and research reports. The Joint Steering Committee met for a total of 14 days on 7 different occasions in various sites across the country.

To ensure First Nation Agency participation throughout the process of the review, letters were sent to all agencies early in the project with copies of the draft research plan and terms of reference for contractors to solicit their feedback. For those agencies who responded their comments/recommendations were incorporated into the final research plan. A second letter was sent to all agencies with copies of the amended research plan and the contractors who were recruited for the four research projects were introduced. Agencies were advised in this letter that the contractors would be contacting them for information as part of their data gathering responsibility.

All four contractors contacted agencies as required in their respective contracts. The Funding and Communications project consultants sent survey instruments to all FNCFS agencies across the country. The Legislation project consultant did a review of the legislation and standards from each province and contacted various agencies that had developed First Nation standards. The Governance project consultant collected data from a small sample of agencies due to very tight time restrictions. Survey instruments were mailed or faxed out to agencies by the consultant which was then followed up by telephone interviews. Site visits to agency directors also took place as part of some of the project activities and other agencies participated by submitting completed surveys to the contractors via such mechanisms as e-mail and/or fax.

Although the completion date for the National Policy Review was originally set for March 31, 2000 DIAND agreed to extend the review to June 30, 2000. This extension however did not reflect an expansion to the budget.

CHAPTER TWO
FIRST NATIONS CHILD AND FAMILY SERVICES
THE CONTEXT

Overview

We believe that the Creator has entrusted us with the sacred responsibility to raise our families. The future of our communities lies with our children who need to be nurtured within their families and communities (RCAP vol. 3 Chapter 2).

Traditionally the family in First Nation societies stood between the individual and the larger society. The family helped individuals understand and respond to the expectations of the society around them. It also helped engage individuals in constructive ways and discipline them when they ventured off course.

In urban society social institutions have been created that play the same mediating roles that families traditionally fulfilled in Aboriginal society. In non-First Nation urban settings neighborhoods, schools, unions, churches and voluntary associations fulfill the role of socialization and mediation that up to recently was traditionally done within the setting of our own communities.

According to the Royal Commission on Aboriginal Peoples, *First Nation peoples have undergone all the stresses that any hunter-gatherer or agricultural institution undergoes as it is plunged into an urbanized, specialized, industrial or post industrial world. There are huge demands on one's adaptability. In addition to this phenomenon First Nations have been subjected to disruption and loss through colonization and instigation from the dominant powers of Canada*

Several experiences of massive loss have disrupted First Nation families and resulted in identity problems and difficulties in functioning (RCAP). First was the historical experience of residential schooling, which resulted in children being removed from their families at very early ages for months and years at a time. Loss of language and rejection of traditional ways resulted and many children were lost through exposure to disease or never even lived to benefit from the education they received.

A second experience of loss was to children whose parents relinquished their responsibility to interpret the world for them. This was where schools taught First Nation children Euro-Canadian philosophy and First Nation competence was devalued. In this situation the world was interpreted by two institutions: school and family. This resulted in confusion as contradictory messages were received. Removal from family and community during the residential school period resulted in children receiving destructive experiences and devaluation of culture, which

was continued and passed on by some survivors. These experiences included emotional, physical and sexual abuses. Coping mechanisms such as addictions were also passed on to the survivors of the residential school era. These effects were experienced by whole communities, not in one region, but to a large degree nationally.

The third situation where children suffered identity confusion was when their parents were insecure in who they were, what their responsibilities were and how they should fulfil them. Lack of confidence and life skills stemming from the boarding school experience had devastating effects. As well repeated experiences of failure in colonial school environments where demands were foreign and unfamiliar effected First Nation children and parents' identities. This brought thousands of First Nation children into foster care and adoption in non-native settings. This impact has spanned generations.

The final situation putting stress on families and children was migration outside the close knit communities of reserves where social supports from networks of siblings and relatives had formerly provided a social safety net. Considerable personal alienation and family stress was experienced by those who left their communities. Many individuals encountered expectations similar to what immigrants do when they come from other countries to Canada and could not cope. The expectation of adapting to a predominately secular, francophone or anglophone, European based institutional culture resulted for many First Nation people in a major disruption of the traditional concept of family (RCAP 1996).

First Nation families have been in the centre of a historical struggle between colonial government on one hand, who set out to eradicate their culture, language and world view, and that of the traditional family, who believed in maintaining a balance in the world for the children and those yet unborn. This struggle has caused dysfunction, high suicide rates, and violence, which have had vast inter-generational impacts.

Expenditures to improve coverage and the quality of native specific child welfare services have been increased over the years to First Nation individuals ordinarily resident on-reserve and through child-in-care costs charged back to DIAND. In 1992-93, according to RCAP, the department allocated $159.8 million to child and family services representing 78 per cent of the welfare services budget; these were funds that were allocated to both provinces and First Nations. Although this was a significant increase from expenditures a decade before, it was evident the needs of First Nation families far outweighed the modest successes afforded by the social reform of the time. This is particularly true since the percentage of children currently in-care remains six times that of children from the general population.

In the case of First Nations Child and family workers, many of them have also been affected by the conditions described by the Royal Commission on Aboriginal Peoples. Many live in First Nation communities and have been touched by poor parenting, various kinds of violence, addictions, the justice system, suicide or suicide attempts, if not personally, then by someone in their extended family.

Community support is required not only in the form of services such as alcohol and drug treatment centres, homemaker services, crisis intervention teams but in the form of healing. The following is some of the statistical realities facing First Nation Child and Family Service agencies across Canada:

The Situation

The Aboriginal population (all ages) for Canada is 799,010. Of that figure 529, 035 are First Nation citizens. The First Nation children population (aged 0-14) equals 80,420 or 35% compared to the general Canadian population (aged 0-14) of 5,899,200 or 20.7%.

Children In-care

In 1996, more than 10% of Aboriginal children (age 0-14) were not living with their parents. That is 7 times more compared to non-Aboriginal children (apprehension by child and family services represents one of the most common reasons). In 1996, 3 of every 10 First Nation children resided in lone parent families, a rate roughly twice that of the non-First Nation population. Four percent of First Nation children were in the care of Child and Family Service agencies in 1996/97.

Poverty/Income

Fifty percent of First Nation children living on or off reserve are living in poverty. Earned income per employed Aboriginal person in 1991 was $14,561 compared to $24,001 for the general Canadian population.

Health

The most prevalent health problems among First Nation children include ear infections and respiratory conditions, broken bones and emotional and behavioral problems, child abuse, neglect and addictions. First Nation children have a higher risk of contracting diseases such as tuberculosis, Hepatitis A and B, meningitis and gastroentieritis than non-First Nation children.

First Nation infants are at an increased risk of being stricken with Sudden Infant Death Syndrome. Infant mortality rates for First Nation babies is roughly twice the Canadian average.

Compared to the total number of children in Canada, First Nation children are four times more likely to die from injury (63 versus 17 per 100,000). For pre-school aged children, the rate is five times as great (83 versus 15 per 100,000).

More than half (52%) of First Nation households live in homes that fall below one or more of the basic Canadian housing standards as compared to 32% for non-First Nation households

More than 20% of First Nations have problems with their water supply which is a threat health and safety

Youth Population

The Aboriginal population (youth, aged 15-24) totals 143,790 or 18% compared to the general Canadian youth population (aged 15-24) which is 3,849,025 or 13.5%. This indicates that trends for youth continue to be high. It is further noted that the First Nation population continues to display a "youthful" age structure. In 1996 the average age of the First Nation population was about 25.5 years: approximately 10 years younger than the non-First Nation population.

Income Adequacy

First Nation youth incomes averaged $ 6,930 in 1995, about 82% that of non-Aboriginal youth at $ 8,493. More than 45% of all First Nation youth live in a low income households, a rate roughly 1.9 times that of non-First Nation youth.

Earnings from employment per person aged 15+ equaled $9,140.00 for First Nation persons compared to the Canadian population at $17,020.00

Living Arrangements

The 1996 census found that approximately 57% of First Nation youth resided in two parent households, 25% lived in lone parent households and 18% lived in non-family settings. Compared to non-Aboriginal counterparts, First Nation youth are 1.6 times more likely to report living in a lone parent family and about 1.4 times more likely to report living in a non-family setting.

Mobility

High rates of mobility characterize the First Nation youth population. Between 1995 and 1996, more than one-third of First Nation youth reported a change in residence, a rate roughly 1.4 times higher than that of non-Aboriginal youth.

Education

More than two-thirds (67.4%) of First Nation youth reported an education level below high school, about 11% reported completion of high school only, 13% had undertaken some post-secondary schooling, 8% earned post-secondary certificates and 1% had earned university degrees.
The rate of school attendance among First Nation youth was about 69%. However, 65% of First Nation youth never complete high school. By contrast only 31% of non-Aboriginal children fail to obtain a secondary school diploma.

Eleven percent of First Nation youth have attended university versus 23.3% of the general youth population. Rates of First Nation youth aged 20 to 24 attending university was 12% compared to 35% of general population. Completion rates for First Nation youth were approximately 31% compared to 58% of general population.

Labour Market Behaviour and Outcomes

1996 census estimates the rates of labour force participation among First Nation youth at 51% for females compared to 77% for the general population and 67% for males versus 86% for the general population.

In addition to being less active in the labour force, Aboriginal youth were much more likely than non-Aboriginal youth to report unemployment. At the national level in 1996, the rate of unemployment among female youth was about 31% (about 2.1 times higher than non-Aboriginal female youth) and approximately 38% for males (about 2.3 times greater than non-Aboriginal male youth).

Average employment income of First Nation youth working full time in 1995 was $18,693.00 which is about $777.00 lower than the average among similar non-First Nation workers. Youth on reserve reported average FYFT (full year/full time) earnings of $4,487.00 lower than non-First Nation youth.

Health and Safety

Mortality: Among Aboriginal youth there are 250 deaths per 100,000 persons, a rate approximately 3.6 times higher than deaths reported for all Canadian youth.

Suicide: Suicide deaths accounted for nearly one-third of all deaths among registered First Nation youth. For males, the suicide rate was 125.7 per 100,000 (5.2 times higher then all male youth). For females, 24.1 per 100,000 (7.8 higher then all female youth). Suicide rates of registered Aboriginal youth (ages 15 to 24) are eight times higher than the national rates for females, and five times higher for males.

Disability: Approximately 6.5% of First Nation youth reported disabilities, which limited their daily functioning. The incidence of disability among Aboriginal youth is 1.7 times higher than the general population. Aboriginal youth are at elevated risk of suffering from a physical, developmental or learning disability. According to the Aboriginal Peoples Survey, nearly a third of all First Nations peoples aged 15 and older had a disability (31%) which is more than double the national rate during the same time period.

Pregnancy and STDs: Aboriginal youth are at elevated risk of becoming pregnant at an early age and are at greater risk of contracting sexually transmitted disease.

Justice

Rates of incarceration (age group 15 to 19) are nine times higher among the First Nation population at approximately 45.7 per 10,000 compared to non-First Nation youth at 4.9 per 10,000. Rates of incarceration for ages 20 to 24 are approximately seven times that of the non-First Nation population at 210 per 10,000 versus 28.8 per 10,000.

Rates of incarceration for violent crimes are nearly nine times higher for First Nation youth at 103 per 10,000 compared rates of 11.8 per 10,000 for the general population.

Vicarious liability

Given the current situation in First Nations communities it may be assumed, that as RCAP has described, much of the dysfunction that First Nation societies experience is the result of the boarding school experience. Given this fact it must also be added that impacts from the boarding school era continue to resonate throughout the country in a wide variety of forms. For example, in a recent study of institutional sexual abuse claims *vicarious liability* and risk management has prevailed. In examining the issue, the obligations of Canada to the Aboriginal community as articulated by the Supreme Court in *R v. Sparrow* clearly states that:

"the government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples, the relationship between the government and Aboriginals (sic) is trust like, rather than adversarial and contemporary recognition and affirmation of Aboriginal rights must be defined in light of this historic relationship."

Under the *Indian Act* and other various regulations, Canada placed itself in the position of guardian over Native children thereby displacing the traditional role that families and communities played in that regard. In doing so Canada assumed parent-like obligations through the placement of Native children in residential schools. Given Canada's role as guardian, combined with its fiduciary obligations for these children, the statutory duty it had to protect these children while at residential schools could not be delegated.

As the "employer" Canada introduced risk into the community. Also, Canada's statutory and non-delegated duties to Native children were such that the risk it created could not be shifted onto the churches and others who operated residential schools on its behalf. In the court ruling by McLachlin, J. *in Jacobi* the statement was clear "*fair compensation involves internalizing the cost of a risk on the appropriate party, judged not by the ability to pay but the introduction of the risk that led to the tort.*"

Vicarious liability is sometimes imposed on employers. This term applies when one part (such as an employer or government) is held responsible for the acts of another part (such as an employee or contractor). *Vicarious liability* applies whether or not the employer itself has been negligent, for example in the hiring of the employee, the systems established or, in the case of residential school, the failure to properly monitor and supervise.

Bazley and *Jacobi* are two Supreme Court Cases on *vicarious liability.* In the *Bazley* case the facts were that two brothers were apprehended under the Protection of Children Act and placed under the authority of the Provincial Superintendent of Child Welfare. The children were placed under the guardianship of the Children's Foundation which operated residential care facilities. At one of these facilities a pedophile abused the children. Based on the facts of the case it was concluded that the Children's foundation was liable. It practiced "*total intervention*" in all aspects of the lives of the children it cared for. It also "*authorized its employees to act as parent figures for the children.*" The connection between the risk created by the Foundation (entrusting children to employees with parent-like authority and contact) and the harm that occurred (abuse by an employee while on the job) was sufficiently strong to create *vicarious liability.* Similarly in the *Jacobi* case it was found that *vicarious liability* was appropriate where government confers 24-hour-a-day parental authority on a third party.

In summary, vicarious liability for governments in both cases squarely poses the question of liability of employers. Upon the review of the case law the courts appear to be inclined to hold the federal government vicariously liable for placing children in the 24-hour-a day of church authorities (such as was the case in boarding schools). Source: Sammon, Insurance Institute and *Bazley* and *Jacoby.*

Jurisdiction and First Nations Child and Family Services

First Nations in Canada adhere to provincial child welfare legislation because of the absence of federal or First Nation specific legislation. This jurisdictional issue is critical to understanding the plight of First Nation children because of its impacts on the adequacy of services to First Nation communities.

Pursuant to the Constitution Act, child welfare falls within provincial jurisdiction, and responsibility to legislate on behalf of *Indians* is within federal jurisdiction. The position of the federal government in the absence of federal legislation on child welfare for *Indians* has been provincial child welfare laws, being laws of general application, apply pursuant to section 88 of the *Indian Act*.

> *Section 88. Subject to the terms of any treaty and of any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule,*

regulation or by-law made thereunder, and except to the extent that such laws make provisions for any matter for which provision is made by or under this Act.

Provincial governments in response point to federal jurisdictions over *Indians* on-reserves and have been reluctant because of financial concerns to extend provincial services to First Nations. This has led to tremendous disparity in the quantity and quality of services available to First Nations from one province to another over the years. Some provinces provide services on the condition of compensation by the federal government and others provide limited services, but only in life and death situations.

Historically First Nations have been resistant to the encroachment of provinces in Native issues. The White Paper in 1969 was an example where whole scale assimilation of Native people into mainstream society was rejected by First Nations. The extension of provincial child welfare jurisdiction was viewed as yet another attempt at cultural genocide and destroying of the culture. Many First Nation leaders pointed out that the absence of specific federal legislation did not give the provinces rights over their people.

The issue of validity of provincial child welfare legislation in relation to status *Indians* was dealt with by the Supreme Court of Canada in *Natural Parents v. Superintendent of Child Welfare,*. The question in that appeal dealt with the validity of an adoption order in respect of a male native child in favor of a non-native couple pursuant to the *B.C. Adoption Act*. The Court was divided on the question of the constitutionality of whether section 88 of the *Indian Act* made provincial laws of general application binding as referentially incorporated in the *Indian Act* or was provincial law applicable to all citizens of the province including status *Indians*. The court in the end ruled that "*all laws of general application from time to time in force in any province cannot be assumed to have legislated a nullity but rather to have in mind provincial legislation, which, per se, would not apply to Indians under the Indian Act unless given force by federal reference.*
(Source: Canadian Children: Have Child Welfare Laws Broken the Circle).

In summary provincial law of general application was found as binding on all citizens of the province including *Indians* providing it did not affect a right granted to an *Indian* under the *Indian Act.*

Inherent Right of Self- Government Section 35

The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982.* Recognition of inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal in their communities, integral to their cultures, identities, traditions, languages and institutions, and with respect to their special relationship to the land and resources.

The federal government also recognizes that Aboriginal governments and institutions require the jurisdiction and authority to act in a number of areas in order to give practical effect to the inherent right of self-government. Broadly stated the government views the scope of Aboriginal jurisdiction or authority as extending to matters that are internal to the group and is essential to its operation as a government or institution. The range of matters that the federal governments sees as subjects for negotiation include adoption and welfare, education, health, social services, policing, property rights, membership, establishment of governing structures, internal constitutions, leadership selection processes, housing, taxation, etc.

Today approximately 80 tables to negotiate self- government arrangements have been established to bring First Nations communities together with the federal government, provinces and territories. Federal departments continue to devolve program responsibility and resources to Aboriginal organizations. All of these initiatives provide opportunities for significant input into program design and delivery and ultimately to lead to direct control of programming by Aboriginal governments and institutions. New approaches to negotiations have led to agreements on processes that have included widely encompassing issues, one of which includes child welfare.

Given this fact it must be stated that it is the clear goal of First Nations to exercise jurisdiction in the field of child welfare in the future. First Nations during the early treaty making process came to those tables with the objective of protecting the children yet unborn – the seven generations. Over time First Nations leaders have seen the effects of change on their communities and continue to struggle with the impacts of colonialism. To make things better for the future generations they know it is their responsibility to make sure that family and community structures are strengthened and supported. Laws and traditional values of caring based on spirituality, language, cultural values and a First Nation worldview are integral to the realization of this vision. Canada, as articulated through its policy on self-government and "*Gathering Strength*" must work in partnership with First Nations to ensure the mechanisms necessary to see this vision through are put in place.

Social Work in the Context of a First Nation Community

Mechanisms must also be in place to provide the climate necessary to ensure that prevention, protection, care, programming, standards, access and control of services and repatriation are driven by the best interests of First Nations children. The following table outlines the realities of First Nations social workers as they deal with the conditions in their communities that have been described in this Chapter. This should be kept in mind as a context for this report:

Table 2.1
Comparison of Social Work in a First Nation and Non-First Nation Setting

Social Work in First Nation Communities	Social Work in Non-First Nation Communities
Clients are usually known personally to the social worker	Clients are usually not known personally to the social worker
The clients extended family is usually known to the social worker	The extended family is usually not known to the social worker
The social worker is usually known to the community	The social worker is often a stranger to the community
Social workers are part of extended families in the community where they practice social work	Social workers do not necessarily work in their own communities
The extended family often participates in decisions that must be made	The extended family is not usually considered as caretakers for a child when alternate care is required
The community often has input into how social work is carried out	The community does not usually participate in social work activities
Although not as much as in the past, children are still seen as the responsibility of the community	The nuclear family is usually seen to be responsible for their children
The community often shares a history of residential schools, non-native child welfare system	The community is more likely not as uniformly affected by culturally divisive events
Traditional child rearing practices have been interrupted by outside influences	Child rearing practices are not as likely to have been altered by outside influences
Cultural practices have been interrupted by outside forces	Cultural practices are not usually changed by assimilation legislation
The raising of children by grandparents is seen as an honour	The raising of children by grandparents is often seen as a failure of the natural parents
It is not uncommon for children to be raised by a member of the extended family, and children do not appear to experience trauma	It is not common for children to be raised by a member of the extended family, and children know that it is not common
Generally, ownership of property is not an issue	Property is usually willed by legal heirs
Legal implications of a case is not initially a primary concern	Legal implication of a case is initially a primary concern

Source: First Nation Family Services Working Group Report 1996, New Brunswick

Summary

In this Chapter we have seen the various reasons for the high need for child and family services in First Nation communities, the current situation in First Nations across Canada, and the jurisdictional concerns of First Nations as it relates to federal and provincial responsibility for services. This information has been provided as a context on the issue of Child and Family Services for this national policy review.

CHAPTER THREE
GOVERNANCE AND FIRST NATIONS CHILD AND FAMILY SERVICES

Background

First Nations view the responsibility for the well being of their children as a sacred trust bestowed upon them by the Creator. Historically, they upheld this trust by relying on their traditional values, practices and customs to raise their children into healthy, self-reliant citizens. Traditionally First Nations exercised control and authority over their children through relationships based on a family or clan system. Although this traditional system was disrupted through colonialism, First Nations have and continue to, exercise responsibility for the welfare of their children within their communities in a variety of different ways.

Overview

In the past two decades First Nations have been successful in regaining various elements of control over the welfare of their children through various arrangements with provincial and federal governments. Current constitutional structure in Canada is such that jurisdiction over child welfare matters is within the purview of the provincial government pursuant to Section 92 of the Constitution Act, 1867. Provincial governments occupy this field through Child Welfare legislation that sets out the legal process for allowing state intervention for the purpose of protecting the best interests of all children in the province. This jurisdiction also extends to First Nations children residing on reserve because of the absence of comparable First Nations legislation.

The federal government, through the Department of Indian and Northern Affairs has the constitutional jurisdiction for First Nations children by virtue of Section 91(24) of the Constitution Act, 1867. In recognition of its fiduciary responsibilities, DIAND developed Program Directive 20-1 to provide funding and support on reserve for child and family services.

There are two kinds of agreements in place to facilitate the provision of child and family services to First Nation children. The first is through agreements with provincial/territorial governments to set out delegation of authority processes to First Nations agencies or representatives from the province/territory. These agreements are for the primary purpose of transferring statutory powers and authority to First Nations or their appropriate governing body to administer child and family services pursuant to provincial legislation. Additionally, funding agreements with the federal government allow First Nations to effectively carry out child and family services on reserve via Directive 20-1.

Six research questions were developed to address the issue of governance as a part of this review. They dealt with the analysis of agency structures and governance and how provincial structures impact on 20-1 and current agency operations; the analysis of the roles & responsibilities of key stakeholders such as Board of Directors, Chief and Councils, staff and committees, Elders, etc. in FNCFS; the analysis of staff and administrative qualifications in relation to provincial human resources standards; the analysis of the reporting mechanisms; and the analysis of agency evaluations to determine common concerns and problems experienced by agencies nationally.

The method of research utilized to collect the data was by structured interviews to gather information specific to governance issues of FNCFS Agencies. The data obtained was from a small sample of FNCFS Agencies who were asked to give their insights into the effect of government policy and law on that ability to administer programs.

Information was obtained through surveys that were developed and distributed to the research participants. The research participants were a sample of fifteen FNCFS Agencies, eight Department of Indian Affairs and Northern Development regions and one provincial Department of Social Services. Attempts to involve other provincial governments were not successful due to the fact that time constraints provided limited opportunity to participate. Although only one provincial government was surveyed directly, actual agreements from various other provincial governments were reviewed and relevant information was extracted for the analysis of data for this review. Finally, provincial child welfare legislation from eight provinces was also reviewed and forms part of the data summarized in this Chapter.

The research participants were contacted in writing with follow-up by telephone. A survey instrument consisting of thirty-four items was developed to respond to the research questions. Each survey took approximately three hours to complete. Responses were hand written and later type written verbatim.

A second survey instrument was designed and administered to the eight regions of DIAND. This survey was designed to assess and compare the nature and level of support provided to the FNCFS Agencies by the regional authorities in their implementation of the Directive 20-1. It also sought out information on the decision making process of the region and the relationship between the region and the Agencies. The surveys were administered by telephone. The responses to the questions were hand written and later type written verbatim. Each survey took approximately two to three hours to complete.

The third survey was designed to extract information from the provinces about their requirements of FNCFS Agencies in relation to legal status, standards, monitoring, limitations or restrictions on activities, decision making processes, qualifications, insurance, reporting and evaluations.

Ontario FNCFS Agencies were excluded from the national sample because these Agencies do not operate under DIAND's Directive 20-1. However, the Ontario FNCFS Agencies and all other FNCFS Agencies not selected in the national sample were given an opportunity to complete all questions relating to the national policy review.

Fifteen (15) Agencies responded to the survey conducted for this national policy review. Given this small sample the information contained in this chapter cannot be generalized from a national perspective but can however provide a "snapshot" into governance issues based on the information that was collected. The survey participants represented the following:

Research Participants

DIAND REGION	AGENCIES	FIRST NATIONS REPRESENTED
British Columbia	Knucwentwecw Society	Williams Lake, Soda Creek, Canoe Creek, Canim Lake
	Nuuchahnulth Community & Human Services	Ahousaht, Detedaht, Ehattsaht, Hesquiat, Hutocasath, Huuayahp, Ka:yu:'kth/che:k'tles 7et'h, Mowachaht, Tla-o-qui-aht
	Heiltsuk Indian Band	Heiltsuk
Alberta	Athabaska CFS	Fort McMurray, Fort Mckay, Janvier, Fort Chipewyan, Mikisew
Saskatchewan	Kanaweyimik CFS Inc.	Moosomin, Red Pheasant, Saulteaux
	Touchwood CFS Inc.	Daystar, Fishing Lake, Gordons, Kawacatoose, Muskowekan
	Lac La Ronge CFS Inc.	Lac La Ronge
	Ahtahkakoop CFS Inc.	Ahtahkakoop
Manitoba	Island Lake First Nation Family Services	Garden Hill, St. Theresa Point, Red Sucker Lake, Wasagamack
	Cree Nation Child & Family Caring Agency Inc.	Grand Rapids, Moose Lake, Indian Birch, Pukatawagan, Easterville, Shoal River
Quebec	Kahnawake Social Services	Kahnawake
	Listuguj Mi'gmag First Nation Council	Listuguj
New Brunswick	Big Cove FNCFS	Big Cove
Nova Scotia	Micmac Family & Children's Services of Nova Scotia	Acadia, Afton, Annapolis, Bear River, Chapel Island, Eskasoni, Horton, Membertou, Millbrook, Pictou Landing, Indian Brook, Wagmatcook, Waycobah
Newfoundland	Miawpukek Mi'kamawey Health & Social Services	Conne River

It is important to acknowledge that the FNCFS Agencies operating across Canada have very unique circumstances and broader governance objectives and aspirations then the scope of this review. Also, not all FNCFS Agencies fall under program Directive 20-1.

Another important consideration is that not all of the FNCFS Agencies operate as full service agencies. The Province of Quebec, for example, has a delegation process that flows to the designated staff positions within the social service structure of the First Nation instead of the Agency as a whole.

Another important factor is that, although some FNCFS agencies were in existence prior to the establishment of the Directive, these agencies have been gradually brought under program Directive 20-1. This may also help explain some of the inconsistency in the application of the program directive from region to region on the part of DIAND.

From the FNCFS Agency perspective, there is an acknowledgment that such governing activities are limited by provincial legislation and standards. In some cases there is a statutory duty imposed on FNCFS Agencies to provide prevention and support services in an effort to avoid placing the child in care. The majority of FNCFS Agencies surveyed expressed a concern that prevention and support services is not supported to the level it should be. Those Agencies who focus their efforts on prevention services run the risk of not being able to provide other required services. Most FNCFS Agencies surveyed favored providing more prevention services than currently offered.

FNCFS Agency responses indicated that there were three main categories within which the governing body falls. The following table sets out those three categories of governing bodies and the lines of authority:

Chief & Council or Chiefs of Tribal Council
Agencies reported that the First Nation's Chief and Council served as their governing body and that no Board of Directors existed. In these cases, the lines of authority flowed top-down from the Chief and Council or Tribal Council Chiefs to a Director or Executive Director.

In cases where the Chief and Council were the governing body, the delegation of authority for child and family services matters was to the staff positions within the FNCFS Agency and not directly with the FNCFS Agency. Also, where the First Nation Chief and Council is the governing body, there was an arms length relationship between the Chief and Council and the FNCFS Agency in relation to case management activities. In some cases the Chief and Council was involved in some administrative matters involving work plans and financial planning, however, there were clear indications that the Chief and Council were not involved in the day-to-day administration of the FNCFS Agency. In other cases, First Nation policy directs that the Chief and Council not be involved in the administrative and case management functions of the FNCFS Agency.

The reporting of activities between the Director of the FNCFS Agency and the Chief and Council in most cases was on a monthly basis.

Chiefs of First Nations or Tribal Councils as Board of Directors

Agencies reported that the Chief and Council of the First Nation or the Chiefs of the Tribal Council make up the Board of Directors and that the Board of Directors functions as the governing body. The lines of authority for the Agencies generally flow down from the Board of Directors to a Director or Executive Director. Other variations of these include: the line of authority flows from the Tribal Council to the Board of Directors; First Nations are represented by members on the Board; or authority flows from the Chief and Council to the Director through a General Band Manager.

Generally it was reported that Boards act in an advisory capacity and are not involved in the day-to-day administration and case management activities of the FNCFS Agencies. There is a difference, however, in the delegation of authority process. Delegation of statutory authority rests in the staff positions within the FNCFS Agency, namely the Director of the Agency.

The delegation of authority process from the provincial government also helps to keep the operations of the FNCFS Agencies separate from the political activities of the Tribal Councils. There is an acknowledgment, as well, from the FNCFS agencies that the Chiefs provide the direction through policies and it is the FNCFS agencies responsibility to implement those policies.

Board of Directors

Agencies indicated that they have a Board of Directors separate and apart from the Chief & Council and Tribal Council structure with accompanying committee structures, generally a local child care committee. The lines of authority in these cases are reported as flowing down from the Board of Directors to a Director or Executive Director. Other variations include authority flowing down to a Committee or line of authority flowing from its Chief and Council to the Board of Directors.

Most respondents indicated they had a Board of Directors as their governing body or were incorporated separate from their First Nation and/or Tribal Council. Of these FNCFS agencies five said they serve more than one First Nation and two said they serve single First Nations.

As for the composition of these Boards there were some variances. Corporate structures allowed for the Chief and Council to appoint from its Council representation to the Board of Directors. The remaining positions were from community members at large. Another allowed local communities to select from their membership representation to the Board and there was a specific requirement in the Agency by-law that the Chief and Council was not to be represented on the Board.

In cases where Boards were the primary governing bodies of the FNCFS Agencies their authority did not include case management matters. The clear intention was to keep the Board's responsibilities limited to strategic planning and general policy development. It was also clear

that representation on the Board of Directors was non-political. Some FNCFS Agencies had specific by-law requirements that the composition of their Boards not include Chiefs and Council members. In all the cases where the Board of Directors was the governing body of the FNCFS Agency, the final decision-maker for administrative and case management matters was the Director of the FNCFS agency.

FNCFS Agency Structure - the Provincial Structures impact on Directive 20-1 and current agency operations

Seven (7) of the eight-(8) responding DIAND regions indicated that they did not require a separate legal status from the First Nation or tribal council. This requirement originates from the individual provinces. If provincial legislation requires it, FNCFS agencies will be required to incorporate separately in order to be a child and family service agency and for the region to provide services.

The Province of Saskatchewan, for example, does not have a legislative requirement for the agency to be a separate legal entity from the First Nation. Each FNCFS agency has the right to incorporate separately from the First Nation or Tribal Council if they wish.

Provincial Legislation & Child Welfare Agreements

Directive 20-1 does not require that a First Nation establish a separate legal entity for its Child and Family Services agency. It does, however, require that the provincial child and family services legislation apply on reserve. In most case provincial child welfare legislation requires that Child and Family Services agencies incorporate under its Act and take on a separate legal status from the First Nation. The requirement that the agency be a separate legal entity thereby dictates the structure and governance of the agency and in this respect the Agency has no say.

Roles and responsibilities of Boards of Directors, Chiefs and Councils, Staff, Committees, Elders

Regardless of whether the governing body was a Chief and Council, a tribal council or a Board of Directors, all respondents indicated consistently that the governing body's roles and responsibilities included strategic planning, policy development, consultation, the establishment of long-term goals or some combination of these. Eleven of the respondents specifically indicated that their governing body was not involved in the day-to-day operations or administration of the agency.

All respondents indicated that their governing body was not involved in the case management aspects. Eight of the surveyed Agencies indicated that there was an arm's length relationship maintained between their governing body and the agency staff. These agencies described no direct interaction between the Staff and Board, and monthly verbal reports from the director of the agency to the governing body were required.

The roles and responsibilities of the FNCFS Agency

Ultimately all of the FNCFS Agencies identified their role and responsibility as being the carrying out of day-to-day administration, case management and planning functions for child and family services. A small number of agencies also indicated they were responsible for strategic planning and implementation. The primary role of FNCFS agencies was to implement the agreements entered into with the provincial and federal governments.

The roles and responsibilities of the community

Some agencies reported that the communities they served had no formal role in the agency. Others measured interest and involvement of community members by indicating that individuals from the community were members of their governing body. Several reported that community child care committees, consisting of community members, played active roles in advising on child placement issues, foster care support, as well as, assisting in public education and awareness at the community level.

Role and responsibility of the Elders

Respondents indicated there was no consistency in the role of Elders in their agencies. Other agencies reported that they made it a requirement that an Elder be appointed to the governing body. Others reported they had formal Elders Advisory Councils that provided support and guidance to the front line workers and those families who used the services of the agency. Other agencies reported they did not have formal involvement of Elders in their programs.

Management, support or professional Development

The number of employees varies greatly between agencies although the vast majority of employees were full-time. The numbers of full-time employees range from a high of 72 at the largest agency to a low of three at the smallest. The number of employees directly relates to the number of the First Nations served, their geographical locations, and the size of the First Nation population being serviced. In addition to variation in staff sizes, the agencies reported a variation in the titles and roles of the employees. Typically the majority of the employees were caseworkers, social workers or child and family services workers, who carry the caseloads of the agencies. The agencies that service larger populations reported larger numbers of support staff and management. In a number of the agencies with only a few employees, many of them were reported as serving dual roles with active caseloads and managerial responsibilities. Most of the responding agencies reported that they had low numbers with respect to staff turnover. Only two agencies described their staff turnover as moderate with another two reporting it as high.

Qualifications and Training

Seven agencies reported the requirement for a Bachelor of Social Work degree in the hiring of their caseworkers. Four agencies reported they required their employees to have training in social work or training in Child and Family Services. Three agencies required their employees to undergo cultural or community-based training specific to their role in a First Nation setting. And, five agencies required core training for their employees that directly related to their specialization within the agency. Generally provinces differ from one to another with regard to entry level standards for workers.

Training Support

Of the 15 agencies surveyed, seven reported that they did not receive any support to facilitate training for their employees. Six agencies reported that DIAND supports training initiatives through their base funding to the agencies' operating budgets. Another six agencies indicated that the provincial governments offer access to their training programs at no charge, although the agency was generally responsible for any required travel costs.

Employee benefits including professional development, career enhancement opportunities and educational courses

Eight agencies reported having Employee Assistance Programs which they described as offering both preventative measures and counseling for those experiencing job stress. Two agencies offered extended leave to employees experiencing job stress; five agencies reported they designate sick leave for this purpose.

All of the agencies surveyed reported that they offered the basics of Canada Pension and Employment Insurance. In addition to this, the following benefits were specifically mentioned by the FNCFS agencies in describing their employee benefits packages: pension plans, short & long term disability, health benefits, dental benefits, life insurance, employee assistance programs, cultural leave and mutual fund investments.

DIAND provisions for coverage of employee benefits

DIAND regional surveys indicated for the most part that these programs were covered by First Nations through additional funding to their operating budgets. The Quebec region indicated that these benefits were based on a funding formula and child population in the community and that each First Nation had its own pay scales. Manitoba and Saskatchewan reported that it provided coverage of employee benefits based on a fixed amount, separate from the operations budget, based on the number of employees per agency. Band employee benefits were frozen a number of years ago therefore making it difficult to include new staff in the benefits package.

Professional Development

Approaches to professional development varied among the respondents. Eight respondents indicated they honor requests for education leave; nine reported they encourage employees to attend workshops and conferences applicable to their fields; eight reported they provide training courses in relevant program areas; and one indicated they hold two professional development courses annually.

Internal Reporting- From FNCFS Agency to First Nation Governments

Generally speaking, the agencies reported that their internal reporting followed the line of authority upwards. In essence, staff report to the agency Director and the agency Director reported to the governing body which may be a Board of Directors, Chief and Council or Tribal Council.

The majority of FNCFS agencies indicated that formal reports by the Director were given on a monthly basis to the governing body. Several others reported that they produce an annual report that summarizes their activities for the Chief and Council or Tribal Council Chiefs and their membership at annual general meetings.

One agency that serves multiple communities indicated that the Director attends community meetings every two to three months to make community specific reports. Another indicated that a monthly newsletter was produced for the community it serves.

Reporting Mechanisms Established in Agreements between the FNCFS Agencies and Provincial Governments

Although the general procedure for reporting from the FNCFS agency was in the form of regular written reports and verbal update reports, some Agreements that FNCFS agencies entered into did describe other reporting mechanisms to be utilized between the parties. In some cases the provincial government endorsed all aspects of the reporting procedures established between the FNCFS agency and DIAND in program Directive 20-1. In other cases the Agency provided the provincial government, in addition to program directive requirements, statistics on services on a quarterly basis.

In yet other cases the reporting procedure was such that the FNCFS agency provided the provincial government with a copy of the FNCFS agency's annual report along with information pertaining to the day-to-day operations of the program.

Sometimes an agency may even be required to maintain and report annually to the province, the number of cases by type, the number of support services in use during the year such as foster care, group homes, homemaker hours, number of meals served, as well as, a quantitative

description of other work carried out by the FNCFS agency during the year. In some other cases the Agency may be required to provide immediate notice of the name and birth date of a child taken into care, or released from care. Additionally, the agency may also have to produce bi-monthly reports covering at a minimum such information as: 1) the number of children in care and their status; 2) volume of intake; 3) type of agreements; 4) placement on or off reserve; and 5) any other information relevant to Child and Family Services. Often these reporting mechanisms were established by provincial standard.

The reporting procedures established by DIAND pursuant to Directive 20-1

- To produce an Operations report twice a year on September 30 and March 31 to report specific information related to services provided by the FNCFS agency. The Operations Report must contain the FNCFS agency's activities in relation to prevention services engaged in to keep children from coming into care, and protection services activities relating to children in care.

- Prevention services information must include: 1) list of services provided; 2) number of families served (by service); 3) number of children included in families served (by service); 4) number of local child and family services' committees; 5) number of Elders' committees; and 6) number of public information/education related sessions/workshops.

- Protection services information must include: 1) list of services provided; 2) number of families served (by service); 3) number of foster homes; 4) number of adoption homes.

- To produce a Maintenance Report on a monthly basis the FNCFS Agency must report information required for the actual reimbursement of maintenance. The Maintenance Report must contain information relating to: 1) the number of children in care at the end of each month by type of placement (foster home, group home, institution); and 2) the number of care days, unit cost and total cost for each type of placement.

- An Annual Report.

In the circumstance where FNCFS agencies were bound by reporting procedures established in provincial child welfare legislation, DIAND adopted those same reporting procedures in the agreements they entered into with the FNCFS agencies.

The DIAND regions reported that they provide only third and sixth year funding to support an agency's capacity to develop internal review processes.

In some provinces, the FNCFS agency is required to engage in an annual evaluation of its operations. In other cases, the Province undertakes to produce a written evaluation of the agency's operations.

Some provincial legislation creates circumstances for the FNCFS Agencies that are inconsistent with DIAND's funding policy statement regarding evaluation requirement. DIAND only provides funding to FNCFS agencies for 3 year and 6 year evaluations, however, provincial legislation requires on-going evaluations.

For the FNCFS agencies that were in existence prior to the establishment of Directive 20-1, DIAND did not qualify these agencies for the funding to do evaluations. Some of these agencies were also in provinces where they are required by legislation to perform the evaluations of the agency's operations.

SUMMARY

The purpose of this review was to measure the degree to which FNCFS agencies were able to influence the design, control and management of their programs. We found in this chapter that such governing activities were limited by provincial legislation and standards.

We also found there was a statutory duty imposed on some FNCFS Agencies to provide prevention and support services in order to avoid placing the child in care. In other cases the duty arose when the child comes into care. In Manitoba and Saskatchewan, the DIAND Region acknowledged that their requirements were inconsistent in that a child must be in care or in apprehended status to be provided prevention and support services. The majority of FNCFS agencies surveyed expressed a concern that prevention and support services was not supported to the level it should be.

On the basis of the data collected we found that where the First Nation Chief and Council was the governing body, there was an arms length relationship between the Chief and Council and the FNCFS agency in relation to case management activities. There was a clear indication that the Chief and Council were not involved in day-to-day administration of the FNCFS agency.

Ultimately the final decision maker for administrative and case management matters was the Director of the FNCFS agency. It was also the clear intention that most Board's roles were limited to long-term strategic planning, development of policies and procedures, and providing broad guidance and direction. It was further clear that Board's have no involvement in the administration or case management of the FNCFS agency resulting in an arms length relationship between the decision maker for the agencies on administrative and case management matters and the political body of the First Nation.

Some provincial legislation created circumstances for the FNCFS agencies that were inconsistent with DIAND's funding policy statement regarding evaluation requirements. DIAND only provided one time funding to FNCFS Agencies for 3 year and 6 year evaluations, however, provincial/territorial legislation requires on-going evaluations.

CHAPTER FOUR
LEGISLATION, STANDARDS AND FIRST NATIONS CHILD AND FAMILY SERVICES

Introduction

This Chapter is a summary of the comparative analysis that was conducted on (1) provincial child and family services legislation similarities/differences; (2) First Nation and provincial child and family services program standards by province; (3) tripartite and complementary bilateral agreements in each region to determine their consistency with provincial legislation, standards and Directive 20-1; (4) the application of Directive 20-1 as it relates to agency compliance with First Nations and provincial standard; (5) mechanisms for the resolution of differences in the interpretation of legislation and standards; and (6) the labour codes under which FNCFS agencies operate.

The information and findings relevant to the purposes of this policy review were obtained and analyzed as follows:

First Nation, provincial/territorial, and DIAND representatives were contacted nationally to gather data related to provincial/territorial child and family services legislation, policies, standards, directives, and agreements. To achieve this task provincial/territorial legislation was obtained from provinces, and libraries, as well as, other sources. Once collected the data were analyzed to identify all key similarities and differences, by province and territory. The legislation data were also examined to determine the manner in which authority for child and family services were delegated, by province and territory.

Provincial/territorial legislation was researched for definitions of "child in need of protection," and similarities and inconsistencies in the definitions were identified by province and territory. In addition to the legislation data, policy manuals and other literature were obtained from provincial and DIAND sources, and were reviewed to determine whether or not there were clear distinctions between protection services and prevention services.

DIAND Directive 20-1 was examined in relation to the child and family services legislation of each province/territory to determine whether the directive reflected the spirit and intent of the legislation.

First Nation and provincial/territorial standards for the administration of child and family services were obtained from First Nation and departmental sources, and were used to determine in which regions standards were developed and/or implemented, and whether t

they had been incorporated into provincial/territorial standards. Provincial/territorial standards, as found in policy and procedure manuals and other provincial literature were reviewed to determine whether or not each jurisdiction provided a clear definition of maintenance.

Procedures for the handling of institutional care placements and potential problems of these services were examined and the information outlined by region. The impact on First Nation agencies of changes in provincial standards as a result of provincial reviews, and the compatibility of changes with Directive 20-1 were also reviewed

Tripartite and complementary bilateral agreements were obtained from First Nation and regional sources, and analyzed by region for consistency with legislation, standards, and Directive 20-1. The compatibility of Directive 20-1 with First Nation and provincial/territorial standards, and of DIAND's consistency in applying the policy were analyzed by region. Finally, information on the labour codes under which FNCFS agencies operate, and information on professional standards, were obtained and compiled.

Legislative Similarities and Differences

The essential role of child and family services is to protect children from neglect and abuse. The child welfare legislation of all provinces/territories contain precise descriptions of the conditions that place a child at risk, and the roles of provincial officials and other child and family services agencies are set out in the legislation and related standards and guidelines. These include investigating allegations of child abuse and neglect, taking appropriate action to protect children, and providing for the care and supervision of children who come into care through voluntary agreements or other court orders. Child and family services also include counseling, homemaker, and other services to families of children who have remained in their homes or who have been discharged from care.

Based on the data collected it was noted that there was a trend in some sections of Canada to move away from apprehension of children who are in need of protection to a mediated approach which seeks to resolve or mediate family problems which may place a child at risk by extending a cluster of services to the entire family.

As indicated in Table 4.1 child and family services legislation nationally is very similar in content, particularly as it relates to the definitions of child in need of protection, court procedures, review and appeal provisions, services to children and families and other key provisions. It is noted that where the protection legislation does not include adoption services, provinces have enacted separate adoption legislation.

Table 4.1
Key Aspects of Provincial Child and Family Services Legislation
(Provision included in Act = X)
As of March 31, 2000

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
Voluntary temporary care agreements	X	X	X	X	X	X	X	X	X	X	X
Voluntary permanent Care agreements			X	X			X		X		
Court-appointed legal Counsel	X	X		X	X	X	X		X	X	X
Order for temporary care and custody	X	X	X	X	X	X	X	X	X	X	X
Order for permanent care and custody	X	X	X	X	X	X	X	X	X	X	X
Order for supervision in parental home	X	X	X	X	X	X	X	X	X	X	X
Extension of care beyond age of majority	X	X		X	X	X	X	X	X	X	X
Restraining orders		X	X	X	X	X	X	X	X	X	
Access orders		X		X	X	X	X	X	X	X	X
Review and appeal	X	X	X	X	X	X	X	X	X	X	X
Mandatory reporting of child abuse/neglect	X	X	X	X	X	X	X	X	X	X	
Child abuse register		X				X	X	X	X		
Inter-jurisdictional transfer of care/custody		X	X	X	X	X	X	X	X	X	X
Consideration of child's cultural heritage	X	X	X	X	X	X	X	X	X	X	X
Specific provisions for Indian/native children		X				X	X	X	X	X	
Statement of rights of children					X	X				X	
Children's Advocate		*1			X	X	X	X	X	X	

* *Note 1*: The Nova Scotia Ombudsman carries this role at present.

Comparison of How Authority For CFS Is Delegated By Provinces

Legislative authority regarding child and family services in Canada is vested with provinces and territories. First Nations Child and Family Services agencies derive the authority for the provision of protection and other statutory services from provincial/territorial statutes. Table 4.2 describes the conditions for delegation. FNCFS agencies acceptance of this process of delegation is temporary until such time as self-government negotiations result in First Nations specific legislation.

Table 4.2
Delegation of Statutory Child and Family Services As of March 31, 2000

Newfoundland And Labrador	• Act does not provide for establishment of C&FS agencies.
Nova Scotia	• Agency requires recommendation of Minister and approval of Governor in Council. • Governor in Council approves name, constitution, jurisdiction, and by-laws. • Constitution and by-laws must be filed with Registrar of Joint Stock Companies.
Prince Edward Island	• Agency requires recommendation of the Director and approval by Lieutenant Governor in Council. • Group of 12 or more persons residing in area of agency's jurisdiction may apply for incorporation under the Act.. • Constitution, objects, and by-laws must be filed with Director.
New Brunswick	• Minister may approve any community social services agency that meets standards and criteria of legislation, and additional criteria as Minister sees fit.
Québec	• Act does not provide for establishment of C&FS agencies; however, Québec has stated it will modify the Act to enable establishment of agencies with full statutory powers.
Ontario	• Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction. • By-laws and amendments to by-laws must be approved by Minister. • Minister may designate a community as a *native community*, and make agreements with bands/native communities and other parties designated by bands/native communities as Indian or native C&FS agencies.
Manitoba	• Minister with approval of Lieutenant Governor in Council may enter into agreements with an Indian Band or Tribal Council and Government of Canada for incorporation by Band or Tribal Council of an agency. • Lieutenant Governor in Council orders that the persons who have signed the application shall be a body corporate.
Saskatchewan	• Minister may enter into an agreement with a Band or other legal entity for the provision of services and exercise of powers specified in the agreement.
Alberta	• Minister may delegate specified duties or powers imposed on him/her under the Act, and enter into an agreement with any person for provision of protective services.
British Columbia	• Minister may make an agreement with an Indian Band or a legal entity representing an Aboriginal community and the Government of Canada. • A Director may make agreements with an Indian Band or a legal entity representing an Aboriginal community for the provision of services, and with the Government of Canada to promote the purposes of the Act.
Yukon Territory	• Commissioner in Executive Council may delegate to a community group or person some or all of the powers of the Director.

The Definition of Children in Need of Protection

All provinces/territories have legislation to protect children from neglect or abuse, and to extend a range of services aimed at ensuring the safety and sound development of children who are at risk. 'Child in need of protection' is described as being a child who meets one of the specified conditions set out in the legislation as placing a child at risk. There is some variation in the descriptions of these conditions, but there is an overall correspondence of meaning and intent.

Table 4.3
Conditions Placing a Child in Need of Protection – as of March 31, 2000
(Condition included in Act = X)

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
Abandonment	X	X	X	X	X	X	X	X	X	X	X
Loss of parents	X	X			X	X			X	X	
Lack of parental care	X	X	X	X	X	X	X	X	X	X	X
Beyond parental control	X		X	X			X		X		
Failure to provide medical treatment	X	X	X	X	X	X	X	X	X	X	X
Physical or sexual abuse	X	X	X	X	X	X	X	X	X	X	X
Emotional abuse	X	X	X	X	X	X	X	X	X	X	X
Cruel treatment or punishment	X	X	X	X	X	X	X	X	X	X	X
Runaway child		X	X	X	X	X				X	X
Request by parent				X		X					
Inadequate provision for child's education			X	X	X						
Child likely to injure self or others	X	X	X	X	X	X	X	X	X	X	X
Child under 12 years committing an offence	X	X		X	X	X		X	X	X	X
Disproportionate work or public performance in unacceptable manner			X		X						
Child subject of							X				

unlawful adoption											
Child in custody of person without consent of parent/guardian				X							
Pregnant child unable to care for self and child			X								

Protection And Prevention

The research indicated that definitions of prevention services or protection services cannot be found in the legislation or standards of any province/territory. There is a distinctive difference between protection and prevention services. Protection services are provided to specific children deemed to be at risk. Prevention services are provided to the general population and not to specific cases.

Spirit and Intent of Provincial Legislation

The extent to which Directive 20-1 reflects the spirit and intent of provincial/territorial legislation is measured by the degree to which the principles incorporated in the directive correspond with related provisions of the legislation. The following table illustrates the specific correspondences between legislation and the directive.

Table 4.4
Correspondence of Directive 20-1 and Legislation – As of March 31, 2000
(Legislation and directive correspond = X)

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
Creation of Indian-designed, controlled, and managed services		X	X	X		X	X	X	X	X	X
FNCFS services may be expanded to level of off-reserve services		X	X	X		X	X	X	X	X	
Development and adoption of Indian standards		X		X		X	X	X	X	X	
FNCFS expansion may be gradual		X		X		X	X	X	X	X	X
Provincial legislation applicable on reserves	X	X	X	X	X	X	X	X	X	X	X

With Changes To Provincial Legislation And Impact On 20-1

Table 4.5 illustrates that there were legislative changes in Ontario, Saskatchewan, Alberta, and British Columbia during the period of the review that had significance on First Nation Child and Family Service Agencies.

Table 4.5
Provincial and First Nation Service Standards
As of March 31, 2000

Newfoundland and Labrador	First Nation standards have not been incorporated into provincial standards. Community-based standards, developed from provincial standards by a First Nation and provincial-working group, have been adopted and implemented by the First Nation.
Nova Scotia	First Nation standards have not been incorporated into provincial standards. First Nation standards have not yet been developed.
PEI	Not applicable.
New Brunswick	First Nation standards have not been incorporated into provincial standards. First Nation standards have been developed and are used by most First Nations; some First Nations use provincial standards.
Québec	First Nation standards have not been incorporated into provincial standards. First Nation standards have been developed, but are not yet implemented.
Ontario	First Nation standards have not been incorporated into provincial standards. Canada/Ontario have funded a First Nations group to develop Indian standards, but they have not yet been developed.
Manitoba	First Nation standards have not been incorporated into provincial standards. First Nation standards have not been developed. (FNCFS agreements are premised on core First Nation values, and provincial standards are considered sufficiently flexible to enable FNCFS to incorporate cultural values into their service delivery and practices.)
Saskatchewan	First Nation standards have not been incorporated into provincial standards. First Nation standards have been developed, and are included in FSIN legislation, *The Indian Child Welfare and Family Support Act*. Province has acknowledged that the FSIN Act is equivalent to the provincial Act, and that standards apply to all FNCFS agencies.
Alberta	First Nation standards have not been incorporated into provincial standards. Chiefs Summit III approved the development of First Nation standards, but standards are not completed as yet.
British Columbia	First Nation standards have been incorporated into provincial "Aboriginal Operational and Practice Standards" and distributed for implementation.
Yukon Territory	Not applicable.

Definition Of Maintenance Within The Standards

Neither DIAND nor provincial/territorial program standards provide a definition of maintenance. All provinces/territory do, however, provide extensive lists of items that are provided to or in behalf of children in care. These expenditures by FNCFS agencies were

in most cases reimbursed by regions (except where special funding arrangements such as block-funding arrangements exist) as the provisions of Directive 20-1 and tripartite/complementary agreements demand. The range of items varies considerably by province.

Institutional placements

The data indicated that generally there were limited facilities available to FNCFS agencies. This made out-of-province placements necessary, particularly in the Atlantic provinces and Saskatchewan. In other regions out-of-province placements required prior DIAND approval or placements had to be screened and approved by the province. Table 4.6 summarizes for each region the various issues related to institutional placements.

Table 4.6
Institutional Care Services as of March 31, 2000

Atlantic	Few institutional care cases in region; handled by agencies on case-by-case basis. Problems: • Lack of care spaces, esp. specialized services care spaces. • First Nation children placed out of province. • Difficult to maintain ties with family and community. • High travel costs.
Québec	Follow provincial procedures; placements usually made on recommendation of judge, except if it is a voluntary agreement. Problems: • Distance between care facilities and communities: difficult to maintain family links, reintegrate children with families. • Services not adapted to children's language/cultural needs. • Services in English may be limited. • Relations between First Nation and non-FN children may be difficult. • First Nations want own institutions, situated on reserves.
Ontario	Under 1965 agreement, institutional care services are integrated with those of province and handled by the province. • No problems were identified.
Manitoba	Placements made by agencies, but all placements are screened and approved by province. Problems: • Institutions have set aside 'federal beds' for which they charge FNCFS admin/service fee. • At times, FNCFS have had problems accessing placements because these

	beds were full. • FNCFS are limiting usage of institutional facilities, and are opting instead to use specialized foster home placements.
Saskatchewan	Placements made by agencies, following same procedures as province. Problems: • Out-of-province facilities require approval from DIAND. • Province is reluctant to conduct accreditation examinations and compliance reviews for on-reserve facilities. • Region is currently reviewing services with a view to develop regional policies.
Alberta	Placements are made by FNCFS in on- and off-reserve institutions. DIAND requires on-reserve facilities be approved by province. Province certifies on-reserve facilities only at request of FN. Problem: • Lack of foster care resources on reserve obliges FNCFS to develop high-cost group care resources.
British Columbia	Agencies make placements, following same procedures as province. DIAND reimburses province for actual per diem costs for a FN child. Problem: • DIAND may ask province and FNCFS to provide confirmation of per diem rate because there have been instances where reimbursement has been requested at institutional rate rather than group rate. • FN and DIAND disagree on the use of a provincial list of resources which meet criteria for institutional care.
Yukon Territory	Placements handled exclusively by territorial government.

Provincial standards and FN agencies and comparability to 20-1

In New Brunswick, a provincial team recently developed a number of recommendations for changes to the Act and service standards for the improvement of services to children and families. The effects of the changes were seen as positive by First Nation representatives, however, they created additional administrative and service-delivery responsibilities for which agencies are not being adequately funded.

In Saskatchewan, the Children's Advocate office recently carried out a review of the circumstances relating to the death of a child, and made a number of recommendations concerning the application of child and family services policies and standards, which were already in place before the incident but possibly not always adhered to by staff. However, as a result of the incident the province moved forward a plan for the hiring of 50 new staff, including 43 child welfare workers. First Nations have to comply with the same administrative burden created by the recommendations, as well as, continuing service demands, but have not received

any increased resources from DIAND to meet those responsibilities. If it should be the case that insufficient DIAND funding for

FNCFS staff prevents the agencies from meeting their increased responsibilities, this may contradict the principle of Directive 20-1. Especially since DIAND is committed to the expansion of services on reserve to a level comparable to the services provided off reserve in similar circumstances.

Federal/provincial agreements

Tripartite and complementary agreements transfer control and responsibility to First Nations for the provision of child and family services to people in their communities. Directive 20-1 establishes the essential terms and conditions which must be included in the agreements, which are (1) provincial child and family services legislation is applicable on reserves and will form the basis for the expansion of First Nations child and family services; (2) an agreement must provide for a comprehensive range of child and family services, which may be taken on gradually; (3) an agreement must describe the service delivery mode; (4) the respective roles and responsibilities of the parties (FNCFS, DIAND, and Province/territory) must be described; (5) the terms and conditions applicable to Comprehensive Funding Arrangements must be included; (6) there must be provision for the development by FNCFS agencies of Indian service-delivery standards; and (7) there must be a regional tripartite panel or committee, composed of representatives of DIAND, FNCFS agencies, and the province/territory to review program objectives and the development of Indian standards, and to be a vehicle for ongoing discussions on issues of regional concern.

Not all agreements provide for the development and implementation of Indian standards for the delivery of services. Funding may not be adequate to enable FNCFS agencies to meet expanded responsibilities under the 1996 Act. The agreements are substantially, but not entirely, in accord with the directive.

Table 4.7

Consistency of Agreements with Legislation, Standards, and Directive 20-1

As of March 31, 2000

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
Agreements are consistent with legislation	No	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA
Agreements are consistent with standards	No	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA
Agreements provide for comprehensive services	NA	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA
Agreements describes service-delivery mode	NA	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA
Agreements define roles/responsibilities	NA	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA
Agreements include CFA	NA	Yes	NA	Yes	Yes	Yes	9 Yes 2 No	Yes	11Yes 3 No	Yes	NA
Agreements provide for Indian standards	NA	Yes	NA	Yes	No	No	Yes	Yes	Yes	2 Yes; 14 No (1)	NA
Agreements specify regional tripartite panel	NA	Yes	NA	Yes	No	Yes	No	1 Yes 6 No	Yes	No (2)	NA
Agreements are substantially in accord with	No	Yes	NA	Yes	Yes (3)	No	4 Yes 7 No	Yes	Yes	Yes	NA

Directive 20-1											

Note 1: Although most BC agreements do not provide for development and adoption of Indian standards, the province and First Nations through a joint consultation process have established Aboriginal Operational and Practice Standards which are applicable throughout the province.
Note 2 No agreements provide for a tripartite panel; however, every Delegation Enabling Agreement contains a clause concerning resolution of differences among the parties.
Note 3: An amendment to the Youth Protection Act will permit the negotiation of agreements as foreseen by Directive 20-1.
Note 4: In Manitoba there are very few tripartite and/or master agreements that exist at this time.

Are regions of DIAND consistent in their application of the policy

Directive 20-1 requires that FNCFS agencies, or their governing bodies, enter into agreements with provinces that provide for the delegation of statutory powers and duties to the agencies. This is also required for the exercise of those powers and duties in accordance with provincial service standards or for First Nation standards established and adopted with the concurrence of the province.

Table 4.8
Verification of First Nation Standards
(Yes = X)

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
First Nation Standards completed and implemented	X			X				X		X	
Standards being developed		X			X				X		

Table 4.9 summarizes by region current arrangements that exist to resolve differences in interpretation of legislation and standards between provinces, DIAND and FNCFS Agencies. In nearly all cases it is noted there is no formal mechanism in place resulting in informal methods being deployed to address various contentious issues.

Table 4.9
Dispute Resolution Mechanisms As of March 31, 2000

Newfoundland And Labrador	No formal mechanism for dispute resolution. Informal discussions between First Nations and provincial representatives.
Nova Scotia	Tripartite Agreement provides for discussion of differences in interpretation of legislation and standards. Any party to agreement may raise concerns for discussion.
PEI	Not applicable.
New Brunswick	No formal mechanism for dispute resolution. Differences of opinion would be looked at on a case-by-case basis.

Québec	No formal mechanism for dispute resolution. Director of Centre de protection de l'Enfance et de la Jeunesse is responsible for interpreting legislation and standards.
Ontario	No formal mechanism for dispute resolution. Provincial and children's aid society officials are responsible for interpreting legislation and standards.
Manitoba	No formal mechanism for dispute resolution. Province is viewed as having final authority in interpretation of legislation and standards; DIAND on funding matters. When issues arise, parties meet to resolve concerns. If agreement not possible, FNCFS would call for advice of elected FN leaders.
Saskatchewan	No formal mechanism for dispute resolution. Differences are resolved on an *ad hoc* basis by parties to agreements.
Alberta	Most agreements provide that differences in interpretation of legislation and standards are to be resolved at meetings of the Steering Management Committee. DIAND attends by invitation only.
British Columbia	Every Delegation Enabling Agreement contains clause on resolution of differences of opinion on legislation and standards. Differences are dealt with according to protocols established by FNCFS and the provincial Director.
Yukon Territory	Not applicable.

Application of Labour Codes and Professional Certification Requirements

Directive 20-1 does not set out any specifications or guidelines concerning labour codes, professional certification or educational standards for FNCFS agencies. Consequently standards vary considerable from one province to the other, with some agencies applying provincial or federal legislation or standards and other agencies applying their own. Table 4.10 summarizes the practices and requirements concerning the application of labour codes, professional licensing/registration and degree certification for social work staff.

Table 4.10
Application of Labour Codes, and Professional Certification and Degree Requirements
As of March 31, 2000
(Applicable to FNCFS = X)

	NF	NS	PE	NB	PQ	ON	MB	SK	AB	BC	YT
Provincial labour code			NA			X		X	X		NA
Federal labour code	X	X	NA	X			X			X	NA
FN labour code			NA		X						NA
Registration	X	X	NA	(4)	(3)	(1)	(2)	(3)	(3)	(2)	NA
Degree requirement	X	X	NA	(4)	(3)	(3)		(3)	(3)	X	NA

Note 1: Ontario legislation was recently enacted; not effective until June 2000. Application to FNs not known yet.
Note 2: No legislative requirements for licensing or certification.
Note 3: FNCFS agencies not obliged to adhere to provincial requirements.
Note 4: Most agencies.

SUMMARY

In this chapter we found that 'child in need of protection' is described as being a child who meets one of the specified conditions set out in the legislation as placing a child at risk. The current funding mechanism does not provide enough flexibility for agencies to adjust to changing conditions.

Effects of some provincial legislation changes are often seen as positive by First Nation representatives, however, it creates additional administrative and service-delivery responsibilities for which agencies are not being adequately funded. If insufficient DIAND funding prevents the agencies from meeting their obligations, there would appear to be a conflict with the fundamental principle of comparability of services expressed in Directive 20-1.

CHAPTER FIVE
COMMUNICATIONS AND
FIRST NATIONS CHILD AND FAMILY SERVICES

OVERVIEW

The First Nations Child and Family Services Program promotes the development and establishment of agencies that provide child and family services. The objective is to enable First Nations children and families living on reserve to have access to culturally sensitive child and family services within their communities These services are to be comparable to those available to other provincial residents in similar circumstances. The goal is to restore jurisdiction of child and family services to the First Nations in Canada.

Policy Directive 20-1 encourages the development of culturally appropriate and culturally sensitive services to First Nation persons. The Guiding Principles of the Policy Review emphasize the need to involve community, parents, extended family, First Nation governments and Elders in the development and provision of services. There is also a recognition of the need to promote greater integration of services in the community and to develop a more holistic model of service delivery where appropriate at the community level.

A survey instrument was developed comprised mainly of open-ended questions related to communications issues which was distributed by fax to all 94 FNCFS agencies in Canada. Fifty agencies completed the survey. A total of 211 First Nations were represented, or were receiving child and family services, from the 50 responding agencies. Although this is nearly a half response rate the information contained in this chapter should be viewed as a "snapshot" of the national reality of communications across the country.

Of the fifty completed survey instruments received, most were submitted by agency Executive Directors or Directors. The actual personnel completing the questionnaires were identified as follows:

Position	Total	among all cases
Executive Directors	20	40
Directors	25	50
Managers	2	4
Other	3	6
TOTAL	50	100

The survey instrument that was developed included forty questions addressing five key areas: communications within the community, with service providers, with local governance representatives, with provincial government representatives and federal government representatives. Questions concerned existing communications, previous successes, major challenges, communications needs, potential opportunities, target audiences and distribution networks were also asked.

The objective of the data collection was to determine the impact of Policy Directive 20-1 on communications and how agencies encourage the development of culturally appropriate services. The instrument probed the role of community members, parents and extended family, First Nations governments, Tribal Councils and of Elders in the development and delivery of FNCFS services.

This Chapter summarizes the findings of this survey.

Collaboration

Nationally, over 60 percent of all agencies reported active participation of community members. Currently newsletters appear to serve as one of the primary tools to share information with the community. On a national basis, the most common modes of communication were flyers and posters, meetings, newsletters and the radio.

More direct contact with community members was cited by 60 percent of the agencies in the form of community meetings and by 40 percent in the form of Band council meetings. The two forums offer an interactive means to share information and lend themselves more to the participation of community members in developing culturally appropriate services.

On a national basis, the most common ways for community members to participate in the development of FNCFS programs and services were reported as: direct contact with the agency, public meetings, committee and volunteer work. Overall, FNCFS agencies rated the collaboration as close to "good." Over 50 percent of the agencies in most provinces rated the relationship with parents as "good." In general, agencies indicated the participation of community members was best with respect to the participation of Elders. Extended family members were rated second followed by the participation of parents. The national mean scores, however, were quite close and suggest that the relationship with all can be considered reasonably good.

One agency reported that they had hired a worker to develop community networking. The goal of the project was open communications and cooperation between programs. This was realized

through wellness initiatives such as Child Days, Cultural Days, and AIDS Awareness Days. An AIDS initiative had been promoted by another agency to reach both adults and youth.

One agency in Manitoba, team building was stressed by combining CFS and other local resources into one program. A Child Development and Parenting Series, available in English, Cree and Dene, was broadcast through local television, radio and within schools. Another agency reported that they actively solicited professionals from the public and other organizations to find "talented people that could contribute to the agency. Other agencies described the use of workshops on topics such as foster parenting, child abuse and service provider training to get information out to the community. Efforts appear related to the agency going out to reach community members more than one of them coming to the agency for information or to participate in program development and delivery.

Promoting community involvement and an understanding of the programs was reported by 48 percent of the agencies as a challenge. Lack of resources and training was cited by 20 percent of all agencies. In British Columbia over 60 percent of the agencies reported a lack of resources and training as a limiting factor. In British Columbia FNCFS agencies serve more than one First Nation and have to employ such tools as newsletters, public notices, and Band, committee and community meetings as methods to communicate with the community membership.

FNCFS Agency Relations With First Nation Governments

Monthly or quarterly communications concerning formal reports, program development, and program delivery were identified by 58 percent of the FNCFS agencies. When asked about the participation of community leaders in the cultural development and delivery of services, the respondents showed regional variations. Nationally, 40 percent indicated community leaders participated informally, 16 percent participated in the context of boards and committees and 40 percent stated leaders did not participate at all.

FNCFS agencies appear to conduct formal communications with First Nations governments on a regular monthly basis; however the tendency is for less formal contacts.

FNCFS agencies rated their relationships with both First Nations governments and Tribal Councils as good but gave preference to the former. Tribal Council relations were rated a little less than good with 38 percent of the agencies indicating the question was not applicable.

Though 62 percent of the agencies indicated they shared information within the context of meetings, they indicated the participation of community leaders in the development and delivery of services was less formal.

FNCFS Agency Relations With Other Service Providers On Reserve

A key indicator of FNCFS agency cooperation and collaboration was the rating the respondents offered regarding the participation of other service providers with respect to the development and delivery of services. Across the country the overall mean rating was an even 2 or "good."

TABLE 5.1

Regular Communication With Other Service Providers

Comparative Analysis of FNCFS Agency Relations with Other Service Providers on the Reserves

Survey Question 1, Section 2	Total	NF	NS	NB	QC	ON	MB	SK	AB	BC
	#	%	%	%	%	%	%	%	%	%
Community Health Services	30	0.0	100.0	90.0	55.6	66.7	28.6	60.0	100.0	50.0
Police Services	16	0.0	100.0	40.0	33.3	0.0	28.6	40.0	0.0	25.0
Schools	14	0.0	100.0	20.0	33.3	33.3	0.0	40.0	0.0	37.5
Alcohol & Drug Assistance Agencies	13	0.0	0.0	60.0	0.0	33.3	28.6	30.0	0.0	12.5
Social Service Agencies	12	0.0	100.0	10.0	0.0	0.0	0.0	50.0	100.0	50.0
Provincial Child/ Family Services	9	100.0	0.0	10.0	33.3	33.3	0.0	0.0	0.0	37.5
Mental Health Agencies	8	0.0	0.0	40.0	0.0	33.3	0.0	20.0	0.0	12.5
Other First Nations CFS Agencies	3	0.0	0.0	20.0	11.1	0.0	0.0	0.0	0.0	0.0

FNCFS agencies were asked if they communicate with other service providers and if they did, what was the service. The data in Table 5.1 summarizes the range of responses and what percentage of the services agencies in any given region identified. Health services predominated with 60 percent of all the agencies indicating some form of communication. Police services followed with 32 percent of all agencies indicating regular contact. Schools, alcohol and drug agencies, and social agencies were each identified by 28 percent, 26 percent, and 24 percent of all FNCFS agencies respectively.

When asked how the agency generally communicated with other service providers, the predominate form reported was personal contact. This was fairly consistent across the country.

Seventy-six percent of all agencies identified direct personal contacts and meetings as a mode of communication. Fifty-four percent of all agencies identified the telephone and fax. Written correspondence was identified by 30 percent. Workshops and e-mails were not emphasized at all. Though telephones and faxes remain important tools, email remains under utilized across the country. This suggests that computers may not be used by these agencies or are not recognized as useful tools for communication.

The theme of common understanding about the agency's programs and promoting involvement continues to be identified as a challenge facing FNCFS agencies. This is true with respect to community members, community leadership and in terms of the relationships with other service providers.

FNCFS agencies pointed to the need for better systems of sharing information and more frequent communication among service providers. Communication and collaboration were generally not formalized among FNCFS agencies and did not show a consistent pattern across the country. Community health services were the most widely identified type of agency that FNCFS agencies had regular contact with. Police services followed second. Communications with other service providers tend to be direct and personal either face-to-face or by phone or fax. Though some formal communication protocols exist they are not widespread.

A consistent challenge is the need for cooperation and understanding as were the problems associated with time and distance. The agencies did not report that financial and resource constraints were factors limiting community and leadership participation or cooperation; however, agencies do tend to favour low-budget communication initiatives.

Inter-organizational Protocols

The previous section detailed the relationships that exist with communities, First Nations governments and Tribal Councils, and other local service providers. There was not a consistent form of communication used by all. Informal protocols were more common with respect to Elders and Tribal Councils. The data indicated that efforts were being made to communicate with Elders, community leaders, and other community members but the mode and success was variable across the country. Agencies varied in their mode of communication and in how they encouraged community participation.

In the context of community, Band or Council meetings and committees, FNCFS agencies in a number of provinces reveal broad-based participation in these public forums. Community meetings (60%) was the most widely cited forum followed by Band Council and committee meetings (40% of all cases), public meetings, and workshops involving program and service development (30% of all cases). Other public forums included committee involvement in program and service development (26 %) and to a lesser extent forums involving service

delivery such as committee involvement (19%), public meetings (16% and participation on boards and committees (16%).

In the context of more personal face-to-face contacts, informal consultations with community leaders was cited by 40 percent of all agencies.
The data suggests agencies have adopted a broad-based range of communication protocols to reach community members. Direct contact in public forums and within more personal face-to-face contexts were the most common or widespread strategy.

Protocols Established By FNCFS Agencies With Other Service Providers

TABLE 5.2

Communication Protocols and Contacts With Other Service Providers

Comparative Analysis of Protocols Established by FNCFS Agencies with Other Service Providers

Survey Questions 1, 2 & 3, Section 2	Total	NF	NS	NB	QC	ON	MB	SK	AB	BC
	#	%	%	%	%	%	%	%	%	%
Direct Personal Contacts & Meetings with Other Service Providers	38	100.0	100.0	90.0	66.7	66.7	57.1	80.0	100.0	75.0
Regular Communication with Community Health Services	30	0.0	100.0	90.0	55.6	66.7	28.6	60.0	100.0	50.0
Telephone & Fax Communications with Other Service Providers	27	100.0	100.0	50.0	66.7	66.7	28.6	50.0	0.0	62.5
Regular Communication with Police Services	16	0.0	100.0	40.0	33.3	0.0	28.6	40.0	0.0	25.0
Formal Protocols, Existing or Developing, with Other Service Providers	16	100.0	100.0	20.0	22.2	66.7	0.0	20.0	100.0	62.5
Written Correspondence with Other Service Providers	15	100.0	0.0	0.0	22.2	66.7	28.6	60.0	0.0	25.0
Regular Communication with Schools	14	0.0	100.0	20.0	33.3	33.3	0.0	40.0	0.0	37.5
Regular Communication with Alcohol & Drug Assistance Agencies	13	0.0	0.0	60.0	0.0	33.3	28.6	30.0	0.0	12.5
Regular Communication with Social Service Agencies	12	0.0	100.0	10.0	0.0	0.0	0.0	50.0	100.0	50.0
Regular Communication with Provincial Child & Family Services	9	100.0	0.0	10.0	33.3	33.3	0.0	0.0	0.0	37.5
Regular Communication with Mental Health Agencies	8	0.0	0.0	40.0	0.0	33.3	0.0	20.0	0.0	12.5
Formal Regular Meetings & Case Conferences with Other Service Providers	7	0.0	0.0	10.0	11.1	0.0	28.6	20.0	0.0	12.5
Workshops with Other Service Providers	3	0.0	100.0	0.0	0.0	0.0	14.3	0.0	0.0	12.5

Regular Communication with Other First Nations CFS Agencies	3	0.0	0.0	20.0	11.1	0.0	0.0	0.0	0.0	0.0
Formal Memorandum of Understanding with Other Service Providers	2	0.0	0.0	20.0	0.0	0.0	0.0	10.0	0.0	0.0
Formal Joint Initiatives with Other Service Providers	2	0.0	0.0	10.0	11.1	0.0	0.0	0.0	0.0	0.0
Email with Other Service Providers	2	0.0	0.0	10.0	11.1	0.0	0.0	0.0	0.0	0.0

Direct personal contact and meetings with service providers was identified by 76 percent of the agencies, or a majority in every province. This indicates lines of communication exist even if not in a formalized manner.

Communications tend to rest on more informal protocols and FNCFS agencies do not always use all the communication tools available to them nor do they necessarily communicate with all service providers within their locale. Perhaps greater emphasis on more formal relationships would address some of these problems. When asked about challenges to communication the lack of understanding about issues and initiatives was commonly cited as was the need for greater participation from other organizations.

Protocols Established By FNCFS Agencies With First Nations Governments

TABLE 5.3

Communication Protocols with First Nations Governments

Comparative Analysis of Protocols Established by FNCFS Agencies with First Nations Governments

Survey Question 2 & 3, Section 3	Total	NF	NS	NB	QC	ON	MB	SK	AB	BC
	#	%	%	%	%	%	%	%	%	%
Scheduled Meetings with FN Gov'ts	31	100.0	100.0	60.0	55.6	33.3	85.7	80.0	100.0	25.0
Written Reports & Correspondence with FN Gov'ts	16	100.0	100.0	40.0	11.1	66.7	28.6	20.0	0.0	37.5
Board & Committee Participation with Community Leaders	8	0.0	100.0	10.0	33.3	0.0	28.6	10.0	0.0	0.0
Communication with FN Gov'ts on an Ongoing or As-Needed Basis	7	0.0	0.0	30.0	0.0	33.3	14.3	0.0	0.0	25.0
Telephone Communication with FN Gov'ts	2	0.0	0.0	10.0	0.0	0.0	0.0	0.0	0.0	12.5

Table 5.3 indicates a number of strategies and mechanisms for communicating with First Nations governments but no clear patterns emerge. Scheduled meetings were cited by sixty-two percent of the agencies followed by written reports and correspondence among thirty-two percent of the cases.

Protocols obviously exist between FNCFS agencies and First Nations governments. Scheduled meetings and written reports and correspondence were common. Agencies nonetheless recognize that challenges exist: fifty-two percent of the agencies identified problems with developing cooperation and understanding with First Nations governments about agency issues

The research indicated forty percent of all FNCFS agencies reported that community leaders do not participate in the development and delivery of services. Assuming community meetings are in some ways related to the role of the Tribal Council, the majority (60%) indicated information was shared within this forum. More specifically, forty percent indicated information was shared at Band and committee meetings. Agencies either indicated the role of the Councils did not apply to their activities or that community leaders did not participate in the development and delivery of services. Nonetheless, the majority of agencies indicated they shared information within community meetings and through the participation of community leaders.

Overall, fifty percent of the agencies reported regular contact suggesting protocols have been established. This was not common however to all regions and agencies. Fifty percent of all agencies reported regular contact with provincial governments. Twenty-eight percent of the agencies reported communications were rare or that there were no communications. Eighteen percent indicated meetings and contacts were on an as-needed basis. Their reasons for communicating with provincial governments were to discuss policy and legislation issues, funding issues, and/or case management issues. Fifty percent of all agencies reported policy and legislative issues as being a key topic of provincial protocols. Program and service protocols and formal agreements were also identified.

With respect to relationships and communications with the federal government (DIAND) the most commonly addressed topics were either funding issues or program and management issues. This differs from the topics commonly communicated with the provincial government, which showed greater emphasis on policy and legislative issues.
Sixty-six percent of all agencies identified funding as the topic most commonly addressed with the federal government.

When queried about challenges faced when communicating with the federal government no clear trends were identified. A lack of understanding was most commonly identified. The most commonly mentioned problem was a basic lack of funding for child and family services. Some agencies noted that this problem made communication initiatives more difficult.

Overall, the agency comments suggest Policy Directive 20-1 has a negative impact on communications. The policy is viewed as rigid and unilateral with little room for FNCFS input in the interpretation, or allocation of funds. FNCFS agencies noted that funding inevitably affected communications. One agency stated Policy Directive 20-1 was outdated. Another noted that the Directive appeared more effective when applied to larger reserves.

In general, the Directive was not perceived as a positive arrangement for service agencies. FNCFS agencies reported they wanted more input into the legislative relationship with the federal government and certainly feel that more collaboration is needed in child and family service issues. The data on communications and policy development at the community level confirms this. Although there was no clear or strong tendencies among agencies across the country, there was a sense that more flexible and informal methods were preferred.

Use of formal communication protocols

Only thirty two percent of the agencies indicated having formal protocols in place with other service providers. These protocols were very regional and not widespread. Direct personal contacts and meetings were identified by 76 percent of the agencies indicating that communications exist even if not in a formalized manner. The relationship with other service providers was rated as reasonably good. Agencies did not always communicate with all service providers that were available in their area.

Protocols exist between FNCFS agencies and First Nations governments. Scheduled meetings and written reports and correspondence were common. Formal protocols with Tribal Councils were not readily identified but contacts fall within the broader scope of community relationships.

Fifty percent of all agencies reported regular contact with provincial governments. Twenty-eight percent of the agencies reported communications were rare or that there were no communications at all. Eighteen percent indicated meetings and contacts were on an as-needed basis. Communications concerned policy and legislation issues, funding issues, and/or case management issues. The most commonly cited protocol concerned programs and services but the responses were highly regionalised

Joint Ventures

The third component to the analysis involved a comparative analysis of the joint ventures between FN agencies and other service providers in the community.

TABLE 5.4

Formal Communications and Joint Ventures with Other Service Providers

Comparative Analysis of Joint Ventures with FN Agencies and Other Service Providers

Survey Question 4, Section 2 and Question 3, Section 2	Total	NF	NS	NB	QC	ON	MB	SK	AB	BC
	#	%	%	%	%	%	%	%	%	%
Protocols (Existing or in Development)	16	100.0	100.0	20.0	22.2	66.7	0.0	20.0	100.0	62.5
Joint Workshops & Forums	8	0.0	0.0	20.0	11.1	33.3	14.3	20.0	0.0	12.5
Regular Meetings & Case Conferences	7	0.0	0.0	10.0	11.1	0.0	28.6	20.0	0.0	12.5
Community Resource Group	3	0.0	0.0	10.0	0.0	0.0	14.3	0.0	0.0	12.5
Developing Protocols	3	0.0	0.0	10.0	0.0	33.3	0.0	0.0	0.0	12.5
Regular Communication with Other FNCFS Agencies	3	0.0	0.0	20.0	11.1	0.0	0.0	0.0	0.0	0.0
Sharing Resources & Training	2	0.0	0.0	10.0	0.0	0.0	0.0	0.0	0.0	25.0
Joint Initiatives	2	0.0	0.0	10.0	11.1	0.0	0.0	0.0	0.0	0.0
Memorandum of Understanding	2	0.0	0.0	20.0	0.0	0.0	0.0	10.0	0.0	0.0

The data summarized in Table 5.4 displays the low response rate to the question about joint ventures with other service providers. At best 32 percent of all agencies indicated protocols either existed or were in the development stage. Sixteen percent identified joint workshops and forums and 14 percent identified regular meetings and case conferences.

Program development and delivery were the most commonly cited joint activity. Forty-eight percent of all agencies cited program development and delivery. Committee representation was identified in only 6 percent of the cases. Significantly, 40 percent indicated that no joint ventures were in place with First Nations governments.

Agencies did not report a high participation of Elders in committee and advisory groups (28%of all agencies), within informal gatherings (22% of all agencies), nor within the context of programs and workshops (14% of all agencies).

According to the data the participation of Elders was not widely noted, however, the agencies tended to rate such participation as good. Informal gatherings and consultations were the

preferred context. It was understood that both Elders and community leaders would bring their traditional knowledge and particular community concerns to any forum that addressed program and service development. A key means to promote the development of culturally sensitive programs was to get community members involved in the program development process.

The need for better communication, understanding, and participation by community members was identified as one of the challenges facing FNCFS agencies. There was a need to develop cooperation and understanding of agency issues among First Nations governments according to the respondents.

SUMMARY

FNCFS agencies appear to conduct formal communications with First Nations governments on a monthly basis; however the tendency is for less formal contacts. Though sixty two percent of the agencies indicated they shared information within the context of meetings, they indicated the participation of community leaders in the development and delivery of services was less formal.

Communications on a monthly or quarterly basis with First Nations governments involved formal reports and to a lesser extent the communication of policy, program development, and delivery issues. Community health services was the most widely identified type of agency that FNCFS agencies had regular contact with. Police services followed second. A consistent challenge was the need for cooperation and understanding as were the problems associated with time and distance.

The data suggests communities have adopted a broad-based range of communication strategies. Direct contact in public forums and within more personal face-to-face contexts were common. Protocols exist between FNCFS agencies and First Nations governments. Scheduled meetings and written reports and correspondences were common. Agencies nonetheless recognize that challenges exist: fifty-two percent of the agencies identified problems with developing cooperation and understanding with First Nations governments about agency issues.

Forty percent of all FNCFS agencies stated that community leaders do not participate in the development and delivery of services.

With respect to relationships and communications with the federal government the most commonly addressed topics were either funding issues or program and management issues.

A key means to promote the development of culturally sensitive programs is to get community members involved in the program development process. There is a need to develop cooperation and understanding of agency issues among First Nations governments.

CHAPTER SIX
THE FUNDING OF FIRST NATIONS CHILD AND FAMILY SERVICES IN CANADA

Introduction

Program Directive 20-1 primarily determines funding for FNCFS agency activity. The Directive has two basic funding methods. One component is a formula that is heavily influenced by the 0-18 on-reserve population of the communities served by FNCFS agencies. This number is used to calculate the administration and operations budget. The second component provides for the reimbursement of actual maintenance expenditures claimed by agencies. The Directive provides for three stages of funding as agencies progress through pre-planning, planning, and start-up phases of development. Once an agency has completed all stages of development, they commence operations and receive funding phased-in over a four-year period.

Federal Treasury Board and DIAND using an on reserve 0-18 population of 1000 children as the norm developed the Directive 20-1 operations formula. The formula was adjusted downward for agencies serving smaller populations. No adjustments were made for agencies serving larger populations. The formula was also adjusted by applying a factor for remoteness using a departmental remoteness policy developed for Band Support programs. The formula provided additional funds for each First Nation belonging to the FNCFS agency. And finally, the formula provided for evaluations in the third and sixth year of operations for new agencies only and not those prior to the directive.

While the funding for the FNCFS agencies is generated by a national federal policy, the agencies are required to seek and receive legislative authority from provincial governments responsible for child welfare services. Each province has its own legislation. While there is a common purpose in the legislation to protect children, the processes, methods by which children are protected, and the delivery agents, vary considerably from one jurisdiction to other.

Since the introduction of Directive 20-1 most provincial child welfare jurisdictions have been under public scrutiny, usually due to the death of a child. As a consequence, most jurisdictions have changed the methods by which children are protected. The reform of child protection services has occurred to some extent in each jurisdiction. It is appropriate that the federally funded system also be reviewed.

Background

In the summer of 1989, DIAND received Cabinet approval to expand First Nation Child and Family Services on reserve as resources became available. This approval followed several years in which a moratorium had been in place restricting such growth. The approval to expand was given with a number of conditions.

DIAND circulated a discussion document, dated October 1989, which outlined several basic principles endorsed by the Federal Cabinet in their consideration of the long-term plan for Indian child welfare in July of 1989. The basic decision made by that Cabinet:

> *"...was that the federal government will continue to fund and support the expansion of Indian child and family services on reserve as resources become available, in co-operation with Indian people and the provincial governments. This funding and support will be in accordance with provincial legislation and at a level comparable to the services provided off reserve in similar circumstances. While the range of services includes most of the prevention and protection services covered by the various provincial Acts, it specifically excludes day care (child care), services for young offenders and maintenance in facilities where a child is placed for mental health treatment, since these are covered by other federal programs. Cabinet also approved the basic objectives of a new management framework which would not only make life easier for Indian child welfare agencies by providing them with stable and predictable funding, and more flexibility in their budgets, but would also improve agency management and accountability."*

The discussion paper was intended to gather responses to the Department's proposals to achieve the objectives from existing ICFS organizations and provinces prior to the Department writing a management directive. The objectives were listed as follows:

1. *"To encourage and support the provision of a full range of services and an integrated service approach for Indian children on reserve.*

2. *To provide ICFS organizations with a choice about delivery of services and control over the full range of services provided to their children.*

3. *To support the establishment of ICFS organizations that serve a large enough population that they can operate efficiently. A target of a minimum of 1,000 children has been set as a guideline*

4. *To support the development of Indian service standards for child and family services.*

5. *To promote the development of new Indian managed child and family service organizations in a planned and coordinated manner, as rapidly as resources and agency planning permit.*

6. *To establish nationally consistent agreements between ICFS organizations and federal and provincial governments which clearly identify respective roles, responsibilities and areas of accountability.*

7. *To manage the funding of ICFS organizations on reserve in a manner that provides flexibility in the operating budget, and stable and predictable funding.*

8. *To adjust ICFS funding to reflect different levels of needs for services, based on socio-economic factors, if appropriate.*

9. *To ensure that no ICFS organization's budget is decreased under the new funding arrangements, and that there is a clearly established method of adjusting such budgets.*

10. *To achieve ICFS organizations of an efficient scale, with a minimum disruption of the operations of existing services. Existing ICFS organizations which do not meet the guidelines for a target population of a minimum 1,000 children will be reviewed, in order to determine a possible amalgamation plan.*

11. *To ensure the establishment of a reliable data collection, analysis and reporting procedure.*

12. *It is important for all ICFS organizations to have access to independent evaluations, in order for them to be able to confirm or improve their practices.*

13. *To ensure that a tripartite mechanism is put in place to facilitate the development of Indian service standards and new ICFS organizations, as well as to deal with any operational issues in a timely fashion.*

14. *Other Administrative Matters: Aside from the specific matters dealt with in the proceeding pages, Cabinet has also directed that certain established administrative requirements be met, including: Submission of annual audits; Submission of agency annual activity reports; Submission of provincial certification; other federal regulations applicable to funding*

will continue to apply. These requirements do not depart from existing practices and are included in current agreements."

Program Directive 20-1 became effective April 1, 1991.

The department established a working group on Child and Family Services in 1993 *"to review the roles of headquarters and regions, the child maintenance question, possible socio-economic indicators for funding formulae, and data collection methodology."* The working group was composed of both headquarters and regional staff. First Nation agencies were provided an opportunity to express their opinions on the issues selected for review.

The Departmental Audit and Evaluation Branch of DIAND published an evaluation of the First Nations Child and Family Services Program in November 1995. The evaluation reviewed agency activity up to March 31, 1994. The evaluation team made the following recommendations.

1. *"It is recommended that the roles and responsibilities of DIAND and its First Nation and provincial partners be clarified in all future agreements, and that current agreements be updated or clarified on renewal.*

2. *It is recommended that reporting requirements in agreements between DIAND and FNCFS agencies be realigned and reinforced to ensure accordance with the specifications of the Program Directive.*

3. *It is recommended that DIAND encourage the Provinces and First Nations to co-ordinate their efforts to deliver effective training programs to FNCFS staff in all communities.*

4. *It is recommended that DIAND revisit the nature and structure of funding for on-reserve First Nation Child and Family Service, with a focus on clarifying the definition of operational and maintenance funding, and to explore the development of block funding arrangements as an alternative to funding operations and maintenance separately."*

The Program Directive was revised marginally effective April 1, 1995 to reflect price increases in the operational formula. There appears to be no evidence that the recommendation of the evaluation to more clearly define operations and maintenance was ever implemented.

After several years of experience of implementing the program directive, agencies became increasingly critical about various financial and policy aspects of Program Directive 20-1.

DIAND agreed to review the policy in partnership with First Nations. By the fall of 1999, the terms of reference to conduct a National Policy Review into four distinct elements of the Directive. The four elements to be researched by selected contractors were: 1) Legislation and Standards; 2) Agency Governance; 3) Funding Issues; and 4) Communications. This Chapter is a summary of the funding research that was undertaken as a part of this review.

The Research Process

The process for collection of data on funding was through a survey instrumentation methodology. Survey instruments were designed to collect as much information as possible from as many agencies as possible via a mail out. The surveys were targeted to three main stakeholder groups in the Directive. They included FNCFS agencies, DIAND regions and provinces. A glossary of Child Welfare Terminology was developed to assist the respondents in completing the survey questions and a chart for the range of services was also included.

Surveys were distributed to ninety- five FNCFS agencies, seven DIAND regions, and nine provincial departments/ministries responsible for child and family services. The resulting responses were: 30 (31.6%) FNCFS agencies including one from Ontario; all six regional funding agencies under Directive 20-1 (excluding Ontario); and 5 (55.6%) provinces. DIAND headquarters, and the Federal-Provincial Working Group on Child and Family Services Information provided additional statistical data. Background documents were also provided by the AFN along with data that were downloaded from the Internet.

First Nations agencies in Ontario are funded by a unique federal-provincial agreement signed in 1965. As a result Ontario agencies did not participate in the data collection targeted in this phase of the National Policy Review. They are funded based on an agreement through the Canada Assistance Plan Act, Part II, which provides cost-sharing arrangements to address the special socio-economic circumstances of select geographic areas. Under the terms of the agreement, Ontario funds social services on reserve with a charge back to DIAND for the major share of the costs of Social Assistance and child and family services. Because of this agreement First Nation Child and Family Services Agencies, except for Ojibway Tribal Family Services (OTFS) are not funded directly by DIAND or on the basis of program Directive 20-1. OTFS is a single Band agency funded by DIAND for the delivery of non-mandated prevention services.

The Province of Ontario has also recently completed a comprehensive review of five First Nation CFS agencies. That review was conducted from October 1997 to late fall 1998. As well, the Ontario Ministry of Community and Social Services developed a Guide to Child Welfare Funding Framework which has some relevance to the funding issues of program Directive 20-1. Due to the limited timeframe and budget for the data gathering for the National

Policy Review, it was determined that the agencies in Ontario would be included on the mailing list for information purposes but would not be included in the development of the sample group because they were not funded in accordance with 20-1.

The agencies that responded to the questionnaire were coded as being pre and post Directive 20-1. It was also noted which of those volunteered their audited financial statement for last year. The frequency distribution of their answers were as follows:

First years of operation

Pre Directive 20-1	13
Post Directive 20-1	17

Audited Financial Statement for fiscal year 1998/99

Full statement	6
Partial statement	5
No statement	19

This chapter summarizes the data that was collected through this methodology.

What was intended to be included under operations

FNCFS Agencies are expected through their delegation of authority from the provinces, the expectations of their communities and by DIAND, to provide a comparable range of services on reserve with the funding they receive through Directive 20-1. The formula, however, provides the same level of funding to agencies regardless of how broad, intense or costly, the range of services is. Table 6.1 summarizes the breakdown of funding for operations based on DIAND data.

Table 6.1
Child and Family Services Costing – Bottom Up Approach
November 1989 Source DIAND

Items	Fixed	Per Band	Per Child 1,000 or 1,250
Board of Directors*		7,200	
Director	50,000		
Director's Travel	10,000		
Secretary/Receptionist	20,000		
Financial Support	25,000		
Evaluation	10,000		
Audit	5,000		
Legal	5,000		

Local Committees		2,000		
Elders Committee*		2,400		
Resource Training	10,000			
On-going Development	20,000			
Service Purchase			100	100.0
Family Support - protection ($168,000)			168	134.4
Travel ($30,000) *			30	24.0
Child Care Staff ($78,000)			78	62.4
Travel $15,000)*			15	12.0
Resource Workers ($28,000)			28	22.4
Travel ($5,000) *			5	4.0
Prevention Workers ($46,000)			46	36.8
Travel ($10,000) *			10	8.0
Supervision ($152,000)			152	121.6
Travel ($40,000) *			40	32.0
Support Staff ($60,000)			60	48.0
Emergency Services ($30,000)			30	24.0
Benefits and Administration $172,000)			172	137.6
On-going Training $26,000)			26	20.8
Total	**155,000**	**11,600**	**960**	**788.0**

NOTE: * denotes cost sensitive item.

Maintenance - what is included

The reimbursement method of funding maintenance was intended by DIAND as a means of protecting agencies from the consequences of unexpected increases in maintenance costs. Maintenance is not defined in Directive 20-1. The evaluation conducted by the department in 1995 concluded that the definition of maintenance should be clarified. There have been no national changes made to the definition since that recommendation was made.

Some of the typical services that agencies reported DIAND and the provinces reimburse as maintenance costs include foster care, group care, institutional care, other care and in need of protection but not in-care. Services that FNCFS agencies reported were rejected for payment under maintenance by DIAND were: parent aide, legal fees/court appearance, counseling/therapy assessments, travel, special needs, regular maintenance, services for families (respite), foster parent training, services to the disabled, repatriation, youth services, etc.

Population thresholds

DIAND's 1989 Discussion Document describes organizational scale as the following:
"It is difficult for an ICFS organization to provide full services in a cost-efficient manner if the population to be served is too small, because of the high administration overhead costs. At the same time, a small ICFS organization can face considerable difficulties in

operating effectively, since the chance of service workers being related to or acquainted with the families they deal with is much higher if the population is small. This can make it particularly difficult when it comes to child apprehensions and placements. And finally, the budget available for the expansion of child and family services on reserve is limited, and it is therefore essential to create efficient ICFS organizations.

The guideline supported by DIAND and the central agencies (e.g. Treasury Board) is that, except in limited cases, a minimum of 1,000 on reserve children (0-18 years) should be the target population of any new ICFS organization. Because of the high cost of having smaller service organizations and the limited funds available, the flexibility in this option is largely limited to its application, and the kinds of exceptions that will be allowed, but all exceptions will be studied on a case-by-case basis.

1. *programs and it Isolation and remoteness: the distance between bands that would otherwise work in cooperation is so great that efficiency would not be achieved by following the guideline.*

2. *Cultural contrast: extreme cultural differences would not lead to effective working relationships.*

3. *Existing groupings: some bands are already cooperating together in the administration and delivery of other would be essential that the same grouping be acknowledged in order to create an efficient ICFS organization.*

   In those cases where the 1,000 guideline can not be followed, the funding would be adjusted accordingly." Pages 8,9.

The Directive includes the same exceptions in section 9.1 (a) (1), (2), and (3).

Staff Training and The Current Operational Formula

The bottom-up approach to developing the formula for operations included $26,000.00 for on-going training to be paid out of the per child calculations. Program Directive 20-1, section 7.1 (c) referring to the expectations of the Start-up phase states that "the initial training of staff" is included in the start-up funds.

Application of the formula

Based on the data collected it appears that the operations funding formula is applied consistently in all regions except for Ontario where child and family services on reserve are funded by a different financial arrangement.

Program directive 20-1 provides phase in funding by contributing 75% of the operations formula funding in the first year of operations, 85% in the second year, 95% in the third and 100% in the fourth year. The assumption behind the phasing-in of funding by DIAND is that agencies at the outset of operations would focus on community education and prevention activities at least for the first couple of years of operation. Subsequent to that it was expected they would commence with the delivery of protection services and the remaining range of services.

FNCFS agencies, regions and provinces, all reported that the phasing-in of operational funding did not reflect reality. In reality, agencies are expected to deliver the full range of services as soon as the agency begins operations. Consequently, the reduced funding in the early years of operations for agencies seriously limits their capacity to deliver the services expected of them. There was consensus among agencies, regions, and provinces that the concept of phasing-in should be considered for termination.

About one-third of FNCFS agencies respondents reported that they do not provide adoption services. The only other significant difference in the range of services provided by agencies compared to the provinces was that agencies generally do not operate group or institutional care facilities.

Comparison of Contribution Funding and Block Funding.

Many department and agency representatives have expressed the merits of block funding but are quick to add a number of caveats that are not currently applied to the agreements and therefore conclude that block funding would be preferred method of funding for some agencies if those caveats could be addressed. The major advantage of block funding for DIAND is the increased predictability of multi-year budget forecasts proportionate to the number of agencies funded on a block basis.

The major advantage of block funding for the FNCFS agencies is the increased ability to establish their own program and administrative priorities. There are several disadvantages of block funding from an FNCFS agency perspective. Agreements lack specific criteria by which the funding can be adjusted during the term of the agreement, and similarly they lack criteria that can be used to determine the starting budget base for a subsequent multi-year term. Currently there are several regional pilot projects under way. Further research should be undertaken to assess the merits of these pilot projects.

What about other funding methodologies

Provinces reported they use a variety of funding methods such as grants, contract for services, and fee-for-services. Ontario and Alberta recently introduced new formula based funding that could be options for possible national funding methodologies:

Ontario

The province is implementing a new funding regime. The number of protection cases forms the base of the formula. The more protection cases an agency has the more staff and budget the agency receives under the formula. The formula uses timed benchmarks for various case activities. Staff salaries are benchmarked to a salary scale for different types of positions that are then multiplied by the number of FTEs for that type of position.

Maintenance costs of the budget are defined by the type of care provided, the number of cases in each category of care, and multiplied by pre-determined per diems

Agency staff training and recruitment budget is set at 1% of total direct service salaries. Travel is set at $5,035.76 per direct service position, plus $30,000.00 for each fly-in community served by the agency. Administration, client services, and program support budgets are established for each agency based on 1997 expenditures. There is no indication in the description of the new funding model, how the FNCFS agencies will be treated in terms of their case practices and service priorities.

Alberta

Alberta recently introduced a new funding model built on the size of the population under age 18 served by a regional authority. The formula is distributive in nature in that it distributes available money rather than generating how much is needed for operations. The base population count is weighted for low-income families, single-parent families and aboriginal families. "The formula is: A region's adjusted population = 1 x (number of children) plus 3 x (number of low-income children) plus 3 x (number of single-parent children) plus 5 x (number of Aboriginal children). The weights are based on extensive Canadian and international research. If a child is in more than one of the population groups, the formula assigns them added weight because research confirms that they face additional needs."

"The base funding for a region is adjusted: 1) to allow for a high needs fund for the Authorities, 2) to compensate for cost-of-doing-business factors (if a region qualifies for this adjustment), and 3) to reflect the amount of federal funding provided for services on First Nations reserves."

The new funding model addresses the additional costs of providing child welfare services related to distance and low population density as follows:

"To compensate for transportation costs associated with distance from major service and supply centres, an Authority's funding will be adjusted for populations living more than 300 kilometres from Edmonton or Calgary.

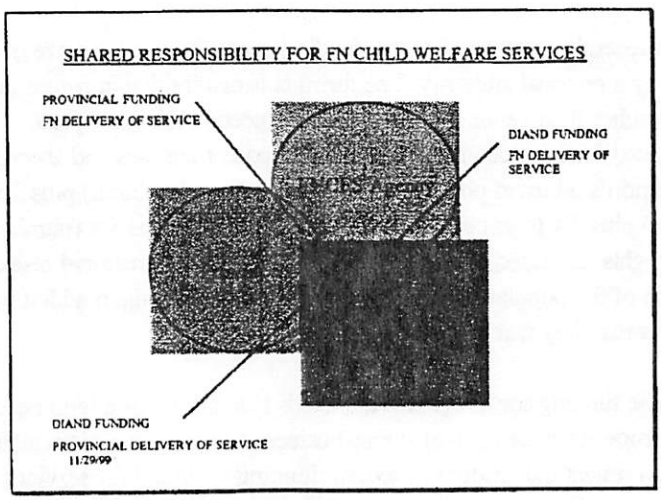
To compensate for costs associated with low-population density, and inability to benefit from economies of scale, an Authority's funding will be adjusted for populations living from 50 to 80 kilometres from towns of 5,000.

An Authority will receive additional compensation for populations living more than 80 kilometres from towns of 5,000."

A Shared Responsibility for Child Welfare

Program directive 20-1 is based on the premise that the provinces have legislative authority for child and family services. The Directive requires that First Nation Child and Family Service (FNCFS) agencies enter into agreements with the provinces to arrange for the authority to deliver a range of comparable child and family services on reserve. Consequently, there is a complex, three party, relationship between FNCFS agencies, the provinces and DIAND's Directive 20-1 all of whom are responsible for the funding and delivery of child and family services in Canada. The following chart illustrates that relationship.

Chart 6A
Shared Responsibility for First Nation Child Welfare Services in Canada

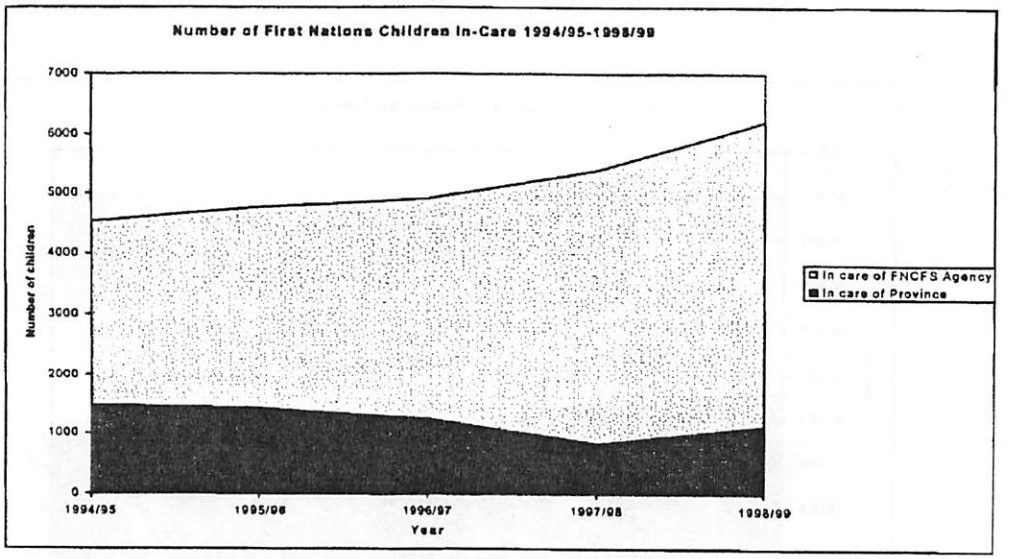


Directive 20-1 is a national funding mechanism that provides a fixed level of funding for operational costs based primarily on the previous years count of the 0-18 on-reserve registered

population. Maintenance costs are reimbursed monthly based on claims made by the agencies to DIAND for the actual costs of keeping children in foster homes, group homes and institutional facilities.

The growth in maintenance expenditures is the result of an increasing number of children-in-care. Since 1994/95 the rate of overall growth has been increasing rapidly, pushing the average annual growth over the 5 years to 9.2%. Since 1996/97 the average annual growth of children in care has increased to 12.7%. This increasing rate of growth may be linked to the number of new agencies becoming operational during the last three years. As well, there does not appear to be offsetting declines in provincial children in care cases funded by DIAND.

Chart 6B
First Nations Children-in-care 1994/95-1998/99
(with the exception of Ontario)

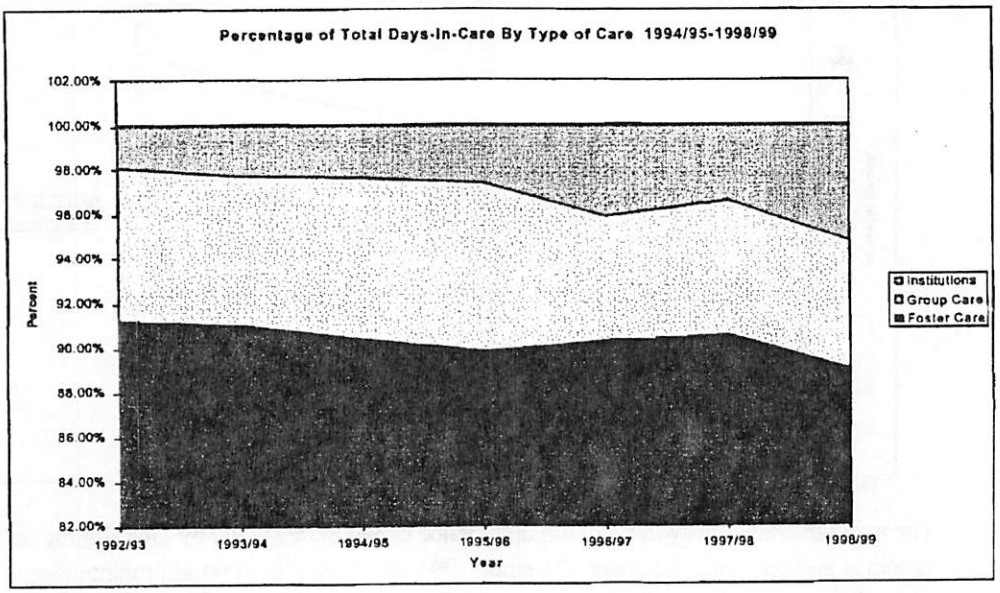


The average annual growth in total maintenance expenditures made by DIAND for both agencies and provinces has been 7% since 1994/95. This 7% growth in maintenance expenditures is made up of a 20.0% increase in agency maintenance expenditures and a decline of 9.4% payments to provinces for maintenance.

By 1998/99 maintenance expenditures were 99.9% of operations funding for FNCFS. As the majority of First Nations communities are now being served by an FNCFS agency or have an agency in a development phase, operations funding is not expected to continue to grow significantly and will level off in the near future. Because of this levelling off, total maintenance funding will begin to exceed operations funding in 1999/2000 and continue to grow in proportion of operations in future years.

It is not imprudent therefore to assume that a continuing steep growth in annual spending will see total maintenance expenditures doubling well before the end of the decade if no changes are made to the policy.

Chart 6C
Percentage of Total Days in Care by Type Of Care 1994/95-1998/99
(With the Exception of Ontario)



Operations costs of FNCFS agencies include staff salaries and benefits, travel, administration, financial and accounting support, prevention services, protection services, recruitment and

training of community resources, board and Elder expenses, research, planning, program and policy development, legal services, and staff training and development. There is no adjustment in the formula for cost sensitive items, increases in volume of children in care or new programs introduced by the provinces.

The funding formula provides some recognition for remoteness but it was consistently criticized by agencies as not being realistic for child welfare purposes. The remoteness formula was developed by DIAND for Band support funding. It measures the distance from the First Nation to the nearest service centre. FNCFS agencies are required to transport children and their family members often to treatment resources that are only available in provincial capitals or major cities

There are two simple adjustments that could be made to adjust the formula. The first would be to consider adjusting the amount provided to each organization upward at least for the smaller agencies. A second method would be to introduce a method of weighting the per capita amounts for agencies serving smaller populations.

The most contentious issue for FNCFS agencies is the definition and the method of funding maintenance costs. One solution would be to define maintenance and its corresponding funding method, which could be directly linked to provincial legislation, policies and practice standards.

Operations Formula

The national policy, as written, allows for limited capacity to adjust the formula to local circumstances. However, the policy when implemented deviates considerably from region to region. This deviation occurs to allow for circumstances that were established prior to the implementation of the directive, to align the directive to match provincial legislation, policy and practices, and to fill definitional vacuums. This phenomenon is not necessarily formally approved by DIAND. It is also not equitably or consistently applied. Furthermore it is not necessarily consistent with the intent of the policy nor does it always support sound social work practice.

The operations formula was originally structured to provide funds for: a fixed amount per agency for core administration, remoteness, community participation, prevention, as well as protection and adoption services. The formula is primarily based on the 0-18 on reserve population. The population base is the only factor that is automatically adjusted each year to reflect changes in the on reserve population as recorded by Lands Revenue and Trusts as of December the previous year.

There are no routine price adjustments incorporated in the operations formula. There appears to have been no price adjustments to the formula since the 1994/95 fiscal year.

Adjustment for Remoteness

Program Directive 20-1 provides an adjustment to the operating budget of each agency based on the averaging of the remoteness of each member Band of the agency. The factor is composed of: *" $9,235.23 X average remoteness factor + $8,865.90 per member Band X average remoteness + $73.65 per child X average remoteness factor".*

The remoteness factor used in the operations formula for FNCFS agencies is the same remoteness factor as is used for most Band activities. The remoteness formula attempts to compensate agencies for travel based on their relative distance to a service centre.

The Band Support remoteness factor defines a service centre as:

"A community where the following services are available:

a) suppliers, material and equipment (i.e. construction, office, etc.)
b) a pool of skilled and semi-skilled labour
c) at least one financial institution (i.e. bank, trust company, credit union);

and where the following services would typically be available:

a) Provincial Services (i.e. Health Services, Community and Social Services, Environment Services)
b) Federal Services (i.e. Canada Post, Employment Centre)."

The policy goes on to say that; " A Service Centre is defined as "the nearest location to which a Band must refer to gain access to government services, banks and suppliers." There are four distinct Zones. Zone 1 is when a Band is located within 50 km from the nearest services centre with year-round road access. Zone 2 is where the Band is located between 50 km. and 350 km. from the nearest service centre with year-round road access. Zone 3 is defined as where the Band is located over 350 km. from the nearest service centre. Zone 4 is where the Band has no year-round road access to the nearest service centre. Each Zone has a four-point scale of numeric values that further classifies Bands.

FNCFS agencies indicated that they all thought that an adjustment for remoteness was necessary. However, the method for calculating the additional travel costs of greater isolation was thought to be not well suited to child welfare services. The definition of a service centre was not reflective of the fact that FNCFS agencies have to travel to large provincial cities to access support services for their children receiving care. Agencies serving communities in northern communities have long distances to travel to access, for example, a psychiatrist, psychologist, speech or language therapist, etc. for special needs children who may be mentally and/or physically disabled. This also includes access to specialized residential resources. In addition costs for family members, caregivers, and staff to travel was another problem.

Provinces use different funding models than Directive 20-1. Generally DIAND and Provincial departments/ministries are funded based on a block methodology from Parliament and Provincial Legislations. Annual budgets are developed and approved by these bodies and then departments are expected to live within the limits of the resources they are provided. They do have varying degrees of ability to move money from one "envelope" to another for example but not to use operations funds to support maintenance expenditures. The scale of most departments is much larger than FNCFS agencies. Federal and provincial departments also have an established system of getting adjustments to budgets mid-year if necessary to cover rising or unexpected costs. Provinces that delegate service delivery responsibility to community child and family service agencies have developed historical funding bases and increase levels over time by balancing budgetary capacity with increased demands for service.

DIAND has been limited to 2% budgetary increases for the department while expenditures for FNCFS agencies have been rising annually at an average rate of 6.2%.

Provincial levels of funding

Differing legislation, funding, and management and program delivery regimes for each province further complicates the inherent variability in the basic language used by agencies, regions and provincial officials. This creates a lack of consistency in provincial information.

Funding data for specific programs delivered by line departments often do not include proportional costs for items such as capital, vehicle operating costs, accommodations costs (both office and program), information systems development and maintenance, legal representation, human resources, finance and payroll, communications, central policy, research and program support and inter-governmental relations. In many cases special operating agencies such as public service commissions, other departments such as justice departments, and crown corporations such as property management organizations, provide these types of supports to line departments of social services. All the proportional costs of these activities must be included in provincial expenditures on child welfare services, in order to make comparisons with FNCFS agencies since these costs appear to be defined as operations costs within the scope of 20-1 funding for FNCFS agencies.

Any comparison of operating expenses must also consider the scale of operations. Provincial governments possess a large infrastructure that is capable of underwriting many of the costs of the child welfare system indirectly. FNCFS agencies do not possess this infrastructure. Agency data reported to DIAND for fiscal year 1998/99 indicates agencies have on average 6.8% of their on-reserve child population in care. The most notable difference between FNCFS agencies and their provincial counterparts is the higher percentage of First Nation children in the care of FNCFS agencies.

A broad based approach is to compare the cost of each child in care can be derived by dividing provincial and DIAND total expenditures by the number of children in care as of March 31, 1999. The following table offers that comparison.

Table 6.2
Annual Cost of Child in Care – DIAND and Provinces
As of March 31, 1999

JURISDICTION	CHILDREN IN CARE MARCH 31, 1999	TOTAL EXPENDITURES	ANNUAL COST PER CHILD IN CARE
Newfoundland	612	$17,132.8	$27,995
Nova Scotia	1906	$98,939.1	$51,909
Ontario	12490	$858,200.0	$68,711
Manitoba	3428	$109,630.6	$31,981
Saskatchewan	3030	$96,468.3	$31,838
Alberta	6629	$291,427.0	$43,962
British Columbia	9813	$533,147.0	$54,331
DIAND	6895	$238,563.8	$34,600
Average			**$44,390**

Data Source: Federal/Provincial Working Group, DIAND HQ

DIAND expenditures per child are the fourth lowest of the provinces listed and $9,970 or 22% lower than the average of the provinces listed.
The national average that includes DIAND average annual growth rate is 12.0%. DIAND's average growth rate is 6.2. The national, including DIAND, average growth rate in the number of children in care over the past five years is 8.2%. DIAND's annual growth rate for the same period was 9.6%.

In summary, it is virtually impossible to make an accurate comparison of the level of funding due to the: very different systems of service delivery; very different scales of economy; vastly different social and economic conditions; differing historical and cultural value bases; and the absence of reliable data.

The average growth rate of expenditures by DIAND is lower than the average of the selected provinces reporting that data and DIAND combined, while the rate of children coming into care in the DIAND funded system is growing at a faster rate than the average of the selected provinces and DIAND combined.

The average per capita per child in care expenditure of the DIAND funded system is 22% lower than the average of the selected provinces.

And finally, studies suggest that the need for child welfare services on reserve is 8 to 10 times than off reserve.

Block Funding

A clear understanding of how the block is defined is required in terms of: how the base budgetary levels are established; what conditions give rise to adjusting the base during the five year agreement; what is the surplus retention policy; how are the budgetary levels established when it comes time to renew the agreement; how are the rate increases, and new program federal and provincial initiatives calculated as adjustments to the base. A definition of exceptional circumstance and dispute resolution mechanisms would also have to be defined if agencies wish to consider block funding for mandated child and family service program responsibility.

The advantages of block funding to agencies is the increased flexibility to set priorities for service delivery. The advantage to the department is increased predictability of cash flow over the life of the agreements.

The disadvantage to agencies is the fixed level of funding based on historical levels that may not adequately reflect future demand for service.

There are 14 pilot funding projects in five different regions. Further research and review of these pilots may provide some further insight into the advantages and disadvantages of each method of funding.

Maintenance Funding and CFA's

There appears to be consistency across the country in the application of the formula for operations and the reporting requirements of the CFAs, Directive 20-1, and the First Nations National Reporting Guide. There is considerable variance in the definition of maintenance from region to region.

The least consistency shows up in the use of a tripartite forum. The Directive states that "each region will initiate a regional tripartite panel or committee, composed of representatives of DIAND, FNCFS organizations and the province, to review program objectives, the development of Indian standards, and to be a vehicle for ongoing discussions on issues of regional concern." There appears to be many issues of policy, program, and practices that are resolved by these forums in the locations that have active tripartite forums. Nova Scotia, for example, appears to have a positive forum.

Economies of Scale

The fixed amount per organisation serving a 0-18 on reserve population of at least 801 is precisely $143,158.84 (s. 19.1 (a)). There is no adjustment upward to accommodate agencies serving large populations. There is an adjustment downward by 50% for agencies serving on-reserve populations between 501 and 800. The formula is reduced by another 50% for agencies serving on-reserve 0-18 populations between 251 and 500. Agencies serving on-reserve populations less than 250 are not eligible for this core administration funding.

The per-organization amount, according the DIAND document Child and Family Services Costing – Bottom Up Approach, was intended to cover the costs of the Director's salary, benefits and travel, secretarial and financial support, evaluation, audit, legal, resource training and on-going development. The per-Band amount was to be used for the costs of a Board of Directors, and costs for local and Elders committees. The per-child component was intended to cover: service purchase, family protection and support, child care staff, resource workers, prevention workers, supervision, support staff, emergency services, on-going training, and staff travel, benefits, and administration.

The formula does not provide a realistic amount of per organization funding for agencies serving small on reserve populations. Agencies serving an on reserve 0-18 population of less than 801, and particularly those that are serving even smaller populations the formula did not provide realistic administration support.

An alternative approach to improve the responsiveness to the smaller agencies would be to develop a weighting factor for the per child calculation. Directive 20-1 now provides the same per child rate regardless of how large the population being served is. Suppose the per-child rate for the first 250 children was greater than the second 250, which was greater than the next 250, etc. In this manner smaller agencies would receive a greater proportional amount in operations funding than larger ones.

Range of Services

Range of services is defined by each province. That results in ranges of services varying in size and shape across the country. The operations formula treats all agencies the same regardless of the range of services expected to be delivered by them. It appears then that the operations formula is assumed to be adequate to cover the costs of any provincially defined range of services regardless of the breadth and depth of each service and regardless of the range in unit cost of service delivery. Generally, the issue of range of services requires further research.

Size and Remoteness

The impact of the operations formula on agency ability to deliver a range of services is compounded by agency size and remoteness. The smaller the agency the more difficult it is to have the staff size, or level of expertise to provide a full range of services. The fewer the number of staff an agency has, the less the per-staff capacity is to deliver a comparable range of services. For small remote agencies the provision of a comparable range of services is considerably more difficult and costly than that of an outside community. It is also more difficult to attract staff with a broad range of service experience to work in a remote community.

Community Capacity

Social and economic conditions on reserve have not improved for decades as was described in chapter two resulting in First Nation child welfare expenditures which continue to grow correspondingly. Directive 20-1 does not clearly address how FNCFS agencies are supposed to cope with poor social conditions in communities, which most significantly contribute to the high demand for services.

The questions of optimum population base to maximize community capacity is required to balance service delivery and program effectiveness with cost efficiency. Funding needs to be adjusted to match the range and level of service to be delivered in First Nation communities so that they truly meet priority needs. A process is required to assess costs for services so that they might result in an adjustment to funding.

The fact that the operations formula in 20-1 is not adjusted in response to the differences in the range of services between jurisdictions or adjusted to the level of authority delegated to agencies to deliver a range of services, suggests that the impact will not be consistent for agencies, at least at a provincial level.

The operations formula is not responsive to the size and remoteness of agencies nor their capacity to deliver a comparable range of services. The fixed amount per organization in the formula should be revised to accommodate agencies serving smaller on-reserve populations by using a method of weighting.

Children in care

The point of financial responsibility for the children transferred from one jurisdiction to another is generally determined by the criteria "place of normal residence" at the point of apprehension as being on or off reserve. On reserve apprehensions are federal/agency responsibility and apprehensions off reserve generally are considered to be provincial responsibility. There are, however, the occasional case transfers that are complex, or unclear and do not get readily resolved. These types of cases are handled on a case-by-case basis. Agencies have suggested

that some form of tribunal would be helpful in resolving financial responsibility in some of the more complex case transfers.

Management Information Systems for FNCFS Activity

"Indian agencies need information to manage their activities, and to determine service and training priorities. In addition they need to be able to account to their boards of directors for their management; The provinces need information to be able to determine if the child welfare mandate is being fulfilled; The federal government needs the information to account to Parliament for its expenditures. And finally, all parties need information for planning and review purposes."

To date, no national system has been developed. Each DIAND region defaults to the information requirements of DIAND headquarters and attempts to accommodate data used in each province. As a result there is considerable variation between DIAND regions as to the quality and quantity of information available. Within regions there also appears to be considerable variation between agencies in information gathering capacity.

Some agencies have developed their own stand-alone information systems tailored to meet their needs. Others are using provincial child welfare information systems, either as a parallel system or as fully integrated offices within the provincial government operated network.

Many agencies expressed frustration with regional DIAND reporting requirements that do not necessarily fit with their own information system capabilities. Incompatibility of data often requires agencies to "massage" their information in order to fulfill their reporting obligations.

Similar "massaging" also appears to exist between DIAND regions and HQ. Because regions have adapted some of their reporting requirements to accommodate agency reporting concerns discussed above and to be compatible with local provincial practices, regions appear to have some difficulties in forcing regional, agency data into national reports.

This can and does lead to inconsistency and inaccuracy of data. In some instances this data variance can have significant effects. Without a concerted effort within some type of tripartite process to develop a coherent national information gathering protocol, it will remain impossible to analyze caseload trends and forecast expenditures.

SUMMARY

It is most notable that this review found that the child welfare service system in Canada, including DIAND, the provinces, and agencies was virtually impossible to compare. Provinces have different legislation, different ranges of and emphasis on discreet services, and different

field practices and standards. The DIAND system in contrast funds agencies based on one formula for operations which is applied across the country with modest flexibility to allow for differences in provincial legislation, agency and community circumstances, or levels of delegated authority.

FNCFS agencies expressed concern that the DIAND formula for operations did not treat those serving small populations and communities adequately. As well they expressed concern that the remoteness factor in the formula was not realistic for child welfare services. A new funding model recently introduced by the Province of Alberta offered an alternate approach to addressing the matter of distance between FNCFS agencies and major cities where most specialized services for children in care are available.

All parties viewed the phasing-in approach of the operations formula as unrealistic. Providing 75% of the formula in the first year of operation, 85% in the second, 95% in the third and 100% in the fourth year of operations was problematic given the expectations on new agencies to provide a full range of services once they were operational.

Maintenance accounts for approximately 50% of FNCFS program costs. The definition of maintenance is grossly variable across the country. Furthermore, it appears that the variability of the definition of maintenance is the source of much criticism of the Directive. There is also general consensus that the formula does not treat agencies serving small populations fairly.

In determining how the inter-provincial transfers of children in care were funded this was primarily dealt with on a case-by-case approach to resolve financial responsibility issues. The most common criterion to determine financial responsibility was the normal residency (on or off reserve) at the time of apprehension.

Prevention services are in great need in First Nation communities. The disturbing trend of increased numbers of children coming into care with more complex and costly needs is likely to continue. Further research must be undertaken to record and replicate best practices of FNCFS agencies and to develop effective prevention models, which will reduce the incidence of children being at risk.

CHAPTER SEVEN
ANALYSIS OF THE DATA

The following is the culmination of information gathered through The First Nations Child & Family Services National Policy Review. It addresses four major themes. These include:

- **Governance and First Nations Child and Family Services**
- **Legislation, Standards and First Nations Child and Family Services**
- **Communications and First Nations Child and Family Services**
- **Funding and First Nations Child and Family Services**

Within these four major topics common themes emerged. These themes are listed as the preface to our analysis of the data:

Legislation and standards vary from region to region resulting in varying degrees of delegation and legislated responsibilities.

Regional DIAND interpretations of directive **20-1 varies from region to region.**

Definitions of **prevention and protection services have not been clearly defined in the legislation** across the country.

Reimbursement for maintenance varies across the country.

Agency operations and case management practices are the responsibility of agency staff under the umbrella of a Board of Directors. **Political leaders maintain an arms length distance** from involvement in daily operations and case management.

Socio-economic conditions of First Nations communities makes it very **difficult to compare** with other child welfare agencies in terms of comparable services.

The remoteness factor in the funding formula is **not realistic for remote and small communities.**

GOVERNANCE AND FIRST NATIONS CHILD AND FAMILY SERVICES

The Policy Review found that most governance problems were centered around the issue of **Statutory Responsibility.** FNCFS Agencies have certain statutory duties and responsibilities to fulfill. In some provincial legislation these duties are clearly defined and in others they are general and broad statements to perform certain service and provide certain things. The following are the major issues centered on statutory responsibility:

What Activities are Funded and not Funded:

FNCFS agencies are required to assume a variety of duties under provincial legislation. The critical issue for some agencies is that DIAND makes the determination of what will and will not be an activity to be funded at real costs and what activities will or will not form part of the overall operation costs of the agency. FNCFS agencies are concerned that DIAND makes this determination without proper consideration for the statutory responsibilities that the FNCFS agencies assume.

The action required to correct this imbalance will be covered more fully in the analysis of the review of funding. However, certain themes are important to statutory responsibility:

> There is a need to **adapt policy to local conditions.** This can be included in a national framework with regional adaptations. This can be accomplished by working with regional committees – First Nation Directors, DIAND and the AFN to identify issues that are unique to each region.
>
> DIAND funding officers need a **clear national perspective** that is clearly communicated to the regional level. Each region needs to be given a mandate to review the issues and meet nationally to form a new national perspective.

Functions and Duties are Unclear:

The duties of the different agencies providing services is unclear across the regions. For example, in Manitoba and Saskatchewan the DIAND Region acknowledges that their requirements are inconsistent, especially in the **area of prevention.** Other agencies have a statutory responsibility to provide prevention and support services in order to avoid placing a child in care while these two regions assume responsibility only after the child is in care. In any event, all DIAND Regions consistently treat these activities as operational expenses that are factored into the FNCFS Agencies regular activities. This practice penalizes those agencies that believe more funding should be used for prevention and support services. These agencies run the risk of not being able to provide other required services:

> The action required should focus around finding clear definitions and duties for services, especially prevention. There needs to be a **reinstatement of prevention programming** and funding for these programs.

Prevention and other funding issues will be covered in the analysis of funding. However, prevention is one example of how the functions and duties of the FNCFS agencies are unclear and have a dramatic effect on statutory responsibility.

Governing Body:

From the data gathered it would appear the Governing Body is in need of further clarification regarding statutory responsibility. In all cases where the First Nation Chief and Council is the governing body, there is an arms length relationship between the Chief and Council and the FNCFS agency in relation to case management activities. In some cases the Chief and Council are involved in some administrative matters involving work plans and financial planning, however, there is a clear indication that the Chief and Council are not involved in day-to-day administration of the FNCFS agencies. In other cases, there is First Nation policy directing the **Chief and Council to not be involved in the administrative and case management functions of the FNCFS Agencies.** Certain action needs to be taken to clarify the statutory responsibility of the governing body:

> There is a need for clear definition of activities of the Governing Body. The Chief and Council are the local officials and need to be recognized as the local authority. This will create accountability back to the community. Funding agreements should be signed acknowledging the authority of the Chief and Council to mandate to the Agency. However, **Chief and Council must be arms length from the day-to-day administration. DIAND also has to be at arms length.**

Board of Directors:

The data indicated where the Board of Directors is the governing body of the FNCFS agency, the final decision-maker for administrative and case management matters is the Executive Director of the FNCFS agency. There is also a clear intention among FNCFS agencies to keep the Board's role limited to long term strategic planning, development of policies and procedures, and providing broad guidance and direction. In all cases the Board has no involvement in the Administration or case management of the FNCFS agency.

In all FNCFS agency situations, there is in effect of an arms length relationship established between the decision maker for the agencies on Administrative and case management matters and the political body of the First Nations. With this in mind the following actions should be considered:

> Board of Directors should set out the function and duties and they need to clarify roles and responsibilities within the FNCFS Agency. For example, they need to **clarify the relationship between program, Agency and Chief and Council.**
>
> FNCFS directives should include the following items- Should encourage **not discourage tribal grouping,** and **support governance mechanisms** of local agencies and First Nations.

A **code of conduct** needs to be established for Chief and Council and the Board of Directors regarding conflict of interest.

Establishment of a Legal Entity:

Directive 20-1 does not require First Nations to establish a separate legal entity for it's Child and Family Service organization. Some provincial legislation requires FNCFS agencies to incorporate under the Act and to take on a separate status from the First Nation. This requires the following action:

In some regions, agencies are required to incorporate under the Child and Family Services Act as a **separate legal entity may be required.** This is regionally driven and should have various options with a framework to support this principle

Role of Elders in FCNFS Agencies:

From the agencies surveyed it appears that there was a minimal involvement of Elders in agency activities. Some have requirements that Elders must be represented in local communities, others have Elders as advisors to Boards and staff. There needs to be a **strengthening of the role of Elders in FNCFS agency governance.**

Reporting:

In some cases the reporting procedure required the individual delegated staff member of the FNCFS agency to report as often as requested by the Director (provincial representative) and to accept the Director's mandates. The agency staff person is also required to provide, on a monthly basis or periodically, a list of the children receiving services from the FNCFS agency.

In contrast, other FNCFS agencies and the provincial government mutually provide information as to the type and volume of services, identifying information on the children maintained in care and other ancillary information as required by DIAND so that funding can be provided. This creates **inconsistency in reporting requirements to the provinces**. And, even though reporting to DIAND follows the National Reporting Guide, there are **no standard mechanisms for First Nations agencies to report internally**:

Standardized reporting needs to be tied into Management Information Systems activities.

An overall **systematic mechanism is needed** for reporting.

Qualifications of Staff:

Most agencies are expected to hire qualified staff to carry out child protection services and in many cases this is extremely difficult. The number of employees hired directly corresponds to the number of First Nations served and geographical locations of First Nations served by the agency. The majority of employees are caseworkers, social workers, and family service workers who carry the caseloads of the agencies. Agencies with larger populations report larger numbers of support staff and management. Agencies with smaller populations report small numbers of staff resulting in duel responsibilities of staff. Action required in upgrading the qualifications of staff are as follows:

> **First Nations Child and Family Services governing bodies should determine the level of qualifications** for staff they wish to hire. This should be a First Nations responsibility.
>
> Staff need professional qualifications and **funding should be provided for** training, maintaining and recruiting staff.
>
> There is a need to **clarify the difference** between provincial and First Nations qualifications for hiring staff.
>
> There is a need to look **at benefits packages, salaries and First Nations licensing of social workers.**

Evaluations:

Some provincial legislation creates circumstances for the FNCFS Agencies that are inconsistent with DIAND's funding policy regarding evaluation requirements. DIAND only provides funding to Agencies for 3 year and 6 year evaluations, however, provincial legislation requires on-going evaluations. This requires a need for a **critical review of evaluation practices, case reviews and other management oriented reviews.**

LEGISLATION & STANDARDS AND FIRST NATIONS CHILD AND FAMILY SERVICES

Legislation Similarities:

The provisions of provincial territorial child and family services legislation must include provisions for voluntary agreements, court procedures, review and appeal, services to children and families, cultural considerations and other key provisions:

> **Flexibility** needs to built in to allow First Nations to function and be responsive to emerging trends.

New **funding mechanisms are also needed**. The current formula restricts flexibility. For example, there are problems with restorative justice. DIAND needs to be responsive so children are not removed from their homes if other alternatives exist.

Restorative justice model needs to be investigated and utilized. It does involve other parties and departments therefore linkages are needed.

A variety of options are needed in the policy via funding and flexibility. There needs to be options to in-care. A variety of ways to fund programs other than maintenance and operations need to be found.

Fully Delegated Service:

The Acts of all provinces/territory except Newfoundland and Labrador, Quebec and Yukon provide for the creation of fully delegated service child and family service organizations. Quebec has indicated that its Act will be amended in June 2000, to provide for legislation for the delegation of full statutory responsibilities to FNCFS agencies:

No Concise Definitions:

Provinces/territory do not offer concise definitions of 'children in need of protection,' but the legislation lists conditions that are deemed to place a child in need of protection. There is an overall consistency in the kinds of situations described. No province/territory makes a clear distinction between prevention and protection services in their Acts or standards. While broad distinctions may be drawn between the focus and methods of each, the services are not mutually exclusive and they should be regarded as a continuum of activities that blend into and overlap with one another. Where these services are extended to children in care and their families, DIAND should consider funding them as maintenance services, rather than as operational funding.

20-1 Consistency with Provincial Legislation:

Directive 20-1 reflects the spirit and intent of Nova Scotia, New Brunswick, Alberta and British Columbia legislation. The legislation of Newfoundland and Labrador, Prince Edward Island and Quebec is inconsistent with provisions of the directive. Some aspects of the Yukon legislation are inconsistent with the content of Directive 20-1. The Province of Quebec has indicated that it will enact an amendment to the Youth Protection Act by June, 2000 that would enable the delegation of statutory responsibilities and powers to First nation agencies in a manner that would be consistent with the intent of the directive.

The **directive is too narrow** and does not reflect the spirit and intent and no change mechanism is included in the directive.

There are **sections of 20-1 that should be eliminated**.

20-1 principles need to reflect self-governance and to work with First Nation leadership to support that end.

First Nation Standards Are Not Included In Provincial Standards:

First Nation service standards have been incorporated into provincial standards only in British Columbia. There has been no changes in provincial standards as a result of provincial reviews that are incompatible with Directive 20-1 or that have had significant impact on Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, Manitoba, Alberta or British Columbia agencies. In New Brunswick and Saskatchewan, changes have recently occurred which place additional burdens on agencies with inadequate funding. In regions where FNCFS full-service agencies have been established, there is either complete or substantial compliance with Directive's requirements:

There needs to be an **ongoing capacity process** that can reflect the ongoing evolution of policy.

The way First Nations do business is different from the province. There needs to be the ability to develop standards and they need to be **tied into the long-term vision of jurisdiction.**

Constant resourcing is needed for First Nations standards development.

Compliance infers that First Nation compliance is voluntary. There needs to be an assertion as to the viability of compliance for First Nations. Possible **First Nation run compliance review process** may be in order.

A clear definition between financial audits and case management assessment is needed

A national body to develop a compliance review process or framework is needed.

Institutional Care Placements:

Institutional care placements are made directly by FNCFS agencies in Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia. In other provinces they are either provided directly or integrated with provincial institutional care services. Identified problems include long distances between home communities and facilities, out-of-province placements, shortage of bed spaces, restricted choice of facilities, occasional language difficulties, maintaining family/community ties and reintegration of children:

There needs to be a **clear understanding of institutional care.**

Capacity building is an issue and training and retraining people needs to be a major component.

There needs to be cross over with Medical Services so First Nations can access money from this organization. Institutional care is reimbursed in some regions and not in others.

Tripartite and Bilateral Agreements:

Tripartite and complementary bilateral agreements consistently comply with the requirements of Directive 20-1 that agencies follow provincial or First Nation service standards. Possible exceptions are agencies which have established their own service standards or others who conduct their own program under a band bylaw and a case-management protocol with the province:

The issue is **compliance versus creativity** in programming. How are self-governing agencies treated and as agencies how have they evolved in sharing of resources and power through tripartite and bilateral agreements?

Dispute Mechanisms:

There are formal mechanisms in place to resolve differences in interpretation of legislation and standards in Nova Scotia agreements, most Alberta agreements and the British Columbia Delegation Enabling Agreements. Informal arrangements for resolution of differences exist in Newfoundland and Labrador, New Brunswick, Manitoba, and Saskatchewan. In Quebec and Ontario the province has exclusive responsibility for interpreting legislation and standards:

A regional table process is needed to discuss this issue and come up with an action plan.

Labour Codes, Certification and Qualification of Staff:

Directive 20-1 does not set out any specifications or guidelines concerning labour codes, professional certification or educational standards for FNCFS agencies. First Nations standards and practices vary considerably from one province to another:

A comprehensive **technical and support staff** is needed in addition to administrative staff.

A First Nations controlled **regulation entity** is needed for oversight of First Nation professionals to license, certify and discipline our own professionals.
The provinces need to recognize there is a **cultural benefit** of allowing people to work a different way despite qualifications requirements.

COMMINICATIONS AND FIRST NATIONS CHILD AND FAMILY SERVICES

Communication Strategies:

In virtually every area of communication and program delivery, FNCFS agencies have developed different approaches to dealing with their communities, fellow service providers and governments. Any future communication strategies will need to consider those regional differences. There is a need for the following.

DIAND needs to **respect the diversity** of FNCFS agencies while documenting overall best practice models for sharing.

There is a need to **develop a national framework related to** functions for First Nation communications.

Community Involvement:

Community involvement and outreach is a key ingredient of communications for FNCFS agencies. Almost two-thirds of the agencies surveyed had community members active in the development of their programs. Elders figured prominently in that involvement:

There needs to be a **continuation of community involvement** and understanding in the whole process. This requires knowledge of how to communicate with community members.

Education and awareness of programs impacts on agency staff cost factors. This needs to be communicated.

There needs to be a **formal recognition** of Elder service and counsel to FNCFS agencies. Resources (human and financial) are required to address these activities.

Contact Within the Community:

There are two main means of communication within the communities; written notices and direct contact through meetings, forums etc. Little use is made of media or electronic communication. This is possibly due to unavailability of resources:

There needs to be an **effective communication plan** identified and funded. This can be used as a guide for First Nation and regional use.

There needs to be the **production of annual reports** and they need to be communicated to the community.

Communication needs to relate to **Management Information Systems activities as there are several overlapping activities.**

There needs to be a **hosting of a general meeting** for 2-way communication on an annual basis.

Lack of Resources:

The main challenge for agencies within communities, and this applies to First Nations governments as well, appears to be attempts at cooperation and understanding. A lack of resources is also a problem but agencies need to reach their grassroots community clients and have their programs understood:

There needs to be **collaboration between groups**. Linkages are important and should be improved.

A tripartite process needs to be developed and **formal agreements entered into** with other departments, organizations and agencies.

20-1 Policy Directive:

Policy Directive 20-1 is not well viewed by FNCFS agencies. There is a basic lack of funding for child and family services. Most FNCFS agencies find this funding problem makes communications initiatives more difficult. Agencies do feel, however, that they do not have a real voice in how the directive is applied:

A new policy needs to emphasize communication and needs to make it an important part of reporting to communities and partners. With this in mind reporting and networking are needed in a collaborative way.

FUNDING AND FIST NATIONS CHILD AND FAMILY SERVICES

Use of Terminology:

The program directive 20-1 provides a national framework that relies on provincial legislation. The policy also supports development of a "full range" of First Nation child welfare services to a level comparable with provinces. However, provinces do not use common legislation, program descriptions, expenditure categories nor do they define or collect case data in a comparable manner. Therefore, to apply a national directive to provincial legislation-based activities requires all three parties (Agencies, regions,

Provinces) to adapt the policy to fit local conditions. Consequently, the terms used in the national policy are interpreted variously at the field level across the country. Action needs to be taken in the following areas:

There is a **need for a national frame work** with regional adaptations so local conditions are not compromised.

Funding officers need training to understand FNCFS agencies dynamics play a clear national policy perspective that is clearly communicated at the regional level.

There is a problem with regional disparities that needs work from **regional committees** – First Nation Directors, DIAND, AFN, to identify what are the needs and possible solutions for each region.

Interpretation of National Policy:

Some terms used in Directive 20-1 are not defined explicitly. Even after the ten years that 20-1 has been in place, the fundamental question of what is in the operations formula and what is the definition of maintenance persists. Answers to these questions have been provided by department officials but have not always been consistent at a national level over time or to the mutual satisfaction of all parties at the regional level. When there has been a need to clarify or refine a definition of a term that is not sufficiently explicit, one or more parties have created their own definitions. This practice has resulted in the development of a patchwork of wide diversity in definitions from region to region.

As with any policy, there are those who appear to use policy definitions as rules and a basis to control expenditures. Others view policies as guidelines and a basis to fulfill the goals and intent of the policy for designed, controlled and managed services. The disparity in definitions has become an issue for those parties who think that they are not well served by the definition and look to a national policy for equity and consistency. There can be consequences in case practice that is less than desirable from the perspective of "best interest of the child" if there is no fundamental comparability in the definition of terms. Interpretation of national policy should be augmented in the following ways:

There are **gaps in the operations formula** and clear definitions need to be spelled out.

A provincial process needs to be implemented for the **definition of maintenance.** This should include the provinces in the definition of maintenance.

There needs to be a **clarification of key terms** that are interpreted and applied nationally.

Comparable Range of Services:

The intent of Program Directive 20-1 was to provide funding to FNCFS agencies at levels that would allow FNCFS agencies the ability to deliver a range of services comparable to that extended by provinces "in similar circumstances." The directive is not clear on what basis services were comparable or what are similar circumstances. The history and socio-economic conditions on reserve are considered by numerous studies to be extraordinary using any social, health or economic indicator. It is difficult to produce similar circumstances off reserve.

Similarly, the policy supports the development of First Nation designed, controlled and managed services. The closer this goal is to reality, the less comparable services will ultimately become. The goal of comparability, particularly without a definition that can be measured at least annually, may not be practical. The difficulty rests with the incomparable form of data currently being controlled by the entire Child Welfare system. In response to this the following action must take place:

> There is a need to **do things differently** at the First Nation level because of unique needs, however, services must be at par with conventional programs.
>
> There has to be a **framework that allows for changes** and consolidating integration of services. Within the framework a continuum of services must exist from region to region.
>
> There is a need to reflect Section 15 of the Charter re: **spirit and intent of equity** and Section 35 in the long-term vision of the program.

Target Population:

The subject of target population for FNCFS agencies was an unanticipated funding issue. The operations formula is based on the 0-18 aged registered on-reserve population as of December of the previous fiscal year. The program directive does not explicitly state what the target population is for the agency. One must assume the intent of the directive is to serve the entire reserve registered population at a minimum. However, there are non-registered children and adults living on reserve who may need child and family services. The proportion of non-registered population varies by community. Therefore agencies serving large non-registered on-reserve populations are inequitably treated since the formula does not take the total target population into account.

We would observe that adding a definition of the target population to be served by the FNCFS agencies would add clarification to the policy. Agencies told us that they are only funded for their own First Nation members living on their particular reserve and are not funded for members of other First Nations living on their reserve yet they are expected to deliver services to all First nations people in their communities. These areas will require action to address these issues:

This area needs further study especially in **defining target population**.

There is a need to recognize CFS statutory obligation for services especially regarding workload, case load especially **for non-registered individuals.**

The province, First Nations and DIAND **need to determine population** then sort out who will finance what areas.

Phase-In Funding:

There is a general consensus that phased-in funding is not realistic and should be **considered for termination:**

Planning and start up operations should be **100% the first year** with solid planning to supplement the funding.

The **problem is in the formula.** It does not recognize circumstances or ties to work load.

Phased in funding should be an **optional component.**

Remoteness Factor:

There is a consensus that the current remoteness factor based on Band Support formula is not relevant for First Nation child and family services where travel involves taking children or families to major provincial cities for services. It is observed that the remoteness factor could be made more realistic by using the Alberta 'cost-of-doing-business adjustment' for distances of agencies from major cities:

There is a need to consider **alternate ways of funding,** including the Alberta model.

Clinical supervision in some regions needs to be factored in for remote communities.

This factor needs to be **re-addressed in the formula.**

Technology for remote communities needs to be set up and combined with other service providers.

There is a need to work with communities on **capacity building.**

Caseload Size:

There is no adjustment in the formula for caseload size, because the operations budget is fixed and the maintenance is open-ended. As the caseload rises, agencies have to shift resources to hire more protection staff and withdraw from prevention activity:

A segregated budget is needed for prevention services.

A **caseload adjustment** must be provided in agency operations budget.

The definition of maintenance needs to be broadened to provide an incentive to agencies to reduce caseloads.

A model similar to the new Ontario model that bases **resources on the number of protection cases**, not just the children requiring out of home placements needs to be applied.

The **average cost per caseload needs to be studied** on a national scale. This emphasizes a need for national standards.

There is a need to determine the First Nation standard for **workload measurement** versus the provincial standard.

There is a need to look at **different models** of staffing allocation and weighing of cases.

Adjustment for New Provincial Programs and Services:

There is also no adjustment made to agency operations budget when the provinces introduce new programs and services. Agencies are expected to have sufficient budgets to absorb all changes. However, agencies stated that the funding provided by the formula does not allow them to get ahead of the crisis of scarce resources and high demands for service. The problem is compounded by high staff turnover brought about by the stress of the work. Action on new adjustment factors can be seen in the following:

Need to review programs annually to assess impacts on First Nations. This **continued self-assessment** by the agencies will help in adjustment needs before they occur.

Capacity development and resources are an issue when provincial programs change because without capacity development and resources the ability to respond is limited.

There needs to be **First Nation representation** when provinces plan adjustments in new provincial programs and services.

An **effective work load measurement** is needed. More research work is required in this area.

Adjustment for Price:

The 1989 Bottom-up approach to the operations funding identified inflationary costs elements. It appears that there have been no price increases to those cost elements since 1994/95:

There needs to be an **adjustment index that reflects the costs of living.** The operations formula needs to keep pace with cost of living.

Adjustments should be factored into the formula for **travel and staff salaries.**

The Role and Responsibilities of Provinces:

The relationships and roles of provinces with agencies appear to be genuinely supportive at the senior levels. All provinces have entered into agreements with agencies to deliver child welfare services on reserve. There are ranges of delegation of authority split between mandated services such as protection and non-mandated services such as prevention services.
However, the provinces do not consistently apply a case management fee or similar compensation to agencies for delivering services to First Nation children. Agencies, individually, are required to negotiate these fees with provinces with varying degrees of success. DIAND pays such a fee to the provinces of Saskatchewan and British Columbia. This is an outstanding issue that should be addressed. Here are a number of options to increase involvement by First nations:

The relationship between provinces and DIAND needs to ensure **adequate First Nation input** before issue or program changes occur. There needs to be a clear process established to guarantee meaningful First Nation participation at the table. This can be accomplished by establishing FNCFS/DIAND/FN regional tables at the provincial level to determine engagement of the province.

There has to be **some mechanism for adults in need of protection.**

First Nations should have access to the same training as provinces. First Nations should have the option to participate if they desire. More training that is culturally appropriate is desirable. This should be paid for by the provinces/territories with the exception of travel.

Tripartite relationship is important. In some regions it is legislated. This needs to be investigated.

Special Needs Children:

The national data on the care days by type of placement, plotted to show trends over the five year period 1994/95 to 1998/99, indicates that the use of the higher cost options of group and institutional care are increasing over time. Many of the agencies are seeing the demand for high support, high cost services, dramatically increasing due to FAE, FAS and other medically defined conditions and behaviors. There is every indication that the trend to higher cost services is likely to continue. Action can be taken to help special needs children in the following ways:

> **20-1 does not have the flexibility** or provides provisions for funding these high costs needs. This promotes a high number of high cost kids because services cannot be provided. This has to change
>
> **An authentic safety mechanism** needs to be looked at to address the potential of extra costs for services.
>
> **There is a need to highlight the gap in resources** that are badly needed to provide special needs services in areas such as FAS, Spina Bifida, drug abuse prevention, mentally and emotionally disturbed, etc.

Management Information System for FNCFS Activity:

To date no national MIS system has been developed for FNCFS activity. Each DIAND region defaults to the information requirements of DIAND headquarters and attempts to accommodate data used in each province. As a result there is considerable variation between DIAND regions as to the quality and quantity of information available. Within regions there also appears to be considerable variation between agencies in information gathering capacity.

Some agencies have developed their own stand-alone information systems tailored to meet their needs. Others are using provincial child welfare information systems, either as a parallel system or as fully integrated offices within the provincial government operated network.

Many agencies expressed frustration with regional DIAND reporting requirements that do not fit with their own information system capabilities. Incompatibility of data requires agencies to "massage" their information in order to fulfill their reporting obligations. This can and does lead to inconsistency and inaccuracy of data:

> Money is needed to develop a strategic plan for a **coherent national information gathering protocol and process.**

A **case management information system** is needed to manage caseload and the program in general. A common base for information management is valuable to front line workers especially if it is computerized.

The First Nations Statistics and Governance Initiative at DIAND in collaboration with First Nations needs to **identify FNCFS data needs.** First Nations need to design, manage and run their own data system. FNFCS fits into this initiative.

Money is needed for hardware, software and technical expertise to develop models for data collection. Compatability with other agencies is also needed in terms of hardware.

Prevention Services:

Prevention services are in great need on reserve. The disturbing trend of an increased number of children coming into care with more complex and costly needs is likely to continue. Further research should be undertaken to record and replicate best practices of FNCFS agencies and to develop effective prevention models promising to reduce the incidence of children being at risk. We are also left with the question as to the merits of creating a separate funding line for prevention services. The intent would be to protect prevention programming from being ravaged by demanding protection cases:

The ability to **re-allocate maintenance funds** is needed to be used for prevention. This would help to reinstate and establish prevention programming.

There needs to be an **analysis of the historical case average** over 10-year period to establish prevention programs.

There needs to be **research around prevention services.** There are a number of pilot programs underway. This will promote innovative activities.

Alternative programs need to be developed for children at risk. These programs need a multiyear authority and there needs to be criteria for measurement of success.

Protective services identifiable to a specific child deemed to be in need of protection should be **reimbursed under maintenance.**

Integration of First Nations Community Health and Social Services:

Human services in First Nation communities are not well integrated consequently, FNCFS agencies spend excessive energy seeking funds and accessing services for the children and families they are serving. Often agencies end up providing or purchasing

services that normally fall into some other organization's area of responsibility. The pilot project in New Brunswick on integration may offer some insights to what approach is effective in making better use of existing community services:

> **Integrated case practice** needs to be promote among health, Elders, educators and others. Flexibility is needed to trade economies of scale for integration of services.
>
> Information about services to **encourage sharing is needed**. There is a need to support best practice models so eventually they would support new program development.
>
> An exemption to 20-1 is needed to **extend the pilot projects** in New Brunswick on integration of services.

Community Capacity:

FNCFS agencies inherited very challenging socio-economic circumstances for establishing effective means of supporting families and protecting children. The incidence of family dysfunction in reserve communities is very high and suggests that community approaches to healing and the development of positive behaviors must be supported if these agencies are to achieve any measure of success. Action needs to be taken in the following ways:

> **The challenge to community capacity is funding.** Everyone agrees this is needed yet there is no money allocated for it.
>
> The **new policy must not be restrictive** to any First nation negotiations in assuming jurisdiction over child welfare.

Capital Funds for Resource Development:

The Directive 20-1 does not include any reference to capital funds to support the development of on reserve children in care options or office space:

> There is no element in the directive **for capital or infrastructure development** especially for remote communities. Money goes to children to support their families.
>
> Dialogue needs to take place with various departments within DIAND to **pool resources** for institutional development.
>
> Dialogue with provinces needs to take place on the development of an **envelope of funds** to be used for capital development.

There is a need for **youth assessment facilities** for holistic service delivery.

Non-billable Children in Care:

There are case billing disputes that arise between participating parties. Sometimes the tripartite forums are used to resolve such issues. In other cases the matter is resolved bilaterally. However, there are instances when no resolution of the issue is achieved. By default, agencies are often obligated to cover the costs until the matter is resolved. Agencies suggest that a formal recognition and forum of redress for this type of dispute might be beneficial. Action could be taken in these ways:

A **formal recognition and forum** is needed for this type of dispute. DIAND should examine federal/provincial arrangements in place to ensure First Nations and other provincial agencies are reimbursed.

There needs to be a **formal mechanism** between the parties so no agency has to absorb the cost.

Evaluations:

The Directive provides $30,6000.00 to agencies to conduct evaluations in their third and sixth year of operations. Evaluation **funding should be made available to all agencies** to facilitate the development of best practices in child welfare service delivery:

Strategy planning should be incorporated to build on areas of strength.

Agencies must be given money for **self-evaluation every three years**.

Criteria for evaluation needs to be established under a national framework.

Standards:

The Directive 20-1 provided one time budget of $1.5 million, expended over fiscal years 1990/91 and 1991/92 for the development of Indian standards for child welfare services on reserve. Additional funds should be provided to all regions to review standards, particularly in light of the changes that have occurred in the provinces since 20-1 was first introduced.:

Funding for ongoing development is needed for amendments to standards.

Funding needs to be made available **to upgrade standards every 3 years**.

There is a need **to correlate First Nation standards with provincial standards**.

CHAPTER EIGHT
FIRST NATIONS CHILD AND FAMILY SERVICES NATIONAL POLICY REVIEW RECOMMENDATIONS

Overview

The finding of the National Policy Review resulted in 17 final recommendations related to the four themes of the study: governance, legislation and standards, communications and funding. They are as follows:

1a. The joint Steering Committee of the National Policy Review recognizes that Directive 20-1 is based on a philosophy of delegated authority. The new policy or Directive must be supportive of the goal of First Nations to assume full jurisdiction over child welfare. The principles and goals of the new policy must enable self-governance and support First Nation leadership to that end, consistent with the policy of the Government of Canada as articulated in *Gathering Strength.*

1b. The new policy or directive must support the governance mechanisms of First Nations and local agencies. Primary accountability back to community and First Nations leadership must be recognized and supported by the policy.

2. The joint Steering Committee recognizes a need for a national process to support First Nation agencies and practitioners in delivery of services through various measures, including best practices.

3. A national framework is required that will be sensitive to the variations that exist regionally in relation to legislation and standards. Tripartite tables consisting of representatives from First Nations, DIAND and the province/territory are required to identify issues and solutions that fit the needs of each province/territory. Some of the issues that will need to be addressed by these regional tables consist of (but are not limited to) the following:

a) definitions of maintenance
b) identification of essential statutory services and mechanisms for funding these services
c) definitions of target populations (as well as the roles of federal / provincial / territorial governments related to provision of services)
d) adjustment factors for new provincial programs and services - processes for FNCFS agencies to adjust and accommodate the impacts of changes in programs and services
e) definition of special needs child
f) dispute mechanisms to address non-billable children in care
g) definition of range of services

h) definition of financial audit and compliance comparability/reciprocity between provincial and First Nation accreditation, training and qualifications requirements of staff (e.g. licensing criteria)

4. DIAND, Health Canada, the provinces / territories and First Nation agencies must give priority to clarifying jurisdiction and resourcing issues related to responsibility for programming and funding for children with complex needs, such as handicapped children and children with emotional and/or medical needs. Services provided to these children must incorporate the importance of cultural heritage and identity.

5. A national framework is needed that includes fundamental principles of supporting FNCFS agencies, that is sensitive to provincial/territorial variances, and has mechanisms to ensure communication, accountability and dispute resolution mechanisms. This will include evaluation of the roles and capacity of all parties.

6. The funding formula in Directive 20-1 is not flexible and is outdated. The methodology for funding operations must be investigated. The new methodology should consider factors such as work load/case analysis, national demographics and the impact on large and small agencies, and economy of scale. Some of the other issues the new formula must address but not be limited to are:

a) Gaps in the operations formula. A clear definition is required.
b) Adjustment for remoteness
c) Establishment of national standards
d) Establishment of an average cost per caseload
e) Establishment of caseload / workload measurement models
f) Ways of funding a full service model of FNCFS
g) The issue of liability
h) Exploration of start up developmental costs
i) Develop and maintain information systems and technological capacity.

7. The Joint Steering Committee found that the funding formula does not provide adequate resources to allow FNCFS agencies to do legislated/targeted prevention, alternative programs, and least disruptive/intrusive measures for children at risk. It is recommended that DIAND seek funding to support such programming as part of agency funding.

8. DIAND must pursue the necessary authorities to enable FNCFS agencies to enter into multi-year agreements and/or block funding as an option to contribution funding, in order to further enhance the ability of First Nations to deliver programs that are geared to maintaining children within their families, communities and reuniting those children in-care with their families. This requires the development of a methodology for establishing funding levels for block funding arrangements that encompass:

a) a methodology and authority for new and second generation agreements
b) multi-year authorities for these programs with a criteria for measurement of success. [DIAND may need to go to Cabinet to get authority for these.]

9. An "exceptional circumstances" funding methodology is required to respond to First Nation communities in crisis where large numbers of children are at risk. Best practices shall inform the development of this methodology.

10. A management information system must be developed and funded for First Nations in order to ensure the establishment of consistent, reliable data collection, analysis and reporting procedures amongst all parties (First Nations, regions, provinces/territories and headquarters).

11. Funding is required to assist First Nations CFS Agencies in the development of their computerization ability in terms of capacity, hardware and software.

12. Funding is required for all agencies for ongoing evaluation based on a national framework with guidelines to be developed.

13. DIAND and First Nations need to identify capital requirements for FNCFS agencies with a goal to develop a creative approach to finance First Nation child and family facilities that will enhance holistic service delivery at the community level.

14. Funding is required for on-going standards development that will allow FNCFS agencies to address change over time.

15. Priority consideration should be given to reinstating annual cost of living adjustments as soon as possible. Consideration should also be given to address the fact that there has not been an increase in cost of living since 1995-96.

16. Phased in funding is a problem in the formula and should be based on the level of delegation from the province.

17. An immediate tripartite review (Canada, Ontario and Ontario First Nations) be undertaken in Ontario due to the implications of the 1965 Indian Welfare Agreement, current changes to the funding formula, and the Ontario Child Welfare Reform.

Conclusion

A new policy to replace current Directive 20-1 (chapter 5) must be developed in a joint process that includes all stakeholders and ensures funding support for that process according to the following action plan.

CHAPTER NINE
FIRST NATIONS CHILD AND FAMILY SERVICES
NATIONAL POLICY REVIEW
NEXT STEPS

Interim Guiding Principles

1. ***That the best interests and well being of First Nations children, families and communities will be the paramount consideration guiding the implementation process.***

2. ***That First Nations CFS programs should be based on First Nations values, customs, traditions, culture, and governance.***

3. ***That the implementation be conducted jointly by AFN, FN, CFS Directors, Health Canada and DIAND.***

4. ***That DIAND will place a moratorium on decreases in the amount of funding or number of funding arrangements for First Nations child and Family Services Agencies.***

5. ***That the funding be guided by the commitment of First Nations and the Government of Canada to ensure parity between First Nations child and family services and provincial/territorial child and family services.***

Consultation and Ratification of National Policy Review

Action	Timelines	Responsibilities
Delivery of draft final report to Minister of Indian and Northern Affairs and the Assembly of First Nations National Chief.	June 30, 2000	DIAND and Assembly of First Nations
Distribution of the draft final report including addendum to FNCFS Agencies, First Nations, Health Canada, HRDC and DIAND regions. Post on AFN web page.	July 15, 2000	DIAND and Assembly of First Nations
Presentation to the DIAND Senior Policy Committee	July/August, 2000	Co-chairs of Joint Steering Committee
Presentation to the National Chief and Minister	August 2000	DIAND and AFN
Presentation of the AFN confederacy meeting	September 2000	
Presentation to Provincial Directors of Child Welfare	October 1-4, 2000	All parties
National First Nation ICFS Conference in Saskatoon, SK	October 10-12, 2000	All parties
Distribution of the Report to all Provinces and Territories	July 15, 2000	DIAND
Develop a presentation package for the National Chief and Minister	August 1, 2000	AFN/DIAND
Select a delegation to do a presentation to the AFN Confederacy meeting and DIAND	August 15, 2000	
Compile feedback resulting from circulation of the report	August 15, 2000	AFN
Ratification of the Report	August 15, 2000	AFN
DIAND approval process	Fall Confederacy Meeting	Sr. Policy Committee

Implementation Phase:

Maintaining the Partnership

Recommendation	Timeline	Responsibility
Establish an interim national committee composed of AFN, FNCFS to oversee the ratification of the National Policy Review and develop a work plan including the identification of necessary resources that leads to the development of a new funding policy.	June 30, 2000 - naming delegates	PMT
Develop a plan of action for those recommendations assigned a short-term implementation date.	July 14, 2000	PMT/Interim National Committee
Completion of a detailed work plan including: • Terms of Reference for the National table; • Terms of Reference for Provincial tables; deliverables, timeframes and required resources	September 2000	PMT/Interim National Committee

Research and Data Collection:

Issue	Timeframe	Responsibility
Identifying areas for additional research arising from the National Policy Review and develop a plan to conduct further research		PMT/Interim National Committee
Incorporate into the detailed work plan	September 2000 (prior to confederacy)	

FIRST NATIONS CHILD AND FAMILY SERVICES
NATIONAL POLICY REVIEW FINAL REPORT
BIBLIOGRAPHY

LEGISLATION AND STANDARDS

Aboriginal Operational and Practice Standards and Indicators. Aboriginal Operational and Practice Standards and Indicators Reference Group; October, 1999.

About Children's Services. Government of Alberta; Ministry of Children's Services; Edmonton.

Agreement Between Moosomin First Nation, Red Pheasant First Nation, and Thunderchild First Nation, and Kanaweyimik Child and Family Services and Her Majesty the Queen in Right of Saskatchewan. September, 1994.

Agreement Between the Nisga'a Tribal Council and the Director of Child, Family and Community Services, and Her Majesty the Queen in Right of Canada. May, 1997.

Agreement Between the Knucwentwecw Society and the Director of the *Child, Family and Community Service Act* and Her Majesty the Queen in Right of Canada. June, 1999.

Ahtahkakoop First Nation – Child and Family Services Agreement. March, 1996.

Akamkisipatinaw Ohpikawasowin Association – Child and Family Services Agreement. 1997.

Annual Report 1996-1997: Manitoba Family Services. Department of Family Services of Manitoba; Winnipeg; September, 1997.

Bigstone Cree Nation – Child Welfare Agreement. August, 1993.

Blood Tribe - Child Welfare Agreement. June, 1996.

Canada and Manitoba and Swampy Cree Tribal Council: Child and Family Services Agreement. June, 1998.

CAS Facts: Recommendations to Support Children at Risk. Ontario Association of Children's Aid Societies, Toronto, Ontario; December, 1997.

Child and Family Services Act (R.S.O. 1990, c. C.11). Government of Ontario.

Child and Family Services Act (S.M. 1985-86, c.8 (C.C.S.M. C80)). Government of Manitoba.

Child and Family Services Act (S.S. 1989-90, c. C-7.2). Government of Saskatchewan.

Children and Family Services Act (S.N.S. 1990, c.5). Government of Nova Scotia.

Child and Family Services Expenditures: 1994-95 to 1996-1997. Department of Health and Social Services; Charlottetown, Prince Edward Island; 1997.

Child and Family Services Statistical Report: 1994-1995 to 1996-1997. Federal-Provincial Working Group on Child and Family Services Information; Ottawa; 1998.

Child, Family, and Community Service Act (January 1996). Government of British Columbia.

Child, Family, and Community Services. Government of Prince Edward Island; Health and Social Services; Charlottetown.

Child Protection and Foster Care. Government of Saskatchewan; Saskatchewan Social Services; Regina.

Bernstein, Marvin M.. et al, Child Protection Law in Canada; Carswell, Toronto, 1999.

Child Protective Services Policy Manual. Department of Community Services of Nova Scotia, Family and Children's Services Division; January, 1996.

Children's Act *(R.S.Y.T. 1986, c. 22)*. Government of the Yukon Territory.

Children with Special Needs. Government of British Columbia; Ministry for Children and Families; Victoria.

Child Welfare Act *(S.A. 1984, c. C-8.1)*. Government of Alberta.

Child Welfare and Family Support Act. Federation of Saskatchewan Indian Nations.

Child Welfare in Canada: The Role of Provincial and Territorial Authorities in Cases of Child Abuse. Ottawa: Federal-Provincial Working Group on Child and Family Services Information, Health Canada, 1994.

Child, Youth and Family Services Act *(R.S.N. 1998, c-12.1)*. Government of Newfoundland and Labrador.

Contract Pertaining to the Rendering of Professional Social Services Between Kahnawake Social Services and les Centres jeunesse de la Monteregie. September, 1998.

Core Functions of Children's and Developmental Services. Government of Ontario; Toronto.
Family and Children's Services. Government of Nova Scotia; Department of Community Services.

Family and Children's Services. Government of the Yukon; Family and Children's Services; Whitehorse.

Family and Child Services Act *(R.S.P.E.I. 1988, c. F-2)*. Government of Prince Edward Island.

Family and Community Social Services. Government of New Brunswick; Health and Community Services.

Family Policy in Québec. Government of Québec; Ministère de la Famille et de l'enfance; Québec.

Family Services Act *(S.N.B. 1980, c. F-2.2, ss 1-63, 138-143)*. Government of New Brunswick.

Foster Care Manual. Department of Community Services of Nova Scotia, Family and Children's Services.

Interim Delegation Agreement Between the Minister of Social Services and Lake Babine Band. November, 1995.

Island Lake First Nations Family Services Agreement. April, 1997.

Kanaweyimik Child and Family Services – Child and Family Services Agreement.

Kanaweyimik Guidelines fo Standards Development.

Lac La Ronge Indian Child and Family Services Inc. – Child and Family Services Agreement. March, 1994.

La Politique de la Santé et du Bien-être. Ministère de la Santé et des Services sociaux; Québec, 1992..

Lesser Slave Lake Indian Regional Council Agreement. December, 1990.

Manual of Procedure: Children in Permanent Care and Custody of the Minister. Department of Community Services of Nova Scotia, Family and Children's Services Division; October 1992.

Meadow Lake Health and Social Development Authority Inc. – Child and Family Services Agreement. February, 1994.

Meadow Lake Tribal Council and Meadow Lake Health and Social Development Authority – Child and Family Services Agreement. December, 1993.

Memorandum of Agreement Respecting Welfare Programs for Indians between Canada and Ontario (1965) Ottawa; 1965.

Memorandum of Understanding Between the Department of Indian Affairs and Northern Development and the Treasury Board of Canada for the Establishment of a Regime of Increased Ministerial Authority and Accountability; Treasury Board of Canada; Ottawa; August, 1990.

Miawpukek 1997-1998 Operations Funding Report. Conne River, Newfoundland; 1998.

Niha'7kapmx Child and Family Services – Comprehensive Funding Arrangements April, 1995.

1994-95 Annual Report: Alberta Family and Social Services. Edmonton, Alberta; 1995.

1996-97 Financial Summary; Revenue and Expenditures. Jewish Child and Family Service; Winnipeg, Manitoba; 1997.

Nuu-chah-nulth Tribal Council – Alternative Funding Arrangements. April, 1992.

Nuu-chah-nulth Tribal Council/Canada Financial Agreement. February, 1987.

Onion Lake Family Services Inc. – Child and Family Services Agreement. 1994.

Our Programs and Services. Government of Manitoba; Manitoba Family Services; Winnipeg.

Peter Ballantyne Child and Family Services Inc. – Child and Family Services Agreement. March, 1998

Practice Standards for Guardianship. British Columbia Ministry for Children and Families; Victoria; May, 1999.

Practice Standards for Child Maintenance Agreements and Orders British Columbia Ministry for Children and Families; Victoria; July, 1999.

Practice Standards for Child Protection. British Columbia Ministry for Children and Families; Victoria.

Practice Standards for Special Needs Agreements. British Columbia Ministry for Children and Families, Victoria, July, 1999.

Practice Standards for Voluntary Care Agreements. British Columbia Ministry for Children and Families; Victoria; July, 1999.

Program Directive 20-1, Chapter 5, Social Development, First Nations Child and Family Services (FNCFS). Department of Indian Affairs and Northern Development; Ottawa; April 1, 1995.

Program Standards: Child Protection Standards, Child-in-Care Program Standards, Access and Assessment Standards New Brunswick Health and Community Services.

Program Standards Manual Child and Family Services. Manitoba Family Services; Winnipeg; January, 1991.

Qu'appelle Child and Family Services Inc. – Child and Family Services Agreement. October, 1994.

Record of Issues and First Nation Recommendations. National Working Group: First Nations Child and Family Services; Ottawa; 1994.

Regional Child and Family Service Agreements: Atlantic.

Resolution III-S-3-11-95: Concerning Child Welfare Matters – Canada and Alberta.

Saddle Lake First Nation Agreement. October, 1993.

Saskatchewan Region Comprehensive Funding Agreement: 1999-2000 Generic for First Nation Child and Family Services Agencies. February, 1999.

Saskatchewan Region Child In Care Policy Manual. Indian and Northern Affairs Canada.

Squamish Indian Band – Child and Family Services Agreement. April, 1993.

Standards for Services for Children and Families. Government of Alberta; Edmonton; 1999.

Sto:lo Tribal Council – Service Agreement. April, 1993.

Stoney Tribe of Indians Agreement. February, 1993.

Summary Report: Development of Amerindian Standards in Social Intervention. Québec Native Social Services Association. Native Consulting Services.; Pointe Bleue, PQ, February, 1992.

"The Lac La Ronge Indian Band Child and Family Services Inc. – Tripartite Agreement." 1994.

The Micmac Family and Children's Services of Nova Scotia – Comprehensive Service Agreement.

The Protocol Agreement Between the Ministry for Children and Families and the Spallumcheen Band Council. July, 1998.

Nicola Valley Tribal Council – Service Agreement. April, 1994.

The Nisga'a Tribal Council –Child and Family Service Agreement. May, 1997.

Touchwood Child and Family Services Inc. – Child and Family Services Agreement. September, 1993.

Treaty Six, Seven, and Eight: First Nations Child and Family Services Standards. October, 1995.

Tribal Chief Child and Family Services (East) Society Agreement. October, 1996.

Tribal Chief Child and Family Services (West) Society Agreement. October, 1996.

Tsuu T'ina Nation – Child Welfare Agreement. September, 1993.

Yellowhead Tribal Services Agency Service Agreement with the Province. April, 1992.

Youth Protection Act (R.S.Q. 1995, c. P-34.1). Government of Quebec.

GOVERNANCE

Agreement between Her Majesty the Queen in Right of Canada and the Miawpukek Band.

Agreement between Her Majesty the Queen in Right of Saskatchewan and Kanaweyimik Child and Family Services Inc.

Agreement between the Touchwood First Nations and the Touchwood Child and Family Services Inc. and The Government of Saskatchewan.

Agreement respecting Indian Child and Family Services between Ahtahkakoop First Nation and Her Majesty the Queen in Right of Saskatchewan and Ahtahkakoop Child and Family Services Inc.

Canada-New Brunswick-First Nations Family and Community Services Agreement.

Canada-Nova Scotia-Mi'kmaw Family and Children Services Amended Agreement (1997).

Canada - Nuuchamulth Child Welfare Agreement.

Comprehensive Funding Arrangement Between Her Majesty the Queen in Right of Canada and Cree Nation Child and Family Caring Agency.

Contract Pertaining to the Rendering of Professional Social Services Between Kahnawake Social Services and Les Centres Jeunesse De La Monteregie.

Delegation Confirmation Agreement between the Knucwentwecw Society and The Director and Her Majesty the Queen in Right of Canada.

Interim Agreement on the Sharing of Specific Responsibilities and on Coordination and Cooperation Regarding Social Services Between Listuguj Mi'gmaq First Nation Community Social Services Directorate and Centre De Protection De L'Enfance Et De La Jeunesse De La Gaspesie Et Des Iles-De-La-Madeleine.

Island Lake First Nations Family Services - Manitoba Subsidiary Child and Family Services Agreement.

Tripartite Agreement between The Lac La Ronge Indian Band and the Lac La Ronge Indian Child and Family Services Agency Inc. and The Government of Saskatchewan.

STATUTES

Children and Family Services Act; Statutes of Nova Scotia, 1990, c.5, s.1.

Child, Youth and Family Services Act; Statutes of Newfoundland.

Family Services Act; Statutes of New Brunswick, 1983 c.16, s.1.

The Child and Family Services Act; Statutes of Manitoba, 1985-86, c. 8 - Cap. C80.

The Child and Family Services Act; Statutes of Saskatchewan, 1989-90, ch.C-7.2.

The Youth Protection Act; Revised Statutes of Quebec, 1984, c. P-

Note: Missing communications bibliography

Health Canada's 1999 Guide to Federal Programs & Services for Children & Youth, Second Edition.

Children First Our Responsibility: Report of the First Nation's Child and Family Task Force, Manitoba, November 1993.

Report of the Departmental Audit and Evaluation Branch, Corporate Services, Department of Indian Affairs and Northern Development, First Nations Child and Family Services Program (FNCFS), Project #93/08E.

Indian Child and Family Services in Canada: Final Report, Published by Indian and Northern Affairs Canada Child and Family Services Task Force, in 1987.

A Comparison of the Costs of On-Reserve and Off-Reserve Child and Family Services, 1993-1994, prepared for DIAND by Keystone Publishing.

Child and Family Services: An Analysis of 1996-1997 Expenditures and Related Data for Off-Reserve and On-Reserve Services, prepared for DIAND by Keystone Publishing, 1999.

Child and Family Services Annual Statistical Report, 1992-93 to 1994-95, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada, April 1996.

Child and Family Services Annual Statistical Report, 1994-95 to 1996-97. by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada.

Foster Care, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada, September 1998.

Bulletin: Child and Family Services Information Project, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada.

Child Protection Law in Canada, by Marvin Bernstein, Lynn Kirwin and Helen Bernstein.

Child Welfare in Canada: The Role of Provincial and Territorial Authorities in Cases of Child Abuse, by the Federal-Provincial working Group on Child and Family Services Information for Human Resources Development Canada, 1994.

First Nation Family Services Working Group Report, January, 1996

Chapter 2 of Volume 3 of the Report of the Royal Commission on Aboriginal Peoples

First Nations Child and Family Services (FNCFS) Self-Evaluation Guide

Evaluating INAC's Indian Child Welfare Program, by Indian and Northern Affairs Canada, Evaluation Directorate, November 1987

The Aboriginal Child Prevention Practice Project, Anishnaabe Mnotaagok: A Learning Circle on Children's Well-Being, by Frank Maidman & Merle Beedie

The Aboriginal Child Prevention Practice Project: Aboriginal Child Maltreatment Prevention Practices: A Literature Review, by Frank Maidman Associates, October 1998

The Aboriginal Child Prevention Practice Project: Aboriginal Child, Family and Community Wellness: Child Welfare Prevention Practice, by Frank Maidman Associates, November 1998

Specifications for Data Requests Re: Socio-Economic Indicators of Demand for on-reserve Child Welfare Services, by J. Phillip Nicholson, Policy & Management Consultants Inc. for Social Development Branch, Indian and Northern Affairs Canada, July 14, 1989.

Report on a Regression Analysis of Socio-Economic Indicators of Demand for On-Reserve Child Welfare Services, by D. Meredith, D. McIsaac, J.G. Banville & L. Salmon of The Coopers & Lybrand Consulting Group.

A Draft Report to the Tripartite Committee: Evaluation of the Canada-New Brunswick Indian Child and Family Services Agreement, by A.R.A. Consultants, December 15, 1988

Guide to Child Welfare Funding Framework, by Ontario Ministry of Community and Social Services, February 5, 1999.

Provincial/Territorial Contacts: Child Welfare/Child and Family Services, by the Federal-Provincial Working Group on Child and Family Services Information, April 1999

Canada's Law on Child Sexual Abuse: A Handbook, by Mary Wells for the Department of Justice Canada, 1990.

Child Welfare in Canada: Research and Policy Implications, edited by Joe Hudson and Burt Galaway, 1995. Copyrighted by Thompson Education Publishing, Inc.

National Overview of Child Welfare Services provided to Indian people in Canada, by J. Girard, Evaluation Branch, Corporate Policy, September 1982.

Considerations & Recommendations for the First Nations/Inuit Child Care Program and Funding Framework, Technical Report Prepared by the Joint First Nations/Inuit/Federal Child Care Working Group

Planning Report for the Evaluation of First Nations Child and Family Services, by the Evaluation Directorate, Corporate Services, Department of Indian Affairs and Northern Development, December 1993.

Planning Report for the Evaluation of the Experiences to Date with DIAND Financial Transfer Arrangements, by the Department of Audit and Evaluation Branch, Department of Indian Affairs and Northern Development, December 1995.

Interim Appraisal: The Anishinaabe Child and Family Services Training Program, by the Evaluation Branch, Corporate Policy, Department of Indian Affairs and Northern Development, October 1985.

Interim Appraisal: The Awasis Child and Family Service Worker Training Program, by E.T. Jackson & Associates Ltd., for the Department of Indian Affairs and Northern Development, December 1985.

Health Canada's 1999 Guide to Federal Programs & Services for Children & Youth, Second Edition

Children First Our Responsibility: Report of the First Nation's Child and Family Task Force, Manitoba, November, 1993

Report of the Departmental Audit and Evaluation Branch, Corporate Services, Department of Indian Affairs and Northern Development, First Nations Child and Family Services Program (FNCFS): Project #93/08E

Indian Child and Family Services in Canada: Final Report Published by Indian and Northern Affairs Canada Child and Family Services Task Force, in 1987.

A Comparison of the Costs of On-Reserve and Off-Reserve Child and Family Services, 1993-1994, by Keystone Consulting, Nepean, Ontario

Child and Family Services: An Analysis of 1996-1997 Expenditures and Related Data for Off-Reserve and On-Reserve Services, by Keystone Consulting, Nepean, Ontario

Child and Family Services Annual Statistical Report, 1992-93 to 1994-95, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada, April 1996.

Child and Family Services Annual Statistical Report, 1994-95 to 1996-97, by the Federal-Provincial

Working Group on Child and Family Services Information for Human Resources Development Canada, February 1998.

Foster Care, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada, September 1998.

Bulletin: Child and Family Services Information Project, by the Federal-Provincial Working Group on Child and Family Services Information for Human Resources Development Canada Internet at hrdc-drhc.gc.ca/socpol/home.shtml.

Child Protection Law in Canada, by Marvin Bernstein, Lynn Kirwin and Helen Bernstein.

Child Welfare in Canada: The Role of Provincial and Territorial Authorities in Cases of Child Abuse, by the Federal-Provincial working Group on Child and Family Services Information for Human Resources Development Canada, 1994

First Nation Family Services Working Group Report, January, 1996

Canada - New Brunswick Indian Child & Family Services

Chapter 2 of Volume 3 of the Report of the Royal Commission on Aboriginal Peoples

Provincial Regulations

Newfoundland
Regulation 177/92 under the Child Welfare Act

Prince Edward Island
Notice of Hearing Regulations (Reg. EC1212/81 under the Family and Child Services Act)

Nova Scotia
Regulation 183/91 under the Child and Family Services Act

New Brunswick
Child Support Guidelines Regulation (Reg. 98/27 under the Family Services Act)

Ontario
General Regulation (Reg. 70 under the Child and Family Services Act)
Regulation 71 under the Child and Family Services Act

Manitoba
Regulation 59/86 under the Child and Family Services Act
Regulation 60/865 under the Child and Family Services Act
Regulation 46/87 under the Child and Family Services Act
Regulation 483/88 under the Child and Family Services Act

Saskatchewan
Regulation 1 under the Child and Family Services Act

Alberta
Adoption Regulation (Reg. 3/89 under the Child Welfare Act)
Intercountry Adoption Regulation (Reg.204/97 under the Child Welfare Act)

British Columbia
Child, Family and Community Service Regulation (Reg. 527/95 under the Child, Family and Community Service Act)

Northwest Territories
Regulation 142/98 under the Child and Family Services Act

Provincial Budget Speeches and Annual Reports

1999 Budget Speech: Newfoundland and Labrador "Celebrating 50 Years"

Prince Edward Island Health and Social Services Annual Report 1997-1998

Nova Scotia's Annual Report, for the fiscal year ending March 31, 1996, Department of Community Services

New Brunswick 97-98 Health and Community Services Annual Report

Rapport Annual 1996-1997 Santé Services sociaux du Québec

Ontario, Ministry of Community and Social Services 1998-1999 Business Plan

Manitoba Family Services Annual Report 1997-1998

Government of Saskatchewan, Saskatchewan Social Services, Annual Report, 1997/1998

Alberta Family and Social Services Annual Report, 1997-98

British Columbia, Ministry of Social Services, Annual Report 1995-96

Budget 1999/2000, Yukon

Agreements with FNCFS Agencies and CFS Inter-provincial Protocol

Nova Scotia
Canada - Nova Scotia - Mi'kmaw Family and Children's Services Amended Agreement (1997)
Canada - Nova Scotia (Bilateral Agreement Pursuant to s.5.1 of the Canada - Nova Scotia - Mi'kmaw Family and Children's Services Amended Agreement 1997)

Manitoba
Canada/Manitoba/Island Lake Child and Family Services Agreement
Island Lake First Nations Family Services Agreement
Canada/Manitoba/Swampy Creek Child and Family Services Agreement (implemented Dec. 1995)
Canada/Manitoba/Swampy Creek Child and Family Services Agreement (implemented Dec. 1993)

Alberta
Blackfoot Social Services Child Welfare Agreement (Subsidiary Agreement)
Tribal Chief Child and Family Services (East) Society - Alberta Child Welfare Agreement
Tribal Chief Child and Family Services (West) Society - Alberta Child Welfare Agreement
Kee Tas Kee Now/Canada/Alberta Child Welfare Agreement
Canada - Alberta - Stoney First Nation Child Welfare Agreement
Canada - Alberta - Tsuu T'ina Nation Child Welfare Agreement
Canada - Alberta - Blood Tribe Child Welfare Agreement
Canada - Alberta Lesser Slave Indian Regional Council Child Welfare Multi-Year Agreement

British Columbia
Canada - BC - Knucwentwecw Delegation Confirmation Agreement
Delegation Enabling Agreement between Carrier Sekani Family Services Society, the BC Director of Child Protection and Canada
Delegation Enabling Agreement between Sto:Lo Nation, the Director designated by MCF and Minister of Indian Affairs and Northern Development
Delegation Enabling Agreement between the Director of Child Protection, Ministry for Children and Families of British Columbia and the Central Island Child and Family Services Society
An Agreement between The Nisga'a Tribal Council, the province of British Columbia and the Government of Canada

FNCFS Pilot Projects

Evaluation of the Pilot Project on Block Funding for Child Maintenance, West Region Child And Family Services, Manitoba - Final Report, July, 1994, by Brad McKenzie, Child and Family Services Research Group, Faculty of Social Work, University of Manitoba

Alberta Family and Social Services, (April 1998). Provincial Accountability Framework for Child and Family Services

Federal-Provincial Working Group on Child and Family Services Information, (January, 1997). Bulletin.

Indian and Northern Affairs Canada,
Indian and Northern Affairs Canada, (April, 1995). Program Directive 20-1.
Indian and Northern Affairs Canada, First Nations National Reporting Guide 1999-2000

Indian and Northern Affairs Canada, (May, 1999). Canada/First Nations Funding Agreement

Indian and Northern Affairs Canada, Saskatchewan Region, (January 1, 2000). Child in Care Policy Manual, Regina.

FUNDING

Keystone Consulting Services, (Date Unknown). A Comparison of the Costs of On-reserve and Off-reserve Child and Family Services. Napean, Ontario.

Keystone Consulting Services, (October 1999). Child and Family Services: An Analysis of 1996-1997 Expenditures and Related Data for Off-Reserve and On-reserve Services. Napean, Ontario.

McKenzie, B., (July, 1994). Evaluation of the Pilot Project On Block Funding For Child Maintenance – West Region Child and Family Services. Winnipeg, Manitoba.2

Ministry of Community and Social Services, (1999). Aboriginal Child Welfare Review – Comprehensive Report, Ontario

Ministry of Community and Social Services, February 5, 1999, Guide to Child Welfare Funding Framework. Ontario

Prilleltensky, I., Nelson, G., & Peirson, L. (Eds.) (March 1999) Promoting Family Wellness and Preventing Child Maltreatment, Wilfred Laurier University.

Saskatchewan Social Services, (January, 1991). Inter-provincial/Territorial Protocol on Children Moving Between Provinces/Territories.

Sealy J., Kreuger, M., Knight, T., (October, 1998) Battleford Tribal council Indian Child and Family Services Program – Three Year Evaluation, Final Report.

2008

Report of the

Auditor General of Canada

to the House of Commons

MAY

Chapter 4

First Nations Child and Family Services Program—
Indian and Northern Affairs Canada

Office of the Auditor General of Canada

The May 2008 Report of the Auditor General of Canada comprises A Message from the Auditor General of Canada, Main Points—Chapters 1 to 8, and eight chapters. The main table of contents for the Report is found at the end of this publication.

The Report is available on our website at www.oag-bvg.gc.ca.

For copies of the Report or other Office of the Auditor General publications, contact

Office of the Auditor General of Canada
240 Sparks Street, Stop 10-1
Ottawa, Ontario
K1A 0G6

Telephone: 613-952-0213, ext. 5000, or 1-888-761-5953
Fax: 613-943-5485
Hearing impaired only TTY: 613-954-8042
Email: distribution@oag-bvg.gc.ca

Ce document est également publié en français.

Cat. No. FA1-2008/1-4E
ISBN 978-0-662-48524-7

Chapter

4

First Nations Child and Family Services Program

Indian and Northern Affairs Canada

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

Table of Contents

First Nations Child and Family Services Program

Indian and Northern Affairs Canada

Foreword

Children are among the most vulnerable people in society. All provinces in Canada have child welfare legislation in place to protect children from abuse and neglect and to help families overcome their problems so that children can grow up in a safe home environment. Where this is not possible, the goal is to find a safe, permanent home for the child.

The Auditors General of Canada and British Columbia are issuing separate audit reports to their respective legislatures on the management of child welfare services, including protection, for Aboriginal and First Nations children and families. The two audits were performed concurrently to present a broader perspective on child welfare services in British Columbia. Our offices shared methodologies and met jointly with some Aboriginal and First Nations agencies and other organizations.

The Auditor General of Canada looked at the First Nations Child and Family Services Program of Indian and Northern Affairs Canada (INAC) not only in British Columbia, but also nationwide. The audit covered primarily the management structure, the processes, and the federal resources used to implement the federal policy on First Nations child and family services on reserves. INAC funds the operating and administration costs of child welfare services provided to children and families ordinarily resident on reserves, as well as the costs related to children brought into care.

The Auditor General of British Columbia assessed whether the province's Ministry of Children and Family Development has the program design, resourcing, management, and accountability reporting to deliver effective, culturally appropriate services to Aboriginal children and families. The Ministry delivers child welfare services through both mainstream and Aboriginal service teams, as well as through Aboriginal and First Nations agencies that provide the services—either fully or in partnership with the Ministry. The Ministry is also responsible for ensuring that child welfare services meet the requirements set out in provincial legislation.

The federal and BC governments share similar principles in their policies for delivering child welfare services, both on and off reserves. Children and their families are to have equitable access to comparable services that are effective in meeting their needs. Where Aboriginal children, including First Nations children, are concerned, the services are to be culturally appropriate. In addition, both governments support efforts to have Aboriginal and First Nations agencies deliver the services.

Outcomes for children

Nationally, INAC data show that about 5 percent of the First Nations children living on reserves are in care; the Auditor General estimates that this proportion is almost eight times that of children in care residing off reserves.

Studies indicate that in British Columbia, an Aboriginal child is about six times more likely to be taken into care than a non-Aboriginal child. Of all BC children who are in care, 51 percent are Aboriginal—yet Aboriginal people represent only about 8 percent of BC's population.

Neither the federal nor the BC government knows enough about the outcomes. What happens to these children who receive child welfare services? Are they better off? Our legislatures and Aboriginal and First Nations communities need to know if the services being provided make a difference. More and better information on outcomes is critical to measure the impact of services and to change or improve them where necessary.

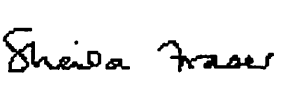
Funding practices

Neither government takes policy requirements sufficiently into account when establishing levels of funding for child welfare services. Under federal and provincial policies, Aboriginal children, including First Nations children, should have equitable access to a level and quality of services comparable with those provided to other children. Funding for the services needs to match the requirements of the policies and also support the delivery of services that are culturally appropriate—which is known to take more time and resources. Current funding practices do not lead to equitable funding among Aboriginal and First Nations communities.

Need for improvements

Although access to good child welfare services alone cannot resolve some of the problems faced by Aboriginal and First Nations children and families, whether on or off reserves, the services are essential to protect these children from abuse or neglect. The overrepresentation of Aboriginal and First Nations children in care—and the indications that outcomes are poor—call for all parties involved in the child welfare system to find better ways of meeting these children's needs.

Our audits have identified a number of other problems that also remain to be resolved, in the areas of staffing, capacity development, and monitoring. We urge our respective governments, working together and with Aboriginal and First Nations organizations, to take prompt action to carry out our recommendations.



Sheila Fraser, FCA
Auditor General of Canada

John Doyle, MBA, CA
Auditor General of British Columbia

First Nations Child and Family Services Program

Indian and Northern Affairs Canada

Main Points

What we examined

Under federal government policy, Indian and Northern Affairs Canada (INAC) is responsible for supporting the provision of child welfare services for on-reserve First Nations children and families. The Department provides funding to First Nations, their child welfare agencies, and provinces to cover the operating costs of child welfare services on reserves and the costs related to children brought into care. These services are expected to meet provincial legislation and standards, be reasonably comparable with those provided off reserves to children in similar circumstances, and be appropriate to the culture of First Nations people. The policy also confirms the federal government's view that provinces have jurisdiction over the welfare of all children, including those living on reserves.

The audit examined the First Nations Child and Family Services Program of INAC. It also included, where relevant, the support available from other INAC programs and programs of other federal departments. The audit covered primarily the management structure and processes and the resources used to implement the government policy on First Nations child and family services on reserves. We interviewed officials of INAC and other departments and reviewed relevant files and documents. We also sought the views of First Nations and First Nations child welfare agencies and met with some provincial officials.

Why it's important

Children are among the most vulnerable people in society. Some of the most vulnerable children in Canada are First Nations children. Information collected by INAC shows that the number of on-reserve First Nations children in care has grown considerably over the last 10 years, as have program expenditures. At the end of March 2007, about 8,300 First Nations children ordinarily resident on reserves were in care. This represents a little over 5 percent of all children residing on reserves (almost eight times the proportion of children residing off reserves). INAC spent $270 million in 2007 to directly support on-reserve children placed in care and another $180 million for the operations, including prevention, of child welfare services for First Nations.

What we found

- The funding INAC provides to First Nations child welfare agencies for operating child welfare services is not based on the actual cost of delivering those services. It is based on a funding formula that the Department applies nationwide. The formula dates from 1988. It has not been changed to reflect variations in legislation and in child welfare services from province to province, or the actual number of children in care. The use of the formula has led to inequities. Under a new formula the Department has developed to take into account current legislation in Alberta, funding to First Nations agencies in that province for the operations and prevention components of child welfare services will have increased by 74 percent when the formula is fully implemented in 2010.
- The Department has not defined key policy requirements related to comparability and cultural appropriateness of services. In addition, it has insufficient assurance that the services provided by First Nations agencies to children on reserves are meeting provincial legislation and standards.
- INAC has not identified and collected the kind of information it would need to determine whether the program that supports child welfare services on reserves is achieving positive outcomes for children. The information the Department collects is mostly for program budgeting purposes.

The Department has responded. Indian and Northern Affairs Canada agrees with all recommendations. In its response to each recommendation, the Department has indicated the action it has taken or will take.

Introduction

4.1 Children are among the most vulnerable people in society. In Canada, child welfare is a provincial responsibility. According to the *Centre of Excellence for Child Welfare*, "child welfare" refers to a group of services designed to promote the well-being of children by ensuring their safety, and to support families in successfully caring for their children.

4.2 All provinces have child welfare statutes in place. Although these statutes have similarities, they vary in how a child in need of protection is defined, the age of children to be protected, investigation procedures, and timelines.

4.3 For First Nations children and families living on reserves, access to child welfare services within their communities is a recent undertaking. There is no explicit reference to child welfare on reserves in either the *Constitution Act, 1867* or the *Indian Act*. As a result of the application of section 88 of the *Indian Act* (extending to First Nations people provincial laws of general application), provincial legislation regarding child welfare is deemed to apply on reserves.

Background on First Nations child welfare services

4.4 Before the 1950s, federal officials intervened in extreme cases if a child living on reserve was abused or neglected; however, their intervention was not based in law. From the 1950s on, provinces began to deliver child welfare services on reserves.

4.5 In the 1970s, First Nations began to express dissatisfaction with the way provinces delivered child welfare services: many First Nations children were adopted out of their communities, some even outside Canada, severing the children's ties to their communities and culture. To remedy these problems, First Nations demanded greater control and jurisdiction over child welfare. Some First Nations developed their own child welfare agencies. The development of First Nations agencies funded by Indian and Northern Affairs Canada (INAC) continued until the mid-1980s, when the Department put a moratorium on the creation of new agencies until the adoption of a federal child welfare policy for First Nations children.

4.6 In 1990, a First Nations child welfare policy was approved by the federal government. This policy promoted the development of culturally appropriate child and family services controlled by First Nations for the benefit of on-reserve children and their families.

Under the policy, a First Nations agency must obtain its mandate from the province and provide child welfare services in accordance with provincial legislation and standards. The policy also recognizes the need to ensure that the services delivered on reserves are culturally appropriate and reasonably comparable with those delivered off reserves in similar circumstances. Over the years, the policy has been confirmed through several government and Treasury Board decisions.

4.7 Today, most provinces provide delegated authority for child welfare services on reserves to local First Nations agencies. These agencies generally are responsible for receiving and investigating reports of possible child abuse or neglect and for taking appropriate actions to ensure the safety and protection of children and promote their well-being. INAC considers that it is the responsibility of each provincial director of child welfare to ensure that the delegated authority is appropriately exercised and to take remedial action when deemed necessary.

4.8 **First Nations Child and Family Services Program.** INAC created the First Nations Child and Family Services Program in 1990, based on the new First Nations child welfare policy. Under the program, INAC provides funding to First Nations, their organizations, and provinces to cover the operating and administrative costs of the child welfare services provided to children and families living on reserves, as well as the costs related to First Nations children placed in care. In addition, a single First Nation or a group of First Nations can obtain funding to prepare for delivering child welfare services. According to INAC, 108 First Nations agencies across the country are now providing at least a portion of child welfare services to about 442 of the 606 First Nations covered by the program. Yukon and provincial agencies serve the rest.

4.9 In 2007, from over $5 billion appropriated by Parliament for transfers and services to First Nations, INAC spent $450 million on this program ($270 million on direct support for First Nations children in care and another $180 million on the operations and administration of child welfare services provided to First Nations). INAC does not track separately what it spends on managing the program.

Child welfare on reserves

4.10 Studies have linked the difficulties faced by many Aboriginal families to historical experiences and poor socio-economic conditions. The *Report of the Royal Commission on Aboriginal Peoples* linked the residential school system to the disruption of Aboriginal families.

Data from the 2003 *Canadian Incidence Study of Reported Child Abuse and Neglect* link poverty, inadequate housing, and caregiver substance misuse on many reserves to the higher substantiated incidence of child neglect occurring on reserves compared to non-Aboriginal children off reserves. Given these linkages, the solution to some of the problems faced by on-reserve children and families do not depend entirely on the availability and quality of child welfare services. Exhibit 4.1 summarizes some of the current challenges that face First Nations children and families as presented to us at meetings with First Nations.

Exhibit 4.1 Challenges facing First Nations children and families

Socio-economic conditions. Many First Nations face difficult socio-economic conditions. Some communities are in crisis. According to First Nations, these conditions present different challenges for First Nations than for mainstream society, but are not taken into account in the child welfare system. There is also a need to address the underlying causes of child welfare cases.

Jurisdiction. First Nations maintain that they have never surrendered their right to care for their children. These rights extend to all members of a First Nation, whether they live on or off reserves.

Legislation. First Nations consider that they have limited input into provincial child welfare legislation. Some provincial standards can be obstacles to providing culturally appropriate child welfare services, which can result in the placement of First Nations children out of their communities.

Program design. As currently designed, the INAC program does not have the flexibility to move funds between operations of an agency and services to children in care. First Nations consider that, at times, this forces agencies to take children in care in order to access funds to provide the required services.

Access to and availability of services. First Nations state that funding allocated to provide child welfare services is not adequate. Travel needs alone require a lot of resources as specialized services are located in large urban centres. They also face difficulties in attracting workers, partly because INAC funding is not sufficient to pay competitive salaries and benefits. The situation is worse in remote and isolated communities.

Emerging issues. Some First Nations note that the number of First Nations children born addicted to drugs is increasing. This causes strains on child welfare resources as these children require special medical or social services that are not always covered by existing funding.

Source: Interviews with First Nations and documents provided by them (unaudited)

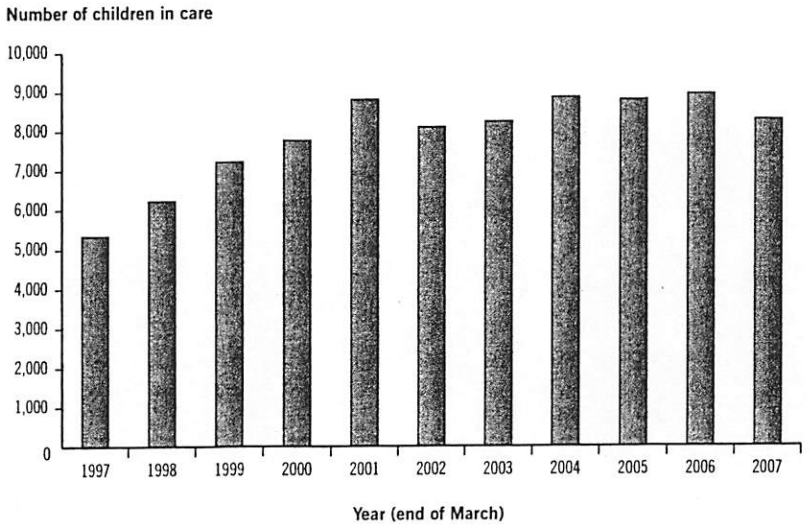
4.11 An analysis funded by INAC, contained in the *Wen:de Report*, found significant differences between Aboriginal and non-Aboriginal children who come into contact with the child welfare system. For example, Aboriginal children are more likely to be reported for neglect than non-Aboriginal children, but they are not over-represented among reports of child abuse. Additionally, Aboriginal children are twice as likely to be investigated for possible abuse or neglect

as non-Aboriginal children. Neglect of Aboriginal children was also confirmed 2.5 times more often. Further, Aboriginal children were more likely to require ongoing services and to be placed in care.

4.12 As shown in Exhibit 4.2, between 1997 and 2001 there was a rapid increase in the number of on-reserve children placed in care. Over this period, the total number of children in care increased by 65 percent, from 5,340 to 8,791 children. This number has remained around the same level since then. At the end of March 2007, there were about 8,300 on-reserve children in care, a little over 5 percent of all children aged from 0 to 18 living on reserves. We estimate that this proportion is almost eight times that of children in care living off reserves.

4.13 Little is known about the outcomes of children placed in care, whether they are Aboriginal or non-Aboriginal. The limited information available regarding children in care shows that they appear to have poor outcomes—a recent British Columbia report noted that the outcomes related to children taken into care in that province were poor. A child who has been in care is less likely to complete high school than a child who has never been in care. For Aboriginal children in care, education results are poorer than for non-Aboriginal children in care.

Exhibit 4.2 The number of on-reserve children placed in care remains high



Source: Indian and Northern Affairs Canada

Focus of the audit

4.14 In this audit, we examined whether INAC is fulfilling its responsibilities, under federal policy, to support child welfare services to on-reserve children and families that are culturally appropriate and reasonably comparable with provincial services available off reserves in similar circumstances. We also looked at how INAC determines whether these services meet provincial legislation and standards. We examined how INAC funds the delivery of child welfare services under its First Nations Child and Family Services Program. We also looked at whether accountability for providing the required services is clearly established. Finally, we examined how the Department determines whether the program is achieving expected results.

4.15 We interviewed officials of INAC at the Department's headquarters and in regional offices in British Columbia, Alberta, Manitoba, Ontario, and Quebec, and reviewed relevant files and documents. We sought the views of First Nations and their child welfare agencies through visits and consultations. We also met with some provincial officials and organizations, and child welfare specialists.

4.16 More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

Program implementation

The program has not defined key policy requirements

4.17 The First Nations Child and Family Services Program was established by Indian and Northern Affairs Canada (INAC) to carry out the federal policy commitment to fund the provision, for on-reserve children, of child welfare services that are culturally appropriate, that comply with provincial legislation and standards, and that are reasonably comparable with services provided off reserves in similar circumstances. The policy confirms the federal government's view that provinces have jurisdiction over the welfare of all children and that the federal government is responsible for funding reasonably comparable programs and services for children living on reserves.

4.18 To deliver this program as the policy requires, we expected that the Department would, at a minimum, know what "culturally appropriate services" means, what provincial legislation and standards require, and what services are available in neighbouring off-reserve communities to children in similar circumstances.

4.19 **Comparability.** We found that INAC has not analyzed and compared the child welfare services available on reserves with those in neighbouring communities off reserves. However, INAC officials and staff from First Nations agencies told us that child welfare services in First Nations communities are not comparable with off-reserve services.

4.20 Child welfare may be complicated by social problems or health issues. We found that First Nations agencies cannot always rely on other social and health services to help keep a family together or provide the necessary services. Access to such services differs not only on and off reserves but among First Nations as well. INAC has not determined what other social and health services are available on reserves to support child welfare services. On-reserve child welfare services cannot be comparable if they have to deal with problems that, off reserves, would be addressed by other social and health services.

4.21 The context in which child welfare services are delivered can be very different on and off reserves and also differs from one First Nation to another. Making comparisons could be difficult in remote and isolated areas, where First Nations constitute a large proportion of the population and provincial services are limited.

4.22 Moreover, in some cases, comparability may not be appropriate. For example, one First Nation we looked at had 14 percent of its children in care as of March 2007. In another case, a First Nations agency advised us that it has taken 70 children into care over a three-year-period because of parental problems with addictions. In situations like these, availability of placement opportunities and access to support services in the communities present difficulties. In such communities, the well-being of children and their chance of achieving positive outcomes can be compromised if the level and range of services are not adequate.

4.23 **Cultural appropriateness.** We found that INAC has not defined the meaning of "culturally appropriate services." Further, while INAC has provided funding to First Nations to develop culturally appropriate standards for the provinces we covered, only British Columbia has approved Aboriginal standards, although BC's own standards contain an Aboriginal component. However, Aboriginal standards

are intended for use only by the Aboriginal agencies, and in 2007, these agencies were providing services to about 65 percent of on-reserve children in care in British Columbia.

4.24 The number of First Nations agencies being funded is the main indicator of cultural appropriateness that INAC uses. According to INAC, the fact that 82 First Nations agencies have been created since the current federal policy was adopted means there are more First Nations children receiving culturally appropriate child welfare services. However, we found that many agencies provide only a limited portion of the services while provinces continue to provide the rest. Further, INAC does not know nationally how many of the children placed in care remain in their communities or are in First Nations foster homes or institutions.

4.25 In our view, INAC needs to define what is meant by reasonably comparable services and find ways to know whether the services that the program supports are in fact reasonably comparable. Further, the work of developing and implementing culturally appropriate standards for First Nations agencies to provide culturally appropriate child welfare services that meet the requirements of provincial legislation needs to be completed.

4.26 Recommendation. Indian and Northern Affairs Canada, in cooperation with provinces and First Nations agencies, should

- define what is meant by services that are reasonably comparable,
- define its expectations for culturally appropriate services and standards, and
- implement this definition and these expectations into the program.

The Department's response. Indian and Northern Affairs Canada agrees. In partnership with provinces and First Nations—beginning with Alberta in the 2007–08 fiscal year—the program is moving to an enhanced prevention-focused approach over the next five years.

Tripartite Enhanced Prevention Frameworks will more clearly define services that are reasonably comparable with services provided in similar circumstances by the provinces to children living off reserve. Definitions of culturally appropriate services will be developed through discussions with the various First Nations based upon community circumstances, and are targeted for completion in 2012.

Responsibilities and services are not always well defined

4.27 Given the complexity associated with coordinating the federal policy of covering the costs of child welfare on reserves, the provinces' jurisdiction over child welfare, and the First Nations delivery of services, we expected to see agreements that would clearly define the respective responsibilities of INAC, the provinces, and the First Nations agencies, and the services to be provided to children. We reviewed the agreements that INAC or the federal government has signed with the provinces and the agreements signed among the provinces, First Nations agencies, and INAC.

4.28 We found that INAC has no agreement on child welfare services with three of the five provinces we covered in the audit—BC, Manitoba, and Quebec. The federal government has agreements with Alberta and Ontario that define these provinces' responsibilities for child welfare services on reserves, and how it will fund these services. However, the child welfare sections of the 1965 Canada-Ontario Welfare Agreement have not been updated since 1981. INAC officials told us that this has no impact on its transferring funds to Ontario to pay for services to children living on reserves. There are, however, provisions in the 1965 Agreement to keep it up-to-date and these could be used to ensure that both the Agreement and the services that the federal government pay for are current.

4.29 Under the program, except in Ontario, INAC needs confirmation that First Nations agencies are mandated by their respective province. This is done through delegation agreements. These agreements can be bilateral, between a province and a First Nations agency, or tripartite, when INAC is a signatory to the agreement. We found that the content of these agreements varies widely. Some agreements clearly define roles and responsibilities and the services to be provided. Others make it difficult to find out what services will be provided to First Nations children and by whom.

4.30 We also found that funding arrangements between INAC and First Nations agencies are generally not tied to the responsibilities that First Nations agencies have under their agreements with provinces; INAC pre-determines the level of funding it will provide to a First Nations agency without regard to the terms of the agreement between the First Nation and the province. Moreover, the funding arrangements rarely define the child welfare services to be made available by the funded agency, the results expected, or the desired outcomes. In the Alberta region, changes being made to the program

require each First Nations agency to develop a business plan that outlines goals, targets, and strategies to achieve them.

4.31 In our view, ensuring the safety, protection, and well-being of children requires that INAC, the provinces, and First Nations agencies have a clear understanding of their responsibilities. Up-to-date agreements among them that clearly define their respective responsibilities and the services to be provided are essential.

4.32 **Recommendation.** Indian and Northern Affairs Canada should ensure that it has up-to-date agreements with the provinces and with First Nations agencies in place. As a minimum, these agreements should consistently define who is responsible for providing the child welfare services required under provincial legislation, and what services will be provided.

The Department's response. Once an enhanced prevention approach model is approved, business plans will be prepared by funding recipients. The Department is already working on arrangements with other provinces to ensure roles and responsibilities and services to be provided are accurately defined and funded. Recipients in those provinces will be asked to develop work plans in the 2008–09 fiscal year, based on those arrangements.

The Department has limited assurance that services meet legislation and standards

4.33 Given how important the standards of care required under provincial legislation are to the safety, protection, and well-being of children, we expected that INAC would obtain assurance from provinces that First Nations agencies deliver child welfare services in accordance with provincial legislation and standards.

4.34 We found that in the five provinces we covered, INAC has limited assurance that child welfare services delivered on reserves by First Nations agencies comply with provincial legislation and standards. INAC officials in Ontario told us that the Department places reliance on the provincial delivery system and that it is informed by the province when there are problems.

4.35 We also found that Alberta and BC did inform the Department that certain provincial legislative requirements and standards were not being fully met by First Nations agencies due to a lack of funding or of flexibility in using funds available. In those cases, for example, there were indications that some on-reserve First Nations children were not receiving prevention or in-home services and were instead being placed into care.

4.36 INAC receives reports from two provinces on some First Nations agencies' compliance with provincial legislation and standards. We reviewed some of those reports and, in our view, certain observations should be of concern to INAC. For example, some First Nations agencies had low rates of compliance with standards of appropriate child welfare services. INAC officials told us that some provinces have intervened in critical situations. We think that when the Department is informed of deficiencies, it should follow up to ensure that timely remedial actions are taken. Without assurance that standards are met and that appropriate actions are taken, INAC does not know whether on-reserve First Nations children are adequately protected and are receiving appropriate services.

4.37 Recommendation. When negotiating agreements with each province, Indian and Northern Affairs Canada should, in consultation with First Nations, seek assurance that provincial legislation is being met. INAC should also analyze the information obtained and follow-up when necessary.

The Department's response. Indian and Northern Affairs Canada agrees and has already initiated discussions with its partners—provinces/territories and First Nation agencies—to clarify accountabilities for monitoring and to support First Nation agencies' adherence to provincial/territorial standards.

Indian and Northern Affairs Canada is working to revise its funding agreements to require assurances that provincial legislation is being met and to follow up when necessary.

Coordination with other programs is poor

4.38 As the protection and well-being of First Nations children may require support from other programs, we expected that INAC would facilitate coordination between the First Nations Child and Family Services Program and other relevant INAC programs, and facilitate access to other federal programs as appropriate.

4.39 We found fundamental differences between the views of INAC and Health Canada on responsibility for funding Non-Insured Health Benefits for First Nations children who are placed in care. According to INAC, the services available to these children before they are placed in care should continue to be available. According to Health Canada, however, an on-reserve child in care should have access to all programs and services available to any child in care in a province, and INAC should take full financial responsibility for these costs in accordance

with federal policy. INAC says it does not have the authority to fund services that are covered by Health Canada. These differences in views can have an impact on the availability, timing, and level of services to First Nations children. For example, it took nine months for a First Nations agency to receive confirmation that an $11,000 piece of equipment for a child in care would be paid for by INAC.

4.40 First Nations children with a high degree of medical need are in an ambiguous situation. Some children placed into care may not need protection but may need extensive medical services that are not available on reserves. By placing these children in care outside of their First Nations communities, they can have access to the medical services they need. INAC is working with Health Canada to collect more information about the extent of such cases and their costs. Exhibit 4.3 outlines a proposal from the *First Nations Child and Family Caring Society of Canada* to deal with these and other issues.

4.41 We found that responsibilities for coordination are not clearly defined. INAC officials told us that First Nations agencies are expected to identify linkages between the various programs funded by INAC and by other federal departments. However, we found that some services are not available in all First Nations communities; for example, INAC's Family Violence Prevention Program is accessed by approximately half of the First Nations communities. Further, departments' rules for their respective programs, as approved by the Treasury Board, do not always facilitate coordination.

Exhibit 4.3 A dispute-resolution mechanism is needed

Jordan's Principle

The provision of services to children in care with complex medical needs often involves many federal departments, provincial ministries, and agencies. Jurisdictional disputes do arise and may result in delays or disrupt services to First Nations children that are otherwise available to other Canadian children. The *First Nations Child and Family Caring Society of Canada* proposes that to deal with these disputes, the government or ministry/department of first contact pay for the services without delay or disruption and then refer the question of responsibility for funding to a jurisdictional dispute-resolution mechanism.

The Society calls this proposal Jordan's Principle, in the name of a child who died in hospital while governments debated who was responsible to pay for his care when discharged.

However, in our view, a dispute-resolution mechanism will not work in the presence of irreconcilable differences and without a change in funding authorities. Such difficulties need to be resolved if this proposal is to result in better and timelier services to First Nations children.

4.42 Recommendation. Indian and Northern Affairs Canada should resolve the fundamental differences with Health Canada related to their respective funding responsibilities for services to First Nations children in care.

The Department's response. Indian and Northern Affairs Canada and Health Canada are working to establish clear agreements on roles and responsibilities, in line with current program authorities before they expire.

4.43 Recommendation. In order to develop a coordinated approach to the provision of federally funded child welfare services, Indian and Northern Affairs Canada should

- ensure that the Department's program rules facilitate coordination; and
- in cooperation with First Nations, work with the Treasury Board of Canada Secretariat and other federal departments that fund programs for First Nations children to facilitate access to their programs.

The Department's response. Indian and Northern Affairs Canada agrees to work with federal partners to improve coordination efforts at headquarters and regional levels and will support First Nations Child and Family Services Agencies as they develop and implement a more coordinated approach to the provision of federally funded child welfare services. Currently in Alberta, agencies are using a business plan mechanism to reflect and report on coordination efforts. As the enhanced approach is adopted in other provinces, the same mechanism will be used.

INAC devotes limited human resources to the program

4.44 INAC's headquarters allocates staff to the management and policy direction of the First Nations Child and Family Services Program, while regional offices allocate staff to the program's delivery. We reviewed organization charts and discussed human resources issues with department officials to assess whether INAC had a sufficient number of people to carry out the program.

4.45 We found that the level of human resources INAC devotes to either managing or delivering the program is insufficient. At headquarters, no executive positions are dedicated full-time to this program, and for many years, only a few positions were devoted to the policy direction and analysis of the program. Most regional offices we visited do not have enough staff to carry out all aspects of the program's management structure. For example, INAC officials informed us that a lack of resources is the main reason why on-site compliance reviews of First Nations agencies were not carried out as required.

4.46 Although INAC has increased the number of positions for the program at headquarters, many of the staff are acting in their positions. And while two positions are to be added to the Alberta regional office, there are indications that implementing the new funding formula and approach will draw significantly on existing resources. For example, the Alberta regional office will need to review business plans coming from 18 Alberta First Nations agencies, and monitor their implementation.

4.47 **Recommendation.** Indian and Northern Affairs Canada should examine the human resources requirements for this program and allocate sufficient resources to meet these requirements.

The Department's response. Indian and Northern Affairs Canada agrees and has already made major progress on a comprehensive human resources plan that places the needs for this program in the broader context of the wide range of pressures on the Department.

Funding of services

Program funding is inequitable

4.48 We expected that INAC would design its funding of the First Nations Child and Family Services Program in a manner consistent with the program's policy and objectives. We reviewed INAC funding practices, including funding arrangements between INAC and First Nations or provinces.

4.49 INAC funds some provinces for delivering child welfare services directly where First Nations do not. INAC has agreements with three of the five provinces we covered on how they will be funded to provide child welfare services on reserves. We found that in these provinces, INAC reimburses all or an agreed-on share of their operating and administrative costs of delivering child welfare services directly to First Nations and of the costs of children placed in care. Exhibit 4.4 summarizes the Department's approaches to funding the provinces covered in our audit.

4.50 INAC funding to cover the costs of operating and administering First Nations agencies is established through a formula. Although the program requires First Nations agencies to meet applicable provincial legislation, we found that INAC's funding formula is not linked to this requirement. The main element of the formula is the number of children aged from 0 to 18 who are ordinarily resident on the reserve or reserves being served by a First Nations agency. At the time of the audit, INAC provided First Nations agencies $787 annually for each child ordinarily resident on reserves. In addition, INAC reimburses the agencies for the costs of children placed in care.

Exhibit 4.4 INAC funding methods vary by province

British Columbia. INAC signed a memorandum of understanding with the province in 1996. Under this agreement, INAC reimburses the province for the administration and supervision costs of on-reserve child welfare services and for the on-reserve children in care costs.

Alberta. Canada signed an agreement with Alberta in 1991. The agreement provides for the reimbursement to Alberta of the estimated operating and administrative costs of the child welfare services delivered directly by the province to some First Nations and the actual costs of services to children from these First Nations who are placed in care.

Ontario. Child welfare services are covered under the 1965 Canada-Ontario Welfare Agreement. INAC pays the province an agreed-on share of its costs to deliver child welfare services to on-reserve First Nations people, including the children in care costs. In addition to regular funding, INAC also provides over $18 million annually to Ontario for enhanced prevention services provided directly to First Nations and to child welfare agencies controlled by First Nations, as well as First Nations agencies that are developing but not yet mandated.

Quebec. INAC has no agreement with the province. INAC signs contribution arrangements with provincial agencies directly providing services to some First Nations. Funding for the operations of these agencies is generally based on the funding formula used to fund First Nations agencies. Costs of services to children in care are reimbursed in the same manner as those reimbursed to First Nations agencies.

Manitoba. INAC has no agreement with the province and no funds are directly provided to it. INAC funds First Nations agencies to deliver all services on reserves.

4.51 **The funding formula is outdated.** We found that the formula was designed in 1988 and has not been significantly modified since. This has had a significant impact on the child welfare services provided to some First Nations children, as the formula does not take into account any costs associated with modifications to provincial legislation or with changes in the way services are provided.

4.52 **The formula leads to funding inequities.** We also found that the formula does not always ensure an equitable allocation of program funding. The formula is based on the assumption that each First Nations agency has 6 percent of on-reserve children placed in care. This assumption leads to funding inequities among First Nations agencies because, in practice, the percentage of children that they bring into care varies widely. In the five provinces we covered, for example, it ranged from 0 to 28 percent in 2007. Further, funding is not responsive to factors that can cause wide variations in operating costs, such as differences in community needs or in support services available, in the child welfare services provided to on-reserve First Nations children, and in the actual work performed by First Nations agencies. In some instances, INAC has had to provide additional funding to respond to needs. For example, in one case we examined, a First Nation was able to convince INAC that its level of funding was

not sufficient because a large number of its children required services. INAC provided it with an additional $1.2 million over two years to increase its capacity to serve children in need.

4.53 Further, we found that INAC does not have a consistent interpretation of the costs covered by the formula when a province has not fully delegated all child welfare services to a First Nations agency. The Quebec regional office takes the position that the funding provided to First Nations under the formula is to cover the costs of all child welfare services, whether delivered by a First Nation or provided by the province. As program funding is not tied to needs, a group of First Nations has accumulated around $4.7 million in unpaid bills owed to a provincial agency for services it provided to them because funding from INAC was not sufficient to pay for all the services. At the time of the audit, INAC was working with the group of First Nations and the agency to address this situation.

4.54 In contrast, the BC regional office does not require First Nations agencies funded under the formula and delivering only a portion of on-reserve child welfare services to pay the province for the administrative costs of the child welfare services they receive from it. INAC estimates that it pays over $2 million annually to BC for services it provides to these First Nations agencies. The BC regional office considers this a duplicate payment, but we note that no concrete actions are being taken to deal with it. We believe that these inequities need to be addressed.

4.55 The formula is not adapted to small agencies. Consistent with the federal policy, the funding formula was designed on the basis that First Nations agencies would be responsible for serving a community, or a group of communities, where at least 1,000 children live on reserve. This was considered the minimum client base an agency could have and still provide services economically and effectively, although exceptions could be made.

4.56 We found that 55 of the 108 agencies funded by INAC are providing child welfare services to fewer than 1,000 children living on reserve. We noted concerns in INAC that small agencies do not always have the funding and capacity to provide the required range of child welfare services, and also have difficulties with governance, conflicts of interest, training, and management. However, action to address these concerns has been limited.

4.57 The shortcomings of the funding formula have been known to INAC for years; some were outlined in a policy study undertaken jointly by INAC and the Assembly of First Nations and completed

in 2000. INAC needs to work with First Nations agencies and the provinces on finding ways to resolve these issues.

4.58 Program funding is not properly coordinated. Under the *Children's Special Allowance Act*, the federal government provides all child welfare agencies in Canada a monthly payment for the care and maintenance of each child placed in care. For the agencies serving children on reserves, this special allowance is paid for the same children that INAC pays for under its program.

4.59 We found that INAC does not deal with special allowances consistently. In Ontario and BC, the special allowance payments are taken into account in the amounts that these provinces claim from INAC. In 2007, for example, we estimate that this resulted in a reduction of approximately $6 million in INAC program costs. Conversely, in the other provinces covered in our audit, and when First Nations agencies deliver the services, INAC funding does not take the special allowance into account. We estimate that these provinces and First Nations agencies received around $17 million in special allowance payments in 2007 for the care and maintenance of on-reserve children in care. Under its program, INAC paid them the full costs of the care and maintenance for the same children.

4.60 Under the current Treasury Board authority, starting 1 April 2008, INAC has to deduct special allowance payments from its funding for the maintenance costs of First Nations children in care. INAC was given one year to advise the provinces and First Nations agencies and allow them to prepare for this change. At the time of our audit, however, INAC had not formally communicated this change.

4.61 We note that the change is likely to have serious implications for some First Nations agencies, particularly those with a large number of children in care. For example, one First Nations agency we examined received about $1.2 million annually in special allowance payments and used this money to supplement INAC funding for its operating and administrative costs. When the special allowance is no longer available for that purpose, the resources for this agency's operations will be reduced by approximately 30 percent. INAC officials were aware of the problem. It is not clear how this First Nations agency, and others in a similar situation, will cope with the change.

4.62 The funding formula is being revised in Alberta. In 2007, INAC obtained authority from the federal government to link its funding of Alberta First Nations agencies to provincial legislation. It has undertaken to provide them with funding and flexibility to deliver services that meet provincial legislation. In cooperation with

First Nations and Alberta, the Department has developed a new formula and funding approach for Alberta First Nations agencies.

4.63 We analyzed the new funding formula and approach and found that it will provide more funds for the operations of First Nations agencies; it also offers them more flexibility to allocate resources to different types of child welfare services. On average, funding to Alberta First Nations agencies for the operation and prevention components will have increased by 74 percent when the new formula is fully implemented in 2010. This should lead to better services for First Nations children.

4.64 However, we also found that the new formula does not address the inequities we have noted under the current formula. It still assumes that a fixed percentage of First Nations children and families in all the First Nations served by an agency need child welfare services. Consequently, in our view, the new formula will not address differing needs among First Nations. Pressures on INAC to fund exceptions will likely continue to exist under the new formula.

4.65 INAC states that it plans to seek similar authority to change the way it funds First Nations agencies in all provinces where it funds them directly. The plan is to complete this work by 2012.

4.66 In our view, the funding formula needs to become more than a means of distributing the program's budget. As currently designed and implemented, the formula does not treat First Nations or provinces in a consistent or equitable manner. One consequence of this situation is that many on-reserve children and families do not always have access to the child welfare services defined in relevant provincial legislation and available to those living off reserves. It is also not consistently harmonized with the special allowance payments provided by the federal government for children in care.

4.67 Recommendation. Indian and Northern Affairs Canada, in consultation with First Nations and provinces, should ensure that its new funding formula and approach to funding First Nations agencies are directly linked with provincial legislation and standards, reflect the current range of child welfare services, and take into account the varying populations and needs of First Nations communities for which it funds on-reserve child welfare services.

The Department's response. Indian and Northern Affairs Canada's current approach to Child and Family Services includes reimbursement of actual costs associated with the needs of maintaining a child in care. The Department agrees that as new partnerships are entered into,

4.72 Because the program's expenditures are growing faster than the Department's overall budget, INAC has had to reallocate funding from other programs. In a 2006 study, the Department acknowledged that over the past decade, budget reallocations—from programs such as community infrastructure and housing to other programs such as child welfare—have meant that spending on housing has not kept pace with growth in population and community infrastructure has deteriorated at a faster rate.

4.73 In our view, the budgeting approach INAC currently uses for this type of program is not sustainable. Program budgeting needs to meet government policy and allow all parties to fulfill their obligations under the program and provincial legislation, while minimizing the impact on other important departmental programs. The Department has taken steps in Alberta to deal with these issues and is committed to doing the same in other provinces by 2012.

4.74 **Recommendation.** Indian and Northern Affairs Canada should determine the full costs of meeting the policy requirements of the First Nations Child and Family Services Program. It should periodically review the program's budget to ensure that it continues to meet program requirements and to minimize the program's financial impact on other departmental programs.

The Department's response. Indian and Northern Affairs Canada agrees to regularly update its estimate of the cost of delivering the program with the new approach on a province-by-province basis, over the next five years.

The program budget will be periodically reviewed by the Department in the context of overall priorities and program requirements.

Compliance with Treasury Board authority could be improved

4.75 We expected that INAC would comply with the Treasury Board authority for the program and would ensure that the funding it provides is used for the intended purposes.

4.76 We found that INAC complies with the Treasury Board authority for the program by ensuring that funding for operations is provided for eligible First Nations agencies. However, we also found that compliance with authority could be improved.

4.77 **Compliance reviews.** To be eligible for INAC funding, a child has to be registered as a status Indian and be ordinarily resident on a reserve. We found that INAC officials can determine whether a child is registered as a status Indian or is entitled to be by using the Indian

based on the enhanced prevention approach, funding will be directly linked to activities that better support the needs of children in care and incorporate provincial legislation and practice standards.

Financial obligations are not reflected in the allocation of resources to the program

4.68 Under government policy, the costs of child welfare services to children and families ordinarily resident on reserves are covered by the federal government. In accordance with that policy, INAC enters into funding agreements with First Nations agencies and provinces to pay for on-reserve child welfare services and cover the costs of children placed in care. Through delegation agreements with provinces and funding arrangements with INAC, First Nations agencies are obligated to ensure that child welfare services available to First Nations children meet provincial legislation and standards.

4.69 We found that there is no link between the financial obligations of this program and how resources are allocated to it. Unlike other programs, the program's expenditures are not fully under the control of INAC. However, the program can be affected by global budget decisions. For example, in 1995, INAC decided not to adjust the funding formula for inflation. This was a response to a federal government request that INAC and other federal departments moderate the pace at which their program expenditures were growing. INAC officials told us that this action was consistent with measures taken across the federal government at that time.

4.70 INAC states that it addresses health and safety issues properly when it makes these budgeting decisions. It also says, however, that over time the lack of adjustment for inflation has had negative impacts on many First Nations agencies. These agencies could not, for example, pay their staff at the same pay scale as staff working for provincial agencies and, as a result, they have difficulties attracting and retaining qualified social workers and meeting their obligations under provincial legislation or their agreements with the province. In 2005, the federal government provided $125 million over five years to support the program and increase First Nations agency funding.

4.71 The program's budget has increased significantly over the last few years—from $193 million in 1997 to $450 million in 2007. The Department attributes this increase to the creation of new First Nations agencies and to factors outside its control, such as the growing number of children living on reserves, the number placed in care, the need to use expensive types of placement, such as specialized institutions, and the child welfare services required.

Registry System operated by the Department. We also found, however, that INAC has not developed a consistent manner to assess a child's residency. INAC usually relies on the information provided by the province, First Nations, or agencies but cannot independently verify this information.

4.78 In its Alberta, Manitoba, and Quebec regional offices, we found that INAC reviews the claims for reimbursement submitted by First Nations agencies or by the province to identify expenses that are not allowable, and that it reconciles the amount it provides them with the actual expenses claimed. However, we also found that INAC's reviews of these claims cannot determine whether the expenses claimed are reasonable. For example, one region reimbursed a First Nations agency for transportation costs that were high enough to be considered questionable.

4.79 To strengthen the review of the expenses claimed by First Nations agencies, INAC is supposed to periodically carry out on-site compliance reviews. The main purposes of these reviews are to provide INAC with additional assurance that children whose care it is funding are ordinarily residents on reserves, that only allowable expenses have been claimed for reimbursement, that expenses are reasonable and accurate, and that the funds were used for the intended purposes.

4.80 While some on-site compliance reviews were undertaken, sometimes in partnership with a province, we found that INAC regional offices do not perform all required periodic compliance reviews. In addition, in two regions where compliance reviews were done, we found that payments made for non-allowable expenses were not recovered as they should have been under the program's authority. For one First Nations agency we examined, approximately $100,000 should have been recovered. INAC officials told us that it was decided before undertaking the reviews not to recover non-allowable expenses in order to emphasize to recipients the need to improve practices. They also told us that the intent is to recover non-allowable expenses in future on-site compliance reviews.

4.81 Costs for children in care in BC. Treasury Board authority for the program requires INAC to reimburse First Nations agencies for the actual costs of each child placed in care and to ensure that all expenditures are allowable under the program. We found that INAC pays First Nations agencies in BC a pre-determined amount per day of care and makes no attempt to relate this amount to the actual expenses incurred for these children. We also found that the actual costs of First Nations children placed in care in some First Nations

agencies are lower than the amount provided by INAC. Further, INAC does not review the agencies' expenses to ensure that they are allowable under the program. In our view, these practices are not consistent with the Treasury Board authority.

4.82 Recommendation. Indian and Northern Affairs Canada should carry out the on-site compliance reviews required under the First Nations Child and Family Services Program. It should also ensure that its British Columbia region complies with Treasury Board authority.

The Department's response. Indian and Northern Affairs Canada agrees. The Department has begun to revise the Child and Family Services program manual and an updated Compliance Directive will be added in the 2008–09 fiscal year.

Indian and Northern Affairs Canada will be working with regional offices, British Columbia in particular, to ensure compliance with program authorities. Compliance audits will be undertaken where risk indicates that this is required.

Information for accountability

The Department lacks information on the program

4.83 Given the program's impact on the lives of on-reserve First Nations children and families, we expected that INAC would define and collect appropriate information to manage and account for the program. We reviewed the information collected by INAC and a program evaluation completed in 2007.

4.84 We found that while INAC has defined some of its information needs, they relate mostly to its funding responsibilities. The information that INAC requires from First Nations and provinces is focused on the volume of services to children in care, such as days of care, and on the costs of services provided to these children. This information is tied directly to actual payments to provinces and First Nations agencies and supports program budgeting and funding allocation to regions.

4.85 We found that INAC collects very limited information on the actual services funded through its funding formula. It does not have information on the volume of activities carried out by the First Nations agencies, such as the number of contacts with child welfare services, the number of assessments, or the major reasons why children come into care. This information would be important in assessing the need for child welfare services in a particular First Nations community and providing guidance to determine the funding needed. It could also help

in monitoring how the funding provided was used and what difference it made in the lives of on-reserve First Nations children and their communities.

4.86 We found that INAC has little information on the outcomes of its funding on the safety, protection, or well-being of children living on reserves. As a result, it is unaware of whether or to what extent its program makes a positive difference in the lives of the children it funds.

4.87 In our view, the information INAC collects falls far short of the child welfare program and policy requirements. The Department is aware of the limits of the information it possesses, and it has identified some of the additional information it needs. These are steps in the right direction. However, a lot of work remains to clearly identify performance indicators and the necessary information, and to obtain the cooperation of the provinces and First Nations in collecting this information and ensuring its quality.

4.88 **Program evaluation.** INAC completed a departmental evaluation of the program early in 2007. From the outset, the evaluation questioned whether evaluating the program was possible: it considered that the program objectives were too broad and that the expected outcomes had not been defined. In addition, it found no systematically collected interim or longer-term outcome information on the program.

4.89 We found that given these limitations, the evaluation did not explore the effectiveness of First Nations agencies or the quality of the services they offer. Instead, it was future-oriented, seeking to explore and recommend program changes to help reduce the number of on-reserve children coming into care and to improve outcomes for First Nations children and families.

4.90 In our view, this evaluation missed an opportunity to find out more about the program, the effectiveness of First Nations agencies, and the overall impact of services on children's lives. INAC plans to undertake another evaluation in 2010. Unless procedures are soon put in place to collect more and better information and responsibilities are assigned, this evaluation will face the same limitations as the previous one.

4.91 **Recommendation.** Indian and Northern Affairs Canada should define the information it needs to manage the program and account for its results, with a particular emphasis on results and outcomes. In cooperation with First Nations and provinces, INAC should develop performance indicators, define the information required, collect the information, and ensure its quality.

The Department's response. Indian and Northern Affairs Canada agrees. It began a comprehensive validation exercise in February 2008 to be completed by December 2008. The program intends to validate the performance indicators with First Nations, to ensure that they are robust and that performance measures lead to data collection that is appropriate, with emphasis on results and outcomes.

The Indian and Northern Affairs Canada "Smart Reporting" exercise is intended to drive the collection of meaningful, relevant, and timely performance data, while ensuring the reduction of reporting requirements on First Nations. This exercise will be used to establish what performance information is required and, if it is not currently available, how it will be obtained.

Conclusion

4.92 Our audit found that Indian and Northern Affairs Canada does not have assurance that the First Nations Child and Family Services Program funds child welfare services for on-reserve First Nations children and families that are culturally appropriate and reasonably comparable with those normally provided off reserves in similar circumstances. In most provinces we visited, many on-reserve children and families do not always have access to the child welfare services defined in relevant provincial legislation and available to those living off reserves.

4.93 We also found that INAC obtains insufficient assurance that the child welfare services funded under the First Nations Child and Family Services Program are delivered in accordance with relevant provincial legislation and standards.

4.94 Finally, INAC does not have sufficient and appropriate information to monitor the program's results and costs for purposes of both program management and accountability.

4.95 This program was established to implement a federal government policy. It is linked to provincial legislation and has direct impact on the safety and well-being of on-reserve children and families. In our view, the program needs to be better supported, managed, and overseen. It also requires better information on results and on the outcomes for children. Although the solutions to some of the problems faced by on-reserve children and families do not depend entirely on the availability and quality of child welfare services, steps need to be taken to address the management deficiencies noted in this audit.

About the Audit

Objectives

Our objectives for the audit were to determine whether Indian and Northern Affairs Canada (INAC)

- has assurance that the First Nations Child and Family Services Program provides on-reserve First Nations children and families with culturally appropriate child welfare services reasonably comparable to those normally provided off reserves in similar circumstances,
- has assurance from the provinces that the child welfare services funded by the program are delivered in accordance with their legislation and standards, and
- collects sufficient and appropriate information on results and costs for program management and accountability purposes.

Scope and approach

Our audit focused on INAC's First Nations Child and Family Services Program; in particular, we examined the management structure and processes and the resources used to implement the federal government policy on First Nations child and family services. We also included, where relevant, information on the support available from other INAC programs and programs of other federal departments, such as Health Canada (non-insured health benefits) and the Canada Revenue Agency (Children's Special Allowance). The audit mainly covered fiscal years 2005–06 and 2006–07.

We looked at the program's design and implementation, as well as INAC's monitoring and measurement of program results. We interviewed INAC managers and staff and reviewed relevant documents at five INAC regional offices (British Columbia, Alberta, Manitoba, Ontario, and Quebec) and at headquarters. In most of these regional offices, we reviewed the information that INAC had on selected First Nations and First Nations agencies. We also looked at INAC files containing information on the funding provided to provinces. In the Ontario regional office, we reviewed the interpretation and implementation of the 1965 Canada-Ontario Welfare Agreement as it relates to First Nations child welfare.

Additionally, we interviewed officials at the Canada Revenue Agency, Health Canada, and Human Resources and Social Development Canada. Although we did not audit the activities carried out by First Nations and their agencies, we sought their views on matters related to child welfare. To that end, we visited eight First Nations communities or child welfare agencies. In these community visits, we discussed matters with managers and staff working on child welfare. We also sought the views of national and regional First Nations organizations and reviewed the documentation provided by them. We also met with some provincial officials and organizations and child welfare specialists.

Criteria

We expected Indian and Northern Affairs Canada

- to have clear authorities and expected results for the program;
- to have agreements clearly defining respective responsibilities for INAC, First Nations agencies, and the provinces and the child welfare services to be provided;
- to obtain from provinces assurance that First Nations agencies deliver services in accordance with provincial legislation and standards;
- to facilitate coordination between the First Nations Child and Family Services Program and other relevant INAC programs, and facilitate access to other relevant federal programs;
- to design its funding of the program consistent with the program's policy and objectives;
- to comply with Treasury Board authority and ensure that funding is being used for the purposes intended; and
- to define and collect appropriate information for program management and accountability.

Audit work completed

Audit work for this chapter was substantially completed on 9 November 2007.

Audit team

Assistant Auditor General: Ronnie Campbell
Principal: Jerome Berthelette
Lead Director: André Côté

Directors: Michelle Salvail, Charlene Taylor

Amy Begley
Kevin McGillivary
Jo Ann Schwartz
Daniel Steeves

For information, please contact Communications at 613-995-3708 or 1-888-761-5953 (toll-free).

Appendix List of recommendations

The following is a list of recommendations found in Chapter 4. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
Program implementation	
4.26 Indian and Northern Affairs Canada, in cooperation with provinces and First Nations agencies, should • define what is meant by services that are reasonably comparable, • define its expectations for culturally appropriate services and standards, and • implement this definition and these expectations into the program. (4.17–4.25)	Indian and Northern Affairs Canada agrees. In partnership with provinces and First Nations—beginning with Alberta in the 2007–08 fiscal year—the program is moving to an enhanced prevention-focused approach over the next five years. Tripartite Enhanced Prevention Frameworks will more clearly define services that are reasonably comparable with services provided in similar circumstances by the provinces to children living off reserve. Definitions of culturally appropriate services will be developed through discussions with the various First Nations based upon community circumstances, and are targeted for completion in 2012.
4.32 Indian and Northern Affairs Canada should ensure that it has up-to-date agreements with the provinces and with First Nations agencies in place. As a minimum, these agreements should consistently define who is responsible for providing the child welfare services required under provincial legislation, and what services will be provided. (4.27–4.31)	Once an enhanced prevention approach model is approved, business plans will be prepared by funding recipients. The Department is already working on arrangements with other provinces to ensure roles and responsibilities and services to be provided are accurately defined and funded. Recipients in those provinces will be asked to develop work plans in the 2008–09 fiscal year, based on those arrangements.
4.37 When negotiating agreements with each province, Indian and Northern Affairs Canada should, in consultation with First Nations, seek assurance that provincial legislation is being met. INAC should also analyze the information obtained and follow-up when necessary. (4.33–4.36)	Indian and Northern Affairs Canada agrees and has already initiated discussions with its partners—provinces/territories and First Nation agencies—to clarify accountabilities for monitoring and to support First Nation agencies' adherence to provincial/territorial standards. Indian and Northern Affairs Canada is working to revise its funding agreements to require assurances that provincial legislation is being met and to follow up when necessary.

Recommendation	Response
4.42 Indian and Northern Affairs Canada should resolve the fundamental differences with Health Canada related to their respective funding responsibilities for services to First Nations children in care. (4.38–4.41)	Indian and Northern Affairs Canada and Health Canada are working to establish clear agreements on roles and responsibilities, in line with current program authorities before they expire.
4.43 In order to develop a coordinated approach to the provision of federally funded child welfare services, Indian and Northern Affairs Canada should • ensure that the Department's program rules facilitate coordination; and • in cooperation with First Nations, work with the Treasury Board of Canada Secretariat and other federal departments that fund programs for First Nations children to facilitate access to their programs. (4.38–4.41)	Indian and Northern Affairs Canada agrees to work with federal partners to improve coordination efforts at headquarters and regional levels and will support First Nations Child and Family Services Agencies as they develop and implement a more coordinated approach to the provision of federally funded child welfare services. Currently in Alberta, agencies are using a business plan mechanism to reflect and report on coordination efforts. As the enhanced approach is adopted in other provinces, the same mechanism will be used.
4.47 Indian and Northern Affairs Canada should examine the human resources requirements for this program and allocate sufficient resources to meet these requirements. (4.44–4.46)	Indian and Northern Affairs Canada agrees and has already made major progress on a comprehensive human resources plan that places the needs for this program in the broader context of the wide range of pressures on the Department.

Recommendation	Response
Funding of services	
4.67 Indian and Northern Affairs Canada, in consultation with First Nations and provinces, should ensure that its new funding formula and approach to funding First Nations agencies are directly linked with provincial legislation and standards, reflect the current range of child welfare services, and take into account the varying populations and needs of First Nations communities for which it funds on-reserve child welfare services. (4.48–4.66)	Indian and Northern Affairs Canada's current approach to Child and Family Services includes reimbursement of actual costs associated with the needs of maintaining a child in care. The Department agrees that as new partnerships are entered into, based on the enhanced prevention approach, funding will be directly linked to activities that better support the needs of children in care and incorporate provincial legislation and practice standards.
4.74 Indian and Northern Affairs Canada should determine the full costs of meeting the policy requirements of the First Nations Child and Family Services Program. It should periodically review the program's budget to ensure that it continues to meet program requirements and to minimize the program's financial impact on other departmental programs. (4.68–4.73)	Indian and Northern Affairs Canada agrees to regularly update its estimate of the cost of delivering the program with the new approach on a province-by-province basis, over the next five years. The program budget will be periodically reviewed by the Department in the context of overall priorities and program requirements.
4.82 Indian and Northern Affairs Canada should carry out the on-site compliance reviews required under the First Nations Child and Family Services Program. It should also ensure that its British Columbia region complies with Treasury Board authority. (4.75–4.81)	Indian and Northern Affairs Canada agrees. The Department has begun to revise the Child and Family Services program manual and an updated Compliance Directive will be added in the 2008–09 fiscal year. Indian and Northern Affairs Canada will be working with regional offices, British Columbia in particular, to ensure compliance with program authorities. Compliance audits will be undertaken where risk indicates that this is required.

Recommendation	Response
Information for accountability	
4.91 Indian and Northern Affairs Canada should define the information it needs to manage the program and account for its results, with a particular emphasis on results and outcomes. In cooperation with First Nations and provinces, INAC should develop performance indicators, define the information required, collect the information, and ensure its quality. (4.83–4.90)	Indian and Northern Affairs Canada agrees. It began a comprehensive validation exercise in February 2008 to be completed by December 2008. The program intends to validate the performance indicators with First Nations, to ensure that they are robust and that performance measures lead to data collection that is appropriate, with emphasis on results and outcomes. The Indian and Northern Affairs Canada "Smart Reporting" exercise is intended to drive the collection of meaningful, relevant, and timely performance data, while ensuring the reduction of reporting requirements on First Nations. This exercise will be used to establish what performance information is required and, if it is not currently available, how it will be obtained.

Report of the Auditor General of Canada to the House of Commons—May 2008

Main Table of Contents

HOUSE OF COMMONS
CANADA

CHAPTER 4, FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM - INDIAN AND NORTHERN AFFAIRS CANADA OF THE MAY 2008 REPORT OF THE AUDITOR GENERAL

Report of the Standing Committee on Public Accounts

Hon. Shawn Murphy, MP
Chair

MARCH 2009

40th PARLIAMENT, 2nd SESSION

This is Exhibit ..... referred to in the
affidavit of .....
sworn before me, this .....
day of ..... 20.....

A COMMISSIONER FOR TAKING AFFIDAVITS

Also available on the Parliamentary Internet Parlementaire: http://www.parl.gc.ca

Available from Communication Canada — Publishing, Ottawa, Canada K1A 0S9

[illegible]

CHAPTER 4, FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM - INDIAN AND NORTHERN AFFAIRS CANADA OF THE MAY 2008 REPORT OF THE AUDITOR GENERAL OF CANADA

Report of the Standing Committee on Public Accounts

Hon. Shawn Murphy, MP
Chair

MARCH 2009

40th PARLIAMENT, 2nd SESSION

STANDING COMMITTEE ON PUBLIC ACCOUNTS

CHAIR

Hon. Shawn Murphy

VICE-CHAIRS

David Christopherson

Daryl Kramp

MEMBERS

Bonnie Crombie

Luc Desnoyers

Meili Faille

Yasmin Ratansi

Andrew Saxton

Bev Shipley

John Weston

Terence Young

CLERK OF THE COMMITTEE

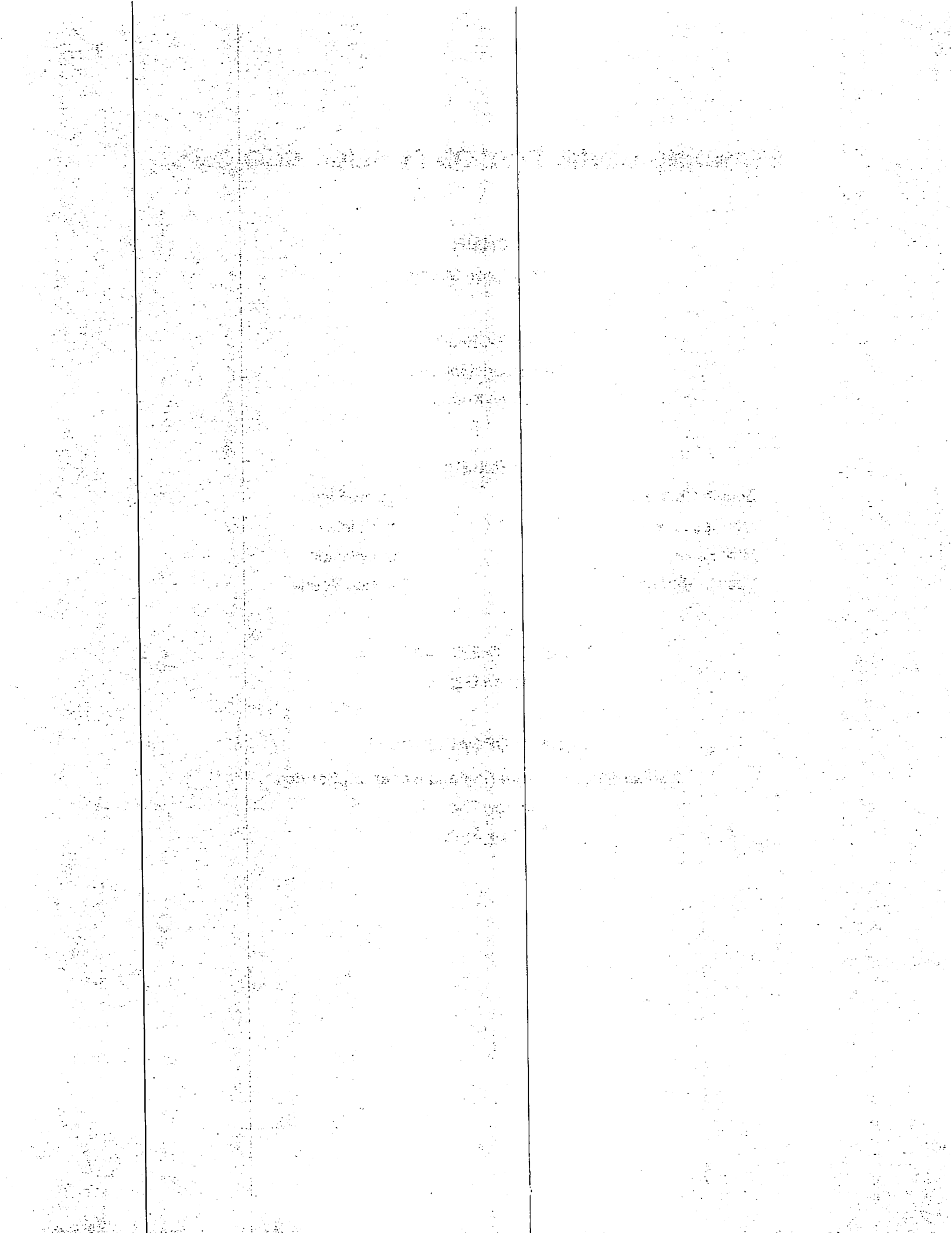
Joann Garbig

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Andrew Kitching

Alex Smith



THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

SEVENTH REPORT

Pursuant to its mandate under Standing Order 108(3)*(g)*, the Committee has studied Chapter 4, First Nations Child and Family Services Program - Indian and Northern Affairs Canada of the May 2008 Report of the Auditor General of Canada and has agreed to report the following:

INTRODUCTION

Children are amongst the most vulnerable people in society. Every effort ought to be taken to ensure that they are protected from abuse and neglect, and assistance is provided to families so children can grow up in a safe home environment. Where this is not possible, it may be necessary to find a safe, permanent home for the child.

As child welfare is a provincial responsibility, all provinces have child welfare statutes in place and have services for children at risk or in need. Providing First Nations children access to child welfare services in their communities is a recent undertaking. Formerly, many First Nations children were adopted out of their communities by provincial child welfare services; today, most provinces delegate authority for these services to local First Nations agencies which are responsible for taking appropriate actions to ensure the safety and protection of children and promoting their well-being.

As First Nations peoples living on reserves are a federal responsibility, Indian and Northern Affairs Canada operates a First Nations Child and Family Services Program. The objective of this program is to fund the provision of child welfare services that are culturally appropriate, that comply with provincial legislation and standards, and that are reasonably comparable with services provided off reserves in similar circumstances.

In May 2008, the Office of the Auditor General presented to Parliament an audit of the First Nations Child and Family Services Program.[1]

Given the importance of the safety and well-being of all Canadian children and the disturbing findings of the audit, the Public Accounts Committee held a hearing on this audit on 12 February 2009 with officials from the Office of the Auditor General (OAG) and Indian and Northern Affairs Canada. The OAG was represented by Sheila Fraser, Auditor General of Canada; Ronnie Campbell, Assistant Auditor General; and Jerome Berthelette, Principal. INAC was represented by Michael Wernick, Deputy Minister; Christine Cram, Assistant Deputy Minister, Education and Social Development

[1] Auditor General of Canada, May 2008 Report, Chapter 4, *First Nations and Family Services Program—Indian and Northern Affairs Canada.*

Programs and Partnerships Sector; Mary Quinn, Director General, Social Policy and Programs Branch; Odette Johnston, Director, Social Programs Reform Directorate.

BACKGROUND

In 1990, the federal government approved a First Nations child welfare policy that promoted the development of culturally appropriate child and family services controlled by First Nations for the benefit of on-reserve children and their families. Based on this policy, Indian and Northern Affairs Canada (INAC) created the First Nations Child and Family Services Program. Under this program, INAC provides funding to First Nations, their organizations, and provinces to cover the operating and administrative costs of the child welfare services provided to children and families living on reserves, as well as the costs related to First Nations children placed in care.

In 2007, INAC spent $450 million on the First Nations Child and Family Services Program: $270 million on direct support for First Nations children in care and $180 million on the operations and administration of child welfare services provided to First Nations. The Program supports 105 First Nations Child and Family Services Agencies to deliver child and family services to approximately 160,000 children and youth in approximately 447 out of 573 First Nation communities.

The statistics of the number of First Nations children in care are alarming. At the end of March 2007, there were about 8,300 on-reserve children in care, a little over 5 percent of all children living on reserves. This proportion is almost eight times that of children in care living off reserves. Some of the major contributing reasons for children coming into care are poverty, poor housing conditions, substance abuse, and exposure to family violence.

The objective of the OAG's audit was to determine whether INAC was fulfilling its responsibility, under federal policy, to support child welfare services to on-reserve children and families that are culturally appropriate and reasonably comparable with provincial services available off reserves in similar circumstances.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ACTION PLAN

The audit made six recommendations, and the Committee fully supports these recommendations. As Indian and Northern Affairs Canada agreed with all of the recommendations, the Committee expects that the Department will fully implement them.

In response to audits by the Office of the Auditor General, the Committee expects that departments prepare an action plan that details what actions will be taken in response to each recommendation, specifies timelines for the completion of the actions, and identifies responsible individuals for ensuring the actions are undertaken in a prompt and effective manner. An action plan demonstrates management's commitment to implementing the OAG's recommendations, provides transparency about the department's plans, and allows the department to be held to account for specific actions.

The Committee also expects that departments provide detailed action plans before their hearing. This allows Committee members to review the action plan and to develop questions for departmental officials.

The work for the audit on the First Nations Child and Family Services Program was completed on 9 November 2007, and the audit was tabled in Parliament on 6 May 2008. However, the Deputy Minister and Accounting Officer for INAC, Michael Wernick, only provided vague generalities in his opening statement about the Department's actions in response to the audit; though, he did commit to providing a follow-up report to the Committee in April. When asked if he had a concrete and specific action plan to provide to the Committee, Mr. Wernick said, "we have an action plan in the sense that we're pursuing these various initiatives. That was the undertaking I made at the beginning: that it would be going to my audit committee in the month of April and we'd provide it to the committee. It will go through each recommendation and give more specifics on what we're doing or what we already have done."[2]

While the Deputy Minister verbally committed to providing an action plan and follow-up report to the Committee in April, the Committee is very concerned that

[2] House of Commons Standing Committee on Public Accounts, 40th Parliament, 2nd Session, Meeting 4, 17:10.

there is no evidence of an action plan currently in place, and that it would take so long to finalize an action plan. The Committee agrees that the departmental audit committee should be regularly examining this issue and ensuring that appropriate progress is made. In order to ensure that INAC follows through on its commitment, the Committee recommends:

RECOMMENDATION 1

That Indian and Northern Affairs Canada provide a detailed action plan to the Public Accounts Committee by 30 April 2009 on the implementation of the Office of the Auditor General's recommendations included in the May 2008 audit of the First Nations Child and Family Services Program.

POLICY REQUIREMENTS

According to the audit, the federal government's First Nations child welfare policy commits the government to fund child welfare services that are culturally appropriate, that comply with provincial legislation and standards, and that are reasonably comparable with services provided off reserves in similar circumstances.[3] Similar wording is provided on INAC's website, "The First Nations Child & Family Services (FNCFS) Program assists First Nations in providing access to culturally sensitive child and family services in their communities, and ensures that the services provided to First Nations children and their families on-reserve are comparable to those available to other provincial residents in similar circumstances."[4]

However, the audit found that INAC had not analyzed and compared the child welfare services available on reserves with those in neighbouring communities off reserves.[5] In some cases comparability may not be appropriate, as First Nations communities often cannot rely on other social and health services to help keep a family together, services are sometimes delivered in isolated areas, and First Nations communities may face more challenging situations than other communities.

---

[3] Chapter 4, paragraph 4.17.
[4] http://www.ainc-inac.gc.ca/hb/sp/fncf/index-eng.asp
[5] Chapter 4, paragraph 4.19.

Nonetheless, it should be possible to compare the level of funding provided to First Nations child and family services agencies to similar provincial agencies, and given their unique and challenging circumstances, it would be reasonable to expect First Nations agencies to receive a higher level of funding. Yet, when asked how the funding for First Nations child and family service agencies compares to agencies for non-natives, the Assistant Deputy Minister said, "I'm sorry, but we don't know the answer."[6] The same question was put to the Deputy Minister and he replied, "Our accountability is for the services delivered by those agencies to the extent that we fund them."[7]

The Committee finds these responses quite disappointing. The Deputy Minister's response was unsatisfactory because the issue under discussion is the extent to which the agencies are funded. Also, to not know how the funding compares to provincial agencies makes the Committee wonder how the level of funding is determined, and how the Department can be assured that it is treating First Nations children equitably.

Some indication of how the funding level for First Nations child welfare agencies compares to provincial agencies can be found in the *Joint National Policy Review* conducted in 2000. This review found that, "DIAND [Department of Indian and Northern Development] has been limited to 2% budgetary increases for the department while expenditures for FNCFS [First Nations child and family services] agencies have been rising annually at an average rate of 6.2%. The average per capita per child in care expenditure of the DIAND funded system is 22% lower than the average of the selected provinces."[8]

This review, though, is now somewhat dated and is not a complete picture of all provinces. As the policy requires First Nations child welfare services to be comparable with services provided off reserves and the Committee believes that First Nations children should be treated equitably, the Committee believes that INAC must

---

[6] Meeting 4, 16:10.
[7] Meeting 4, 16:25.
[8] Dr. Rose-Alma J. McDonald, Dr. Peter Ladd, et. al., *First Nations Child and Family Services Joint National Policy Review*, June 2000, page 14. This report was prepared for the Assembly of First Nations with First Nations Child and Family Service Agency Representatives in partnership with the Department of Indian Affairs and Northern Development.

have comprehensive information about the funding level provided to provincial child welfare agencies and compare that to the funding of First Nations agencies. This does not mean that INAC should adopt provincial funding formulae for First Nations agencies as the needs for First Nations agencies are unique and often greater. Nonetheless, at the very least, INAC should be able to compare funding. Consequently, the Committee recommends:

RECOMMENDATION 2

That Indian and Northern Affairs Canada conduct by 31 December 2009 a comprehensive comparison of its funding to First Nations child and family welfare services agencies to provincial funding of similar agencies and provide the Public Accounts Committee with the results of this review.

In addition to comparability, the policy also requires that child welfare services be "culturally appropriate." The audit found that INAC had not yet defined the meaning of "culturally appropriate services."[9] The main indicator of culturally appropriate used by the Department is the number of agencies being funded. However, many of these agencies provide only a limited portion of services, while provinces continue to provide the rest.

When asked whether the Department had defined "culturally appropriate services," the Deputy Minister somewhat flippantly replied, "Culturally appropriate services are not really something that I, as a white bureaucrat in Ottawa, can define for a first nations agency operating in a particular community."[10] The Committee was not expecting the Deputy Minister to provide the definition, but instead he should have had a clear grasp of what progress the Department has made in working with its partners to develop a definition, especially as the Department's response to the OAG's recommendation states, "Definitions of culturally appropriate services will be developed through discussions with the various First Nations based upon community

[9] Chapter 4, paragraph 4.23.
[10] Meeting 4, 16:20.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

circumstances, and are targeted for completion in 2012."[11] As the Committee would like to know what progress has been made to date, the Committee recommends:

RECOMMENDATION 3

That Indian and Northern Affairs include a clear indication of progress made in defining "culturally appropriate services" in its follow-up report on the Office of the Auditor General's audit of the First Nations Child and Family Services Program to be provided to the Public Accounts Committee in April 2009.

FUNDING FORMULAE

Indian and Northern Affairs currently has two funding formulae in place for the First Nations Child and Family Services Program: one formula, known as Directive 20-1, was designed in 1988 and has not been significantly modified since, and a new formula that is being developed in tripartite agreements with First Nations and provinces. There are currently tripartite agreements in place with Alberta, Saskatchewan, and Nova Scotia.

The older funding formula has the effect of increasing the number of children in care because the costs of in-care options—foster care, group homes and institutional care—are fully reimbursed under this formula. In other words, under Directive 20-1, the Department will cover the costs of children in care regardless of the amount, but it will provide minimal funding for supports for children to be cared for safely in their own family.

Moreover, the audit points out that this formula does not ensure an equitable allocation of program funding.[12] It is based on the assumption that each First Nations agency has 6 percent of on-reserve children placed in care. Though, the audit found that the actual percentage of children in care can range from 0 to 28 percent. The formula is also unresponsive to factors that can cause wide variations in operating costs, such the capacity of small agencies to provide the required range of child welfare services.

---

[11] Chapter 4, response to recommendation 4.26.
[12] Chapter 4, paragraph 4.52.

The Deputy Minister acknowledged the flaws in the older funding formula and pointed to the new approach:

> What we had was a system that basically provided funds for kids in care. So what you got was a lot of kids being taken into care. And the service agencies didn't have the full suite of tools, in terms of kinship care, foster care, placement, diversion, prevention services, and so on. The new approach that we're trying to do through the new partnership agreements provides the agencies with a mix of funding for operating and maintenance--which is basically paying for the kids' needs--and for prevention services, and they have greater flexibility to move between those.

In other words, the new formula is based on an enhanced prevention approach, which is intended to improve outcomes for children and families and reduce the need for out-of-home placements. The enhanced prevention approach provides First Nations child welfare agencies greater flexibility to fund such options as family supports, in-home services, and kinship care. This new approach has been called the "Alberta Response model," and it should lead to better outcomes for children and possibly lower costs in the long-term. The Committee supports this prevention-based approach as it brings together a range of community partners to support children and their families.

However, both funding formulae are currently in place. The Assistant Deputy Minister, Christine Cram, described the current situation:

> We currently have two formulas in operation. We have a formula for those provinces where we haven't moved to the new model. Under that formula, we reimburse all charges for kids who are actually in care, and that's why the costs have gone up so dramatically over time. There were comments made about the fact that under the old formula there wasn't funding provided to be able to permit agencies to provide prevention services. That's a fair criticism of the old formula. Under the new formula, as the deputy was mentioning, we have three categories in the funding formula. We have operations, prevention, and maintenance. So those are each determined on a different basis.[13]

So, First Nations child welfare agencies in the three provinces noted above are funded by the new formula, but agencies in the rest of the country are funded under the old formula, until new tripartite agreements are signed, which the Department hopes to achieve with all provinces by 2012.

---

[13] Meeting 4, 16:05.

[illegible]

The Committee is quite concerned that the majority of First Nations children on reserves continue to live under a funding regime which numerous studies have found is not working and should be changed. According to the Joint National Policy Review, "The funding formula inherent in Directive 20-1 is not flexible and is outdated."[14] The 2005 Wen:de report, which undertook a comprehensive review of funding formulae to support First Nations child and family service agencies, found that the current funding formula drastically underfunds primary, secondary and tertiary child maltreatment intervention services, including least disruptive measures. The report writes, "The lack of early intervention services contributes to the large numbers of First Nations children entering care and staying in care."[15] An evaluation prepared in 2007 by INAC's Departmental Audit and Evaluation Branch recommended that INAC, "correct the weaknesses in the First Nations Child and Family Service Program's funding formula."[16] The OAG concluded, "As currently designed and implemented, the formula does not treat First Nations or provinces in a consistent or equitable manner. One consequence of this situation is that many on-reserve children and families do not always have access to the child welfare services defined in relevant provincial legislation and available to those living off reserves."[17]

Yet, this funding formula continues. As the Auditor General puts it, "Quite frankly, one has to ask why a program goes on for 20 years, the world changes around it, and yet the formula stays the same, preventative services aren't funded, and all these children are being put into care."[18]

While the Committee appreciates the efforts the Department is making to develop new agreements based on the enhanced prevention model, the Committee completely fails to understand why the old funding formula is still in place. Moving to new agreements should in no way preclude making improvements to the existing formula, especially as it may take years to develop agreements with the provinces. In

---

[14] Dr. Rose-Alma J. McDonald, Dr. Peter Ladd, et. al., *First Nations Child and Family Services Joint National Policy Review*, June 2000, page 17.
[15] First Nations Child and Family Caring Society of Canada, *Wen:de: The Journey Continues*, 2005, page 35.
[16] Indian and Northern Affairs Canada, Departmental Audit and Evaluation Branch, *Evaluation of the First Nations Child and Family Services Program*, March 2007, page 48.
[17] Chapter 4, paragraph 4.66.
[18] Meeting 4, 17:15.

the meantime, many First Nations children are taken into care when other options are available. This is unacceptable and clearly inequitable. The Committee recommends:

RECOMMENDATION 4

That Indian and Northern Affairs immediately modify Directive 20-1 for the funding of First Nations child and family services agencies to allow for the funding of enhanced prevention services, and report back to the Public Accounts Committee on its progress in making this change by 30 June 2009.

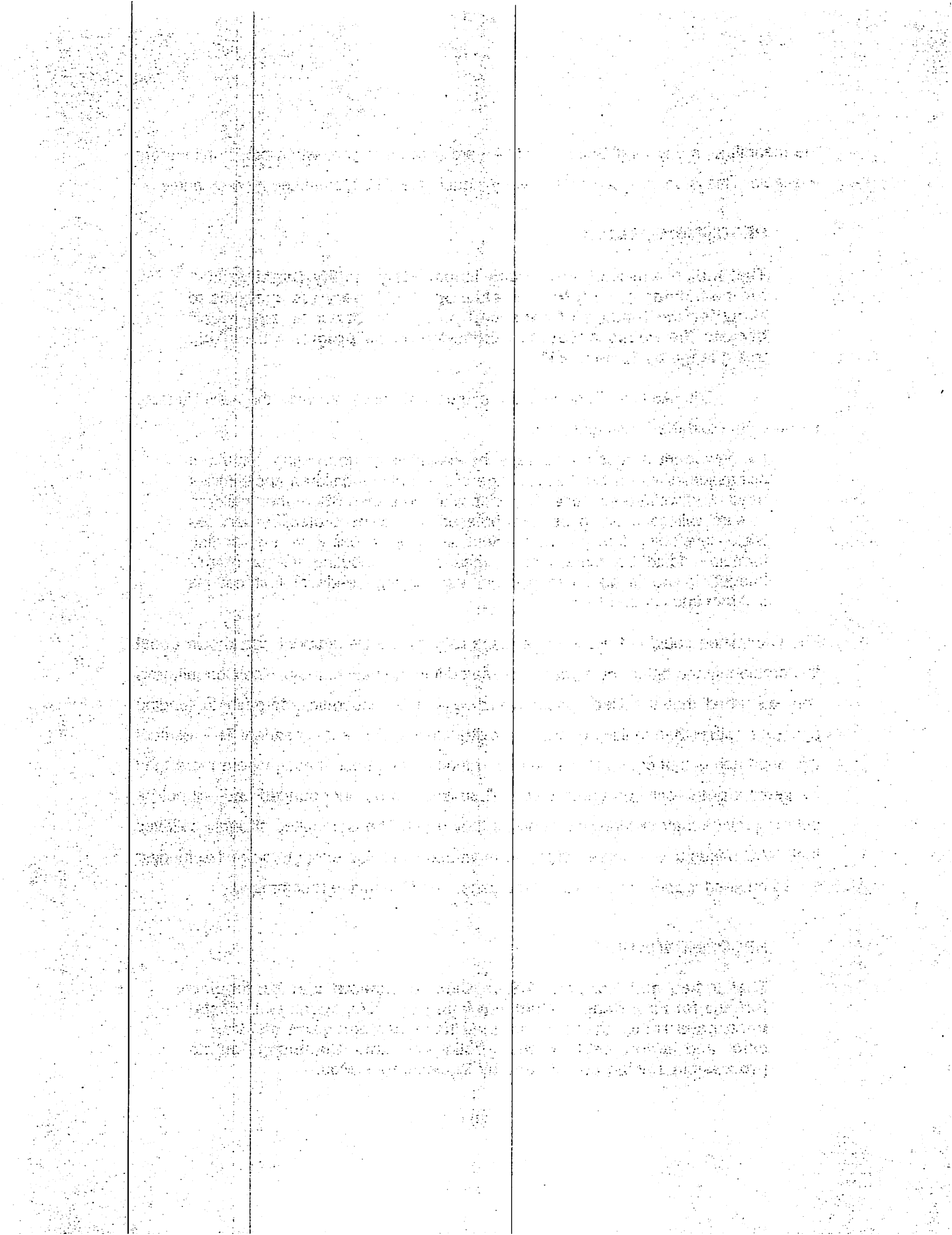
The Auditor General also expressed concerns with the new funding formula. She told the Committee that:

> the new formula does not address the inequities of the existing formula. It still assumes that a fixed percentage of first nations children and families need child welfare services. Agencies with more than 6% of their children in care will continue to be hard-pressed to provide protection services while developing family enhancement services. In our view, the funding formula should be more than a means of distributing the program's budget; it should take into account the varying needs of first nations children and communities.

The Committee could not agree more, especially as the Department has known about this problem in the old formula yet has repeated it in the new formula. The Committee is very disturbed that the Department would take a bureaucratic approach to funding agencies, rather than making efforts to provide funding where it is needed. The result of this approach is that communities that need funding the most, that is, where more than six percent of the children are in care, will continue to be underfunded and will not be able to provide their children the services they need. The Committee strongly believes that INAC needs to develop a funding formula that is flexible enough to provide funding based on need, rather than a fixed percentage. The Committee recommends:

RECOMMENDATION 5

That Indian and Northern Affairs Canada ensures that its funding formula for First Nations child and family services agencies is based upon need rather than an assumed fixed percentage of children in care, and report back to the Public Accounts Committee on its progress in making this change by 31 December 2009.



REALLOCATIONS

In order to moderate the pace at which program expenditures were growing, in 1995 the Department's annual funding increases were limited to 2 percent. The First Nations Child and Family Services Program's budget, though, has increased significantly over the last few years—from $193 million in 1997 to $450 million in 2007. The Program's needs and consequent expenditures are growing faster than the department's overall budget. This has led INAC to reallocate funding from other programs, such as community infrastructure and housing.[19] This means that spending on housing has not kept pace with growth in population and community infrastructure has deteriorated at a faster rate.

The OAG recommended that INAC should determine the full cost of meeting the policy requirements of the First Nations Child and Family Services Program. While the Committee believes that this is a positive first step, it does not resolve INAC's continuing problem of constantly having to reallocate funds from one program to another in order to meet emergencies. This means that other pressing needs are underfunded. As the Committee is troubled by the problem of continuing reallocations within INAC, it recommends:

RECOMMENDATION 6

That Indian and Northern Affairs Canada determine the full costs of meeting all of its policy requirements and develop a funding model to meet those requirements.

THE BEST INTERESTS OF CHILDREN

In order to determine whether or not a program is having its intended effects, it is necessary to set clear and concrete objectives and to collect information about the program's results as assessed against these objectives. In this case, the goal of the First Nations Children and Family Services Program should be to ensure that First Nations children are protected from abuse and neglect and are able to grow up in a safe environment. INAC should know whether or not children are better off as a result of

[19] Chapter 4, paragraph 4.72.

this program. Measuring results would allow the department to modify and improve the program based upon solid empirical information.

However, the audit found that the information collected by INAC is mostly for program budgeting purposes. INAC has little information on the outcomes of its funding on the safety, protection, or well-being of children living on reserves.[20] In other words, INAC does not know whether its funding is in the best interests of First Nations children.

If INAC had been collecting this information, then perhaps it would have realized long ago that its old funding formula, Directive 20-1, encouraged agencies to put children into care, rather than fund family-based prevention services. It is not in the best interests of children to place more children into care than is necessary, and it is not in the best interests of children to provide funding based on a fixed percentage of costs rather than on need.

The Committee believes that if INAC were to set criteria based on the best interests of children and to measure the results of its program on the basis of these criteria, then it might better manage the program to meet the needs of First Nations children. Consequently, the Committee recommends:

RECOMMENDATION 7

That Indian and Northern Affairs Canada develop measures and collect information based on the best interests of children for the results and outcomes of its First Nations Child and Family Services Program.

CONCLUSION

The Committee recognizes that some progress is being made. Tripartite agreements have been signed with Alberta, Nova Scotia, Saskatchewan, and First Nations groups. The new approach to child welfare in Alberta is a model that the government is seeking to replicate across Canada. As Ms. Fraser noted, "I think we can be somewhat hopeful when we look at the Alberta model, which is recognizing that services have changed and funding based on that example is going to go up quite

[20] Chapter 4, paragraph 4.86.

significantly."[21] The Committee also recognizes the increase in funding for the First Nations Child and Welfare Services Program over the last few years from $193 million in 1996-1997 to a projected $523 million in 2008-2009.

Despite this progress, First Nations children are particularly vulnerable and the necessity of adequate funding of First Nations child and family services cannot be denied. The Committee is disappointed with the bureaucratic approach taken by Indian and Northern Affairs Canada to funding its First Nations Child and Family Services Program. It is continuing to use a funding formula with extensive flaws and its new funding formula incorporates some of those same flaws. The formula is not based on the actual cost of delivering services, is not sufficiently linked to the costs of meeting provincial requirements and standards, does not reflect the current range of child welfare services, nor does it take into account the varying populations and needs of First Nations communities

Continuing to use a flawed funding formula means that First Nations child and family services agencies are often underfunded, and First Nations children and their families do not receive the services that they need. Instead, First Nations children are much more likely to enter into and stay in care, and their families are not given the full range of support services to help them provide a safe environment for their children. This situation is not tenable. The Committee sincerely hopes that INAC will take prompt action to ensure that First Nations children are provided appropriate and adequate services in a manner that treats them equitably with all other Canadian children.

[21] Meeting 4, 17:15.

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Indian Affairs and Northern Development Christine Cram, Assistant Deputy Minister, Education and Social Development Programs and Partnerships Sector Odette Johnston, Director, Social Programs Reform Directorate Mary Quinn, Director General, Social Policy and Programs Branch Michael Wernick, Deputy Minister	2009/02/12	4
Office of the Auditor General of Canada Jerome Berthelette, Principal Ronnie Campbell, Assistant Auditor General Sheila Fraser, Auditor General of Canada		

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos. 4, 6 and 8) is tabled.

Respectfully submitted,

Hon. Shawn Murphy, MP

Chair

Opening Statement by Cindy Blackstock, PhD
Executive Director
First Nations Child and Family Caring Society of Canada at the
Canadian Human Rights Tribunal on First Nations Child Welfare,
11th floor, 160 Elgin Street, Ottawa, Canada

September 14, 2009

On behalf of the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations it is a great honour to stand before you today to represent First Nations children and families living in First Nations communities across this great country. We filed this complaint on behalf of all First Nations children who want the same opportunity to live safely in their family homes as other children. As you know Mr. Chair, provincial child welfare laws apply both on and off reserve in Canada, but typically the provinces expect the federal government through its funding service to meet child welfare needs on reserve. It is important to note Mr. Chair that the provincial child welfare statutes to which the respondent ties their funding do not allow for any differential service on the basis of funding disputes between Canada and the respective provinces and territories. The paramount consideration of child welfare law is the safety and well being of the children.

When the federal government's funding service does not provide the same level of benefit as children served by the provinces, the provinces typically do not top up those funding level resulting in a two tiered child welfare service where one child who is on reserve, even across the street from a non-reserve community, will receive less child welfare services than another child across the street off reserve who is serviced and funded by the province. The federal government has been shown in the reports by the Auditor General and the Standing Committee on Public Accounts report and numerous expert reports to provide lesser funding for child welfare services on reserve even though First Nations children have higher needs than non-Aboriginal children.

It is important to underscore that this case was not our first choice. It was filed simply as a last resort after ten years of trying to work cooperatively with the federal government to get them to treat First Nations children equitably. Our first job dated back to the turn of the millennium in what is called the Joint National Policy Review completed in 2000. This report found that the federal child welfare funding was 22% less than that received by other children. Four years the Wen:de series of reports found that the funding on reserve needed to be increased by 109 million dollars per year to achieve basic equity (excluding Ontario). The Auditor General in 2008 found the federal government's old funding formula known as "the directive" to be inequitable and their new formula to be inequitable and not tied to the needs of First Nations children on reserve. Since the time of the Directive, the federal government has advanced something called the "enhanced funding formula" which was also reviewed by the Honourable Auditor General of Canada and in her report she find that too to be inequitable. So we have had numerous solutions that have been affordable to the government and these solutions were announced at times when the federal government was running a surplus budget in the billions of dollars

[illegible]

[illegible]

[illegible]

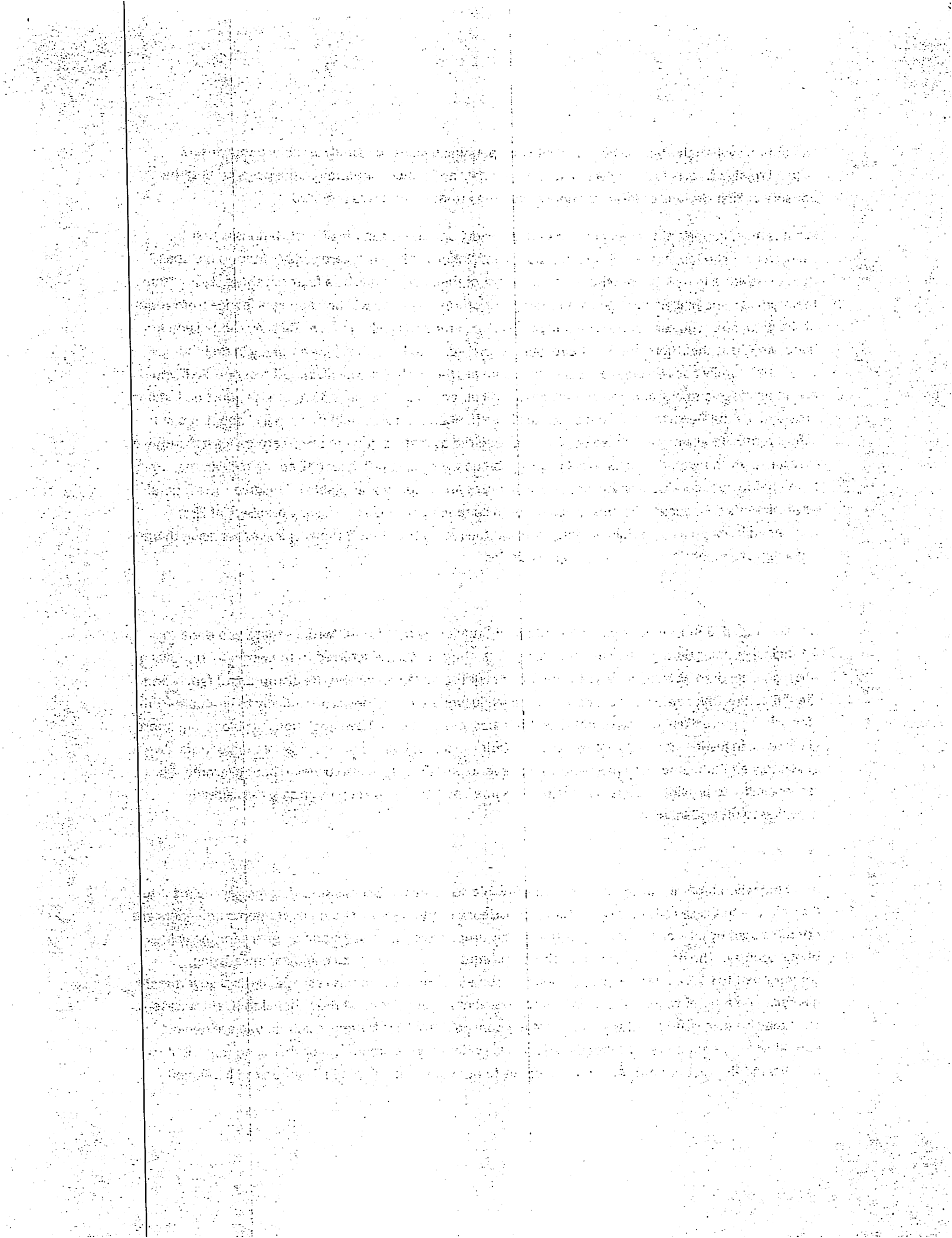
[illegible]

and at times when the federal government was spending billions to stimulate the economy using "shovel ready projects." But it seems no matter what the financial situation of the government; the equality of First Nations children did not receive the attention that was required.

What is most important for me, and the Caring Society and the Assembly of First Nations is that the children could no longer wait. There are more First Nations children in care today, Honourable Chair, than there were in residential schools at the height of their operations by a factor of three. Taken from their families and placed in foster care either on or off reserve. You will be hearing evidence from some of the witnesses who run services on and off reserve in terms of child welfare and they can tell you first hand Mr. Chair, that there are not the resources on reserve to keep the children safely in their homes when their family goes through a crisis to the same degree as they are available off reserve. So if you are an on reserve family and you go through a difficult time, as all families do, there is almost no funding provided by the Department of Indian Affairs in its funding service to help that family keep that child safely in their family home. Those services are required by statute and are often termed least disruptive measures which mean that, as a social worker, you do everything possible to keep the child in the family home before you consider removal but these services are simply not available on reserve. The federal government's own documents link problems with its funding formula to growing numbers of First Nations children going into child welfare care and the reality that First Nations agencies servicing them are unable to meet their mandated responsibilities.

On June 11, 2008, the Honourable Prime Minister Stephen Harper for the wrongs that were done to Aboriginal peoples during the residential school era. He particularly referred to the wrongful removal of Aboriginal children. We all know about the loss of culture, of language and the disruption of family and the difficulties that come from children being in child welfare care. They are less likely to graduate from high school, more likely to have mental health issues, more likely to have addictions problems and more likely to be in justice. It is not that we, as First Nations, do not believe our children should be safe. We absolutely and fundamentally believe they deserve to be safe but we also believe that government has a responsibility to provide their families with the same opportunity to keep them safe as is already provided to other Canadians.

At a time when federal leaders are meeting a few blocks away to discuss issues that matter the most to Canadians – this case calls them back to the conscience of the Nation. Great governments or leaders are not measured by interests or issues; they are measured by whether they stand on guard for the values of our country. The ones that define us the most- equality, freedom, justice and an unwavering commitment to human rights-especially when it comes to children. In this case, the federal government has relied on a series of legal technicalities to question the jurisdiction of the tribunal to hear the case. They may be successful and if they are what happens to these First Nations children who are denied equitable treatment by yet another Canadian government? Who stands up for them and their right to equality in this great nation? And what happens to our Canada if vulnerable children can be denied



equitable government services simply because of their race or some other discriminatory ground because the government feels that their funding is not a service? The implications of this case reach into the households of all Canadians and into the hearts of all caring Canadians who believe in the equality and sacred treatment of all children. It also reaches into the conscience of this great nation and as the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples have asserted, when the children win – when the children receive equity and are able to grow up in their families proud of who they are – we all win. In this case Honourable Chair, if the children win then Canada wins too.

Thank you very much

Check against delivery

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Ottawa, Canada K1A 1J4

September 17, 2009

By E-mail

Cindy Blackstock
Executive Director
First Nations Child and Family Caring Society of Canada
302 - 251 Bank Street
Ottawa ON K2P 1X3

Valerie Richer
Senior Policy Analyst
Assembly of First Nations
473 Albert Street, 8th Floor
Ottawa ON K1R 5B4

Karen Cuddy
Department of Justice, Resolution Branch
Indian Residential Schools/Foster Care/ Day Schools
Legal Services (5th floor)
Floor 01, Room 003
90 Sparks Street
Ottawa, Ontario K1A 0H4

Daniel Poulin
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1

Chiefs of Ontario
Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H-2J1

Amnesty International Canada
Owen Rees
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Dear Parties:

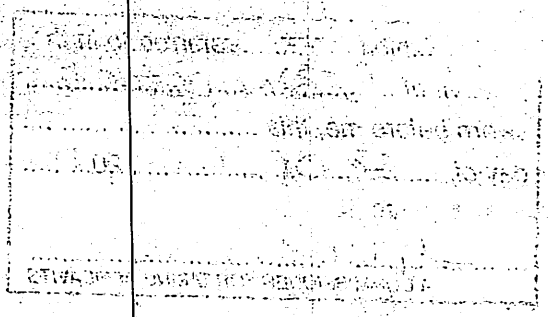
Re: Tribunal – First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)
Our File: T1340/7008

At the hearing in the above referenced complaint held on **Monday, September 14, 2009**, the Tribunal issued the following order:

1. **INTERESTED PARTIES**

Both the Chiefs of Ontario (COO) and Amnesty International (AI) are granted Interested Party status in the hearing of the above complaint.

.../2



2. DISCLOSURE:

(i) COO is to provide the other parties with the names of its fact witnesses together with will-say statements, by **September 18, 2009** and the names of its expert witnesses and brief will-say statements, by **September 25, 2009**.

COO will provide its Statement of Particulars and documentary disclosure by **October 7, 2009** and its expert(s) reports by **October 30, 2009**.

In terms of its participation in the hearing, COO may examine its own witnesses, cross-examine respondent's witnesses after cross-examination by the Commission and the complainants, and make final submissions. COO may not present any evidence, cross-examine or final submissions that duplicates or overlaps with that of the Commission or the complainants.

(ii) AI's participation in the hearing is limited to final legal submissions, written and/or oral to be presented at the conclusion of the evidence and after the legal submissions of the other parties. AI will provide the other parties with an **outline** of its final submissions plus a **compilation** of all of the international sources that it will reference in its final submissions by **October 30, 2009**.

AI will also provide the other parties with its full, written legal submissions at the close of the evidence.

(iii) The Commission will provide further particulars as requested in the respondent's August 17, 2009 letter and any supplementary disclosure by **September 21, 2009**.

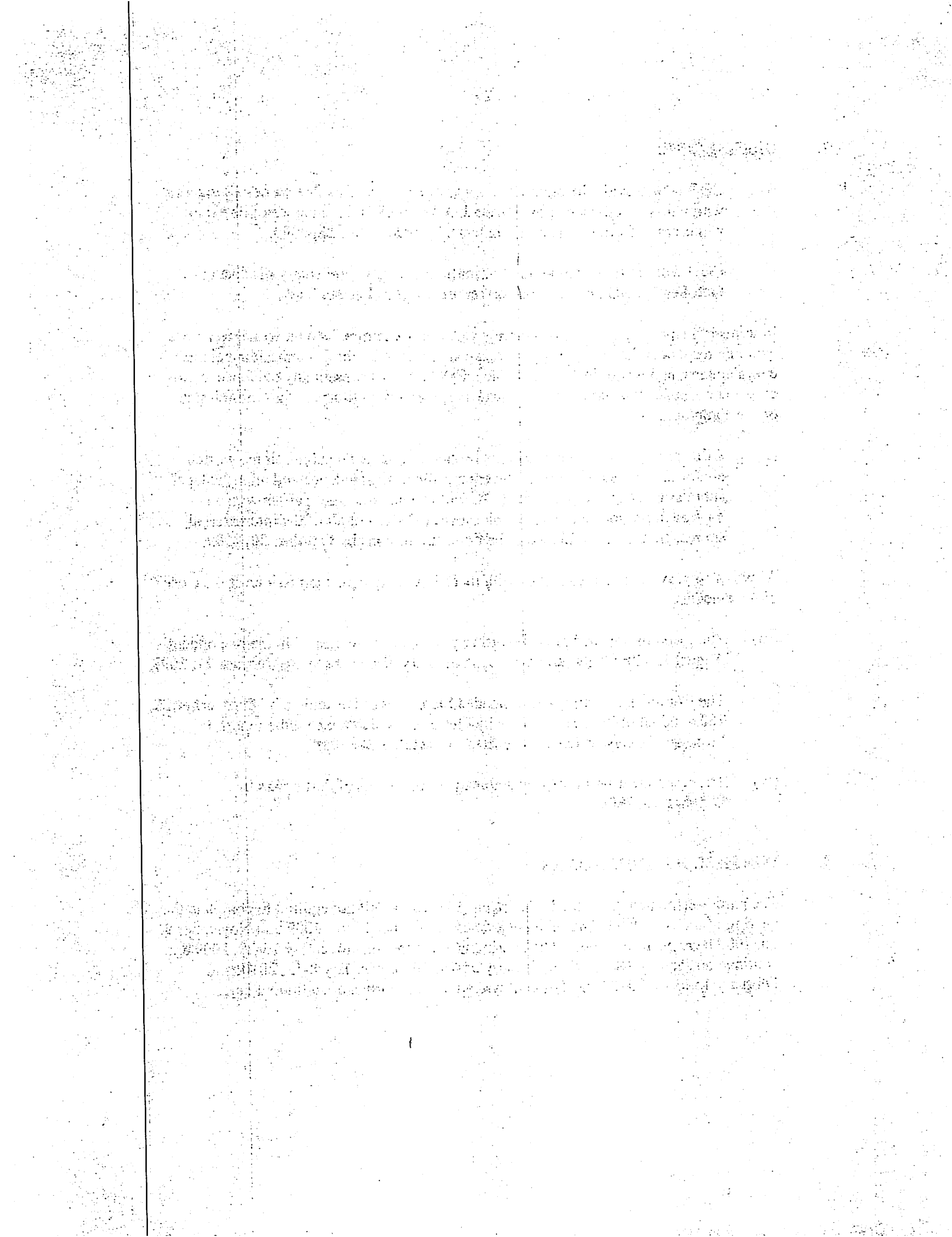
The Commission will file its amended Statement of Particulars by **September 28, 2009** and all of its expert reports by **October 14, 2009** except the report of Professor Loxley which is to be filed by **October 30, 2009**.

(iv) The respondent will provide its amended Statements of Particulars by **October 23, 2009**.

3. FURTHER HEARING DATES:

The parties estimated that a total of thirteen (13) weeks will be required to complete the hearing of the complaint. The scheduled dates of October 13-16, 2009 and November 9-10, 2009 have been cancelled. The hearing is to resume on November 16-20, 2009 and continue on January 18-22, 2010; January 25-29, 2010; February 8-12, 2010; and February 15 to 19, 2010. The Tribunal will advise the parties of additional dates.

.../3



If Nicole Bacon, Registry Officer, can be of any assistance prior to the hearing, please do not hesitate to contact her at (613) 947-1161, or by e-mail at: nicole.bacon@chrt-tcdp.gc.ca.

Yours truly,

Guy Grégoire
Director, Registry Operations

Champ & Associates

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

This is Exhibit G referred to in the affidavit of C. Blackstock sworn before me, this 6 day of February 20 11
A COMMISSIONER FOR TAKING AFFIDAVITS

Our File No. 1001

November 9, 2009

BY EMAIL & FACSIMILE

Nicole Bacon
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Madam:

Re First Nations Child and Family Caring Society and Assembly of First Nations v. Canada
CHRT File No. T1340/7008

As counsel for the First Nations Child and Family Caring Society, I am writing further to the conference call in the above noted matter between the parties and the Tribunal Chair on November 6, 2009. It would be appreciated if this letter could be brought to the attention of the Chair.

In the course of the call, it was unclear whether Mr. Grant Sinclair remains the Tribunal member sitting on the case. While we understand that Mr. Sinclair's term has expired, it was anticipated that he would remain sitting on this case until the conclusion of the inquiry pursuant to section 48.2(2) of *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. This expectation was largely based on the fact there is presently a shortage of members on the Tribunal, though it is also noted that Mr. Sinclair has considerable adjudicative experience. By this letter, we are asking the Tribunal to formally render a decision on this matter.

In light of the guidance provided by the Federal Court in *Canada (Attorney General) v Montreuil*, 2009 FC 22, it is submitted that the following factors support a decision by the Chair extending Mr. Sinclair's appointment to conclude the inquiry:

- Proceedings are to proceed as expeditiously as the requirements of natural justice allow. At present, it is not evident that another member is in a position to hear the matter on the dates already scheduled. Mr. Sinclair has already heard several motions on this case and sat through submissions and opening statements. It would take considerable time for another member to get up to speed on the file and conduct it in accordance with the time line presently scheduled.

- Mr. Sinclair has considerable adjudication experience on the Tribunal, including experience sitting on large cases and those involving difficult questions of law. At present, the Tribunal is short-handed, and an experienced member on this complaint – who is already lined up to hear it - would serve the interests of all parties.

The significance of the within complaint cannot be overstated. It raises important and novel issues of law concerning the interpretation of the Act as well as the application of human rights legislation to the complicated jurisdictional environment found on First Nations reserves. Even more seriously, the implications of the complaint are enormous. For the complainants, the case is about vulnerable children who are seeking the right to equal protection and the equal right to grow up safely in their own homes, with their families and within their communities. For the respondent, providing First Nations children with equitable child protection services would be very costly – in the range of $100-million per year.

For the reasons set out above, the First Nations Child and Family Caring Society would like to see this matter proceed as soon as possible. Having Mr. Sinclair remain seized of the complaint would serve the common objective of expeditiousness.

Yours truly,

Paul Champ

c: Cindy Blackstock, First Nations Child and Family Caring Society
Valerie Richer, Assembly of First Nations
Mitchell Taylor, Department of Justice (Counsel for the Respondent)
Daniel Poulin, Canadian Human Rights Commission
Owen Rees, Stockwoods (Counsel for Amnesty International)
Mike Sherry (Counsel for Chiefs of Ontario)

[illegible]

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

Our File No. 1001

December 4, 2009

BY EMAIL

This is Exhibit ...H..... referred to in the affidavit of C. Blackstock..... sworn before me, this ...H..... day of February..... 20..11...

A COMMISSIONER FOR TAKING AFFIDAVITS

Nicole Bacon
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms Bacon:

Re First Nations Child and Family Caring Society and Assembly of First Nations v. Canada
CHRT File No. T1340/7008

We are writing further to the Chair's direction dated November 6, 2009, and the upcoming case management conference. The purpose of this letter is to raise certain concerns that our client, the complainant First Nations Child and Family Caring Society of Canada (the "FNCFCS" or "Caring Society"), have about the progress of this matter. Please bring this letter to the attention of the Chair.

Firstly, on behalf of the FNCFCS, we wish to recognize the Tribunal's commitment to ensuring that this hearing is conducted in a fair and expeditious manner. Expeditiousness is also extremely important to our client and the First Nations peoples across the country following this case, for whom there is a profound interest in ensuring that the case moves beyond procedural concerns into testimony on an urgent basis. The terrible impact of discriminatory child welfare services are seen and felt every day in First Nations communities across Canada. An estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, are presently in state custody, many of them unnecessarily.

Our client is very concerned that the alternative processes suggested by the Chair, so close to the commencement of the hearing, will unfortunately only serve to delay the case. One week of scheduled hearing has already been lost, and two more in January 2010 are in serious jeopardy. In the event the Chair directs the parties to lead their evidence through affidavits, the start of the hearing will be delayed much longer – perhaps months.

More seriously, the FNCFCS is of the opinion that the proposed procedure is likely to severely limit the procedural fairness of the hearing. Given the importance of the rights at stake in this hearing, and the vulnerability of the affected population, the FNCFCS believes that all parties involved should be provided with a "full and ample opportunity" to present their case and evidence. The Chair must also be mindful that this case very much relates to the collective experiences of First Nations communities. The procedure suggested by the Chair would deprive the complainants of the opportunity to present – and witness - the evidence orally, which is a traditional and culturally potent form of expression, custom and identity to Aboriginal peoples. For these reasons, which will be expanded upon below, the Caring Society is asking the Tribunal to allow the hearing to commence on January 18, 2010, with witnesses.

Right to an oral hearing

The common law duty of fairness requires that those who may be adversely affected by an administrative decision be afforded a reasonable opportunity to participate in the decision making process by tendering evidence and making submissions. The scope of the duty of fairness increases according to the importance of the interests or rights at stake.[1]

It should be stressed that legislation protecting the right to be free from discrimination is of quasi-constitutional nature.[2] Furthermore, this particular case will potentially have very wide impact, affecting literally thousands of children in need of care and support. These are clearly interests of vital importance, and the FNCFCS believes that the parties should be entitled to the utmost level of procedural fairness. This includes the right to a meaningful opportunity to present the testimony of witnesses and experts in a thorough and comprehensive manner, which is best achieved through *viva voce* testimony. Limits and restrictions imposed on the evidence, and the manner in which it can be tendered, such as those suggested by the Chair, are likely to infringe upon the procedural fairness of the hearing and the rules of natural justice.[3]

We also note that this case involves the rights of children and young people. As such, the Tribunal should consider the procedural processes in light of their interests and procedural rights. The provision of evidence in affidavit form, either exclusively or in the main, erodes the ability for children to understand the proceedings that directly impact on them. *Viva voce* evidence is much more accessible to children and more in keeping with the Respondent's obligations under the United Nations *Convention on the Rights of the Child*.[4] The interest of

---

[1] *Singh v. Canada (Minister of Employment and Immigration* (1985) 1 S.C.R. 177

[2] *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 546-47.

[3] *Mackey v. Saskatchewan (Medical Care Insurance Commn.)* (1988) 67 Sask. R. 88 (Sask. Q.B.)

[4] The United Nations Committee on the Rights of the Child issued the following interpretive guidance, General Comment 11: "The Committee considers that special measures through legislation and policies for the protection

youth in this case is demonstrated by a group of school children who were planning to attend the Tribunal during the week of November 16, 2009.

The Chair suggested in the conference call on November 6, 2009, that the case of the Commission and the complainants was not focussed and further "discovery" was required. The FNCFCS does not share that view. Neither, apparently, does the Respondent, as there was no objection when Tribunal Member Sinclair scheduled this matter for hearing on November 16, 2009. Indeed, all of the main factual assertions advanced by the complainants are supported by government studies and reports. The facts are these:

- There is a significant disparity in the level of child welfare services available to First Nations children living on reserves compared to children living off reserves.

- The cause of this disparity in services is a disproportionately lower level of funding provided by the Respondent, and also problems with the structure of the funding.

- Child welfare services on reserves do not meet relevant child welfare statutory requirements, particularly as they relate to "least intrusive measures" which can keep children in the family home. Accordingly, more First Nations children are in state custody than would be the case if they enjoyed the equal benefit of child welfare services available to non-First Nations children.

The above allegations are not a surprise – again, they appear in numerous government and other official reports and documents, many of which were produced or sponsored by the Respondent. In short, there is no need to discover the complainants' case. What is unknown is how the Respondent intends to prove that First Nations children are receiving equal benefit to child welfare services when all available evidence indicates otherwise. It is noted that the Respondent has yet to name a single expert witness to support its case. Nevertheless, the Respondent claims that it will contest these central factual issues. Accordingly, we can only assume that the Tribunal will be presented with conflicting evidence and that the credibility of the witnesses giving evidence will be of essential importance in determining the outcome of this matter. As noted by Wilson J., the highest level of procedural fairness is required when the credibility of the witnesses is an important issue in the hearing. In *Singh v. Minister of Employment and Immigration*, Wilson J. explained:

> I am of the view that where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing. Appellate courts are well aware of the inherent weakness of written transcripts where questions of credibility are at stake and thus

---

of indigenous children should be undertaken in consultation with the communities concerned and with the participation of children,,,,The Committee considers that consultations should be actively carried out by authorities or other entities of States parties in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue."

> are extremely loath to review the findings of tribunals which have had the benefit of hearing the testimony of witnesses in person: see Stein v. The Ship "Kathy K", [1976] 2 S.C.R. 802, at pp. 806□08 (per Ritchie J.) I find it difficult to conceive of a situation in which compliance with fundamental justice could be achieved by a tribunal making significant findings of credibility solely on the basis of written submissions.[5]

We also note that the Tribunal Chair expressed some questions about the proposed evidence concerning the history of the residential school system and also Jordan's Principle. These questions should not affect the mode of evidence. The Tribunal may always exclude any evidence that does not meet the test of relevance. Thus, the admissibility of this evidence should be addressed directly, with full arguments by the parties on the issue of relevance. For the record, the Caring Society regards this evidence as highly relevant. It demonstrates that discrimination against First Nations peoples - and the view that it is somehow acceptable for First Nations children to receive a lower standard of treatment and services - is a well-entrenched and systemic aspect of Canadian government policy.[6]

The importance of oral history to Aboriginal communities

First Nations peoples across Canada are following this case very closely given the important impacts this case has on children in their communities. Many have expressed a desire to travel in order to attend and witness the proceedings and evidence. In fact, First Nations people from two provinces outside of Ontario had made travel plans to attend the hearings that were scheduled for the week of November 16, 2009. The Supreme Court of Canada has recognised that the sharing of Aboriginal oral history is a manner in which culture and traditions are expressed. Quoting the Royal Commission on Aboriginal Peoples, Lamer C.J. stated the following in the landmark *Delgamuukw* case:

> In the Aboriginal tradition the purpose of repeating oral accounts from the past is broader than the role of written history in western societies. **It may be to educate the listener, to communicate aspects of culture, to socialize people into a cultural tradition, or to validate the claims of a particular family to authority and prestige. . . .**[7]

---

[5] *Singh, supra.* Also see *Khan v. University of Ottawa* (1997), 34 O.R. (3d) 535 (Ont.C.A.)

[6] We note in passing that the Respondent appears to have drawn its own links between residential schools and child welfare as it has taken the unusual step of appointing lawyers from the residential school division of Justice to advance its case.

[7] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para 85

Likewise, the Federal Court has also held that oral history provides listeners with a sense of belonging and identity. In *Wilson v. Canada (Minister of Fisheries and Oceans)*, 2001 FCT 936 Hargrave, J. observed:

> Oral history is a product of events, both as related from one generation of the Indian Nation's elders, to the next generation and as observed and experienced by the present generation of elders. **Such oral history is an important aspect within an Indian Nation, so it may know its past, its place in the course of past events, its traditions, customs and way of life, its growth, its relationships and affiliations with others, its identity and also to establish its direction of progress in the future.**
>
> Oral accounts of the past include a good deal of subjective experience. They are not simply a detached recounting of factual events but, rather, are "facts enmeshed in the stories of a lifetime". They are also likely to be rooted in particular locations, making reference to particular families and communities. **This contributes to a sense that there are many histories, each characterized in part by how a people see themselves, how they define their identity in relation to their environment, and how they express their uniqueness as a people.**

A large part of the evidence which will be provided by witnesses during these proceedings will relate to the collective experiences of Aboriginal communities from across the country. As such, the *viva voce* evidence in these proceedings is expected to become a part of the rich oral histories which helps define the collective identities of First Nations communities in Canada. While the *Canadian Human Rights Act* confers considerable discretion on the Tribunal to control its own procedure, this discretion must be exercised in a manner consistent with the *Charter* and other constitutional rights and values. Simply put, when conducting hearings, the Tribunal must ensure that its actions or decisions honour the activities, practices and traditions of First Nations and do not adversely impact members of these communities.

Conclusion

The FNCFCS is deeply committed to ensuring that this hearing be conducted in a fair and expeditious manner. The FNCFCS and the Assembly of First Nations filed this joint complaint with the Canadian Human Rights Commission close to three years ago. Since then, the complainants have been anxiously waiting for the opportunity to present their case before the Tribunal because it directly and imminently impacts on the lives of thousands of vulnerable First Nations children across the country.

Presently, the Commission intends to call 17 witnesses in support of the complaint. The Chiefs of Ontario have indicated they wish to call four witnesses. From the perspective of the Caring Society, this is a remarkably reasonable number of witnesses given the scope of the complaint. It involves evidence of funding schemes and service delivery models across all of the provinces and territories. The history of unequal treatment of First Nations children will also be presented. Given that the complaint will touch on thousands of lives, and it calls for a remedy in the hundreds of millions of dollars, it is submitted that the estimated 13 weeks of hearings is completely reasonable.

It is also noted that the Federal Court has stayed the application by the Respondent to dismiss the Tribunal until after the Tribunal has concluded. Although the Respondent has declared an intent to appeal this decision, we believe that those appeals and any ultimate hearing by the Federal Court will not reasonably be heard for many months and therefore should not impinge on scheduling dates for evidence in the Tribunal.

In summary, the FNCFCS does not want to lose one more hearing day. We appreciate that, at the first case conference, the Chair had a very limited knowledge of the file, and perhaps had not given full consideration to the issues engaged by her proposal. Waiting until January 2010 to learn whether further adjournments will be necessary for the preparation of affidavits is a distressing prospect. Any submissions on the topic will no doubt lead to delays while the Tribunal deliberates, with further delays necessitated if the parties are directed to prepare their affidavits. It is submitted that the most expeditious manner for this complaint to proceed – which it was already on the verge of doing – is for the January 2010 dates to be restored, with the first witness appearing January 18, 2010.

In closing we also respectfully call attention of the Tribunal to the outstanding need for a response to our letter dated November 9 2009 requesting clarification regarding the status of Mr. Sinclair who we view as being seized of the matter.

On behalf of our client, we thank the Tribunal for considering all the above. We reserve the right to make full submissions on the issue of procedure in the event it is deemed necessary by the Tribunal.

Yours truly,

Paul Champ

c: Cindy Blackstock, First Nations Child and Family Caring Society
Valerie Richer, Assembly of First Nations
Mitchell Taylor, Department of Justice (Counsel for the Respondent)
Daniel Poulin, Canadian Human Rights Commission
Owen Rees, Stockwoods (Counsel for Amnesty International)
Mike Sherry (Counsel for Chiefs of Ontario)

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne

Ottawa, Canada K1A 1J4

December 23, 2009

By Electronic Mail

Paul Champ
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa ON K2P 0W6

Daniel Poulin
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa ON K1A 1E1

Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H 2J1

Karen Cuddy
Department of Justice , Resolution Branch
Indian Residential Schools/Foster Care/Day Schools
Legal Services (5th Floor)
Floor 01, Room 003
Ottawa ON K1A 0H4

Valerie Richer
Senior Policy Analyst
Assembly of First Nations
473 Albert Street, 8th Floor
Ottawa ON K1R 5B4

Owen Rees
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Mitchell R. Taylor
Department of Justice
Aboriginal Law, Litigation Services
900 – 840 Howe St.
Vancouver BC V6Z 2S9

Dear Counsel:

Re: Tribunal – First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)
Our File: T1340/7008

Further to the case management meeting held on December 14, 2009 between the Tribunal and the parties, the Tribunal has directed as follows:

.../2

1. IN ATTENDANCE:

Ms. Shirish Chotalia Q.C., Chairperson
Paul Champ, FNCFCSC counsel
Valerie Richer and Dave Nahwegahbow, AFN representatives
Michael Sherry, COO counsel (*via telephone*)
Owen Rees, AIC counsel (*via telephone*)
Mitchell R. Taylor, Respondent counsel
(with Karen Cuddy, Erin Smith, Natalia Strelkova, Krista Robertson and Vince Donaghy)
Daniel Poulin and Samar Musallam, Commission counsel
Guy Grégoire, Director, CHRT Registry Operation
Katherine Julien, Registry Officer (for Nicole Bacon)

2. AGREED STATEMENT OF FACTS:

Both Mr. Poulin and Mr. Taylor informed the Tribunal that they are preparing drafts for the Agreed Statement of Facts. Mr. Taylor indicated that his version deals with the anatomy of the funding - "who funds what services". Mr. Poulin suggested that both drafts could serve as the basis for finalizing the Agreed Statement of Facts. The parties indicated their intention to submit the Agreed Statement of Facts to the Tribunal by **December 18, 2009**. There was a discussion regarding the residential schools issue: the respondent does not see it as relevant and as moving the inquiry beyond its statutory mandate in s.5(b). The Chair understood that one of the arguments the AG will make includes the issue of executive power over budgeting. The Commission and complainant groups see the residential schools issue as relevant to contextualize the current adverse differentiation and to explain how this issue had consequences for the community that results in current greater need for services. The Commission indicated that there is no need to go into detail or into an inquiry on the issue and that the federal government's apology for the residential schools issue evidences the situation. If it cannot be agreed to then not much evidence will need to be called regarding the same. The Commission would like to see as expansive an Agreed Statement of Facts as possible to reduce witnesses. The Tribunal suggested the parties arrive at some agreement regarding the funding structure and with respect to expert evidence. Regarding the funding structure the Tribunal asked that the parties provide it to the Tribunal in a concise and clear form. Mr. Champ indicated that the respondent does not accept the reports regarding underfunding put forward by the complainants. Mr. Taylor indicated that the respondent challenges the methodology used and that the reports identify a number of variables and unknowns and caveats. Mr. Poulin indicated that he was surprised by the respondent's objections and used the Auditor General's report as an example.

.../3

3. NARROWING THE ISSUES:

The Tribunal asked the parties to take steps, as much as possible, to clarify the issues that are to be determined by the Tribunal. Mr. Taylor indicated that the actual funding numbers are very difficult to find and isolate with respect to the provision of child and family services. The parties confirmed that the complaint is based on section 5(b) of the *Act*.

4. THE TEMPORAL SCOPE OF THE COMPLAINT

The CHRC and the Complainants confirmed that the complaint is based on allegations of current discrimination in services as they stand now and that they will tender evidence spanning the past 10 years as a contextual framework for the allegations of existing adverse differentiation and why current needs may be higher for certain communities. They seek remedies for current adverse differentiation. The parties agree to amend the pleadings to ensure that they reflect this temporal scope.

5. PROCESS MEDIATOR:

The Tribunal indicated that a Tribunal member (Matthew Garfield) could be made available to the parties as process mediator. The mediator would assist the parties to define areas of agreement and disagreement, thus refining the Agreed Statement of Facts, to better clarify the issues in dispute both factual and legal, and to identify the resulting witnesses, including experts. The mediator would also work with the parties to assess the need and hopefully reach consensus on the experts needed, the specific and concise opinion that the experts will speak to, the specific nature of the expertise, the data collection methodology on which the opinions are based, and the assumptions underlying the expert opinion. He would also explore with the parties the possibility of using affidavit evidence and cross-examination of experts outside of the hearing process.

In addition to the above, the mediator would attempt to facilitate agreement on the issue of what actual levels of funding the respondent currently provides to on-reserve children across the country, as well as the corresponding levels of funding being provided by the provinces to off-reserve children.

The parties can discuss a ceremonial opening for the hearing.

The process mediator would be bound by a mediator confidentiality agreement. If agreed, the mediator (whose availability has now been confirmed for the week of January 11) could conduct a meeting with the parties to plan the mediation session.

The complainants and the CHRC accepted the Tribunal's offer. The respondent will indicate its position with respect to the offer of a process mediation by **Monday, December 21, 2009**. In the event the parties agree to the process mediator, they will make themselves available during the week of January 11, 2010.

.../4

6. CASE LAW:

The Tribunal referred the parties to the following case law with respect to the use of affidavits.

While recognizing that they arise in a different legal and factual context, the Tribunal invited the parties to review these decisions and to consider innovative approaches to the presentation of their evidence to ensure an expeditious and fair presentation of evidence:

Ball et al. v. Ontario 2008 HRTO 19
Ball et al. v. Ontario 2008 HRTO 24
Ball et al. v. Ontario 2008 HRTO 29
Ball et al. v. Ontario 2008 HRTO 72
Ball et al. v. Ontario 2008 HRTO 207
ATU Local 113 v. OLRB & TTC, (Oct. 1, 2007) Ont. Div. Ct.
IBEW Local 1739 v. Guild Electric Ltd. 2007 CanLII 65617 (Ont. Div. Ct.)
National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 444 v. Great Blue Heron Gaming Co., 2003 CanLII 37425 (O.L.R.B.)
National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 444 v. Great Blue Heron Gaming Co., 2003 CanLII 34538 (O.L.R.B.)
Teamsters Local Union No. 938 v. Patrolman Security Services Inc., 2005 CanLII 38038 (O.L.R.B.)
C.U.P.E. Local 3197 v. Muskwachees Ambulance Authority Ltd. [2006] Alta. L.R.B.R. 243 (A.L.R.B.), para. 13 ff.

7. MOTIONS:

The outstanding motions will be heard as scheduled beginning January 19, 2010, including:

- Attorney General's jurisdictional motion including section 5 'services' and 'comparator group' et al.
- APTN broadcasting motion

The Chair will also address the following issues

- Agreed Statement of Facts
- Expert witnesses: area of expertise and qualification of the expert, concise opinion, assumptions and methodology used and relevance of opinion
- Affidavit evidence and hearing procedure

The respondent will submit its motion to the Tribunal and to all parties by **December 21, 2009**. The other parties will inform the Tribunal, by **December 30, 2009**, as to whether they wish to proceed with this motion on the January 2010 hearing dates or if they would rather have this matter heard at a later date and the preferred motion date and dates by

.../5

which they can submit their materials. Then the Tribunal will set dates for response from the Commission and complainant group.

Amnesty International requested that it be allowed to present oral and written argument pertaining to the Attorney General's jurisdictional motion. Upon noting that the Attorney General did not object, the Tribunal agreed to vary Amnesty International's interested party status in respect of this motion only.

The Tribunal indicated that it is considering assigning a panel of three members to hear this complaint and offered the parties an opportunity to submit a motion or otherwise address the issue of the Tribunal's exercise of discretion under section 48.2(2) of the *Act*. Counsel for the complainant and the Commission indicated that they are not requesting that Grant Sinclair be extended to continue this inquiry. The respondent submitted that section 48.2(2) discretion is the authority of the Tribunal and that, in any event, it is not of the view that former chairperson Sinclair is seized with this case.

The parties will resolve the issues of outstanding particulars amongst themselves.

8. WITNESSES:

The Tribunal asked the parties to reach an agreement regarding the qualifications of the expert witnesses prior to the hearing.

The respondent will finalise its witness list, including experts, along with detailed will-say statements for all witnesses, and will provide them to the Tribunal and all parties by **January 12, 2010**.

9. PANEL:

The Chair indicated that she is willing to make her best efforts to constitute a panel. The parties expressed no particular preference regarding the constitution of a panel.

10. DIGITAL VOICE RECORDINGS:

A copy of the Digital Voice Recordings of the case management conference calls of November 6 and 14, 2009 will be provided to the parties by the Tribunal registry.

If Nicole Bacon, Registry Officer, can be of any assistance, please do not hesitate to contact her at (613) 947-1161, or by email at: nicole.bacon@chrt-tcdp.gc.ca.

Yours truly,

Guy Grégoire
Director, Registry Operations

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

This is Exhibit J referred to in the affidavit of C. Blackstock sworn before me, this 3 day of February 20 11
A COMMISSIONER FOR TAKING AFFIDAVITS

Our File No. 1001

December 30, 2009

BY EMAIL

Nicole Bacon
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Madam:

Re First Nations Child and Family Caring Society and Assembly of First Nations v. Canada
CHRT File No. T1340/7008

We are writing further to the Respondent's motion dated December 21, 2009 to strike the complaint on the basis of jurisdiction. The Respondent has proposed that the motion be heard on January 19, 2010. The Respondent has served a notice of motion and supporting affidavit, but no written submissions. The Tribunal Chair indicated that the other parties could elect to extend the schedule if the Tribunal was so informed by December 30, 2009.

It is the position of the First Nations Child and Family Caring Society (hereinafter the Caring Society) that the jurisdictional motion is premature and cannot be determined in the absence of a full evidentiary record. In the alternative, the Caring Society submits that, in fairness to the other parties, the full motion should be argued at a later date, with all parties having a full opportunity to file affidavits and written submissions. Our proposal follows.

The Respondent's motion raises a substantive question of law – i.e., the meaning of service under section 5 of the *Canadian Human Rights Act* - that remains subject to a range of jurisprudential debate. Moreover, the Respondent's characterization of its role in the delivery of child welfare services on reserves ("we fund", as put by counsel) is disingenuously simplistic. The Canadian Human Rights Commission and the Complainants will be leading evidence that demonstrates that the relationship between the Respondent and the primary service providers is complex, and reflects a degree of involvement, responsibility and oversight that adds significantly to the analysis. The issue is further complicated by the fact that the nature of the relationship between the Respondent and the funding and delivery of child welfare services on reserves also has differences between the provinces. In short, the determination of the

jurisdictional question raised by the Respondent is far from clear, and necessarily requires a contextual analysis.

In light of the foregoing, the Caring Society would like to make submissions during the week of January 19, 2010, that the Respondent's motion should be deferred until the full evidentiary record has been put before the Tribunal, or at least until the Commission, the Complainants and the interested parties have entered their case. The significant nature of the complaint, which alleges that thousands of vulnerable Canadian children and families are subjected to systemic discriminatory treatment that impacts on their safety and well being, demands as much.

If, following the submissions of the parties, the Tribunal rules that the motion should indeed proceed at this preliminary stage, the Caring Society suggests the following timetable for disposing of the motion in full:

> Parties shall file responding affidavits to the motion, if any, by February 12, 2010;
>
> The Respondent shall file written submissions by February 26, 2010;
>
> The Commission and other parties shall file written submissions by March 5, 2010; and
>
> The motion shall proceed during the week of March 8, 2010, with cross examination of the affiants before the Tribunal, followed by oral arguments.

We have consulted with the Commission, the other Complainant, and the interested parties. They are all in agreement with the above proposal and timetable.

Yours truly,

Paul Champ

c: Cindy Blackstock, First Nations Child and Family Caring Society
Valerie Richer, Assembly of First Nations
Mitchell Taylor, Department of Justice (Counsel for the Respondent)
Daniel Poulin, Canadian Human Rights Commission
Owen Rees, Stockwoods (Counsel for Amnesty International)
Mike Sherry (Counsel for Chiefs of Ontario)

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada K1A 1J4

January 8, 2010

By Electronic Mail

Paul Champ
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa ON K2P 0W6

Daniel Poulin
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa ON K1A 1E1

Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H 2J1

Karen Cuddy
Department of Justice , Resolution Branch
Indian Residential Schools/Foster Care/Day Schools
Legal Services (5th Floor)
Floor 01, Room 003
Ottawa ON K1A 0H4

Valerie Richer
Senior Policy Analyst
Assembly of First Nations
473 Albert Street, 8th Floor
Ottawa ON K1R 5B4

Owen Rees
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Mitchell R. Taylor
Department of Justice
Aboriginal Law, Litigation Services
900 – 840 Howe St.
Vancouver BC V6Z 2S9

Dear Parties:

Re: Tribunal – First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)
Our File: T1340/7008

This is to advise of the directions of Tribunal Chairperson Shirish P. Chotalia issued today in respect of the above-noted matter as follows:

The Tribunal has considered the parties' representations with respect to the Attorney General's motion dated December 21, 2009 to strike this complaint on the basis of jurisdiction.

.../2

The complainant's allegation of prematurity cannot properly be considered without examining the evidentiary record pertaining to the motion. If the evidentiary record is found sufficient, the motion can be heard and disposed of. Based on the submissions of the parties as to a timeline for dealing with this motion, the following deadlines are therefore instructed:

- any affidavits responding to the jurisdiction motion must be filed by **February 12, 2010;**
- all cross-examinations on affidavits are to be completed by **March 3, 2010;**
- the Attorney General's written submissions, including argument and jurisprudence, are to be filed by **March 17, 2010;**
- all responding written submissions, including argument and jurisprudence, are to be filed by **March 26, 2010;**
- the Attorney General's written submissions in reply are to be filed by **April 1, 2010.**

Any matters arising from cross-examinations that require the Tribunal's direction are to be submitted to the Tribunal by **March 5, 2010.**

Counsel are also instructed to submit to the Tribunal their availability during the weeks of April 6 and April 12, 2010 to appear before the Tribunal to provide oral argument on the jurisdiction motion. Accordingly, the current January and February 2010 hearing dates are cancelled. All outstanding matters, including the APTN request to film the hearing, will be held in abeyance, pending disposition of the Attorney General's jurisdiction motion.

The parties are also encouraged to include in their work with the process mediator during the week of January 11, 2010 the issues raised by the Attorney General's motion regarding expert reports.

If Nicole Bacon, Registry Officer, can be of any assistance, please do not hesitate to contact her at (613) 947-1161, or by email at: nicole.bacon@chrt-tcdp.gc.ca.

Yours truly,

Guy Grégoire
Director, Registry Operations

c.c. David C. Nahwegahbow, AFN
Robert Sokalski, APTN

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

This is Exhibit ...L..... referred to in the affidavit of ...C. Blackstock.... sworn before me, this ....28..... day of ...February..... 20.11....

A COMMISSIONER FOR TAKING AFFIDAVITS

Our File No. 1001

January 13, 2010

BY EMAIL

Nicole Bacon
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms. Bacon,

Re: January 8, 2010 Directions
FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

As counsel for the First Nations Child and Family Caring Society ("Caring Society"), we are writing regarding the directions provided by the Chair on January 8, 2010 ("the directions") in the above mentioned matter. The purpose of this letter is to raise several concerns that our client has regarding these directions. We ask you to please ensure that this letter is brought to the attention of the Chair immediately.

Firstly, we wish to convey our client's extreme disappointment regarding the decision to again adjourn the hearing without its consent and without having provided it with the opportunity to make submissions on this issue. As was the case with the November 6, 2009 directions, the parties were provided with only one week's notice of the Tribunal's decision to adjourn the proceedings. As was the case with the last adjournment, a number of First Nations People had made plans to travel from all over Canada to attend the proceedings, and our cancelling them yet again. Unlike many cases the Tribunal may hear, this one has a very high level of interest, probably because it affects so many people. We wish to reiterate yet again that expeditiousness is of upmost importance to our client who represents the interests of an estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, who are presently in state custody. Every delay that occurs in this matter causes thousands of First Nations children to be further isolated from their families and communities and deprived of adequate and culturally relevant care. The prejudice caused by further delays is irreparable.

Decision not to consider the Caring Society's submission on prematurity

We also have serious concerns regarding the Chair's decision not to consider our submissions regarding the prematurity of the Respondent's motion.[1] It is a violation of procedural fairness and an error of law to consider the submissions made by one party while failing to equally consider those made by another.[2] Likewise, it is also a breach of natural justice and procedural fairness to make a ruling on whether the Respondent's motion is premature without having provided any of the parties with the opportunity to make written or oral submissions on this issue.[3] As it will be explained below, it remains our view that the Respondent's motion to dismiss is premature and cannot be determined in the absence of a full evidentiary record.

As stated in our letter to the Tribunal dated December 30, 2009, it is our position that the Respondent's motion concerns one of the most central, complex and contentious issues regarding this complaint - what is the Respondent's role in the delivery of unequal child welfare services on reserves, and whether the Respondent's contributions and actions constitute a "service" within the meaning of the *Canadian Human Rights Act*. The Federal Court has repeatedly held that determinations of central issues, such as the one raised in the Respondent's motion, may be made based on affidavit evidence only when "there is no material disagreement between the parties" and when the issue "deserve no further consideration".[4]

This Tribunal and other human rights tribunals from all over the country have followed this reasoning and have refused to make determinations regarding central issues regarding human rights complaints without a complete evidentiary record and a full hearing. In *Bozek v. MCL Ryder Transport Inc.* [2002] C.H.R.D. No. 34, it was held:

> *[T]his Tribunal should at least have a full evidentiary record before dealing with any preliminary motions that seek to dismiss a complaint without a hearing [...]. This would require an agreed statement of facts, or affidavit evidence, or an oral hearing; and with the full opportunity for cross-examination if required, and argument. To this, I add the caveat that where the issues of fact and law are complex or intermingled, the preliminary objections should await a full hearing.*[5]

---

[1] The directions expressly state that the complainant's "allegation" of prematurity was not considered by the Chair prior to issuing these directions. We also note that the Commission, the Assembly of First Nations, and all of the interested parties supported this position. Yet, none of these parties were provided with the opportunity to make submissions regarding this issue.

[2] *Woolworth Canada Inc. V. Newfoundland (Human Rights Commission)* (1994), 11 Nfld. & P.E.I.R. 315 (Nfld. T.D.); reversed in part (1995), 135 Nfld. & P.E.I.R. 45 (C.A.).

[3] The Tribunal's Rules of Procedure also provide that the Tribunal shall grant each party with the opportunity to respond to another party's motion.

[4] See, e.g., *Apotex Inc. v. Canada*, 2003 FCT 414 (CanLII).

[5] See also, e.g., *Beeman v. Marlborough Development* (1973) [1997] M.H.R.B.A.D. No. 2, *Basudde v. Health Canada*, 2005, CHRT 21 (CanLII) and *Sugimoto v. Bank of Canada*, 2006 CHRT 2.

It is our understanding that *Bozek* remains good law and we are unaware of adverse authority. Moreover, the Federal Court addressed this very issue in the context of the within complaint. The Respondent is seeking to have the referral by the Commission quashed by the Federal Court on the same basis – i.e., the definition of "service". Allowing the Caring Society's motion to hold the judicial review application in abeyance, the Court observed,

> *There is an interest however in allowing a full and thorough examination in the specialized forum of the Tribunal, of issues that may have impact on the future ability of aboriginal people to make discrimination claims.*[6]

It is the position of the Caring Society that this Tribunal is bound by this decision. It is unreasonable and inconsistent with relevant case law to proceed with the Respondent's motion given its importance, contentiousness and complexity, particularly in light of the Federal Court's ruling that this issue warrants a "full and thorough examination". Had the Tribunal proceeded with hearing our arguments on prematurity, we would have made these submissions in full and it remains our position that the rules of procedural fairness and natural justice were violated.

In accordance with the principles of natural justice, our client asks the Tribunal to provide it with reasons for this decision.

Decision to prioritize the Respondent's motion at the expense of all other outstanding matters

The Caring Society is also strongly opposed to the Chair's decision to prioritize the Respondent's motion at the expense of all of the other outstanding and pressing matters which also need to be heard by the Tribunal. Although this matter was referred to the Tribunal over one year ago, the Respondent made its motion to dismiss only weeks before the proceedings were expected to commence rather than as soon as practicable as required by the Tribunal's *Rules of Procedure* ("the Rules"). Our client filed a full motion record on December 23, 2009 to amend the complaint by adding an allegation of retaliation, following recent events where the Respondent has made it clear that the Caring Society would be prohibited from providing advice and assistance to First Nations groups and organizations. Based on correspondence from the Tribunal Registry Officer, it is unclear whether the Tribunal even took notice of this motion when it decided to cancel all dates and effectively postpone the motion to amend indefinitely.

It must be emphasized that the delay in hearing this motion is also likely to negatively impact the lives of First Nations children in care in that it will enable the Respondent to continue to retaliate against the Caring Society and prevent it from taking measures to ensure that the

---

[6] *Attorney General of Canada v. First Nations Child and Family Caring Society et al*, (November 24, 2009), Federal Court file number T-1753-08, p. 6 [emphasis added]

needs of these children are met. First Nations agencies and leaders rely on the Caring Society to provide them with expertise on First Nations child welfare issues. The Respondent's behavior, on three distinct occasions, has severely hindered its ability to do this. Our client has no reasons to believe that the Respondent will cease to subject it to retaliatory measures until its motion to amend its complaint is heard by the Tribunal. In the meantime, it is again First Nations children in care who will be prejudiced by the Tribunal's decision. At a bare minimum, the Respondent should have been directed by the Tribunal to file responding materials.

Our client questions the fairness and reasonableness of the decision to prioritize the Respondent's motion - at the expense of all other outstanding matters - without having provided any parties with the opportunity to make submissions regarding this issue. Again pursuant to the principles of natural justice, it asks to be provided with reasons in support of this decision.

Decision to require that cross-examinations be conducted before a court reporter

The Caring Society strongly objects to the ruling requiring that all cross-examinations on affidavits be conducted before a court reporter rather than before the Tribunal. This is contrary to how our client legitimately expected the motion to proceed. During the December 14, 2009 case conference, the Chair clearly stated, on several occasions, that she would not consider alternative procedures for tendering evidence, such as cross-examinations before court reporters, without hearing and considering the submissions of the parties. Contrary to the Chair's indication, the decision to require parties to conduct cross-examinations before a court reporter was taken without providing the parties with the opportunity to make submissions on this matter.

Moreover, it is the highly exceptional for this Tribunal to decline to hear *viva voce* cross-examinations. In fact, the Caring Society knows of no precedent in which a party was ordered to conduct cross-examinations before a court reporter. Paragraph 9(5) of the *Rules* provides that evidence may be taken outside a hearing only when a witness is unavailable to attend the hearing and only upon request of one of the parties. No such motion has been made by any of the parties and there is no indication that any of the witnesses are unavailable to attend the hearing for cross-examinations. Indeed, the Respondent made no submissions whatsoever on this issue. Again, the complainant had a legitimate expectation, based on the Chair's December 14, 2009 comments, the Tribunal's usual practice, and the Tribunal's Rules, that it would be entitled to cross-examine witnesses before the Tribunal. The directions deny the Caring Society access to a procedure which it legitimately expected to be entitled and therefore constitutes an error of law.[7] Given that the directions were issued in the absence of submissions, it also constitutes a violation of the rules of procedural fairness.

[7] *Gale v. Canada (Treasury Board)* (2004) 10 Admin. L.R. (4th) 304 (FCA)

We note that *Ball et al. v. Ontario* is the only precedent where a human rights tribunal ordered cross-examinations to be conducted before a court reporter. However, in that case, all parties were provided with the opportunity, on two occasions, to make submissions on this issue. Furthermore, as it was the Respondent that requested this procedure, the Ontario Human Rights Tribunal ordered it to pay for all costs relating to the cross-examinations. No directions were provided relating to the costs of conducting cross-examinations before a court reporter. In light of the foregoing, we would ask the Tribunal to revisit the entire issue of cross examinations outside the Tribunal, or costs related to same.

Decision to determine the issue raised in the Respondent's motion based on documentary sworn evidence only

As mentioned in our letter dated December 4, 2009 to the Tribunal, given that this hearing is likely to have a direct impact on the lives of First Nations people from across the country, these proceedings should be conducted in a manner that respects First Nations customs and traditions. In many First Nations communities, knowledge has traditionally been shared and passed on orally. For this reason, this hearing will be more accessible and culturally relevant to First Nations people if the evidence is presented *viva voce* in an open proceeding. It is submitted that, in the circumstances of this case, respect for the customs and traditions of Aboriginal people is a constitutional principle protected by section 35 of the *Constitution Act, 1982*. Although not yet in force, it is noted that the amendments to the *Canadian Human Rights Act* related to First Nations – Bill C-21 – include a provision requiring respect for First Nations legal traditions and customary laws.

We fully adopt and rely upon the submissions and authorities in our letter dated December 4, 2009, regarding the cultural importance to First Nations of *viva voce* evidence in an open proceeding

Conclusion

With respect, many elements of the Chair's January 8, 2010 directions are unreasonable and were not made in accordance to the principles of natural justice and procedural fairness. In particular, our client is opposed to the Chair's decision not to consider its submissions regarding the prematurity of the Respondent's motion and the decision to prioritize this motion at the expense of all other outstanding issues before the Tribunal. Our client asks for reasons for these decisions. Our client also asks the Tribunal to accord it the procedural rights that it legitimately expected to be granted. In that regard, we would ask that, in particular, the issue of cross examinations outside the Tribunal be revisited.

Finally, we wish to reiterate that every unnecessary delay in this case has a damaging impact on the lives of First Nations children in care. We ask the Tribunal to consider this when issuing directions which are likely to cause further delays in these proceedings.

We thank you for considering the above submissions. We are available for a case management conference which in our view is advisable.

Yours truly,

Paul Champ

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

This is Exhibit "M" referred to in the affidavit of C. Blackstock sworn before me, this 23 day of February 2011

A COMMISSIONER FOR TAKING AFFIDAVITS

Our File No. 1001

March 9, 2010

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms. Choquette:

Re: Availability of the parties for motion to dismiss this complaint
FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

We are counsel for the First Nations Child and Family Caring Society ("Caring Society") in the above noted matter. We are writing to provide dates of availability for the Respondent's motion to dismiss this complaint.

To expedite the scheduling of dates, we have consulted the Assembly of First Nations, the Commission and all of the interested parties to survey their availability for the motion. We have also reviewed the dates provided by the Respondent. Please be advised that the parties are available on the following dates:

June 7 to 9, 2010
June 14-15, 2010
July 15-16, 2010

We request that two consecutive dates be set for this motion immediately. If the Tribunal is not able to confirm dates for the motion by March 12, 2010, we request that a case conference call be scheduled for next week in order to avoid any further unnecessary delays in this case. Once again, we wish to reiterate that any unnecessary delays in this case will cause severe and irreparable harm to the thousands of First Nations children and teens who are currently in care across the country.

Finally, we would remind the Tribunal again that this complaint was originally scheduled to commence on November 16, 2009. We are concerned that the preliminary issues raised by the Tribunal and the Respondents may lead to a delay of more than one year in commencing this

matter. Under the circumstances, the Caring Society and the Assembly of First Nations request that dates be scheduled for the hearing of the merits of this case. In the event the Respondent's motion to dismiss is successful, the dates would be cancelled. But waiting for the outcome of the motion would, in our respectful submission, be unfair to the Complainants and inconsistent with the duty under section 48.9(1) of the *Canadian Human Rights Act* to conduct the proceedings as expeditiously as possible. We would therefore ask that dates be scheduled for September 19, 2010, and following.

We look forward to hearing from you.

Your truly,

Paul Champ

c: All Parties

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

Our File No. 1001

August 23, 2010

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms. Choquette,

Re: FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

Further to the Chair's direction dated August 10, 2010, below are the submissions of the First Nations Child and Family Caring Society regarding the judgment of the New Brunswick Court of Appeal in *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development),* 2010 NBCA 40. It is submitted that this case does not support the Respondent's position.

The Caring Society would also like to reiterate the urgency of this case. The longer resolution is delayed, thousands of vulnerable First Nations children become further isolated from their families and communities and deprived of adequate care and protection. By this letter, the Caring Society hereby requests that the Tribunal issue a "bottom line" decision on the outstanding motion as quickly as possible, with reasons to follow. If the Tribunal orders that that the motion be dismissed, the parties can start working again to bring this matter to hearing without further delays.

Comparator Issue

As was the case in its written submission, the Respondent's August 16, 2010 letter to the Tribunal overlooks the fact that the Supreme Court of Canada has never held that a comparator group is mandatory to establish *prima facie* discrimination under human rights legislation. The Respondent asserts that *New Brunswick Human Rights Commission* stands for that proposition. This is overstating the observations by that Court. While the Court thoroughly reviews cases under s. 15(1) of the *Canadian Charter of Rights and Freedoms*, it

also concedes at paragraph 72 that there is no authority that says identifying a comparator group is essential to a claim under human rights legislation.

In any cases, the complainants in this case have identified an appropriate comparator group - non-First Nations families and children living off reserve. Therefore, even if it is accepted that *New Brunswick Human Rights Commission* stands for the proposition that comparator groups are required to establish *prima facie* discrimination, there is no authority supporting the position that cross-jurisdictional comparisons are not permitted, particularly in this novel situation where the same child protection statutes are being applied by both provincial and federal governments. As argued in paragraphs 47-52 of our written representations regarding the Respondent's motion to dismiss, disallowing cross-jurisdictional comparisons in the context of First Nations would significantly frustrate the objectives of the *Canadian Human Rights Act* as it would permit the Respondent to treat First Nations people living on reserve as second class citizens by providing inadequate and discriminatory public services to them compared to other Canadians, without accountability or recourse. This would effectively cause First Nations peoples to have no human rights when receiving services from the Respondent. This position is untenable.

The choice of comparator group in this case has effectively been accepted and articulated by the Respondent itself – again, INAC's own manuals state that the very *raison d'être* of the FNCFS Program is to provide First Nations child with child protection services comparable to those available off-reserve[1].

Service Available to the Public

In its letter, the Respondent argues that this complaint "shares the same fatal defect as the Court of Appeal identified in its decision". This is wrong. As stated by the Court at para. 85, the complaint in *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development)* failed because the complainant was challenging the *fashion* in which the care was provided rather than the *level* of care provided.[2] It held:

> This case comes down to the unstated premise that it makes no economic sense to pay for a service being provided for in the State of Maine, when, arguably, the same service could be offered in Fredericton at the same cost. If that is the true source of the grievance, this case is not about forcing the government to expend money to provide persons with disabilities with access to public services. Rather, the objective is to tell the government where the money must be spent.

[1] Blackstock Affidavit, Exhibit I, FNCFS National Program Manual, May 2005 ("FNCFS Program Manual"), Respondent's Record, Tab 3B, p. 54

[2] *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development),* para. 61

At para. 81, the Court also stated that "there is no arguable case that the complainant was denied access to a level of service that was available to the public generally or to other person with mental disabilities". Contrary to the circumstances in *New Brunswick Human Rights Commission*, there is an arguable case that First Nations children are being denied access to a *level* of services available to the public (i.e. off-reserve). The complaint's focus is the unequal and inequitable level of child protection services available to on-reserve to First Nations children compared to children off-reserve.

Finally, the Respondent argues that, "the complainants are unable to show a service that is available to a public within federal legislative authority, who can use it to the exclusion of others within that same jurisdiction." Thus, the Respondent argues, the complaint cannot concern a service customarily available to the public. The Caring Society submits that the Respondent has articulated the most difficult issue at the core of this motion and, indeed, the case itself. The Caring Society recognizes that children off-reserve who receive child protection services are not within federal legislative jurisdiction. But we do say that First Nations children who receive child protection services from agencies that are funded by the federal government are within federal jurisdiction, particularly when those agencies are monitored by and report to INAC and deliver specific services in accordance with mandates, guidelines and determinations made by INAC officials.

In the present case, child protection services are "customarily available to the general public", with the public defined as First Nations children on reserve. The Supreme Court of Canada is clear that "public" does not mean the entire general public, but rather the subset of the public to whom the service is delivered.[3] The fact that the comparator group here is within the provincial jurisdiction raises legal issues about whether a *prima facie* case of discrimination can be established, not whether the service in question qualifies as a "service" within the definition of section 5 of the *Canadian Human Rights Act*.

To conclude, the case before the Tribunal raises novel and complex issues of fact and law. *New Brunswick Human Rights Commission* does not demonstrate or establish that it is plain and obvious that the within complaint must be dismissed without a full hearing.

Yours truly,

Paul Champ

[3] See *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, where Lamer, C.J., states for the Court: "I would reject any definition of "public" which refuses to recognize that any accommodation, service or facility will only ever be available to a subset of the public."

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne

Ottawa, Canada K1A 1J4

This is Exhibit "N" referred to in the affidavit of C. Blackstock sworn before me, this 23 day of February 20 11

A COMMISSIONER FOR TAKING AFFIDAVITS

March 12, 2010

By Electronic Mail

(SEE DISTRIBUTION LIST)

Dear Parties:

Re: Tribunal – First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)
Our File: T1340/7008

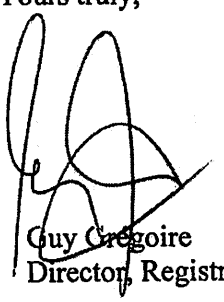
This is further to the March 9, 2010 letter received from counsel for the Complainant, First Nations Child and Family Caring Society, concerning the scheduling of the motion to dismiss, the request to schedule tentative dates for the hearing on the merits as well as the request to extend the submission deadlines for the motion to dismiss submitted on March 5, 2010 by the Respondent's counsel on behalf of all parties. The Tribunal has considered the matters raised by the parties and has directed as follows:

> The Tribunal is available to hear the motion to dismiss on June 14 and 15, 2010. If counsel for the Respondent is not available, the parties are to canvass each other for available dates in August 2010 or from September 8 to 30, 2010 and advise the Tribunal of their common availability.
>
> The request to extend the submission deadlines for the motion to dismiss is granted in part. The deadlines are extended by one month. As such, the Respondent's submissions are to be filed by **April 14, 2010**; the other parties shall file their responses by **April 23, 2010**, and; the Respondent shall file its reply by **April 29, 2010**.
>
> The Tribunal is open to scheduling dates for the hearing on the merits once the date for the motion to dismiss is set.

The parties are requested to submit their common availability for the motion to dismiss to the Tribunal by **Thursday, March 18, 2010**.

If Maryse Choquette, Registry Officer, can be of any assistance, please do not hesitate to contact her at (613) 947-1189, or by email at: maryse.choquette@chrt-tcdp.gc.ca.

Yours truly,



Guy Grégoire
Director, Registry Operations

DISTRIBUTION LIST

To: Paul Champ
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa ON K2P 0W6

Valerie Richer
Senior Policy Analyst
Assembly of First Nations
473 Albert Street, 8th Floor
Ottawa ON K1R 5B4

Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H-2J1

Owen Rees
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Daniel Poulin / Samar Musallam
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa ON K1A 1E1

Mitchell R. Taylor/ Jonathan Tarlton
Department of Justice
Aboriginal Law, Litigation Services
900 – 840 Howe St.
Vancouver BC V6Z 2S9

Karen Cuddy
Department of Justice , Resolution Branch
Indian Residential Schools/Foster Care/Day Schools
Legal Services (5th Floor)
Floor 01, Room 003
90 Sparks Street
Ottawa ON K1A 0H4

Paul Champ

From: David Nahwegahbow [dndaystar@nncfirm.ca]
Sent: March 16, 2010 3:47 PM
To: Maryse Choquette; SAMAR MUSALLAM
Cc: vricher@afn.ca; alevesque@champlaw.ca; pchamp@champlaw.ca; DANIEL POULIN; cblackst@fncaringsociety.com; CuddyK@inac-ainc.gc.ca; Erin.Smith@inac-ainc.gc.ca; Mitch.Taylor@JUSTICE.GC.CA; mwsherry@rogers.com; OwenR@stockwoods.ca; jonathan.tarlton@justice.gc.ca; heather.wilson@inac-ainc.gc.ca
Subject: RE: URGENT - Request for Case Conference re AFN and FNCFCS v. AG(INAC) T-1340/7008

Importance: High

Dear Ms. Choquette:

Please communicate the following to the Tribunal:

The Assembly of First Nations (AFN) is extremely concerned about what would appear to be undue delay in this complaint moving forward to a hearing on the merits, or at least a hearing of the jurisdictional motion. The Chiefs have directed the National Chief of the AFN to make this a priority. Because this complaint involves the lives of First Nation children, who are the most vulnerable, the AFN wants to impress upon the Tribunal, in the strongest terms possible, that it is essential that the Tribunal give it the appropriate priority it deserves.

All parties provided the Tribunal with a range of dates of common availability. A number of possible dates were open to the Tribunal. All counsel for the complainants were available on June 14th and 15th, but counsel for the Attorney General was not. In its response, the Tribunal did not select any of the dates in which the parties were all available, it provided dates -- June 14 and 15, 2010 -- in which one of the parties was clearly unavailable. We have several comments/questions with regard to this:

First of all, why did the Tribunal respond with a date in which one of the parties was clearly unavailable? Perhaps, this was an inadvertent error? Was the Tribunal available on any of the other dates within the May, June, July timeframe? If so, maybe the parties would be prepared to adjust to accommodate the Tribunal.

Secondly, if June 14 and 15 are the only available dates, perhaps counsel for the Attorney General can be persuaded to accommodate these dates, especially given that when Mr. Taylor handed this file over he assured us the transition would not cause any delays.

The AFN supports the Commission's request for a case conference as soon as possible. In the circumstances, we will wait for the case conference to submit our further dates.

Respectfully,

David C. Nahwegahbow, LL.B, IPC
Nahwegahbow, Corbiere
Barristers and Solicitors
7410 Benson Side Road,
PO Box 217,
RAMA, ON L0K 1T0

O: (705) 325-0520

F: (705) 325-7204
C: (613) 795-3145

-----Original Message-----
From: Maryse Choquette [mailto:maryse.choquette@chrt-tcdp.gc.ca]
Sent: Tuesday, March 16, 2010 3:06 PM
To: SAMAR MUSALLAM
Cc: vricher@afn.ca; alevesque@champlaw.ca; pchamp@champlaw.ca; DANIEL POULIN; cblackst@fncaringsociety.com; CuddyK@inac-ainc.gc.ca; Erin.Smith@inac-ainc.gc.ca; Mitch.Taylor@JUSTICE.GC.CA; David Nahwegahbow; mwsherry@rogers.com; OwenR@stockwoods.ca; jonathan.tarlton@justice.gc.ca; heather.wilson@inac-ainc.gc.ca
Subject: RE: URGENT - Request for Case Conference re AFN and FNCFCS v. AG(INAC) T-1340/7008

Dear Ms. Musallam,

I acknowledge the receipt of your correspondence below concerning a request for a conference call. The Tribunal will respond to your e-mail on Friday March 19, 2010. In the meantime, we encourage the parties to discuss common hearing dates.

Respectfully yours,

Maryse Choquette

-----Original Message-----
From: SAMAR MUSALLAM [mailto:samar.musallam@CHRC-CCDP.CA]
Sent: March 16, 2010 11:43 AM
To: Maryse Choquette
Cc: vricher@afn.ca; alevesque@champlaw.ca; pchamp@champlaw.ca; DANIEL POULIN; cblackst@fncaringsociety.com; CuddyK@inac-ainc.gc.ca; Erin.Smith@inac-ainc.gc.ca; Mitch.Taylor@JUSTICE.GC.CA; dndaystar@nncfirm.ca; mwsherry@rogers.com; OwenR@stockwoods.ca
Subject: URGENT - Request for Case Conference re AFN and FNCFCS v. AG(INAC) T-1340/7008

Dear Ms. Choquette,

In response to the Tribunal's letter dated March 12, 2010, both Complainants, Counsel for the Chiefs of Ontario and the Commission request an urgent case conference with the Tribunal regarding scheduling concerns, prior to or on Thursday, the 18th of March, 2010.

We look forward to receiving a response from the Tribunal as soon as possible.

Kindest Regards,

Samar

Legal Counsel / Conseiller juridique
Canadian Human Rights Commission /
Commission canadienne des droits de la personne
344 Slater St. / 344, rue Slater
Ottawa, Ontario, K1A 1E1, Canada

Telephone / Téléphone : 613-943-9080
Fax / Télécopieur : 613-947-7279
E-mail / Courriel : samar.musallam@chrc-ccdp.ca
Web: www.chrc-ccdp.ca

Department of Justice Canada
Ministère de la Justice Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File: Notre dossier: AR-17-82297

Your file: Votre dossier:

Via Facsimile

March 17, 2010

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, Ontario
K1A 1J4

Dear Ms. Choquette:

Re: FNCFCS et al v. Attorney General of Canada
Tribunal File No.: T1340/7008

This is further to Mr. Nahwegahbow's letter of March 16th and my previous correspondence on the subject. While I am unavailable June 10 – 14, inclusive, I am otherwise available in June and the entire months of July, August and September.

In addition, we are still prepared to make ourselves available for the month of May, including the week of May 31st.

We look forward to hearing from the other parties regarding alternate hearing dates and discussing this matter further with the Tribunal.

Yours truly,

Jonathan D.N. Tarlton
Senior Counsel
Civil Litigation and Advisory Services

JT/snc

c.c. David Nahwegahbow
Paul Champ
Valerie Richer
Michael Sherry
Owen Rees
Daniel Poulin/Samar Musallam

Canada

STOCKWOODS

Barristers

Owen M. Rees
Direct Line: 416-593-2494
Direct Fax: 416-593-9345
owenr@stockwoods.ca

March 17, 2010

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Madame Choquette:

Re: First Nations Child and Family Caring Society (File No. T1340/7008)

I am writing on behalf of Amnesty International Canada. My client is deeply concerned about the continuing delays in hearing this complaint. In our respectful submission, the hearing of this complaint, and at the very least the jurisdiction motion, should have been expedited and could have been commenced months ago.

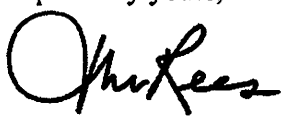
The complaint involves the lives of vulnerable First Nation children, who continue to suffer prejudice and irreparable harm given the delays in the hearing of this matter. Canada is continuing to breach its international human rights obligations as a result.

Amnesty International Canada joins the AFN in impressing upon the Tribunal that it is essential that the Tribunal give the complaint the priority it deserves and we respectfully request that the Tribunal set the June 14 and 15 dates for the jurisdiction motion as peremptory.

If Mr. Tarlton is unavailable on June 14 and 15, then other counsel for the Attorney General can be found. I note that the Attorney General has several counsel assigned to this matter. The Department of Justice is the largest law firm in the country. There is no reason why the Attorney General cannot assign other counsel to the argument of the motion. The Attorney General recently demonstrated that other counsel can be assigned to this matter when Mr. Taylor, Q.C. became committed elsewhere and Mr. Tarlton assumed carriage of the matter.

Please bring this letter to the attention of the Chair.

Respectfully yours,



Owen M. Rees
OMR/sn

Paul Champ

From: DANIEL POULIN [DANIEL.POULIN@CHRC-CCDP.CA]
Sent: August 6, 2010 10:59 AM
To: maryse.choquette@chrt-tcdp.gc.ca; Sabrina.Cameron@justice.gc.ca
Cc: pchamp@champlaw.ca; SAMAR MUSALLAM; Jonathan.Tarlton@justice.gc.ca; dndaystar@nncfirm.ca; mwsherry@rogers.com; OwenR@stockwoods.ca; pattil@stockwoods.ca; vanessag@stockwoods.ca
Subject: FNCFCS et al v. AGC - Letter Re: NBCA Decision - Reply from Commission

This is Exhibit "O" referred to in the affidavit of Cindy Blackstock sworn before me, this 23 day of February, 2011
A COMMISSIONER FOR TAKING AFFIDAVITS

Dear Tribunal, Parties and fellow Counsel,

The present is pursuant to the request by the Attorney General of Canada, acting on behalf of the respondent INAC in the above mentioned file to file additional submissions in regards to a new decision by the New Brunswick Court of Appeal in the matter of New Brunswich Human Rights Commission v Province of New Brunswick, 2010 NBCA 40. The respondent seeks to make further representations in support of its pretentions that the complaint should be dismissed at a preliminary stage.

The Commission opposes the request. The Commission first notes that if the issues raised by the above mentioned decision of the N.B. Court of Appeal, then the respondent would have included some remarks in regards to the first instance decision which might have been relevant (New Brunswick (Department of Social Development) v. New Brunswick Human Rights Commission 2009 NBQB 47). The respondent did not include any such submissions originally thus demonstrating that the issue is not relevant to its argument. At this point it is too late to revisit the issues and add to submissions.

The New Brunswick decision deals with the issue of services. There are a number of decisions to that effect, some quoted by the Commission in its written submissions (some are favourable to its position, others are not). More are likely to come in the near future. There are at this time additional decisions by other instances across Canada on exactly the same issue, including the recent decision African Canadian Legal Clinic v. Legal Aid Ontario, 2010 HRTO 187, a decision from the Ontario Human Rights Tribunal dismissing a motion very similar to the one filed by the respondent in the present case rendered in January 2010. The respondent is not attempting to address or to distinguish that decision. It cannot select a few recent decisions and ignore others that would be relevant to the issue. These decisions are all decisions that have to be taken into account by the Tribunal at this point in dealing with the motion.

A party cannot be given multiple chances to revisit issues once submissions are filed and two days of hearing were held (Canada Post Corporation v Public Service Alliance of Canada and CHRC, 2008 FC 223).

Consequently, the Tribunal should dismiss the request.

Daniel Poulin
Legal Counsel
Canadian Human Rights Commission

>>> "Cameron, Sabrina" <Sabrina.Cameron@justice.gc.ca> 30/07/2010 1:08
>>> pm >>>
Good afternoon,

Attached, please find a copy of correspondence in the above-noted matter.

Sabrina.

Sabrina Cameron

Legal Assistant

Department of Justice/ Ministère de la Justice Canada
1400- 5251 Duke Street/ Pièce 1400, 5251, rue Duke Halifax, NS B3J 1P2 / Halifax (N.-É.) B3J 1P2
Tel./Tél.: (902) 426-8769
Fax/Téléc.: (902) 426-8796
sabrina.cameron@justice.gc.ca
Government of Canada/Gouvernement du Canada

Department of Justice Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice Canada

Bureau régional de l'Atlantique
Plèce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File. Notre dossier: AR-17-82297

Your file: Votre dossier:

Via E-mail

July 30, 2010

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, Ontario K1A 1J4

Dear Ms. Choquette:

Re: *FNCFCS et al* v. *Attorney General of Canada*
Tribunal File No.: T1340/7008

Please direct this correspondence to the Chair of the Tribunal, who is currently seized with this matter.

It has recently come to our attention that on June 3, 2010, the New Brunswick Court of Appeal released its decision in *New Brunswick Human Rights Commission* v. *Province of New Brunswick (Department of Social Development)*, 2010 NBCA 40.

In our view, it would assist the Tribunal to receive further written representations regarding that decision and its application to the motion to dismiss the complaints presently before it. If you wish to receive our submissions we will provide them by August 6, 2010 and propose that our friends respond (if they wish) no later than August 13, 2010.

Respectfully submitted,

Jonathan D.N. Tarlton
Senior Counsel
Civil Litigation and Advisory Services

/JT

c.c. David Nahwegahbow
Paul Champ
Valerie Richer
Michael Sherry
Owen Rees/Patti Latimer/Vanessa Gruben
Daniel Poulin/Samar Musallam

Canada

Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne

Ottawa, Canada K1A 1J4

August 10, 2010

By Electronic mail

This is Exhibit P..... referred to in the affidavit of C. Blackstock..... sworn before me, this ....28..... day of ....February..... 20..11.... A Commissioner for taking affidavits

(SEE DISTRIBUTION LIST)

Dear Parties:

Re: Tribunal – First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)
Our File: T1340/7008

The Tribunal has reviewed the correspondence from the Respondent and Canadian Human Rights Commission on the Respondent's July 30, 2010 request to present further submissions on a recent case issued by the New Brunswick Court of Appeal and has directed as follows:

> The Crown is granted an opportunity to file written submissions and the *New Brunswick Human Rights Commission v. Province of New Brunswick (Department of Social Development)*, 2010 NBCA 40 case by **August 16, 2010.**
>
> The other parties are granted an opportunity to file their reply by way of written submissions and relevant case law by **August 23, 2010.**

If the Registry Officer, Maryse Choquette, can be of any assistance, please do not hesitate to contact her at (613) 947-1189, or by email at: maryse.choquette@chrt-tcdp.gc.ca.

Respectfully yours,

Guy Grégoire
Director, Registry Operations

DISTRIBUTION LIST

To: Paul Champ
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa ON K2P 0W6

Valerie Richer
Senior Policy Analyst
Assembly of First Nations
473 Albert Street, 8th Floor
Ottawa ON K1R 5B4

Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H-2J1

Patricia Latimer
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Daniel Poulin / Samar Musallam
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa ON K1A 1E1

Jonathan Tarlton
Department of Justice
Aboriginal Law, Litigation Services
900 – 840 Howe St.
Vancouver BC V6Z 2S9

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-2441
F: 613-232-2680

Our File No. 1001

August 23, 2010

BY EMAIL

This is Exhibit "Q" referred to in the affidavit of C. Blackstock sworn before me, this 2 day of February 20 11
A COMMISSIONER FOR TAKING AFFIDAVITS

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms. Choquette,

Re: FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

Further to the Chair's direction dated August 10, 2010, below are the submissions of the First Nations Child and Family Caring Society regarding the judgment of the New Brunswick Court of Appeal in *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development),* 2010 NBCA 40. It is submitted that this case does not support the Respondent's position.

The Caring Society would also like to reiterate the urgency of this case. The longer resolution is delayed, thousands of vulnerable First Nations children become further isolated from their families and communities and deprived of adequate care and protection. By this letter, the Caring Society hereby requests that the Tribunal issue a "bottom line" decision on the outstanding motion as quickly as possible, with reasons to follow. If the Tribunal orders that that the motion be dismissed, the parties can start working again to bring this matter to hearing without further delays.

Comparator Issue

As was the case in its written submission, the Respondent's August 16, 2010 letter to the Tribunal overlooks the fact that the Supreme Court of Canada has never held that a comparator group is mandatory to establish *prima facie* discrimination under human rights legislation. The Respondent asserts that *New Brunswick Human Rights Commission* stands for that proposition. This is overstating the observations by that Court. While the Court thoroughly reviews cases under s. 15(1) of the *Canadian Charter of Rights and Freedoms*, it

also concedes at paragraph 72 that there is no authority that says identifying a comparator group is essential to a claim under human rights legislation.

In any cases, the complainants in this case have identified an appropriate comparator group - non-First Nations families and children living off reserve. Therefore, even if it is accepted that *New Brunswick Human Rights Commission* stands for the proposition that comparator groups are required to establish *prima facie* discrimination, there is no authority supporting the position that cross-jurisdictional comparisons are not permitted, particularly in this novel situation where the same child protection statutes are being applied by both provincial and federal governments. As argued in paragraphs 47-52 of our written representations regarding the Respondent's motion to dismiss, disallowing cross-jurisdictional comparisons in the context of First Nations would significantly frustrate the objectives of the *Canadian Human Rights Act* as it would permit the Respondent to treat First Nations people living on reserve as second class citizens by providing inadequate and discriminatory public services to them compared to other Canadians, without accountability or recourse. This would effectively cause First Nations peoples to have no human rights when receiving services from the Respondent. This position is untenable.

The choice of comparator group in this case has effectively been accepted and articulated by the Respondent itself – again, INAC's own manuals state that the very *raison d'être* of the FNCFS Program is to provide First Nations child with child protection services comparable to those available off-reserve[1].

Service Available to the Public

In its letter, the Respondent argues that this complaint "shares the same fatal defect as the Court of Appeal identified in its decision". This is wrong. As stated by the Court at para. 85, the complaint in *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development)* failed because the complainant was challenging the *fashion* in which the care was provided rather than the *level* of care provided.[2] It held:

> This case comes down to the unstated premise that it makes no economic sense to pay for a service being provided for in the State of Maine, when, arguably, the same service could be offered in Fredericton at the same cost. If that is the true source of the grievance, this case is not about forcing the government to expend money to provide persons with disabilities with access to public services. Rather, the objective is to tell the government where the money must be spent.

[1] Blackstock Affidavit, Exhibit I, FNCFS National Program Manual, May 2005 ("FNCFS Program Manual"), Respondent's Record, Tab 3B, p. 54

[2] *New Brunswick Human Rights Commission v. Province of New Brunswick (Dept. of Social Development)*, para. 61

At para. 81, the Court also stated that "there is no arguable case that the complainant was denied access to a level of service that was available to the public generally or to other person with mental disabilities". Contrary to the circumstances in *New Brunswick Human Rights Commission*, there is an arguable case that First Nations children are being denied access to a *level* of services available to the public (i.e. off-reserve). The complaint's focus is the unequal and inequitable level of child protection services available to on-reserve to First Nations children compared to children off-reserve.

Finally, the Respondent argues that, "the complainants are unable to show a service that is available to a public within federal legislative authority, who can use it to the exclusion of others within that same jurisdiction." Thus, the Respondent argues, the complaint cannot concern a service customarily available to the public. The Caring Society submits that the Respondent has articulated the most difficult issue at the core of this motion and, indeed, the case itself. The Caring Society recognizes that children off-reserve who receive child protection services are not within federal legislative jurisdiction. But we do say that First Nations children who receive child protection services from agencies that are funded by the federal government are within federal jurisdiction, particularly when those agencies are monitored by and report to INAC and deliver specific services in accordance with mandates, guidelines and determinations made by INAC officials.

In the present case, child protection services are "customarily available to the general public", with the public defined as First Nations children on reserve. The Supreme Court of Canada is clear that "public" does not mean the entire general public, but rather the subset of the public to whom the service is delivered.[3] The fact that the comparator group here is within the provincial jurisdiction raises legal issues about whether a *prima facie* case of discrimination can be established, not whether the service in question qualifies as a "service" within the definition of section 5 of the *Canadian Human Rights Act*.

To conclude, the case before the Tribunal raises novel and complex issues of fact and law. *New Brunswick Human Rights Commission* does not demonstrate or establish that it is plain and obvious that the within complaint must be dismissed without a full hearing.

Yours truly,

Paul Champ

---

[3] See *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, where Lamer, C.J., states for the Court: "I would reject any definition of "public" which refuses to recognize that any accommodation, service or facility will only ever be available to a subset of the public."

Department of Justice Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice Canada

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File / Notre dossier. AR-17-82297

Your file / Votre dossier

Via E-mail

November 15, 2010

This is Exhibit "K" referred to in the affidavit of C. Blackstock sworn before me, this 28 day of February 2011

A COMMISSIONER FOR TAKING AFFIDAVITS

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, Ontario
K1A 1J4

Dear Ms. Choquette:

Re: ***FNCFCS et al* v. *Attorney General of Canada***
Tribunal File No.: T1340/7008

Please direct this correspondence to the Chair of the Tribunal, who is currently seized with this matter.

It has recently come to our attention that on November 4, 2010, the Supreme Court of Canada released its judgments in two cases: *NIL/TU,O Child and Family Services Society* v. *B.C. Government and Service Employees' Union*, 2010 SCC 45 and *Communications, Energy and Paperworkers Union of Canada* v. *Native Child and Family Services of Toronto*, 2010 SCC 46.

In our view, it would assist the Tribunal to receive further written representations regarding these cases and their application to Canada's motion to dismiss the complaints presently before it. If you wish to receive our submissions we will provide them by November 22, 2010 and propose that our friends respond (if they wish) no later than November 28, 2010.

Respectfully submitted,

Jonathan D.N. Tarlton
Senior Counsel
Civil Litigation and Advisory Services

/JT

c.c. David Nahwegahbow
Paul Champ
Valerie Richer
Michael Sherry
Owen Rees/Patti Latimer/Vanessa Gruben
Daniel Poulin/Samar Musallam

Canada

NAHWEGAHBOW CORBIERE
Genoodmagejig
Barristers & Solicitors

7410 Benson Side Road • Box 217 • Rama, ON • L0K 1T0
p: (705) 325-0520 f: (705) 325-7204 w: www.nncfirm.ca

David C. Nahwegahbow LL.B., IPC*
Dianne G. Corbiere H.B.S.W., LL.B.

BY EMAIL

November 18, 2010

Canadian Human Rights Tribunal
160 Elgin Street
11 Floor, Suite 11A-100
Ottawa, Ontario
K1A 1J4

Attention: Maryse Choquette, Registry Officer

Re: **FNCFCS v. Attorney General of Canada**
Tribunal File #: T1340/7008

We are writing in response to Canada's letter of November 15, 2010, requesting an opportunity to make submissions regarding two recent Supreme Court decisions: *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union* 2010 SCC 45; and *Communications, Energy and Paperworkers Union of Canada v. Native Child and Family Services of Toronto*, 2010 SCC 46.

We take note of the correspondence of today's date from Mr. Paul Champ, on behalf of the First Nations Child and Family Caring Society, and wish to state, on behalf of the Assembly of First Nations, that we support the concerns expressed therein regarding delay; nevertheless, we are prepared to accede to the Canada's request, and indicate that the Assembly of First Nations will be making submissions in response to those made by Canada.

At the same time, we wish to draw the Tribunal's attention to Canada's endorsement on November 12th of the *United Nations Declaration on the Rights of Indigenous Peoples*. The Assembly of First Nations regards this as an extremely significant and material development, not just for Aboriginal peoples, but for all of Canada, which undoubtedly has a bearing on this case and the motion currently before the Tribunal. As such, the Assembly of First Nations is seeking the opportunity to make submissions on this development, with a view to providing further guidance to the Tribunal on the impact of the endorsement of the UN Declaration by Canada.

With regard to the timetable, counsel for the Commission has proposed that 10 days be given to Canada, i.e., November 29th, and 10 days be allowed to the Respondents, i.e., December 10th. We agree with this schedule.

Respectfully,

NAHWEGAHBOW, CORBIERE

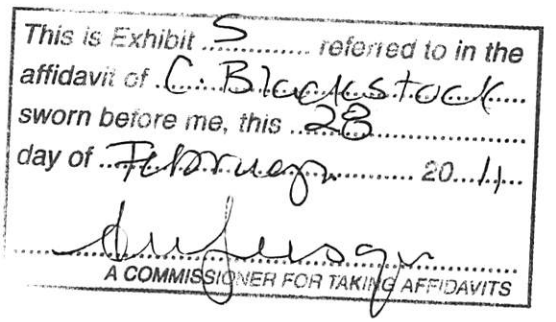
Per: David C. Nahwegahbow, IPC
dndaystar@nncfirm.ca

c. Jonathon Tarlton, Attorney General of Canada
Daniel Poulin, Canadian Human Rights Commission
Paul Champ, First Nations Child and Family Caring Society
Michael Sherry, Chiefs of Ontario
Owen Rees, Amnesty International

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

Our File No. 1001



November 18, 2010

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms Choquette:

Re: First NationsCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

As counsel for the First Nations Child and Family Caring Society, we are writing regarding the Attorney General's request to make further submissions on *NIL/TU,O Child and Family Services Society v B.C. Government and Service Employees' Union*, 2010 SCC 45, a recent judgment rendered by the Supreme Court of Canada.

It is the Caring Society's position that the Respondent's request must be denied. As submitted to the Tribunal in our oral and written submissions on the motion to strike, the Attorney General bears the burden of proof of demonstrating that it is "plain and obvious" that this complaint is without merit. If the Attorney General did not meet this burden at the time this motion was argued, its motion must fail. The Attorney General cannot seek to re-argue its case every time a judgment is rendered. Courts and administrative tribunals across the country regularly issue decisions pertaining to human rights law and the division of powers. While the Caring Society recognizes these are dynamic and evolving areas of law, this is not a justification to allow legal arguments to continue *ad infinitum*.

The Caring Society's greatest concern is that the Tribunal's motion ruling will be delayed by these further submissions. Based on the Tribunal's Practice Note No 1, a decision must be issued on the motion on or before December 3, 2010. The Note states:

> Absent some **extraordinary excuse such as serious illness or accident, or extended hospitalization, or other unforeseen calamity**, the time for rendering judgment in

the human rights field should be the same as what is expected in the judicial sphere, that is within six months of the hearing, if not sooner than that.

Granting the Attorney General's request would inevitably result in delays in rendering this decision well beyond what is permitted by the Practice Note. Accordingly, the Caring Society urges the Tribunal to deny the Attorney General's request.

The Caring Society is seriously concerned that the Attorney General's motion to dismiss this complaint on a preliminary basis has already caused significant delays in these proceedings. The Caring Society strongly opposes the granting of any request that would cause any further delays to the hearing of this complaint on its merits. As stated in previous letters to the Tribunal, expeditiousness is of upmost importance to our client who speaks on behalf of an estimated 27,000 First Nations children, including the 8,000-9,000 children who are presently in state custody. Every delay that occurs in this matter causes thousands of First Nations children to be further isolated from their families and communities and deprived of adequate and culturally relevant care. Any further delays would be utterly unacceptable to our client.

We thank the Tribunal for considering these submissions and look forward to receiving the decision on the Attorney General's motion in the next few weeks.

Yours truly,

Paul Champ

c: Cindy Blackstock, First Nations Child and Family Caring Society
Jonathan Tarlton, Department of Justice
Daniel Poulin, Canadian Human Rights Commission
David Nahwegahbow, Assembly of First Nations
Mike Sherry, Chiefs of Ontario
Owen Rees, Amnesty International

CANADIAN HUMAN RIGHTS TRIBUNAL

PRACTICE NOTE No. 1

22 October 2007

RE : Timeliness of Hearings and Decisions

1. Subsection 48.9(1) of the *Canadian Human Rights Act* stipulates that proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

2. In the recent case of *Nova Scotia Construction Safety Association v. Nova Scotia Human Rights Commission*, 2006 NSCA 63, the Court made the following observations in regard to the adjudication of human rights complaints in that province:

    a. While ad hoc tribunal members, and busy counsel can present challenges for the scheduling of cases, when hearing days are spread out over too long a stretch of time, the process is discredited.

    b. In order for matters under the Act to be dealt with fairly and expeditiously, those involved must use best efforts to ensure that proceedings taken under the statute are effective and timely. Accommodations must be made to speed up the process and ensure that hearings are convened in a workable sequence of days, without huge gaps of time separating the hearings.

    c. Tribunal members and counsel should only agree to become involved in a human rights proceeding if their own professional schedules will permit meaningful, productive, cohesive and uninterrupted hearings.

    d. Absent some extraordinary excuse such as serious illness or accident, or extended hospitalization, or other unforeseen calamity, the time for rendering judgment in the human rights field should be the same as what is expected in the judicial sphere, that is within six months of the hearing, if not sooner than that.

    e. Recognizing the well known principle that a key objective of human rights legislation is to be remedial, the process for inquiring into and exposing acts of discrimination must be expeditious in order to be effective. Otherwise, the salutary benefit of public scrutiny, enlightenment and appropriate redress in the face of proved

violations, is lost. An efficient and timely disposition of complaints is in the interest of both complainants and those whose behaviour is impugned. It is also in the public interest.

3. This last point has also been underscored by the Federal Court (Trial Division) when it stated that there is a public interest in having complaints of discrimination dealt with expeditiously. *Bell Canada v. C.E.P.* (1997), 31 C.H.R.R. D/65

4. In the spirit of the foregoing, all participants in *CHRA* inquiries are reminded of their obligation to assist in the timely completion of the hearing and deliberation process.

5. Moreover, the Tribunal intends to adhere firmly to the Parliament's directive in subsection 48.9(1), and to release decisions as often as possible within a four month time frame, in keeping with its stated commitment to Parliamentarians and Canadians as a whole.

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Ottawa, Canada K1A 1J4

This is Exhibit ..... referred to in the affidavit of ..... sworn before me, this ..... day of ..... 20..

COMMISSIONER FOR TAKING AFFIDAVITS

December 1, 2010

By Electronic mail

(SEE DISTRIBUTION LIST)

Dear Parties:

Re: Tribunal – First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development Canada)
Our File: T1340/7008

The Tribunal has reviewed the correspondence from the parties with regards to the Respondent's November 15, 2010 request to present further submissions on recent cases released by the Supreme Court of Canada and the Assembly of First Nations' November 18, 2010 request to make submissions on Canada's signing of the *United Nations Declaration on the Rights of Indigenous Peoples* and has directed as follows:

> The Attorney General is granted an opportunity to file written submissions on the *NIL/TU, O Child and Family Services Society v. B.C. Government and Service Employees' Union* and *Communications, Energy and Paperworkers Union of Canada v. Native Child and Family Services of Toronto* Supreme Court decisions by **December 9, 2010.**
>
> The Assembly of First Nations is granted an opportunity to file written submissions on Canada's signature of the *United Nations Declaration on the Rights of Indigenous Peoples* by **December 9, 2010.**
>
> The other parties, including the Attorney General and Assembly of First Nations, may file their responses to both requests by way of written submissions and relevant case law by **December 17, 2010.**
>
> The Attorney General and Assembly of First Nations may file reply submissions by **December 23, 2010.**

If the Registry Officer, Maryse Choquette, can be of any assistance, please do not hesitate to contact her at (613) 947-1189, or by email at: maryse.choquette@chrt-tcdp.gc.ca.

Respectfully yours,

Michelle Costello
Director, Registry Operations

Canada

DISTRIBUTION LIST

To: Paul Champ
Champ & Associates
Equity Chambers
43 Florence Street
Ottawa ON K2P 0W6

David C. Nahwegahbow
Nahwegahbow, Corbiere
Barristers and Solicitors
7410 Benson Side Road,
PO Box 217,
RAMA, ON L0K 1T0

Michael Sherry
Barrister & Solicitor
1203 Mississauga Road
Mississauga ON L5H-2J1

Patricia Latimer
Stockwoods LLP
Barristers
The Sun Life Tower
Suite 2512, 150 King Street West
Toronto ON M5H 1J9

Daniel Poulin / Samar Musallam
Legal Counsel
Canadian Human Rights Commission
Canada Place
344 Slater Street, 8th Floor
Ottawa ON K1A 1E1

Jonathan Tarlton
Department of Justice
Aboriginal Law, Litigation Services
900 – 840 Howe St.
Vancouver BC V6Z 2S9

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

This is Exhibit ..... referred to in the affidavit of ..... sworn before me, this ..... of ..... 20..

COMMISSIONER FOR TAKING AFFIDAVITS

Our File No. 1001

December 17, 2010

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Re: FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

Further to the Chair's direction dated December 1, 2010, below are the submissions of the First Nations Child and Family Caring Society on *NIL/TU,O Child and Family Services Society c. B.C. Government and Service Employees' Union*[1] and *Communications, Energy and Paperworkers Union of Canada v Native Child and Family Services of Toronto*[2]. The Caring Society adopts the submissions of the Assembly of First Nations on Canada's Endorsement of the *UN Declaration on the Rights of Indigenous Peoples.*

It is submitted that neither *NIL/TU,O* or *Native Child and Family Services of Toronto* change the analysis applicable to the present complaint. Both cases relate solely and exclusively to the labour relations of First Nations child protection agencies. The complainants have never contested that the agencies providing child protection services on reserves fall within provincial jurisdiction. Similarly, the constitutionality of the provincial child protection statutes have not been challenged. Rather, it is the role of the federal government which is at issue in this complaint.

The majority in *NIL/TU,O* unequivocally stated that the analysis applied to determine whether labour relations are federally regulated are not to be applied in other contexts. According to Justice Abella, writing for the majority:

---

[1] *NIL/TU,O Child and Family Services Society c. B.C. Government and Service Employees' Union*, 2010 SCC 45

[2] *Communications, Energy and Paperworkers Union of Canada v Native Child and Family Services of Toronto,* 2010 SCC 46

> The approach to determining whether an entity's labour relations are federally or provincially regulated is a **distinct one and, notably, entails a completely different analysis** from that used to determine whether a particular statute is *intra* or *ultra vires* the constitutional authority of the enabling government. Because the regulation of labour relations falls presumptively within the jurisdiction of the provinces, the narrow question when dealing with cases raising the jurisdiction of labour relations is whether a particular entity is a "federal work, undertaking or business" for the purposes of triggering the jurisdiction of the *Canadian Labour Code*. [emphasis added][3]

Later, the Court adds that "it is possible for an entity to be federally regulated in part and provincially regulated in part."[4] Given that this complaint does not deal with labour relations, it should not be assumed that the matter is onedealing with provincial jurisdiction. Indeed, unlike in labour relations, there is no presumption that human rights law falls within provincial jurisdiction.[5]

To be clear, this human rights complaint is not against a child protection agency that is governed by provincial statute. The Respondent in this complaint is the Minister of Indian and Northern Affairs, who funds and oversees the agencies according to his own strict requirements, thereby effectively controlling the availability of child welfare services on reserves.[6] The Respondent funds and administers the First Nations Child and Family Services Program pursuant to the *Financial Administrative Ac.t*[7] There is no disputing that the Minister is bound by the *Canadian Human Rights Act* ("the *CHRA*") or that the *Financial Administrative Act* is federal legislation. As such, it is within this Tribunal's jurisdiction to examine whether the Minister is discriminating against First Nations children and families through the *First Nations Child and Family Services Program* in a manner contrary to the *Canadian Human Rights Act.* [1] This is clearly within the purview of matters coming within the legislative authority of Parliament and the jurisdiction of this Tribunal.

As argued by the Caring Society in its written submissions regarding the Respondent's motion to dismiss this complaint, the fact that the Respondent relies on agencies to

---

[3] *NIL/TU,O*, para. 12

[4] *NIL/TU,O*, supra, at para. 22

[5] *Scowby v. Glendinning*, [1986] 2 S.C.R. 226, paras. 3-4

[6] Affidavit of Cindy Blackstock, Complainants' Record, Tab 1, para. 10; Affidavit of Elsie Flette, para. 33-44; Affidavit of Tom Goff, Respondent's Record, Tab 5, para. 13-16; Cross-Examination of Odette Johnston, Respondent's Record, Tab 6 , p. 305

[7] Exhibit A to the Affidavit of Elsie Flette, Comprehensive Funding Arrangement, dated, March 19, 2007, Respondent's Record, Tab 4A, p. 181

implement its First Nations Child and Family Services Program does not shield it from human rights scrutiny. The Respondent must comply in its own right, on its own behalf, with the appropriate federal law when it provides funding pursuant to the *Financial Administrative Act*. In *Arnold*, it was argued that universities are provincial jurisdiction and therefore the administration of SSHRC grants could not be governed by the *Canadian Human Rights Act*. The Federal Court disagreed, finding that the exercise of the spending power brought that issue within the federal jurisdiction.[8]

In the present case, the Minister has expressly "accepted responsibility" over First Nations Children living on reserves to provide funding for the delivery of child protection services.[9] Having assumed this responsibility, and establishing the First Nations Child and Family Services Program pursuant to the spending power, the Minister cannot subrogate his human rights obligations to First Nations agencies which must independently comply with provincial human rights legislation. Indeed, much like the governments cannot shield themselves from *Charter* scrutiny by delivery of public programs through private entities, the Respondent's First Nations Child and Family Services Program is not exempt from the *CHRA* simply because it provides funding through the vehicle of child protection agencies to which the *Act* does not necessarily apply. As explained by the Court in *Eldridge,*

> "[I]n the present case there is a "direct and . . . precisely-defined connection" between a specific government policy and the hospital's impugned conduct. The alleged discrimination -- the failure to provide sign language interpretation -- is intimately connected to the medical service delivery system instituted by the legislation. The provision of these services is not simply a matter of internal hospital management; it is an expression of government policy. Thus, while hospitals may be autonomous in their day-to-day operations, they act as agents for the government in providing the specific medical services set out in the Act. The Legislature, upon defining its objective as guaranteeing access to a range of medical services, cannot evade its obligations under s. 15(1) of the *Charter* to provide those services without

---

[8] *Arnold v. Canada (Human Rights Commission),* [1997] 1 F.C. 582 , para. 35-36 [Complainants' Book of Authorities, Tab 13]

[9] Exhibit A to the Affidavit of Elsie Flette, Comprehensive Funding Arrangement, dated, March 19, 2007, Respondent's Record, Tab 4A, p. 176 which states:

> "The Minister is providing funding to assist the Agency in delivering programs in the areas of child and family services including adoption services to such persons within the Agency's jurisdiction **for whom the Minister has accepted responsibility**"

> discrimination by appointing hospitals to carry out that objective. In so far as they do so, hospitals must conform with the *Charter*.[10]

Similarly, the Respondent must comply with the *Act* regardless of the vehicle it uses to implement its First Nations Child and Family Services Program. The services it provides pursuant to the *Financial Administrative Act* must, like any other services provided within federal jurisdiction, comply with federal human rights legislation.

Finally, it must be emphasized that the Respondent is wrong when it states that Canada's funding is merely "in furtherance of a provincial or territorial child welfare regulatory scheme" and, as such, is "integrally tied to the provincial scheme". The evidence before the Tribunal clearly demonstrates that this is not the case. The Respondent only funds what is within its particular mandate, regardless of the provincial scheme in which the agency in question operates.[11] The National Program Manual on First Nations Child and Family Services expressly states that "it should be clearly understood that INAC's funding authority is based upon Cabinet and Treasury Board authority and not Provincial definitions."[12] In other words, it is the Respondent - and not the provinces - that determines which child welfare services are available to First Nations children on reserve.[13]

Contrary to what is alleged by the Respondent, the Respondent's role in First Nations child and family services is not the reflection of a "sophisticated and collaborative effort" by Canada to respond to the needs of First Nations children. If that were the case, the Respondent would agree to take action when it received letters from worried provincial governments voicing their urgent concerns about the unmet needs of First Nations children living on reserve.[14] The letter of the government of British Columbia dated November 18, 2009, highlights not only the merits and urgency of this complaint, but negates the Respondent's claim that INAC is a mere distant funder of First Nations child and family services, who makes "sophisticated and collaborative efforts" with provincial governments and agencies. Rather, by acting unilaterally, refusing to meet with provinces, and disregarding provincial statutes and standards, INAC effectively controls the level and the nature of child protections services on reserves, thereby contributing to growing numbers

---

[10] *Supra*, para. 51

[11] Cross examination of Odette Johnston, Respondent's Record, Tab 6, p. 220-221

[12] FNCFS Program Manual , Record of the Respondent, Tab 3B, p. 149

[13] INAC's role in the First Nations Child and Family Services Program is more than that of a mere funder. According to the Minister's funding agreement with First Nations child and family agencies, the Minister must approve of an agency's co-managers. The Minister also plays a role in the Management Development Plan of agencies (page 4 of the Agreement), reviews children's files (see section 3.1(c)(ii)) and makes determination as to whether an agency is compromising the health, safety or welfare of children in care (section 4.1(m)) Exhibit A to the Affidavit of Elsie Flette, Comprehensive Funding Arrangement, dated, March 19, 2007, Respondent's Record, Tab 4A, p. 181

[14] Letter from Mary Polak and George Abbott to Minister Chuck Strahl, dated November 18, 2009, Complainants' Record, Tab 16

of First Nations children in care.[15] The simple and ugly fact is, were the children at issue here any other race or ethnicity than Aboriginal, they would have a greater level of funding for child protection services. That is discrimination by any definition.

Request for Date of Order and Hearing to be Set

The Caring Society wishes to reiterate its request that this matter be dealt with expeditiously and in compliance with the Tribunal's Practice Note. As stated in our submissions to the Tribunal dated November 18, 2010, the Tribunal's Practice Note No 1 provides that a decision ought to have been issued regarding the Respondent's motion on or before December 3, 2010. The Note states:

> Absent some extraordinary excuse such as serious illness or accident, or extended hospitalization, or other unforeseen calamity, the time for rendering judgment in the human rights field should be the same as what is expected in the judicial sphere, that is within six months of the hearing, if not sooner than that.

In order to avoid further delays in these proceedings, we ask the Tribunal to provide the parties with a firm date on which the decision will be rendered. We ask that this date reflect the Tribunal's Practice Note and the urgency of this complaint which involves an estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, who are presently in state custody. As submitted by the Caring Society on numerous occasions, every delay that occurs in this matter causes thousands of First Nations children to be further isolated from their families and communities and deprived of adequate and culturally relevant care.

Finally, as requested in the past, we ask that the Tribunal schedule tentative dates for the hearing on the merits of this complaint. This will help avoid future delays in these proceedings.

Yours truly,

Paul Champ

c: Parties

[15] Speaking Points: Domestic Affairs Committee, Complainants' Record, Tab 1, p. 6

Champ & Associates
www.champlaw.ca

Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6
T: 613-237-4740
F: 613-232-2680

Our File No. 1001

This is Exhibit J referred to in the affidavit of C. Blackstock sworn before me, this 28 of February 20 11

A COMMISSIONER FOR TAKING AFFIDAVITS

February 4, 2011

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms Choquette:

Re: FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

On behalf of the complainant First Nations Child and Family Caring Society ("Caring Society"), we are writing to request that the Respondent's motion to dismiss this complaint be determined without further delay. Please bring this letter to the attention of the Chair at your earliest opportunity.

The Caring Society would like to underscore that February 27, 2011 will mark the fourth year anniversary of the filing of the present complaint against the Government of Canada for its discriminatory provision of child welfare services to First Nations children and families living on reserve and its failure to implement Jordan's Principle. Proceedings before the Tribunal commenced in September 2009, but have subsequently been paralyzed by preliminary motions brought by the Respondent and the Tribunal's failure to dispose of them in an expeditious manner. It must be emphasized that this is not a complaint that primarily seeks financial compensation. Rather, it calls for systemic public interest remedies that will have a significant and immediate impact on the lives of children in need. As the Caring Society has repeated numerous times, the urgency of this complaint should be manifest to all concerned.

Tragically, First Nations children and families continue to be severely and irreparably harmed by jurisdictional disputes within and between governments and as a result of the unequal treatment they receive in child welfare services. Recent reports examining the provision of child welfare services in the provinces of New Brunswick, Saskatchewan and

Alberta all confirm that this is the case.[1] Various sources have also confirmed that these urgent problems can be remedied if the Government of Canada were to take action. For example, the 2008 Report in the Inquest of the death of Tracia Owen, a Manitoba teen who hanged herself after being removed from her native community of Little Grand Rapids, Manitoba, recommended that flexible funding arrangements be put in place by INAC in order to meet the needs of children and teens who are at risk.[2] In December 2009, two Ministers of British Columbia wrote to the federal Minister of Indian and Northern Affairs urging him to provide better child welfare services on reserves in order to remedy the dire situation of many First Nations families.[3]

The harm caused by the delays in the adjudication of this complaint and in particular, the Respondent's motion to dismiss, cannot be overstated. An estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, are presently in state custody, and the Government of Canada's discriminatory programs in child welfare services are a significant contributing factor. When four years of a child's life is lost so are the most special and formative moments of their lives.

The importance of expeditiousness in cases involving children's rights has been recognized by legislatures across the country. Family and adoption legislation in nearly every Canadian province expressly require courts to avoid delays when dealing with cases involving children as this is considered fundamentally against his or her best interests.[4] As was suggested by

---

[1] "Hand-in-Hand: A Review of First Nations Child Welfare in New Brunswick" Office of the Ombudsman and Child and Youth Advocate of the Province of New Brunswick, February 2010, pp. 38, 40, 91. This report urges INAC to increase its levels of investment in preventative child welfare services. It also calls for the immediate implementation of Jordon's Principle. "For the Good of Our Children and Youth: A New Vision, A New Direction" Saskatchewan Child Welfare Review Panel Report, November 2010, pp. 29. The report finds "frustration with the level of funding INAC has provided to First Nation Child and Family Services Agencies. Per capital child welfare funding on-reserve has fallen short of per capita funding in the mainstream provincial systems." The report also recommended that Jordan's Principle be implemented to "ensure that individual children do not experience delays in getting services they need while the new structure and arrangements are being negotiated and developed." "Closing the Gap Between Vision and Reality: Strengthening Accountability, Adaptability and Continuous Improvement in Alberta's Child Intervention System" Final Report of the Alberta Child Intervention Review Panel June 30, 2010, p. 147.

[2] Report on Inquest of the Honourable Judge John Guy in the Matter of the Death of Tracia Owen, issued January 11, 2008.

[3] Letter from Mary Polak and George Abbott to Minister Chuck Strahl, dated November 18, 2009, Complainants' Record, Tab 16

[4] See, e.g. *Child And Family Services Act*, S.N.W.T. (Nu.) 1997, c. 13, s. 2(j), *Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 1(d)(x); *Children and Family Services Act*, S.N.S. 1990, c. 5 s. 3(2)(k); *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 s. 4(1)(g); *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 2(o); *Child, Youth and Family Services Act*, S.N.L. 1998, c. C-12.1 s. 9(i); *Child and Family Services Act*, S.S. 1989-90, c. C-7.2 4(h); *Child and Family Services Act*, C.C.S.M. c. C80 2(g)

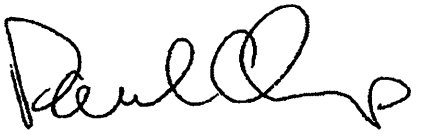
Granger, J. in the *Hurdle v. Hurdles*, when society delays in determining cases involving children's rights and their best interests,

> "the effects of such delay may impact on the children and on our nation in the future. **It is difficult to imagine a judicial process which should be assigned a higher priority**".[5]

In light of the clear importance of this case, it is most unfortunate that the Tribunal has not yet issued its decision regarding the Government of Canada's motion to dismiss. Based on the Tribunal's own Practice Note No.1, which requires that rulings on the merits of complaints be issued within four months, we had anticipated that a decision would be rendered in October 2010, at the very latest. We soon will be approaching eight months since the preliminary motion was argued, or double the recommended period for final rulings in the Practice Note.

Our client is extremely disappointed and worried about these delays given the vulnerability of children and families who are at the center of this case. Because of this, we have been instructed to request that a decision be issued as a matter of priority and urgency by the Tribunal, with reasons to follow if necessary.

Yours truly,



Paul Champ

cc Jonathan Tarlton, Department of Justice
Daniel Poulin, Canadian Human Rights Commission
David Nahwegahbow, Assembly of First Nations
Cindy Blackstock, First Nations Child and Family Caring Society
Mike Sherry, Chiefs of Ontario
Owen Rees, Stockwoods (Amnesty International)

[5] *Hurdle v. Hurdles* (1991), 31 R.F.L. (3d) 349

Department of Justice Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice Canada

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File / Notre dossier: AR-17-82297

Your file / Votre dossier:

By E-Mail

February 7, 2011

This is Exhibit ... W ... referred to in the Affidavit of ... C. Blackstock ... Sworn before me, this ... 23 ... day of ... February ... 20 11 ...

A COMMISSIONER FOR TAKING AFFIDAVITS

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, Ontario
K1A 1J4

Dear Ms. Choquette:

Re: ***FNCFCS et al v Attorney General of Canada***
Tribunal File No.: T1340/7008

Please direct this correspondence to the Chair of the Tribunal, who is currently seized with this matter.

The contents of the Caring Society's letter dated February 4, 2011 raise nothing that needs to be brought to the attention of the Tribunal while it is reserving its decision regarding Canada's motion to dismiss the complaint.

Respectfully submitted,

Jonathan D.N. Tarlton
Senior Counsel
Civil Litigation and Advisory Services

JT/snc

c.c. David Nahwegahbow
Paul Champ
Michael Sherry
Owen Rees/Patti Latimer/Vanessa Gruben
Daniel Poulin/Samar Musallam

Canada

STOCKWOODS
barristers

Owen M. Rees
Direct Line: 416-593-2494
Direct Fax: 416-593-9345
owenr@stockwoods.ca

This is Exhibit "X" referred to in the affidavit of C. Blackstock sworn before me, this 28 day of February 20 11

A COMMISSIONER FOR TAKING AFFIDAVITS

February 8, 2011

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms. Choquette:

Re: First Nations Child and Family Caring Society et al. re Attorney General of Canada
Tribunal File No. T1340/7008

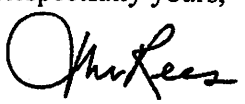
I am writing on behalf of Amnesty International Canada to register its very serious concerns regarding the Tribunal's lengthy delay in determining the Respondent's motion to dismiss this complaint. Please bring this letter to the attention of the Chair at your earliest opportunity.

In his letter of February 4, 2011, Mr. Champ has set out the history of delay in this matter. I will not repeat it here.

In Amnesty International's respectful submission, the nearly eight month delay in determining the Respondent's preliminary motion – coupled with the earlier delays caused by the procedure adopted on the motion – is approaching a denial of justice for the Complainants and vulnerable First Nations children across Canada. The human rights complaint procedure under the *Canadian Human Rights Act* and the procedure before the Tribunal is intended to promote accessible and expeditious determinations of human rights complaints. Regrettably, the Tribunal is failing to meet its mandate in this complaint.

Amnesty International joins the complainant First Nations Child and Family Caring Society in requesting that the Tribunal determine the Respondent's motion without further delay.

Respectfully yours,



Owen M. Rees
OR/scb

c. Paul Champ
Jonathan Tarlton
Daniel Poulin
David Nahwegahbow
Mike Sherry

Paul Champ

From: DANIEL POULIN [DANIEL.POULIN@CHRC-CCDP.GC.CA]
Sent: February 24, 2011 1:39 PM
To: maryse.choquette@chrt-tcdp.gc.ca
Cc: pchamp@champlaw.ca; SAMAR MUSALLAM; Jonathan.Tarlton@justice.gc.ca; Sabrina.Cameron@justice.gc.ca; dndaystar@nncfirm.ca; mwsherry@rogers.com; OwenR@stockwoods.ca; pattil@stockwoods.ca; vanessag@stockwoods.ca
Subject: FNCFCS et al v Attorney General of Canada - Re: Delays

Dear Ms Choquette,

The present follows the exchange of correspondence that started with the letter by Counsel for the Caring Society dated February 4, 2011 and was followed by letters by other parties including the Attorney General of Canada on February 7, 2011 and Amnesty International on February 8, 2011.

The Commission notes that this case raises serious issues in regards to members of our society that are very vulnerable. In fact, it is difficult to picture a more vulnerable group of people in Canadian society.

The Federal Court has held that it is in the public interest to have complaints of discrimination dealt with expeditiously (Bell Canada v. Communication, Energy and Paperworkers Union of Canada, 1997 CanLII 4851 (F.C.)). As a result, the Commission urges the Tribunal to issue its ruling on the motion without delay or to advise the parties when the decision will be released. In the alternative, we submit that the hearing ought to proceed on the merits pending a decision on this motion.

Daniel Poulin
Legal Counsel
Canadian Human Rights Commission