

**MASTER Qs & As**

**FIRST NATIONS CHILD AND FAMILY SERVICES**

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## Questions and Answers

### **First Nations Child and Family Services**

**(February 2013)**

**(Positive questions are indicated by an \*)**

#### FIRST NATIONS CHILD AND FAMILY SERVICES GENERAL

**Q1. \* What is the First Nations Child and Family Services Program and what are its objectives?**

**A.** The objective of the First Nations Child and Family Services (FNCFS) Program is to ensure the safety and well-being of First Nations children ordinarily resident on reserve by supporting culturally appropriate prevention and protection services for First Nations children and families, in accordance with the legislation and standards of the province or territory of residence.

AANDC's FNCFS Program funds child and family services agencies designed, managed and controlled by First Nations and delegated by provincial authority. In areas where FNCFS agencies do not exist, AANDC funds services provided by provincial or territorial organizations or departments.

AANDC is in the process of implementing an Enhanced Prevention Focused Approach on a province-by-province basis with ready and willing partners. This new approach will provide First Nations Child and Family Services (FNCFS) agencies with improved capacity to provide services to on reserve First Nations children on a proactive basis. AANDC has made progress in this area through tripartite frameworks in Alberta, Nova Scotia, Saskatchewan, Quebec, Prince Edward Island and Manitoba.

AANDC continues to share lessons learned and remains willing to work with other jurisdictions as they shift their own approaches to enhanced prevention.

**Q.2 \* How much funding does AANDC provide for the FNCFS Program?**

- A. The Program funds 105 agencies (and provinces and the Yukon Territory where there are no agencies) to deliver culturally appropriate child and family services on reserve in accordance with provincial/Yukon Territory legislation and standards. AANDC does not fund Child and Family Services in the Northwest Territories and Nunavut; these territorial governments receive their Child and Family Services budget through a separate territorial transfer payment.

Funding has more than doubled over the past 16 years, from \$193 million in 1996-1997 to approximately \$618 million in 2011-2012. In Budget 2005, incremental funding was provided for the FNCFS program in the amount of \$125 million over 5 years. Funding for the new Enhanced Prevention Focused Approach was provided through Budget 2006, with incremental funding provided for Alberta in the amount of \$98.1 million over 5 years; Budget 2008 provided incremental funding for Nova Scotia and Saskatchewan in the amount of \$115 million over 5 years; Budget 2009 provided \$20 million over 2 years allowing for additional incremental investments for the reform of the FNCFS program in Quebec and PEI and Budget 2010 provided \$177 million over 5 years for implementation of the Enhanced Prevention Focused Approach in Manitoba.

By 2012-2013, funding under this new approach will represent approximately \$100 million annually in additional funding. With six provinces on board, the new funding is now reaching 68% of First Nations children and families living on reserve across Canada.

**Q.3 Why are First Nations children (6 times) more likely than non-aboriginal children to be placed in care?**

A. As the Auditor General's report noted, numerous 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 in 1996 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 and inadequate housing on many reserves to the higher substantiated incidence of child abuse and neglect occurring on reserves compared to off reserve.

**Q. What does AANDC have to say about the claim made by many that there are currently 27,000 Aboriginal children in care, more than were in government-run schools at the height of the residential schools era?**

A. We are aware of reports that indicate approximately 27,000 Aboriginal children currently in care outside the parental home in Canada. However, we are not able to confirm this number as it includes Aboriginal children who live off reserve and are served by a province or territory. Our understanding is that it is very difficult to determine exactly how many children are in care nationally, for many reasons, but especially because of varying definitions in provincial and territorial systems.

The Government of Canada's role is to provide funding to provinces, Yukon Territory and provincially delegated service providers to provide culturally-appropriate prevention and protection services to First Nations children ordinarily resident on reserve and their families. The provinces and territories are responsible for service delivery to all other children, including all First Nations, Inuit and Métis children residing off reserve. In 2011-2012, there were approximately 9,400 on reserve First Nations children in some form of care outside their parental home being supported by federal funding.

The welfare of all children, including First Nations children, is a

priority for the Government of Canada. Addressing issues related to Aboriginal children in care is a shared responsibility and involves First Nations and other Aboriginal communities, provinces, territories and the federal government.

**FNCFS ENHANCED PREVENTION FOCUSED APPROACH**

**Q.4 The Department is making progress in supporting the transition to the enhanced prevention model. But isn't it taking a long time to fix the problem?**

**A.** Two decades ago, there were far fewer federally funded First Nations Child and Family Service agencies and very limited child welfare services provided on reserve.

While the existing regime has its challenges, it is important to recognize that far more services are being provided today to help address the needs of First Nations children on reserve and the amount of funding has grown over the last 16 years from \$193M to \$618M.

The challenge is that child welfare is a complex system that does not lend itself to simple solutions. The bottom line is that the Department is working diligently to ensure that children are safe; have access to the services they need; and achieve the best possible outcomes regarding their well-being. And we cannot do this alone -AANDC is working with provinces and First Nations communities to identify and address their needs within the confines of our program authorities.

AANDC is committed to transitioning the FNCFS Program to an Enhanced Prevention Focused Approach, province-by-province, that is systematic, consistent, and ensures that community-level needs are met with culturally appropriate services based on provincial comparability.

**Q.5 Why is AANDC approaching the transition of Child and Family Services Program incrementally? Why don't you just introduce a one-size fits all model?**

**A.** The FNCFS Program operates within provincial jurisdiction and therefore requires close partnership with the provinces, and the First Nations, both in the developmental and implementation stages of the transition to enhanced-prevention services. AANDC is therefore moving forward incrementally with ready and willing partners.

**Q.6 How many Frameworks does AANDC expect to complete in the next few years?**

A. Six Frameworks are now completed (AB, SK, NS, QC, PEI and MB). AANDC continues to share lessons learned and remains willing to work with other jurisdictions as they shift their own approaches to enhanced prevention.

**Q.7 What are the challenges AANDC faces in managing its Child and Family Services Program?**

A. The First Nations Child and Family Services Program operates under the legislation and standards of the provinces and the Yukon Territorial government. The legislation and standards vary by jurisdiction and are subject to change at differing times. The challenge is to first define, then maintain provincial comparability within the First Nations Child and Family Services program authorities, given the variance in provincial and territorial legislation and standards.

**Q.8 \* Why is AANDC implementing this Enhanced Prevention Focused Approach?**

A. AANDC recognized that the costs and numbers of children in care were rising dramatically and leading to less optimal outcomes for First Nations children and families on reserve. Provinces were faced with similar problems and began to refocus their child welfare programs to more prevention-based approaches. As well, preliminary but promising studies were showing that prevention activities could lead to more positive outcomes for children and provide some economic benefits.

OAG AND PAC RELATED

**Q. 9 How has AANDC ensured that its approach to funding First Nations agencies takes into account the concerns raised by the OAG and PAC?**

A. AANDC is confident that the Enhanced Prevention Focused Approach model provides sufficient funding to provide the range of child welfare services needed to meet the provincial standards and legislation. Various evaluation mechanisms will be used to measure the efficacy of this approach.

**Q.10 Why has AANDC shifted its position and decided to not define the meaning of “culturally appropriate services”?**

A. AANDC has not developed a specific definition on “culturally appropriate services”, because it would be inappropriate for the Department to do so as a definition would depend on the interpretation of various First Nations based upon their specific and unique community circumstances, traditions and needs. Under the Enhanced Prevention Focused Approach, specific culturally appropriate services are included in each Tripartite Accountability Framework document and each business plan that forms the basis of the new approach in the transitioned region.

However, given ongoing concerns from both the AG and the Public Accounts Committee, a general principle on culturally appropriate services has been articulated to alleviate further criticism while not infringing upon First Nations interpretation. It is as follows:

*While respecting the provincial governments' constitutional mandate to provide child and family services, the Government of Canada provides funding, as a matter of social policy, to support the delivery of culturally appropriate child welfare services among First Nations communities that acknowledge and respect the values, beliefs and unique cultural circumstances of the communities*



*being served. As such, culturally appropriate services encourage activities such as kinship care options where a child is placed with an extended family member so that cultural identity and traditions may be maintained.*

**Q.11 Has AANDC estimated the full cost of delivering the First Nations Child and Family Services Program? If so, what is it?**

A. AANDC has consistently assessed full costs of policy requirements as it has transitioned the First Nations Child and Family Services Program to the Enhanced Prevention Focused Approach. The Department continues to work with ready and willing partners to complete the transition to the new approach. The cost requirements are determined as AANDC moves forward on a province-by province basis.

Since Budget 2006, the Government of Canada has consistently been investing additional funding into the FNCFS Program. We have reached tripartite frameworks in:

**Manitoba** (in 2010: \$177.1 million over 5 years and ongoing);

**Quebec** (in 2009: \$59.8 million over 5 years and ongoing);

**PEI** (in 2009: \$1.7 million over 2 years and ongoing);

**Saskatchewan** (in 2008: \$104.8 million over five years and ongoing)

**Nova Scotia** (in 2008: \$10.2 million over five years and ongoing, and;)

**Alberta** (in 2007: \$98.1 million over five years and ongoing)

Collectively, this means that the new prevention funding model is now being implemented in First Nations communities in six provinces and is reaching 68% of First Nations children who live on reserves in Canada. AANDC continues to share lessons learned and remains willing to work with other jurisdictions as they shift their own approaches to enhanced prevention.

**Q.12 Will additional funding be required for First Nations child and welfare services in other provinces?**

- A. As discussions continue with willing partners in the outstanding jurisdictions, AANDC will have a clearer idea of what resources will be necessary to complete the transition.

**Q.13 What is AANDC doing about ensuring that they have proper agreements in place for funding FNCFS services provided directly by the respective province in a region where there is no FNCFS agency or program?**

- A. AANDC officials are working with the respective provinces to ensure that the proper agreements are in place.

**Q.14 What is AANDC doing to ensure First Nations Child and Family Services agencies on reserve comply with provincial legislation and standards and financial accountability?**

- A. AANDC has initiated discussions with its partners – provinces/territories and First Nations Agencies – to clarify accountabilities for monitoring, measuring and reporting on the outputs, outcomes and costs of Child and Family Services activities; as well as support First Nations Agencies' adherence to provincial/territorial standards.

AANDC's Child and Family Services funding agreements all contain conditions pertaining to the recipient's ability to meet provincial legislative standards, and the Department's financial accountability requirements.

**Q.15 What actions does AANDC take when it is informed that the requirements of provincial legislation are not being met?**

- A. The provinces have legislative authority for child welfare which includes the delegation to FNCFS Agencies. The province is responsible for ensuring First Nations recipients meet provincial

legislation and standards. As per AANDC's authorities, funding to agencies is only provided once confirmation of provincial delegation is received. Should an agency lose their delegation, AANDC would terminate funding and make appropriate arrangements to ensure services continue to be provided.

**Q.16 To what extent do the new frameworks take into account the varying circumstances in First Nations communities?**

- A. The new framework model involves a Business Plan that is developed and reviewed through by the tripartite process and reflects the specific needs of the respective First Nations communities. As well, inherent in this model is the ability to move funding between the three streams (Operations, Prevention, and Protection) to better address community needs in a timely and effective manner.

**Q.17 \* In your Action Plan in response to the Office of the Auditor General's report, there is a recommendation on coordination, as follows:**

**"In order to develop a coordinated approach to the provision of federally funded child welfare services, AANDC should ensure that its 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."**

**How is AANDC addressing this recommendation?**

- A. Under the Enhanced Prevention Focused Approach, AANDC ensures that FNCFS recipients have resources to develop and implement a more coordinated approach to the provision of federally funded child welfare services. Agencies are required to indicate in their five year Business Plan how they will work with other services providers (e.g. Home and Community Care,

Native Alcohol and Drug Abuse Program, Special Education) to provide better outcomes for children and families.

As well, we have worked collaboratively with Health Canada to implement Jordan's Principle. The Government of Canada has engaged all ten provinces, established a network of federal and provincial officials to review cases as they arise, and agreed with four provinces to develop formal dispute avoidance mechanisms. As part of the federal approach, Health Canada has agreed to revise their directive on Non-Insured Health Benefits to cover the costs of eligible benefits for First Nations ordinarily resident on reserve who are in care out of the parental home.

**FNCFS REASONABLE PROVINCIAL COMPARABILITY**

**Q.18 Is it possible to compare FNCFS Program to provincial child welfare systems?**

- A. First Nations Child and Family Services is a complex matter with many variables at play, including different administrative regimes with varying services and systems of service delivery, as well as differences in definitions, financial reporting and data quality. Some of the challenges associated with comparing funding for child and family services across multiple jurisdictions include variation in the type, quantity and sometimes quality of information available from provinces and from AANDC. Another difficulty is properly accounting for services that are included in CFS in certain jurisdictions, but that from a federal perspective, are funded through other AANDC funding sources or through other federal government departments.

**Q.19 \* Does AANDC believe that First Nations Child and Family Services agencies are currently funded at a similar level to provincial agencies?**

- A. The First Nations Child and Family Services (FNCFS) program provides funding to assist in ensuring the safety and well-being of First Nations children on reserve by supporting culturally appropriate prevention and protection services for First Nations children and families. These services are provided in accordance with the legislation and standards of the province or territory of residence and in a manner that is reasonably comparable to those available to other provincial residents in similar circumstances within AANDC program authorities.

**Q.20 Why is it difficult to compare FNCFS Program and its funding models with provincial child welfare services and funding?**

- A. There are multiple complexities, challenges and resulting difficulties which arise in attempting to compare federal and provincial funding levels. The many challenges associated with performing a robust comparison of funding levels with varying child and family services regimes across Canada are results of differing provincial child welfare legislation.

While AANDC knows how much it spends per province, there is limited breakdown by category of expenditures, making it difficult to do a comparison of federal/provincial expenditures.

**Q.21 I understand that AANDC has commissioned a report by KPMG on the issue of provincial comparability in the context of a Human Rights Complaint filed against the federal government by the AFN and the First Nations Child and Family Caring Society. What information does this report contain?**

- A. The report in question was produced in the context of an ongoing case before the Canadian Human Rights Tribunal. Any requests for disclosure of the report will be considered and followed-up on appropriately and according to all relevant legislation.

## FUNDING FOR FNCFS

### **Q.22 Why is the funding model based on 6% of the child population and not on the actual number of children in care (needs based)?**

- A. FNCFS agencies require a base and stable amount that does not fluctuate from year-to-year to be able to operate. The 6% funding formula was mutually agreed upon by First Nations, the provinces and AANDC, and is based on the percentage of children on reserve in care in out-of-home placements which equates to approximately 5.3%. This formula ensures that FNCFS agencies with a very low number of children in care still obtain sufficient funding to operate.

It's important to note that the 6% average number of children in care calculation is one of many factors (e.g. caseload ratios, supervisor and support staff ratios, and provincial salaries) used only to model operations funding which includes the number of protection workers. This is then translated into a portion of the operations funding that agency receives. This base amount ensures that FNCFS agencies with a very low number of children in care still obtain sufficient funding to operate. Also, having a set base amount ensures stability for agencies and provides a disincentive to increase the number of children taken out of the parental home for the purposes of obtaining more funding. Prevention activities are being funded under the Enhanced Prevention Focused Approach, which in turn are intended to reduce the number of children in care by providing services that improve family cohesion.

Under this model, FNCFS agencies have the flexibility to shift funds from one stream to another to meet community needs. The funding provides all FNCFS providers under the new approach with the necessary resources to offer all types of child and family services, including the communities that have more than 6% of children in care.

**Q.23 Is AANDC underfunding FNCFS by 22% compared to provincial systems as indicated in the Joint National Policy Review Final Report, June 2000?**

A. No. The authors of the 2000 AANDC/First Nations Child and Family Caring Society of Canada Joint National Policy Review Final Report explicitly stated the following with regard to the 22% statistic: "It is virtually impossible to make any 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."

Furthermore, the data used to prepare the 2000 joint AANDC/First Nations Child and Family Caring Society of Canada Joint National Policy Review Final Report was never intended to be used as a comparison between federal and provincial allocations, and did not accurately capture the full amounts of funding provided by the federal, provincial and territorial governments.

**Q.24 How do the incremental amounts for Child and Family Services for Alberta, Saskatchewan, Nova Scotia, Quebec, Prince Edward Island and Manitoba compare to the needs as identified in the Wen:de report?**

A. The Wen:de report presented a model that was to be used by all First Nations agencies across the country and did not take into consideration many of the important characteristics of a provincially comparable model. For example, the new models currently being developed incorporate cost drivers such as provincial salary rates; case-load ratios or service standards that are necessary to meeting provincial legislative requirements. The variances in provincial legislation must be taken into account when developing funding models. This is why a one-size-fits-all approach was not deemed satisfactory to meet the individual



First Nations needs across jurisdictions.

The Wen:de report did however, provide useful information on a number of related considerations, including information technology, adjustments for remoteness, and revising aspects of the operations formula to minimize the impact of minor population changes on funding levels for small agencies.

The new Enhanced Prevention Focused Approach involves tripartite partnerships that result in the development of tripartite accountability frameworks that support agency business planning, as well as costing models that include cost drivers specifically identified by the practitioners providing the services.

**Q.25 Why is AANDC not modifying Directive 20-1 immediately to provide prevention funding to all jurisdictions?**

- A. AANDC continues to share lessons learned and remains willing to work with other jurisdictions as they shift their own approaches to enhanced prevention. The timing of completion is taking longer than expected and it is difficult to predict when we will transition to EPFA in the five remaining jurisdictions.

AANDC acknowledges the need for prevention services for all jurisdictions. However, moving to the Enhanced Prevention Focused Approach is a matter of keeping step with provinces as they shift their own regimes to emphasize prevention. So far, six provinces are transitioning to or implementing EPFA, and AANDC continues to work with remaining ready and willing jurisdictions to transition to this new approach.

**Q.26 How does AANDC determine whether the funding provided for child welfare services on reserve achieves positive outcomes for children?**

- A. AANDC is in the process of completing a robust Performance Measurement Strategy that will support appropriate data

collection that emphasizes results and outcomes. All jurisdictions transitioned or transitioning to the Enhanced Prevention Focused Approach are using business plans and annual reports to plan for, and report on outcomes. Non-transitioned jurisdictions are using work plans for the same purpose.

Additional resources have been approved to undertake extensive compliance reviews of the FNCFS programs in 2009-2010, 2010-2011 and 2011-2012 in various regions, with the goal of ensuring that the current funding is being spent within the Department's authorities and therefore in such a manner as to achieve the most positive outcomes.

In addition to the steps already taken, Canada's Economic Action Plan identified funding for an integrated Information Management System for the FNCFS Program. The information that will be generated by this system will ensure that AANDC can efficiently collect relevant and accurate data pertaining to performance outcomes.

In addition, Canada's Economic Action Plan provided \$8 million over five years for the development of an automated information management system for the FNCFS Program and \$1 million ongoing annually for maintenance support for the system. The system will be implemented in three phases, with the first release planned for April 1, 2013, the second release planned for April 1, 2014 and the final implementation planned for June 2014.

## **FNCFS INFORMATION MANAGEMENT SYSTEM**

### **Q.27 \* What type of Information Management System is being developed for the FNCFS Program?**

- A. The FNCFS Information Management System (IMS) is a new approach to data management that focuses on capturing and reporting on program results, while maintaining essential program management information. The FNCFS IMS will be designed to: simplify reporting; improve work processes; and reduce the administrative work-burden. The FNCFS IMS will provide timely reports on the results of the investments of the FNCFS Program and give First Nations and FNCFS agencies information to identify where change is needed in the delivery of FNCFS programs.

### **Q.28 \* How will the IMS support the reform of the FNCFS Program?**

- A. The reform requires an information management system that will support AANDC in moving from a passive financial review role to one of more active involvement in oversight and accountability for results. The FNCFS IMS will also address OAG and Public Accounts Committee criticisms of program management and the need for better information management.

### **Q.29 \* What investments have been made into the FNCFS IMS and when will the system be implemented?**

- A. Canada's Economic Action Plan provided \$8 million over five years for the development of an automated information management system for the FNCFS Program and \$1 million ongoing annually for the maintenance support for the system. The system will be implemented in three phases, with the first release planned for April 1, 2013, the second release planned for April 1, 2014, and the final implementation planned for June 2014.

**PROVINCE/TERRITORY SPECIFIC**

**Q.30 What is AANDC doing to implement the recommendations of the New Brunswick report, *Hand-in-Hand: A Review of First Nations Child Welfare in New Brunswick***

- A. In April 2009, the Province of New Brunswick appointed Mr. Bernard Richard, the Child and Youth Advocate and Ombudsman for the Province of New Brunswick, to report and make recommendations on the state of provincial First Nations Child and Family Services (FNCFS). The Report, *Hand-in-Hand: A Review of First Nations Child Welfare in New Brunswick* was tabled on February 24, 2010.

The final report contains 93 recommendations, targeted at various departments, and ranging in breadth from child and family services, culture and language, recreation, housing and education. Mr. Richard recommends sweeping changes to the child welfare system on First Nations, reducing the number of agencies to three from the current 11. Mr. Richard also calls for the establishment of a single First Nations Child and Family Services Office that would provide financial and administrative functions to the three agencies.

AANDC officials met with the Assembly of New Brunswick Chiefs on October 26, 2011 to discuss aggregation of child welfare programs and movement to the Enhanced Prevention Focused Approach. The Department is planning to draft a letter to the Chiefs of NB and the Province to re-engage in the near future.

AANDC is committed to working in partnership with the Province of New Brunswick and First Nations stakeholders to achieve better outcomes for First Nations children and families.

**Q.31 What does AANDC think of the recently released report from British Columbia, *Growing Up in B.C.*?**

A. On October 18, 2010, the Province of British Columbia's Representative for Children and Youth and the Provincial Health Officer released the Report *Growing Up in B.C* which examined six important aspects of child well-being – health, learning, safety, behaviour, family economic wellbeing and family, peer and community connections. The Report highlights the over-representation of Aboriginal children and youth in the British Columbia child in care population but does not, however, specifically distinguish between Aboriginal people living on and off reserve. According to the Report, Aboriginal children and youth are six times more likely to be admitted into care than non-Aboriginal children and youth in the Province of British Columbia.

During meetings on October 20 and 21, 2010, with officials from the British Columbia Ministry of Child and Family Development (MCFD), provincial willingness to consider First Nations jurisdiction over Child and Family Services as an alternative to delegated authority was reaffirmed. At a later meeting on November 10, 2010, provincial officials also outlined their intent to engage with First Nations in British Columbia to discuss legislation around First Nations and Métis developing their own culturally appropriate child welfare system for both their on- and off-reserve members.

Effective April 1, 2012, a one-year renewable Service Agreement was signed by AANDC and the Ministry of Children and Family Development. In October 2012, tripartite meetings resumed to move forward with the implementation of the EPFA.

Building on this progress AANDC and the Ministry of Child and Family Development invited the First Nations Directors Forum and the BC Wellness Council to meetings in October 2012, to discuss the willingness amongst the parties to look at progress since 2008, a joint update of the Enhanced Prevention Framework for BC Region and an examination of other activities that could be undertaken to make BC implementation ready should a federal funding decision be taken that would support EPFA roll out to BC. Progress is already being made to begin the implementation of the workplan.

**Q.32 What is AANDC doing to address the recommendations of the Province of Alberta's report: *Closing the Gap Between Vision and Reality: Strengthening Accountability, Adaptability and Continuous Improvement in Alberta's Child Intervention System.***

**A.** On October 15, 2010, the Province of Alberta released the report: *Closing the Gap Between Vision and Reality: Strengthening Accountability, Adaptability and Continuous Improvement in Alberta's Child Intervention System.* Of the 14 recommendations made by the panel of specialists, four dealt specifically with Aboriginal Albertans, three of which were accepted by the province. The Report does not specifically distinguish between Aboriginal people living on and off reserve.

The Government of Canada is working with ready and willing partners to build healthier, stronger First Nations families. A vital component to this is improving the lives of First Nations children. In April 2007, AANDC announced \$98.1 million over five years to implement the Enhanced Prevention Focused Approach to child and family services on reserve in Alberta. After the first year, all First Nations Child and Family Services agencies in the province had opted into the enhanced prevention model.

AANDC's First Nations Child and Family Services program supports culturally appropriate prevention and protection services to create a more secure and stable family environment for First Nations children living on reserve. AANDC is committed to working in partnership with the Province of Alberta to strengthen relationships, improve collaboration to achieve better outcomes for First Nations children and families.

**Q.33 How does the Department support child and family services for the Labrador Innu First Nations?**

- A. AANDC's overall annual funding of \$15 million, under the time-limited Labrador Innu Comprehensive Healing Strategy, ended March 31, 2010.

AANDC now funds the Labrador Innu (via the province) using the same funding methodology, monitoring and evaluating of basic programs and services for all First Nations on reserve. While the programs being funded are not new, permanent funding replaces that provided under the strategy, allowing for better planning and implementation of changes to address new priorities.

Annual funding for the Labrador Innu for child and family services amounts to \$5.6M.

**Q.34 How does FNCFS funding work in the Territories?**

- A. The government of Yukon is the service provider for First Nations Child and Family Services for all Yukon residents. AANDC funding is provided under Directive 20-1 and is based on all First Nations children resident in the Territory as opposed to First Nations children "ordinarily resident on reserve" as there are no reserves in Yukon. AANDC is exploring with the Territory the possibility to eventually transition to EPFA.

Funding for child and family services in Nunavut and the Northwest Territories is provided by the Department of Finance through transfer agreements with the territorial governments which make up a portion of their annual budgets, and those governments decide how and where to spend the funds.

**CANADIAN HUMAN RIGHTS COMPLAINT**

**Q.35 The Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a Human Rights complaint against the Department in February 2007 regarding First Nations Child and Family services. What is the complaint about?**

A. In February 2007, the AFN and the Caring Society filed a Complaint with the Canadian Human Rights Commission alleging that inequitable funding for the provision of on reserve child and family services constitutes systemic and ongoing discrimination on the basis of race, national or ethnic origin under the Act.

**Q.36 What is the history of the proceedings?**

A. On October 14, 2008, the Commission gave notice that it had referred the Complaint to the Canadian Human Rights Tribunal for a hearing.

**The Canadian Human Rights Tribunal:**

The Tribunal considered a number of motions on September 14, 2009, including a motion for the Chiefs of Ontario to be added as co-Complainant, and a motion for Amnesty International Canada to be added as an Interested Party.

The Tribunal granted the Chiefs of Ontario Interested Party status, limiting their participation to the 1965 Welfare Agreement and the circumstances of child and family services in Ontario.

Amnesty International Canada was also granted Interested Party status. They were instructed by the Tribunal to focus their submissions on the issue of how the Tribunal should interpret ss. 3 and 5 of the *Canadian Human Rights Act* in light of Canada's international obligations.

On December 21, 2009, Canada filed a motion before the Tribunal to have the Complaint struck out on jurisdictional grounds.



This motion was heard on June 2-3, 2010. On March 14, 2011, the Tribunal ruled to dismiss the complaint on the ground that the Tribunal lacked jurisdiction because the Act is not intended to compare the service provided by two different service providers (the federal government and provincial governments) to two different publics (children on reserve versus children off reserve).

*Judicial Review:*

Following the March 14, 2011 decision, the Commission, the AFN and the Caring Society all filed separate applications for judicial review by the Federal Court of Canada of the Tribunal's decision to dismiss the Complaint. The applications were heard in February 2012, and in April of the same year, the Federal Court ordered the matter to be returned to a differently-constituted Tribunal for a re-determination in accordance with the Court's reasons.

**Q.37 What is the status of the Human Rights complaint?**

- A. On December 21, 2009, Canada filed a motion before the Tribunal to have the Complaint struck out on jurisdictional grounds.

This motion was heard on June 2-3, 2010.

On March 14, 2011, the Tribunal ruled to dismiss the complaint on the ground that the Tribunal lacked jurisdiction because the Act is not intended to compare the service provided by two different service providers (the federal government and provincial governments) to two different publics (children on reserve versus children off reserve).

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Tribunal for a re-determination in accordance with the Court's reasons.

Canada appealed the decision and the Federal Court of Appeal hearing is expected to take place on March 6, 2013.

In August 2012, the Tribunal, based on its interpretation of the Federal Court decision ordered that the Complaint proceed to a hearing on the merits. The hearing at the Tribunal is set to begin on February 25, 2013.

Preliminary motions were heard on September 25, 2012. The hearing dates have been scheduled as follows:

- February 25 to March 1, 2013
- April 1st to 9, 2013;
- May 13 to 24, 2013 (except May 20);
- June 3 to 14, 2013;
- June 24 to July 5, 2013 (except July 1st);
- July 15 to 26, 2013;
- August 5 to 16, 2013;
- August 26 to 30, 2013.

Child welfare services on reserve continue to be a priority for this government and we believe that the best way to address the complex issues surrounding First Nations Child and Family Services is through collaboration.

Our legal position does not prevent us from moving forward with willing partners and taking concrete actions that result in important progress with respect to Child and Family Services.

**Q.38 Why has the KPMG Report not been released?**

- A. The report in question was produced in the context of an ongoing case before the Canadian Human Rights Tribunal. Any requests for disclosure of the report will be considered and followed-up on appropriately and according to all relevant legislation.

## **JORDAN'S PRINCIPLE AND PICTOU LANDING CASE IN NOVA SCOTIA**

### **Q.39 What is the federal response to Jordan's Principle?**

- A. The Government of Canada is working with provinces and First Nations to make sure the care of a First Nations child with multiple disabilities will continue even if there is a dispute between federal and provincial governments concerning responsibility and payment of service.

Health Canada and Aboriginal Affairs and Northern Development Canada have collaboratively developed a federal response to Jordan's Principle which is guided by the following principles:

Cases involving a jurisdictional dispute between a provincial and federal government.

First Nations children, ordinarily resident on reserve, who are assessed as having multiple disabilities, requiring services from multiple service providers.

Care for the child will continue even if there is a dispute about responsibility.

Services are comparable provincial standards – the same level of care is provided to a child with similar needs, living off reserve in similar geographic locations.

### **Q.40 What is the Government doing to implement Jordan's Principle?**

- A. The Government of Canada has formally engaged all provinces, and has reached agreements with the province of Manitoba in September 2008, and the province of Saskatchewan and the Federation of Saskatchewan Indian Nations in September 2009. Manitoba's bilateral case conferencing and dispute resolution process has been approved by AANDC in 2012, and

Saskatchewan's dispute resolution process was completed as a bilateral document and approved in November 2012.

The federal government has finalized with the Province of New Brunswick and First Nations Chiefs of New Brunswick a tripartite dispute resolution process and was approved in late 2011, and is the first to outline both a case conferencing and dispute resolution process. British Columbia's bilateral agreement commits the parties to work together to develop a case conferencing and dispute resolution process and to engage First Nations. It is anticipated the case conferencing and dispute resolution process will be completed and approved in 2013.

The remaining provinces have indicated they have sufficient processes already in place to respond to, and address, jurisdictional disputes.

A network of federal and provincial contacts is in place across the country to address cases that are brought forward to ensure continuity of care for First Nations children with disabilities. To date, cases brought forward have been addressed through existing mechanisms and local processes, and none have progressed to a federal/provincial jurisdictional dispute.

**Q.41 Does the Federal Government's approach to Jordan's Principle include establishing a new program or providing additional funding to assist children with multiple disabilities?**

- A. Jordan's Principle is being implemented within the context of existing health and social programs so that services to First Nations children with multiple disabilities, in need of multiple services, will continue even if there is a dispute between federal and provincial governments concerning responsibility and payment of services. It does not involve establishing new programming or providing new funding.

**Q.42 How has the Federal Government engaged First Nations in the implementation of Jordan's Principle?**

- A. Because the care for First Nations children is a shared responsibility between the federal government, the provinces/territories and First Nations, a partnership approach is required to implement Jordan's Principle.

As work has progressed with each province, First Nations have been engaged in discussions related to the implementation of Jordan's Principle in the respective province. First Nations are actively involved in discussions in Saskatchewan and New Brunswick, Manitoba and British Columbia.

The Assembly of First Nations has been engaged bilaterally and Focal Point contact information, as well as implementation updates, has been shared. At the regional level, information updates and communication regarding the successful resolution of potential cases is provided to First Nations through existing regional mechanisms. Health Canada and Aboriginal Affairs and Northern Development Canada are working closely with some First Nations communities, using a case by case approach to ensure continuity of care for children with multiple disabilities.

**Q.43 Have AANDC and Health Canada addressed the issue of providing Non-Insured Health Benefits (NIHB) to children in AANDC-funded care?**

- A. Effective April 20, 2009, NIHB Program agreed to provide eligible benefits to eligible First Nations children receiving AANDC-funded child welfare (protection services). This was communicated to AANDC/Health Canada regional offices, as well as to First Nations Child and Family Service Agencies.

In the event of a jurisdictional dispute the current service provider will continue to pay for the services while a resolution is negotiated by all parties involved. This case-by-case approach engages all service providers and governments involved in a child's care to make sure that the child comes first and services are not disrupted.

**Q.44 What is the status of the judicial review in Pictou Landing First Nation, Nova Scotia?**

- A. The Pictou Landing Band Council and Maurina Beadle filed a Notice of Application in the Federal Court on June 24, 2011 against the Attorney General of Canada, seeking a judicial review of AANDC and Health Canada's decision not to provide additional funding for enhanced services that the First Nation is providing the family for care of a disabled child on reserve.

A review by AANDC and Health Canada, with the Province of Nova Scotia, determined that it was not a Jordan's Principle case as there is no jurisdictional dispute and the level of care requested (15 - 24 hours of in-home care) exceeds what is normally available to provincial residents. AANDC's Assisted Living program is not mandated to fund respite services beyond the provincial normative standard.

Decisions to provide enhanced levels of in-home respite care is the prerogative of families and First Nations. First Nations may use own source revenues to enhance federal programming, however, these amounts will not be reimbursed.

At this time, there has been no disruption in either the services funded through federal programs or to additional services that have been put in place by the First Nation.

Affidavits were filed by departmental representatives from AANDC and Health Canada on September 22, 2011. Cross-examinations took place October 5-7 and 18, 2011 in Halifax. The judicial review was heard June 11, 2012, in Halifax and a decision is pending. Hearings are likely to begin in January 2012. As this matter is now before the courts, it is not appropriate for us to comment.

Health Canada is responsible for the funds used for care of the Pictou Landing individual and calls should be referred to Health Canada Media Relations.

CIDM: 3881523