

# **OUR CHILDREN, OUR FUTURE: TRANSFORMING CHILD WELFARE FOR THE WELL-BEING OF CHILDREN AND FAMILIES**

**INDsight Consulting**

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Wellness from an Indigenous perspective is a whole and healthy person expressed through a sense of balance of spirit, emotion, mind and body. Central to wellness is belief in one's connection to language, land, beings of creation, and ancestry, supported by a caring family and environment. (Dumont, 2014, Definition of Wellness©)

## ACKNOWLEDGEMENTS

The Ontario Special Study was undertaken for the Chiefs of Ontario Technical Table on Child and Family Well-Being.<sup>1</sup> The Table is comprised of representatives from the First Nations political organizations in Ontario, including the Association of Iroquois and Allied Indians, Anishinabek Nation, Grand Council Treaty #3, Nishnawbe Aski Nation; the Independent First Nations; the unaffiliated First Nations; and the governments of Canada and Ontario. The generosity of the members' time and support enabled the completion of this study.

The Social Services Coordination Unit of the Chiefs of Ontario was also instrumental in guiding and supporting this collaborative effort, as were the contributions of Indigenous Services Canada and the Ontario Ministry of Children, Communities and Social Services.

The Special Study project team, led by INDSight Consulting, would like to thank additional authors Judith Rae, JD MSW, and Samantha Craig-Curnow for their invaluable contributions.

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<sup>1</sup> The request for proposals for the Ontario Special Study was coordinated by the Chiefs of Ontario. Chiefs of Ontario retained the consultants that comprise the project team.

## EXECUTIVE SUMMARY

Ontario First Nations have repeatedly called for First Nations child welfare reform. Tens of thousands of First Nations children have been stolen from their families and communities, impacting generations (Anishinabek Nation<sup>2</sup>, 2013; Truth and Reconciliation Commission of Canada, 2015a; . The current child welfare system is reactive, services operate in silos, and the children often end up in care rather than staying with their family in community.

The federal government's discriminatory practice of underfunding child and family services for on reserve children was at the heart of a recent case brought against the Government of Canada to the Canadian Human Rights Tribunal (CHRT) in 2007 by the Assembly of First Nation (AFN) and the First Nations Child and Family Caring Society (Caring Society). The Chiefs in Ontario (COO) and Nishnawbe Aski Nation (NAN) were granted "Interested Party" status for these proceedings.

The CHRT rendered its landmark decision on January 26, 2016, finding that the First Nations Child and Family Services (FNCFS) Program delivered by the Government of Canada, along with its related funding models and federal-provincial agreements, is discriminatory contrary to section 5 of the *Canadian Human Rights Act (First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2 [Caring Society 2016 CHRT 2])*. The CHRT ordered Aboriginal Affairs and Northern Development Canada (AANDC, now Indigenous Services Canada) to immediately

cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle. (*Caring Society 2016 CHRT 2, para. 481*).

The reference to the *1965 Agreement*<sup>3</sup> was a specific order applicable to child welfare services in Ontario.

The COO requested an "independent study of funding and service levels for First Nations child welfare in Ontario based on the 1965 Agreement be conducted" (*Caring Society 2016 CHRT 2, para. 478*). Subsequently, the Complainants, Commission and Interested Parties<sup>4</sup> requested this special study to "determine the adequacy of the 1965 Agreement in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount" (*Caring Society 2016 CHRT 16, para. 101*). The CHRT did not rule on this request pending

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<sup>2</sup> The Anishinabek Nation has been referenced to as the Union of Ontario Indians.

<sup>3</sup> The *1965 Memorandum of Agreement Respecting Welfare Programs for Indians* is sometimes known as the "1965 Indian Welfare Agreement," or the "Indian Welfare Agreement," or "IWA" or the "1965 Agreement."

<sup>4</sup> The 'Complainants' refer to the Caring Society and AFN; the 'Commission' refers to the CHRC; and 'interested parties' refers to the COO and NAN.

a response from Aboriginal Affairs and Northern Development Canada, now Indigenous Services Canada (ISC) (*Caring Society* 2016 CHRT 16, para. 101).

The Ontario Chiefs in Assembly, in 2017 “passed Resolution 25/17, *Canadian Human Rights Tribunal* (CHRT), where the Chiefs in Assembly used the CHRT ruling to highlight the importance of full-scale reform of all child and family services funded by Indigenous and Northern Affairs Canada (INAC) [now ISC]” (Special Chiefs Assembly, 2017, October 25, p. 1). The Chiefs further provided direction by resolution stating that the study would

examine the funding relationships and comparability of child welfare services for on-reserve children in Ontario and to provide options on a new First Nations family well-being policy, program delivery and funding approach that is family-centered, community-directed and supports better outcomes by focusing on prevention. (Special Chiefs Assembly, Resolution 21/17, 2017, October 25, p. 2)

Finally, the study would

address substantive equality, align with Canada and Ontario’s commitment to achieving reconciliation with Indigenous peoples, and continue to support decolonization. The approach will respect First Nations perspectives on child well-being and will support and enhance First Nations cultures, control, laws, jurisdiction, and autonomy. (COO, 2018, p. 3)

## SYSTEM TRANSFORMATION

A Technical Table on Child and Family Well-Being was convened to discuss First Nations child welfare reforms in Ontario. The Technical Table included representatives from the First Nations political territorial organizations in Ontario, including the Chiefs of Ontario, Association of Iroquois and Allied Indians, Anishinabek Nation, Grand Council Treat #3, and Nishnawbe Aski Nation; the Independent First Nations; the unaffiliated First Nations; and the governments of Canada and Ontario. The Technical Table provided oversight and direction to this Special Study.

The options for a new First Nations child well-being policy and funding approach for short and long-term reform of child welfare were identified by reviewing and synthesizing available documents and literature, and consulting with the Technical Table to:

- identify approaches to prevent children coming into care through an emphasis on prevention/child and family well-being services and supports;
- evaluate the current funding approach and offer options for reform or alternatives to the child and family services (CFS) component of the 1965 Agreement; and
- examine the 1965 Agreement and offer options for revisiting the agreement.

This process evolved through an iterative series of discussions between the Technical Table, the First Nations Caucus and the study team, examining evidence of, need for, and approaches toward, system transformation in Ontario. The First Nation Caucus of the Technical Table provided a list of recommendations for the final report.

The governments of Canada and Ontario concur with the need for system change. Prime Minister Justin Trudeau stated in his Mandate Letter to his Minister of Indigenous Services (2017, October 4) that one of the top priorities of the federal government is to:

Develop and implement an improved response to the provision of child welfare and health care under Jordan’s Principle that focuses on the best interests of the child. This will require a holistic approach to the delivery of services that focuses on prevention, family preservation and well-being, and community wellness. It should include responding to immediate pressures to deliver health, child, and family services while working with the Minister of Crown-Indigenous Relations and Northern Affairs on self-governance frameworks.

Indigenous Services Canada reiterated this mandate in its 2017-2018 Departmental Results Report that “ISC has been mandated to create systemic change in how the federal government delivers services to Indigenous peoples and ultimately transfer the design, the planning, management and delivery of these services under to [sic] Indigenous control” (2018, p. 10).

The Political Accord between First Nations and the Government of Ontario (August 24, 2015) recognizes that First Nations are self-governing, and the parties involved agree to “move forward together in a spirit of respectful co-existence and with a view to revitalizing the treaty relationship.”<sup>5</sup> The parties also agree to “work together to identify and address common priorities and issues, that will include, but are not limited to, the treaty relationship, resource benefits and revenue sharing and jurisdictional matters involving First Nations and Ontario.”<sup>6</sup>

As this Ontario Special Study is being prepared for distribution, the CHRT on September 6, 2019 ruled

The Panel finds there is sufficient evidence and other information ... in this case to establish, on a balance of probabilities, that Canada’s systemic racial discrimination found in the Tribunal’s Decision 2016 CHRT 2 and subsequent rulings: 2016 CHRT 10, 2016 CHRT 16, 2018 CHRT 4, resulted in harming First Nations children living on reserve and in the Yukon Territory who, as a result of poverty, lack of housing or deemed appropriate housing, neglect and substance abuse were unnecessarily apprehended and placed in care outside of their homes, families and communities and especially in regards to substance abuse, did not benefit from prevention services in the form of least disruptive measures or other prevention services permitting them to remain safely in their homes, families and communities. (*Caring Society* 2019 CHRT 39, para 245)

The current child welfare system has operated over decades. System change requires significant reform along with funding that meets or exceeds substantive equality and at least ten years to reach a steady state. Four stages have been identified by the First Nations Caucus of the Technical Table to reach this steady state. Those four stages are illustrated in the following figure.

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<sup>5</sup> Political Accord between First Nations and the Government of Ontario, August 24, 2015, Whereas, No 1.

<sup>6</sup> Political Accord, Whereas, No. 4.

These stages assume that transformation occurs at the pace determined by each First Nation. This allows First Nations to assume responsibility for programs and services based on their own needs and plans. It allows for various pathways for First Nations and their respective Indigenous Child Well-Being Agencies (ICWBAs)<sup>7</sup> to address child and family well-being through: putting in place the necessary infrastructure; making progress on the First Nations determinants of well-being; and ensuring First Nations human resources capacity exists to successfully deliver child, youth and family services. Services should follow children and youth up to age 25, and support their transition into adulthood.<sup>8</sup>

This approach makes no distinction about which services and supports are community-based or provided through ICWBAs and non-Indigenous mainstream children's aid societies (CASs). Rather, because there is an interconnected relationship between First Nations and the respective Indigenous agency they govern; both determine how best to implement the spectrum of well-being services and supports. For instance, an agency that serves five First Nations communities may offer different services and/or supports to each of those communities based on their needs and wishes. Over time, the assumption is that communities and agencies transform in function and service delivery. This transformation moves significantly away from protection to addressing child and family well-being in community.

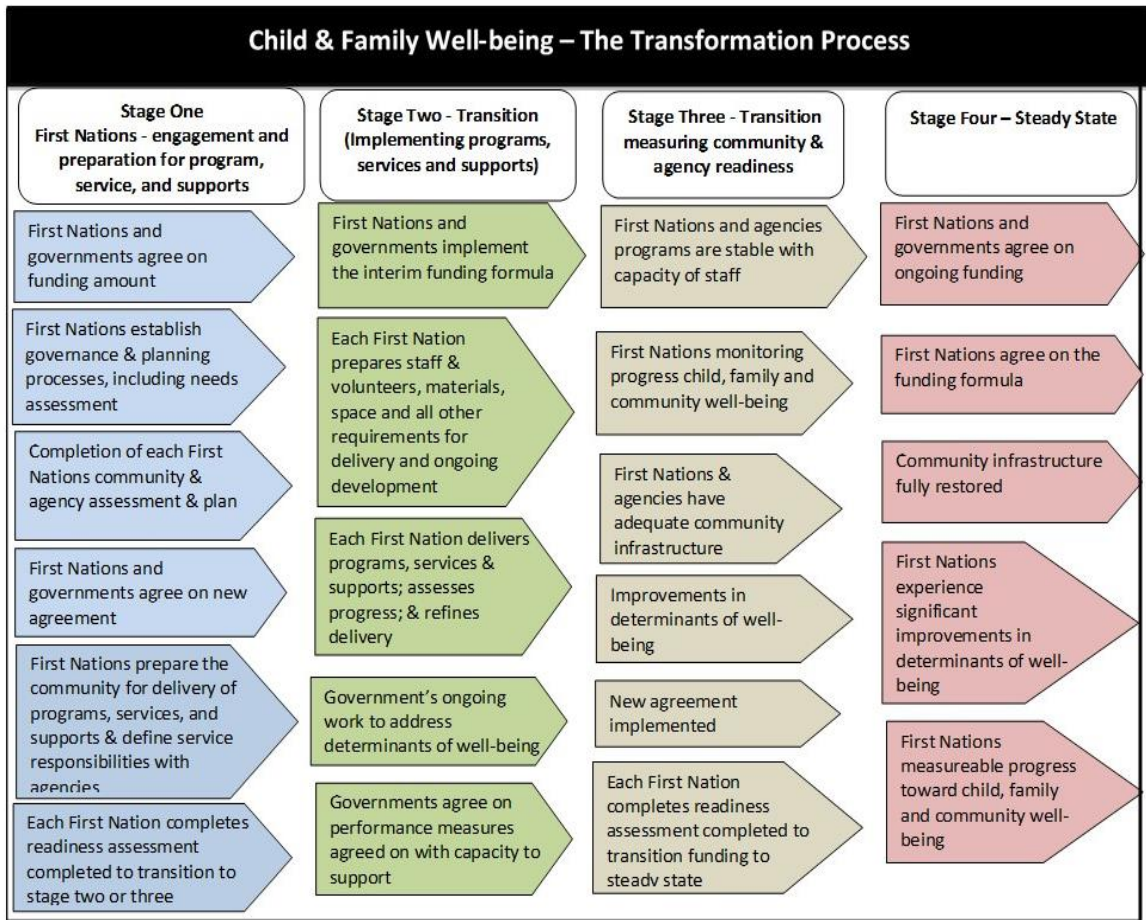
This report acknowledges that there are some First Nations children and families currently being served by mainstream CASs. These CASs have committed to work on identifying Indigenous children and families. Many of these CASs are also working with ICWBAs to find the best solutions for children and families once they are identified. It is also understood that some families may choose to continue to receive services from mainstream CASs. These issues may require consideration when the Technical Table undertakes the development of a full implementation plan.

Establishing funding which meets or exceeds substantive equality to address the well-being of children and families is integral to transformation. Acknowledging that current funding does not meet substantive equality, Stage One of transformation determines baseline needs (see Figure below).

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<sup>7</sup> The term ICWBA refers to both the 12 designated Indigenous societies under the CYFSA as well as two Indigenous agencies seeking designation as a society under the CYFSA (see Appendix A).

<sup>8</sup> Chapter Four: Youth Leaving Care discusses the rationale for changing the age for service provision to 25 years of age.



To inform the first stage of transformation the following table identifies current and recent funding amounts and gaps. The table below specifies the 2017-18 funding received by Ontario First Nations, as reported by the governments of Canada and Ontario as of January 2019. Contributions as reported here are before reimbursements through the 1965 Agreement (also known as the Indian Welfare Agreement, "IWA"). "IWA reimbursements" (from Canada to Ontario) are indicated in italics and include some prevention funding falling within the scope of the 1965 Agreement. The actual amounts reported for 2017-18 by the federal government are understated, as claims, for example, under Jordan's Principle, are still being processed. The 2017-18 amounts are enhanced by the CHRT rulings and other dollars associated with reconciliation as apparent by the increase over 2015-16 funding amounts.



Total actual and needed funding to First Nations agencies and communities, as at January 2019.

Funds received by Agency/Community by Principal Category of Expenditure*	PROVINCIAL Contributions (before IWA reimbursements)	FEDERAL Contributions (before IWA reimbursements)	TOTAL FUNDING	PROVINCIAL Contributions (before IWA reimbursements)	FEDERAL Contributions (before IWA reimbursements)	TOTAL FUNDING	LOW estimate of funding needs	HIGH estimate of funding needs
<b>PROGRAM FUNDING</b>	<b>2015-2016</b>			<b>2017-2018</b>			<b>PREPARATION FOR TRANSFORMATION</b>	
<b>To Agencies</b>								
Capital Renewal, Repairs & Maintenance	\$2,247,593		\$2,247,593	\$2,044,003	\$0	\$2,044,003	\$2,044,003	\$2,044,003
Information & Communications Technologies - Operations & Mtce**							\$9,750,000	\$17,100,000
Protection*** (funds in italics are \$\$ reimbursed by Canada to Ontario under the Indian Welfare Agreement (IWA))	\$152,399,691	<i>IWA reimbursement = \$123,468,903</i>	\$152,399,691	\$188,375,460	<i>IWA reimbursement = \$124,898,457</i>	\$188,375,460	\$195,000,000	\$285,000,000
<b>SUB-TOTAL - FUNDS TO AGENCIES</b>	<b>\$154,647,284</b>		<b>\$154,647,284</b>	<b>\$190,419,463</b>		<b>\$190,419,463</b>	<b>\$206,794,003</b>	<b>\$304,144,003</b>
<b>To Communities or Agencies</b>								
Prevention - outside scope of current IWA	\$46,533,283	\$19,976,969	\$66,510,252	\$84,403,583	\$85,706,348	\$170,109,931	\$170,109,931	\$170,109,931
Extraordinary Circumstances & Contingencies - CHRT Order 411					\$18,386,800	\$18,386,800	\$18,386,800	\$18,386,800
Extraordinary Circumstances & Contingencies - CHRT Orders 426 & 427					\$57,727,066	\$57,727,066	\$57,727,066	\$57,727,066
<b>SUB-TOTAL - FUNDS TO COMMUNITIES</b>	<b>\$46,533,283</b>	<b>\$19,976,969</b>	<b>\$66,510,252</b>	<b>\$84,403,583</b>	<b>\$161,820,214</b>	<b>\$246,223,797</b>	<b>\$246,223,797</b>	<b>\$246,223,797</b>
<b>SUB-TOTAL PROGRAM FUNDING</b>	<b>\$221,157,536</b>			<b>\$436,643,260</b>			<b>\$453,017,800</b>	<b>\$550,367,800</b>
<b>JORDAN'S PRINCIPLE &amp; INFRASTRUCTURE FUNDING</b>								
Jordan's Principle - All Ontario					\$27,544,304	\$27,544,304	\$27,544,304	\$27,544,304
Jordan's Principle - NAN (\$73M Apr2017-Jan2019; monthly avg*12mos)					\$43,800,000	\$43,800,000	\$43,800,000	\$43,800,000
Large Capital Assets - Agencies							\$17,000,000	\$25,000,000
Large Capital Assets - Communities (Multi-use Building; Safe housing)							as needed	
Information & Communications Technologies - Broadband							as planned	
<b>TOTAL FUNDING including Jordan's Principle (before IWA reimbursements)</b>	<b>\$201,180,567</b>	<b>\$19,976,969</b>	<b>\$221,157,536</b>	<b>\$274,823,046</b>	<b>\$233,164,518</b>	<b>\$507,987,564</b>	<b>\$541,362,104</b>	<b>\$646,712,104</b>

\*See Appendix D - ON1.1 for Ontario figures; See Appendix D - GC 3.0 for Federal figures; blank cells not applicable or unknown

\*\*ICTs low/high estimate = Industry benchmark at 5% (of low) and 6% (of high) operating costs

\*\*\*Protection low/high estimate = 13% and 19% share of Total Provincial Agency Budget of \$1.5B

This first stage is informed by the work of NAN who examined and developed “a remoteness coefficient methodology that can be readily applied to funding for child and family services to determine the additional funding needed to provide the same standard of service as found in non-remote areas of the province” (Barnes Management Group, 2019, p. 6). This study, reviewed by a third party, was tabled with the CHRT on March 29, 2019. The NAN study further concluded that “Though the remoteness quotients provide a credible means to allocate a pool of funds, the only way to truly determine appropriate funding for the NAN communities is to factor in actual community conditions, resource requirements and gaps” (Barnes Management Group, 2019, p. 8). The First Nations Caucus of the Technical Table has indicated the importance of reviewing the results of this study in conjunction with information obtained from the community needs assessments to be done in Stage One of transformation in Ontario.

The transformation process outlined in this report is organized according to seven pillars, including: First Nations self-determination and inherent jurisdiction; language and culture; First Nations determinants of well-being;<sup>9</sup> service delivery, which emphasizes well-being and customary care; equitable supports and capacity to support well-being (i.e., capital, human resources, and information governance); equitable and predictable funding; and a new agreement.

The First Nations Caucus of the Technical Table developed the following recommendations without comment from MCCSS and ISC. These recommendations align with the pillars and the four stages of transformation.

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<sup>9</sup> The First Nations Determinants of Well-Being are considered to be the “conditions in which people are born, grow, live and work” (Aboriginal Children in Care Working Group, 2015, p. 1) and, for purposes of this study, include: language and culture; colonization and systemic racism; intergenerational trauma and legacy of child welfare policies (i.e., residential schools, 60s scoop, and child welfare system); poverty and income; health and social services; housing; education and employment; water quality; and food security.

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
<b>First Nations Self-Determination and Jurisdiction</b>			
1. That federal and provincial policy and legislation regarding child and family well-being that applies to First Nations be made on a government-to-government basis.			
2. That federal and provincial policy and legislation support and respect First Nations inherent jurisdiction in child and family well-being, and provide opt-out clauses for any First Nation that has developed their own child and family well-being laws.			
3. That federal and provincial policy and legislation support and respect First Nations inherent jurisdiction in governing citizenship of their own Nations regardless of where they reside.			
4. That federal and provincial policy, legislation and decisions support First Nations inherent jurisdictional right to define and develop their own programs, services, training, and standards.			
5. That federal and provincial governments ensure that existing and new legislation are compliant with the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child.			
6. That First Nations and federal and provincial governments work together to eliminate racism across the child welfare sector.			
7. That First Nations, federal and provincial governments enter into a comprehensive First Nations child well-being transformation process, anticipated to last approximately 10 years. <ul style="list-style-type: none"> <li data-bbox="300 1227 1455 1295">a. This transformation process will support each First Nation in assessing its needs, planning the future of its child and family well-being system, and implementing that system.</li> <li data-bbox="300 1300 1377 1369">b. The process must be First Nations defined and directed, and encompass on/off reserve citizens and Indigenous Child Well-Being Agencies.</li> </ul>			

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
<ul style="list-style-type: none"> <li>c. First Nations may choose to exercise their jurisdiction. First Nations laws, programs, standards, and systems will generally take shape and begin operating during this period.</li> <li>d. The process will begin with an assessment and planning stage that supports each First Nation in determining what its system landscape will look like. Costs will be assessed and forecasted based on the needs of each transformed system, and adjusted as these systems begin operations.</li> <li>e. During the transformation process, transitional funding measures would be in place (see below).</li> <li>f. A First Nations assessment and planning template and support team would be created, within Chiefs of Ontario and/or within PTOs, to help each First Nation work through similar issues while tailoring their plans to their specific situation, and to help gather information for overall cost assessment and understanding of the transformation process (in line with OCAP principles).</li> </ul>			
<b>Language and Culture</b>			
8. That federal and provincial governments expand on their supports to revitalize First Nations language, culture, and land-based healing.			
<b>First Nations Determinants of Well-Being</b>			
9. Given that poverty, poor housing, mental health and addictions, and intergenerational trauma are leading drivers of Indigenous children coming into care at a disproportionate rate, the federal and provincial governments must make substantial investments in First Nations communities to alleviate these issues for on and off-reserve members. These substantial investments should be both inside and outside child and family well-being services. When these issues arise in a context that could put children at risk, First Nations communities and Indigenous Child Well-Being Agencies must be			

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
empowered to take proactive measures to support child and family well-being and address these risks.			
10. That the federal and provincial governments fund the First Nations determinants of well-being to ensure the basic needs of families (i.e., income, health and social services, housing, education, employment, water safety, food security) are met. It is acknowledged that making investments in these areas will reduce the number of children coming into care.			
11. The federal and provincial governments support the National Advisory Committee’s request that the Parliamentary Budget Officer cost out all inequities in services affecting First Nations children, youth and families to provide a baseline cost of the aggregate shortfalls to inform a comprehensive and public plan to be developed in consultation with First Nations to fix the inequities.			
<b>Service Delivery</b>			
12. That federal and provincial governments actively support First Nations understandings of child and family well-being, which are generally broader, more holistic and conceptually different than mainstream models of “child protection” and “prevention”. Legislation, policies, funding, and negotiated agreements reflect this understanding.			
13. That federal and provincial governments recognize and support First Nations customary care, and that both primary and alternative caregivers have access to the full range of professional, cultural and financial supports available in the provincial system. These supports should be enhanced to account for the intergenerational effects First Nations families experience, and to address the reasons why they are accessing child and family well-being supports.			
14. That First Nations and/or Indigenous Child Well-Being Agencies enter into agreements with mainstream societies/agencies to reach more children in mainstream care and provide access to community and/or Indigenous agency-based child and family well-being services and cultural supports.			

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
<b>Service Delivery Supports</b>			
<p>15. That the federal and provincial governments, at the option of First Nation(s), fund a human resources assessment and plan to be undertaken in conjunction with the transformation process to understand the human resources capacity needs of First Nations communities to successfully facilitate child and family well-being transformation. This assessment and plan should include:</p> <ul style="list-style-type: none"> <li>a. Assessments/plans particular to each First Nations child well-being system.</li> <li>b. A broader labour market study and strategy to support the child welfare sector to successfully facilitate child and family well-being transformation.</li> <li>c. Measures to encourage and support First Nations individuals in pursuing careers in this sector and increasing culturally-appropriate training opportunities.</li> </ul>			
<p>16. Systems for Monitoring and Coordination – That a First Nations Working Group be established to develop a set of common outcome measures for system transformation and child and family well-being with the ability for each First Nation to contribute their own priority indicators.</p>			
<p>17. First Nations undertake a study funded by the federal and provincial governments to examine the feasibility of a First Nation child and family well-being information system that can link with mainstream and other First Nations community systems.</p>			
<p>18. That a First Nations Working Group be established to consider an Ontario-based First Nations information institute that could serve as the data steward facilitating First Nations capacity in information governance.</p>			
<b>Funding</b>			
<p>19. That federal and provincial governments commit to supporting the First Nations child and family well-being transformation process (see figure-transformation process- above and recommendation</p>			

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
<p>#7) and provide all necessary funding for communities to complete bottom-up costs assessments to support their transformed systems, and provide the transitional costs associated with putting those systems into place (e.g. consultations, negotiations, law and policy development, institution-building, start-up of new programs and services, developing culturally appropriate models, creating local and culturally-appropriate placement resources, training and capacity-building, etc.). Actual costs should be covered throughout the transformation process.</p>			
<p>20. That all federal and provincial funding directed towards First Nations child and family well-being be consolidated into fewer streams and ultimately a single stream, to be directed to First Nations or distributed according to their child welfare system. This consolidation should take place during the transformation process, while maintaining actual cost reimbursement in accordance with the CHRT orders.</p>			
<p>21. That First Nations, federal and provincial governments review cost and system information throughout the transformation process, and continue to develop and refine a long-term funding approach.</p>			
<p>22. That processes for First Nations to exercise self-determination over child and family well-being are fully funded by federal and provincial governments, and include ongoing governance, capacity building, operations, and additional liability, both during and after the transformation period. Funding should extend beyond existing sources so as to cover the costs associated with working out relationships among First Nations, working out relationships with other governments, internal consultation with members, policy-making and law-making processes, system development, capacity-building and start-up within new bodies within that system, training, and legal support.</p>			
<p>23. Required capital and infrastructure projects for child and family well-being transformation in First Nations communities and Indigenous Child Well-Being Agencies are fully funded by federal and provincial governments both during and after the transformation period.</p>			

The Well-Being of Children and Family	Timeframe		
Recommendations	Short 1-3 yrs	Medium 4- 8 yrs	Long- Term 8 -10 yrs
24. All information and communication technologies (ICTs) and broadband services requirements to enable all First Nations communities, community-based child and family well-being programs, and Indigenous Child Well-Being Agencies to run their programs are fully funded by federal and provincial governments both during and after the transformation period.			
25. Community- and/or land-based culturally appropriate placement and treatment options, such as group homes, family healing centres, and youth treatment centres are fully funded by federal and provincial governments. This funding should be made available to First Nations communities, Tribal Councils, PTOs or agencies willing to establish such necessary placements both during and after the transformation period.			
26. That First Nations child and family well-being funding will not be reduced, even if the number of protection cases decrease as a result of an increase in prevention services.			
27. That First Nations carry over child and family well-being funding year-over-year, any accumulation of which to enhance program delivery.			
<b>A New Agreement or Agreements</b>			
28. That First Nation, federal and provincial governments each appoint negotiation teams to enter into exploratory discussions on creating a new inter-governmental agreement(s) with respect to First Nations child and family well-being services in Ontario. The new agreement(s) would either supplement, update or replace the child welfare provisions of the 1965 Agreement, depending on the details negotiated.			



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## ABBREVIATIONS

1965 Agreement.....	1965 Memorandum of Agreement Respecting Welfare Programs for Indians (1965 Agreement / 1965 Indian Welfare Agreement)
AANDC .....	Aboriginal Affairs and Northern Development Canada
AFN .....	Assembly of First Nations
ANCFSAO .....	Association of Native Child and Family Service Agencies of Ontario
Caring Society.....	First Nations Child and Family Caring Society
CAS.....	Children’s Aid Society
CBRT.....	Community-based Reporting Template
CCI.....	Complainants, Commission and Interested Parties
CHRT.....	Canadian Human Rights Tribunal
CFS.....	Child and Family Services
<i>CFSA</i> .....	<i>Child and Family Services Act</i>
CMHC .....	Canada Mortgage and Housing Corporation
COO.....	Chiefs of Ontario
CPIN.....	Child Protection Information Network
CSD.....	Canadian Survey on Disability
CWB .....	Community Well-Being Index
<i>CYFSA</i> .....	<i>Child, Youth and Family Services Act, 2017</i>
FN.....	First Nation
FNCFS .....	First Nations Child and Family Services
FNCIS.....	First Nations component Canadian Incidence Study of Reported Child Abuse and Neglect
FNIGC.....	First Nations Information Governance Centre
FNIHB.....	First Nations and Inuit Health Branch
ICTs.....	Information and Communications Technologies
ICWBAs .....	Indigenous Child Well-Being Agencies

IFSD.....	Institute of Fiscal Studies and Democracy
INAC.....	Indigenous and Northern Affairs Canada
ISC .....	Indigenous Services Canada
LTDWA .....	Long-term Drinking Water Advisory
MCCSS.....	Ontario Ministry of Children, Community and Social Services
MCYS.....	Ontario Ministry of Children and Youth Services
NAN .....	Nishnawbe Aski Nation
NAC.....	National Advisory Committee
OACAS .....	Ontario Association of Children’s Aid Societies
OCAP® .....	Ownership, Control, Access, and Possession
ODSP.....	Ontario Disability Support Program
OKT.....	Olthuis Kleer Townshend LLP
ON.....	Ontario
RHS.....	First Nations Regional Longitudinal Health Survey
PRIDE.....	Parent Resources for Information, Development and Education
SAFE .....	Structured Analysis Family Evaluation
SCRI.....	Statistics Canada Remoteness Index
TAG .....	The Action Group on Access to Justice
TRC.....	Truth and Reconciliation Commission of Canada
UNDRIP.....	United Nations Declaration on the Rights of Indigenous Peoples

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## INTRODUCTION

Ontario has the largest First Nations<sup>10</sup> population of any province in Canada, with approximately 236,680 individuals, or nearly one quarter (24.2 percent) of all First Nations people (Statistics Canada, 2016). There are 133 First Nation communities<sup>11</sup> across all areas of the province, which is home to the Anishinaabek, Mushkegowuk, Haudenosaunee, and Lenape peoples.

Although these Nations have different languages, cultural practices and spiritual beliefs, they share many similarities. For instance, all Nations have a reverence for Mother Earth, Turtle Island, the Creator, and all things spiritual. They also share similar traditional child-rearing practices. Prior to the arrival of Europeans and colonization, “First Nations families and communities cared for their children in accordance with their cultural practices, spiritual beliefs, laws and traditions ... [there was] an emphasis on extended families and a worldview which prized children as gifts from the creator” (Sinha et al., 2011, p. 5; Royal Commission on Aboriginal Peoples, 1996). This emphasis on extended family was the cornerstone of First Nations child care and is still very much prevalent among families and within communities today.

With the introduction of the Indian Act in 1876, the federal government sought to regulate and disrupt all aspects of First Nations peoples’ lives, including their cultural, traditional and spiritual practices. The Indian Act unilaterally gave the federal government control over First Nations lands, status, education, resources, and health, as the government sought to marginalize First Nations in the name of territorial expansion (Ugarte, 2014). The Indian Act was also used as a tool for assimilating First Nations into Anglo-European culture, largely through the establishment of residential schools; the majority of which operated between 1879 and 1996.

The regulating of First Nations peoples’ lives had a detrimental impact on the social, political and cultural fabric that is central to First Nations peoples’ identity and family structure (Richmond & Ross, 2009). The effects of colonization, the Indian Act, and residential schools are still felt by First Nations peoples today. First Nations peoples experience lower levels of education, health and well-being, and increased rates of disease, premature death, incarceration, and child apprehensions compared to the rest of Canadians (National Collaborating Centre for Aboriginal Health [NCCA], 2010, 2013; King, Smith, & Gracie, 2009)

This breakdown in the social fabric among First Nations families and communities has led to First Nations children being apprehended and brought into care at a rate that is significantly higher than non-Indigenous children. In Canada, 7.7 percent of children are Indigenous, yet they account for 52.2 percent

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<sup>10</sup> The term “First Nations” is used predominately throughout this Special Study. However, there are times when the terms “Aboriginal” and “Indigenous” are used. These latter terms by definition include First Nations, Métis and Inuit, and are used when the context and/or quotes dictate.

<sup>11</sup> The Government of Canada recognizes 126 First Nations and works with 127 Chiefs and Councils in Ontario.

of all children in foster care (Statistics Canada, 2016). In Ontario, First Nations children account for just 2.5 percent of the total child population, yet they make up 23 percent of all children in foster care (Ma, Fallon, & Richard, 2019).

These troubling statistics are in part attributable to a change the federal government made to the Indian Act in 1951, which made clear that provincial laws are applicable to First Nations on reserve, including child welfare. This change, coupled with the availability of federal funding to the provinces, led to provinces expanding the reach of their child welfare services and other services on reserve in the 1950s and 60s. As a result, non-Indigenous social workers were now authorized to apprehend First Nations children and did so at an alarming rate. It is estimated that prior to 1951 “less than one percent of children in care were Aboriginal; by 1977, approximately 8.6% of all children in out-of-home care in Ontario were Aboriginal” (Kozlowski, Sinha, & Richard, 2012, p. 2; Royal Commission on Aboriginal Peoples, 1996). It is further estimated that over 11,000 First Nations children across Canada were apprehended and adopted between 1960 and 1990 (Sinha & Kozlowski, 2013; Royal Commission on Aboriginal Peoples, 1996).

Several reports have been commissioned over the years that have either directly or indirectly examined the overrepresentation of First Nation children in care, including the reports of the Royal Commission on Aboriginal Peoples (1996), the *Aboriginal Children in Care – Report to Canada’s Premiers* (Aboriginal Children in Care Working Group, 2015), *Kiskisik Awasisak: Remember the Children* (Sinha et al., 2011), the *Truth and Reconciliation Commission of Canada’s Final Report* (2015a), and *Enabling First Nations Children to Thrive* (Institute of Fiscal Studies for Democracy, 2018), among others. These reports all conclude that First Nations are significantly overrepresented in the child welfare system because of the effects of colonization, residential schools, changes to the Indian Act, systemic and institutional racism, and underfunding of on reserve social programs, particularly for children.

The federal government’s discriminatory practice of underfunding child and family services for on reserve children was at the heart of a recent case brought against the Government of Canada to the Canadian Human Rights Tribunal (CHRT) in 2007 by the Assembly of First Nation (AFN) and the First Nations Child and Family Caring Society (Caring Society). The CHRT hears cases of alleged discrimination that may violate the *Canadian Human Rights Act*. The AFN and Caring Society argued that “child welfare services provided to First Nations children and families on-reserve were flawed, inequitable and discriminatory ... [and] asked that the CHRT find that First Nations children are being discriminated against and order appropriate remedies (Canadian Child Welfare Research Portal, n.d., para. 1).<sup>12</sup>

The Chiefs of Ontario and Nishnawbe Aski Nation (NAN) were both granted ‘Interested Party’ status during the proceedings, with COO granted status in September 2009<sup>13</sup> to “speak to the particularities of on-reserve child welfare services in Ontario” (*Caring Society* 2016 CHRT 2, para. 13), specifically how First Nations child welfare is funded under the *1965 Indian Welfare Agreement* (1965 Agreement). Nishnawbe Aski Nation, in addition, was given status for “specific considerations of delivering child and

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<sup>12</sup> See <https://cwrp.ca/canadian-human-rights-tribunal-first-nations-child-welfare>

<sup>13</sup> See <https://fncaringsociety.com/sites/default/files/tribunal-order-september-2009-hearings.pdf>



family services to remote and northern communities in Ontario and the factors required to successfully provide those services in those communities” (*Caring Society* 2016 CHRT 11, para. 15). This included an agreement for “development and implementation of a remoteness quotient for the three FNCFS Agencies that serve NAN communities” (*Caring Society* 2017 CHRT 7, para. 21).<sup>14</sup>

The CHRT rendered its landmark decision on January 26, 2016, finding that the First Nations Child and Family Services Program delivered by the government of Canada, along with its related funding models and federal-provincial agreements, is discriminatory contrary to section 5 of the *Canadian Human Rights Act* (*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [*Caring Society* 2016 CHRT 2])). The CHRT ordered Aboriginal Affairs and Northern Development Canada (AANDC, now Indigenous Services Canada) to immediately

cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s principle. (*Caring Society* 2016 CHRT 2, para. 481).<sup>15</sup>

The reference to the 1965 Agreement<sup>16</sup> was a specific order applicable to child welfare services in Ontario.

Similarly, in Ontario, the COO requested that an independent study of funding and service levels for First Nations child welfare in Ontario based on the *1965 Agreement* be conducted (*Caring Society* 2016 CHRT 2, para. 478).

This report – the Ontario Special Study – responds to the Chiefs’ call for a new approach.

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<sup>14</sup> NAN tabled their final report, Phase II of the *Remoteness Quotient Research Project (“Rq Project”): Final Report* (Barnes Management Group, 2019) with the CHRT on March 29, 2019. Their study, reviewed by a third party, informed comments within this Special Study in Chapter Six. It is understood that the COO and its members may undertake further analysis for its applicability to other First Nations in Ontario.

<sup>15</sup> The National Advisory Committee on First Nations Child and Family Services Program Reform (NAC) is undertaking reform efforts with the Institute for Fiscal Studies and Democracy (IFSD). Their findings and recommendations from their initial report have been taken into consideration within this study.

<sup>16</sup> The ‘1965 Agreement’ is the commonly used term for the *1965 Memorandum of Agreement Respecting Welfare Programs for Indians* which is sometimes also known as the “1965 Indian Welfare Agreement,” or the “Indian Welfare Agreement” or “IWA”. The commonly used term, 1965 Agreement, is used throughout this Special Study.

## THE APPROACH

The Chiefs of Ontario (COO) Technical Table on Child and Family Wellbeing commissioned a Special Study of First Nations child welfare in Ontario, as requested initially by COO and subsequently by the Complainants, Commission and Interested Parties (CCI).<sup>17</sup> The Table is comprised of representatives from First Nations political organizations in Ontario, including the Association of Iroquois and Allied Indians, Anishinabek Nation, Grand Council Treaty #3, and Nishnawbe Aski Nation; the Independent First Nations; and the governments of Canada and Ontario. As stated in the 2016 CHRT ruling:

The CCI Parties request that ... a special study be ... conducted ... through a mechanism developed through agreement of the parties ... that allows for the meaningful participation of FNCFS Agencies, First Nations governments, INAC and the Province of Ontario. ... [T]he study would determine the adequacy of the *1965 Agreement* in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount. (*Caring Society* 2016 CHRT 2, para. 101)

The purpose of this study, as identified in a resolution by the Special Chiefs Assembly is to “[P]rovide options on a new First Nations family well-being policy, program delivery, and funding approach that is family-centered, community-directed, and supports better outcomes by focusing on prevention.” (Resolution 21/17, October 25, 2017)

Working closely with the Technical Table, the research for this Study was conducted between January and March 2019. Olthuis Kleer Townshend LLP (OKT), legal counsel for COO, provided expert assistance by completing an analysis of the current *Child, Youth and Family Services Act, 2017 (CYFSA)* and the 1965 Agreement.

The directive and goal for options on a new First Nations child well-being policy and funding approach for short and long-term reform of child welfare were identified by reviewing and synthesizing available documents and literature, and consulting with the Technical Team (see Figure 1) to:

- identify approaches to prevent children coming into care through an emphasis on prevention/child and family well-being services and supports (Chapters Three-Five);
- evaluate the current funding approach and offer options for reform or alternatives to the child and family services (CFS) component of the 1965 Agreement or “IWA” (Chapter Six); and
- examine the 1965 Agreement or IWA and offer options for revisiting the agreement (Chapter Seven).

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<sup>17</sup> The ‘Complainants’ refer to the Caring Society and AFN; the ‘Commission’ refers to the CHRC; and ‘interested parties’ refers to the COO and NAN.

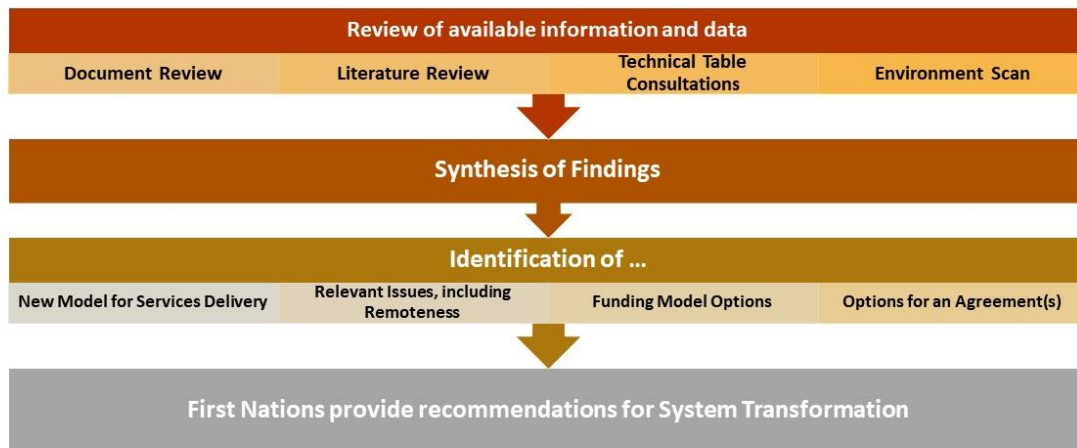


Figure 1. Approach to the Ontario Special Study

This process included an iterative series of discussions between the Technical Table, the First Nations Caucus and the study team, examining evidence of, need for, and approaches toward, system transformation in Ontario.

The final report was reviewed by the members of the Technical Table as well as legal counsel and governmental representatives who provided comments on the draft, with the exception of the recommendations. During this process, the Technical Table acknowledged the need for system transformation. The First Nations Caucus of the Technical Table then developed recommendations for transformation to a First Nations-designed system that meets or exceeds substantive equality for children and families in Ontario through well-being services, supports, and customary care.

The major limitations associated with this approach were the length of time available to complete the research for this study, as well as the access to, and availability of, data and reports to inform the work.

Prior to the discussion of a new approach, the next chapter provides an overview of First Nations child welfare in Ontario.

## CHAPTER ONE: CHILD WELFARE IN ONTARIO

### Key points

- In Ontario, child protection services are governed by the *Child, Youth and Family Services Act, 2017*.
- There are 38 Children's Aid Societies and 14 Indigenous Child Well-Being Agencies across Ontario that provide prevention and protection services.
- A number of reports have discussed child welfare reform. These reports have primarily focused on service and funding adjustments within the child welfare agencies rather than addressing system changes to keep children with their families and prevent them from coming into care.
- A new approach is required to ensure substantive equality and the well-being of children and families. This requires system transformation.

First Nations child welfare in Ontario has a long and troubled history, as it does in the rest of Canada. Between 1879 and 1996, residential schools were the institutional vehicles that were charged with First Nations child welfare (Kozlowski, Sinha, & Richard, 2011), although they operated under the guise of educating and 'civilizing' the Indians. These schools, legislated and funded by the federal government, were principally run mainly by churches and missionaries with the sole purpose of assimilating First Nations children into Anglo-European culture by removing them from their families, communities and culture. A total of 139 residential schools operated across Canada between 1879 and 1946; the last one of which operated until 1996. It is estimated that over 150,000 children passed through the system (Truth and Reconciliation Commission of Canada [TRC], 2015a).

Although these schools were established to 'civilize' the First Nations population, the forced removal of children from their families lead to dual systems: one to educate and the other to 'care' for children. A survey conducted in 1953 found that of the 10,112 students who were then in residential schools, approximately 4,313 were either orphans or were from "broken homes," and by 1960, it was estimated "that 50% of the children in residential schools were there for child welfare reasons (TRC, 2015a, p. 138).

In 1951 a new section (section 88) was amended to the Indian Act, which according to the National Collaborating Centre for Aboriginal Health (2010), "cleared the way for provincial laws to apply to First Nations people living on reserve" (p. 1).<sup>18</sup> This amendment meant that provincial child welfare

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<sup>18</sup> For more information see *Native Children and the Child Welfare System* by Christine Davies, Q.C., 1992, in the *Alberta Law Review* Vol. XXX(4), pp. 1200-1214, and the *Truth and Reconciliation Commission of Canada: The Legacy*, 2015b.

authorities now had the authorization to apply and enforce provincial child welfare laws on reserves, paving the way for what would come to be known as the ‘Sixties Scoop’.

First coined by Patrick Johnson in 1983, the term “Sixties Scoop” refers to the period between 1951 and 1991 when thousands of First Nations children were removed from their families and communities and adopted out to largely non-Indigenous parents (Sinclair, 2007). Such apprehensions and adoptions were facilitated because the often non-Indigenous social workers who went into communities made value judgments based on their own cultures and lived experience, as opposed to understanding the injustices Indigenous peoples and communities faced. Many of these children never saw their families again, and suffered from grave mental, emotional and psychological distress, having lost their language, culture and identity (TRC, 2015a).

As a result of the alarming rate of apprehension of First Nations children, First Nation leaders began to demand greater control over child welfare matters in the 1970s, and in the 1980s many First Nation communities began to develop their own child welfare programs and agencies (Auditor General of Canada, 2008). Those demands and efforts continue to this day. In 1984, the Ontario government made changes to its *Child and Family Services Act (CFSA)* which recognized some rights of First Nations children and allowed for the “development of First Nations child welfare agencies” (Kozlowski, Sinha, & Richard, 2012, p. 2).

## STRUCTURE IN ONTARIO

In Ontario, child protection services are now governed by the *Child, Youth and Family Services Act, 2017 (CYFSA)*, including Indigenous child welfare. Children’s Aid Societies (CASs) are governed by and charged with administering the *Act*, and they are responsible for “investigating reports or evidence of abuse or neglect of children under the age of 18, and when necessary, taking steps to protect children. They also look after children who come under their care or supervision, counsel and support families, and place children for adoption” (Ontario, Ministry of Children, Community and Social Services [MCCSS], 2019).

There are currently 38 Children’s Aid Societies (CASs) and 14 Indigenous Child Well-Being Agencies (ICWBAs, see Appendix A)<sup>19</sup> across Ontario that provide prevention and protection. Fully 85 percent of all First Nations in Ontario receive protection services from an Indigenous agency. There are two Indigenous agencies offering preventative and supportive services that are seeking designation to provide child welfare services, and are not currently authorized to apprehend children.

Although changes to the *CFSA* (1984, 1990) and the introduction of the *CYFSA* afforded First Nations and their delegated agencies greater control over child protection matters, there are a number of criticisms of and challenges with the provincial model.

Indigenous Child Well-Being Agencies are only delegated authority over child welfare matters through provincial legislation. This means that First Nations are limited in their ability to exercise self-governance and self-determination in matters respecting the best interest of their children and families. Further to

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<sup>19</sup> The term ICWBA refers to both the 12 designated Indigenous societies under the *CYFSA* as well as two Indigenous agencies seeking designation as a society under the *CYFSA*.

this point, ICWBAs, while having some leeway to provide services in a more culturally appropriate manner, must still apply provincial legislation and standards that do not meet the needs of First Nations children, families and communities, nor take in to account the myriad historic and ongoing systemic and structural barriers First Nations peoples face. The recent passage of federal legislation, *An Act respecting First Nations, Inuit and Métis children, youth and families*,<sup>20</sup> which is intended to create a pathway for the exercise of First Nations jurisdiction could have implications here.

These barriers, which include poverty, poor housing and limited access to clean drinking water, still result in Indigenous children coming into care at 2.6 times the rate of non-Indigenous children (Ontario Human Rights Commission, 2018) and, once they are in care, Indigenous children are often placed with non-Indigenous families as housing on reserve often times does not meet provincial standards.

To address the issue of First Nations children being placed outside their communities with non-Indigenous caregivers, the Association of Native Child and Family Service Agencies of Ontario (ANCFSAO), a membership organization representing Ontario's Indigenous societies, has developed a new culturally appropriate home study to replace Parent Resources for Information, Development and Education (PRIDE) and the Structured Analysis Family Evaluation (SAFE), the caregiver educational program and home assessment tool. However, MCCSS has yet to authorize its use with Indigenous children and families.

Indigenous Child Well-Being Agencies also face additional difficulties, including: larger geographic areas to which they must provide services; higher costs of transportation, particularly in northern and remote communities; employee recruitment and retention issues; availability of qualified professionals in remote locations; limited housing stock; higher costs associated with delivering culturally-based programming; and lack of other professional and support services available to children and families (Ontario Commission to Promote Sustainable Child Welfare [CPSCW], 2011a).

In spite of the challenges that First Nations communities and agencies experience when addressing child welfare matters, communities and Nations are exerting greater control over the rights and best interests of their children and families. Some Nations, like the Anishinabek Nation, which represents 40 First Nations in Ontario, have developed their own child well-being laws (Anishinabek Nation, 2016); as has the Grand Council of Treaty #3. Other communities, like Wabaseemoong Independent Nation and the Mohawks of the Bay of Quinte, have developed their own community-based models of child and family services.

### *CHILD, YOUTH AND FAMILY SERVICES ACT, 2017*

The *CYFSA*, the act that governs child welfare in Ontario, was passed on June 1, 2017 following a review of the existing *CFSA* in 2014-15. The *CYFSA* was “designed to strengthen and modernize child, youth and family services across Ontario” (MCCSS, 2017, p. 4). The intent was to improve services and outcomes for children and youth.

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<sup>20</sup> For further information see Chapter Two, Changes through Federal Legislation.

Chapter Two offers an analysis of the current *CYFSA* and emphasizes the importance of addressing the government-to-government relationship, including recognition of First Nations jurisdiction to create and implement their own child welfare laws; enhance legislative recognition of Jordan's Principle; a broader mandate for prevention; more space to evolve customary adoption; and adjusting definitions to reflect First Nations worldviews.

## CHILD AND FAMILY WELL-BEING SERVICE DELIVERY

The current child welfare system is reactive, and services operate in silos. Services and supports encourage bringing children into care rather than staying with their family in community. This Study charts a path for system change that emphasizes the well-being services and supports to prevent the need for protection. Chapters Three through Five discuss what is needed to enhance the well-being of children and families. In particular, emphasis is placed on addressing the First Nations Determinants of Well-Being; improving availability of and access and funding for well-being services and supports; and addressing service delivery supports such as human resources, information governance, capital and infrastructure, information and communications technologies, and extraordinary circumstances and contingencies.

## FUNDING

Chapter Six presents an analysis of the current framework for funding First Nations child and family well-being services in Ontario. It reviews the current funding model for funding ICWBAs and examines the reimbursement under the 1965 Agreement. The current funding model promotes an approach to child welfare in which services operate in siloes. Many prevention and well-being programs and services are underfunded. Gaps in funding are identified. Principles governing the development of the First Nations Funding Framework together with a review of the full range of alternative funding methods inform a summary of the advantages and disadvantages of three structurally different funding model options. The chapter concludes with a discussion of ways to compensate for significant community cost differentials.

## THE 1965 AGREEMENT

Judith Rae, JD MSW of Olthuis Kleer Townshend LLP discusses the 1965 Agreement in Chapter Seven. The 1965 Agreement is a bilateral cost-sharing agreement between Canada and Ontario that sets out reimbursement provisions for eligible social services provided on reserve. The original intention behind the establishment of the 1965 Agreement was to make available the full range of provincial welfare programs available off reserve, to status First Nations living on reserve. The 1965 Agreement establishes that the province will deliver, and the federal government will provide reimbursement for, welfare programs available to the general Ontario population.

The services covered are listed in schedules that reference provincial legislation, and they consist of child welfare, Ontario Works (financial assistance), child care (day care) and homemakers services. The formula for calculating Canada's reimbursement to Ontario is complicated, and is based on the proportion of First Nations people who use social assistance and how much that population cost differs from the mainstream cost. It is written as an open-ended, uncapped reimbursement that varies depending on how much Ontario spends. Under the agreement, Ontario has generally been reimbursed

approximately 93% of eligible costs for services for First Nations on reserve (or living off reserve for less than 12 months). Ontario is responsible for and continues to bear the full cost of services for people off reserve.

While there have been comments on the 1965 Agreement during reviews of child welfare services and social assistance, there has never been a full tripartite review of the 1965 Agreement. In the *Caring Society* case, the Canadian Human Rights Tribunal ordered Canada to reform the 1965 Agreement to end discrimination and reflect substantive equality and other aspects of the Tribunal's decision. Chapter Seven of this report discusses some options and recommendations for reform.

## REFORM EFFORTS

A number of reports have been commissioned to reform child welfare, including the *First Nations Child and Family Services Joint National Policy Review* (McDonald, Ladd, et al., 2000), the *Wen:de* reports (Blackstock, et al., 2005), *Realizing a Sustainable Child Welfare System in Ontario* (Ontario Commission to Promote Sustainable Child Welfare, 2012), and *Enabling First Nations Children to Thrive* (Institute for Fiscal Studies and Democracy, 2018). All of these reports largely bypassed addressing the child welfare system for First Nations in Ontario. The primary reason for doing so concerned the existing 1965 Agreement, which is unique to Ontario. The majority of these reports did however call for a separate study to examine the unique funding approach and agreement in Ontario.

These same reports emphasized service and funding adjustments within child welfare agencies rather than the system changes with the associated funding required in First Nations communities to keep children in the community and prevent them from coming into care.

Recent work has occurred that should be considered as the Technical Table embarks on system transformation. In particular, NAN (Barnes Management Group, 2019) has completed a study examining the remoteness quotient for its communities. Their study has resulted in the “development of a remoteness coefficient methodology that can be readily applied to funding for child and family services to determine the additional funding needed to provide the same standard of service as found in non-remote areas of the province” (p. 6). The “applicability of the remoteness coefficients across Canada” (p. 6) was also examined. The NAN study concluded that “Though the remoteness quotients provide a credible means to allocate a pool of funds, the only way to truly determine appropriate funding for the NAN communities is to factor in actual community conditions, resource requirements and gaps” (Barnes, 2019, p. 8). The Technical Table has indicated the importance of reviewing the results of this study in conjunction with information obtained from the community needs assessments to be done in Stage 1 of transformation in Ontario.

The National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) has tabled its report *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls: Volume 1a* which found that “First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people in Canada have been the targets of violence for far too long” (p. 1). They claim that “This violence amounts to a race-based genocide” (p. 1). When discussing child welfare, they point “to the need for a comprehensive, systems-level approach to transforming the ways that child welfare



operates in Canada from its most fundamental level – the lack of respect for Indigenous families and the rights of Indigenous children” (p. 339).<sup>21</sup>

Finally, it is expected that this study will inform the continued work of the National Advisory Committee on First Nations Child and Family Services Program Reform (NAC), and that their work with the Institute for Fiscal Studies and Democracy (IFSD) may further inform the implementation of the recommendations from this Study.

### **CALL FOR A DIFFERENT APPROACH**

This Study calls for a new approach to service delivery and funding to ensure substantive equality and well-being for First Nations children and families. Transformation based on First Nations self-determination and jurisdiction means that First Nations design, direct, and deliver services and supports to keep children and families well and together in community with funding that meets or exceeds substantive equality. A path for system change is offered in *Chapter Eight: Transformation Process and Recommendations*.

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<sup>21</sup> ANCFSAO was the only Child and Family Service member association that had party standing to the National Inquiry process.

## CHAPTER TWO: THE CHILD, YOUTH AND FAMILY SERVICES ACT

This chapter offers an analysis of the current *CYFSA*. Emphasis is on the importance of addressing the government-to-government relationship, including recognition of First Nations jurisdiction to create and implement their own child welfare laws; enhance recognition of Jordan's Principle; a broader mandate for prevention/well-being services; more space to evolve customary adoption; and adjusting definitions to reflect First Nations worldviews.

### Key points

- The *CYFSA* is the child and family services legislation in Ontario, and contains provisions specific to First Nations, Inuit, and Métis children and families. Viewed as a one-size-fits-all solution for the non-Indigenous and First Nations populations, the legislation needs to incorporate language that meets the needs and concerns of First Nations.
- First Nations' own laws, written by each First Nation, and interpreted and enforced according to its own terms, could properly accommodate the differences that First Nations have between each other and between themselves and the mainstream.
- The Federal government enacted *An Act respecting First Nations, Inuit and Métis children, youth and families* which established minimum standards for delivery of services nationwide. This Act received Royal Assent on June 21, 2019 will come into force on January 1, 2020. However, it is unclear whether or not this Act will create meaningful opportunities for First Nations' exercise of self-government and jurisdiction over child and family services. This Act is also silent on funding.
- First Nations have made some recommendations about provincial legislation that remain outstanding and include the following:
  - The *CYFSA* gives some attention to "least disruptive measures" but it needs to prioritize child and family well-being services and supports in a much more comprehensive way.
  - The *CYFSA* definition of "child in need of protection" needs to encourage a more prevention-focused approach, ensuring that family supports are provided, and prioritizing family integrity in most cases while reserving apprehension for serious cases.
  - The *CYFSA* should automatically add grandparents as parties to matters involving First Nations children if they want to participate, rather than raising barriers to family participation.
  - The implementation of provincial standards does not reflect First Nations worldviews, and needs to be opened up to allow First Nations' own standards (e.g. home studies, etc.).
  - The *CYFSA* should enhance the space and language for using traditional customary care and adoption.
  - The *CYFSA* should enhance the space for Jordan's Principle.

First Nations in Ontario have consistently raised concerns regarding the provision of child and family services to First Nations children in Ontario. Throughout the development of the new *CYFSA*,<sup>22</sup> the COO Technical Table on the Disentanglement of Child Well-Being Jurisdiction maintained that the essential elements for the development of child welfare legislation included: a focus on prevention versus protection; an increased role of First Nations governments and communities, including, but not limited to, recognition of First Nations jurisdiction to create and implement their own child welfare laws; recognition of culture and community as components essential to, and not inferior to other considerations, in the determination of the best interests of a child; enhance recognition of Jordan's Principle; and requirements for cultural competency when placing First Nations children (among others).<sup>23</sup> Many of these elements have not been fully incorporated into the *CYFSA*, and aspects of the legislation are incompatible with many First Nations' worldviews. These elements are discussed in the following sections, and as omissions these elements continue to interfere with First Nations in the province of Ontario working collaboratively to provide culturally appropriate child welfare services.

A government-to-government relationship between First Nations and Ontario would respect First Nations jurisdiction to create and implement their own child welfare laws where they choose to do so.

### **INTERPRETATION AND THE IMPOSITION OF A ONE-SIZE-FITS-ALL LAW**

The Preamble of the *CYFSA* states the following:

Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families

First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.

Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.<sup>24</sup>

While fundamentally true, the underlying assumption in the *CYFSA* is that First Nations children are expected to live according to the same measures of success as those applied to mainstream society. For many First Nations, traditional education in a manner that allows a child to focus on learning language

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<sup>22</sup> *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1.

<sup>23</sup> Chiefs of Ontario Technical Table on the Disentanglement of Child Well-Being Jurisdiction, *Proposed Amendments to the CFSA*, December 27, 2016.

<sup>24</sup> *CYFSA*, *supra*, Preamble.

and culture is preferred. Learning from Elders and spending time on the land outside of a formal classroom is an important part of First Nations child development.

The *CYFSA* recognizes that “all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.”<sup>25</sup> Rather than functioning as a one-size-fits-all solution, the *CYFSA* must incorporate language that meet the needs and concerns of the First Nations, as First Nations themselves define it. Some First Nations may choose to apply the *CYFSA* in their jurisdiction based on the degree to which their concerns have been addressed. Other First Nations (e.g., Anishinabek Nation) want their own laws written, interpreted and enforced according to their own terms. These laws could properly accommodate for the differences that First Nations have between each other, and between themselves and the mainstream – differences in worldview, in local needs and realities, in systems of caring for and protecting children, and in understanding of what it means to be “well” and “healthy.”

### BEST INTERESTS OF THE CHILD

A particularly problematic aspect of the *CYFSA* is the prescribed definition of the “Best Interests of the Child.”<sup>26</sup>

The definition includes a consideration of “the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child’s cultural identity and connection to community.”<sup>27</sup> This provision is encouraging, and a recent case says that it signals a change in content and emphasis, and requires attention to the specific communities, cultural practices and places that connect to the well-being of a First Nations child.<sup>28</sup>

Implementation of “best interests” in practice remains heavily influenced by the judgment of the person applying it. While the *CYFSA* acknowledges the importance of considering the physical, mental, and emotional needs<sup>29</sup> and development of the child,<sup>30</sup> there are real disagreements about how those are best served. Connection with culture, community and extended family, as well as with one’s family of origin, even if that family is not able to fully care for the child, might be seen as of great long-term importance for a child’s well-being by many First Nations. In the mainstream, those factors often get

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<sup>25</sup> *CYFSA*, *supra*, ss. 1(2) and 6.

<sup>26</sup> *CYFSA*, *supra*, ss. 74 and 179.

<sup>27</sup> *CYFSA*, *supra*, ss. 74(3)(b) and 179(2)(b).

<sup>28</sup> *Kawartha-Haliburton Children’s Aid Society v. M.W.*, 2019 ONCA 316. Interpretations of the former Ontario child welfare legislation, the *Child and Family Services Act* (“*CFS*”), seemed to make First Nations cultural considerations subject to other considerations in the broader ‘best interests of the child’ test. The former legislation also did not include language on a child’s “connection to community”.

<sup>29</sup> *CYFSA*, *supra*, ss. 74(3)(c)(i) and 179(2)(c)(i).

<sup>30</sup> *CYFSA*, *supra*, ss. 74(3)(c)(ii) and 179(2)(c)(ii).

downgraded in favour of a present attachment to foster parents. Courts and others interpreting and enforcing the *CYFSA* often lack an appreciation of how attachment to a non-Indigenous home frequently breaks down when First Nations children develop their identity in the teenage years.<sup>31</sup>

Similarly, the outcome of a best interests analysis is going to be shaped by the services and options made available within the system. The *CYFSA* gives some attention to “least disruptive measures” but it does not prioritize prevention or child and family well-being as much as it could, and does not provide for preventative or well-being supports to a family; it assumes that supportive services, if any, come from elsewhere. It is still designed around the apprehension of a child from their home as a routine intervention if things are not going well in that home. The *CYFSA*’s ‘best interest of the child’ provision and its interpretation to date does not align with the priorities or worldviews of many First Nations peoples and it does not align with the specific needs of many First Nations children.

## OTHER DEFINITIONS

The differences in worldview continue throughout the legislation. For example, the *CYFSA* distinguishes between “extended family,” inclusive to all members of a child’s First Nation, and “relative,” which refers exclusively to specific members of the family. First Nations understandings may be both narrower and broader, e.g. for some purposes in some communities, the relevant group may be a clan or certain people within specific family relationships; for other purposes, the term “relative” may reflect “all my relations”, which encompasses all of our human and non-human relations.<sup>32</sup>

Under the *CYFSA*, a “child” means a person younger than 18. Some services can also be extended to those persons over the age of 18 in specified circumstances. The *CYFSA* also addresses “young persons,”<sup>33</sup> being people between the ages of 12 and 18 who have had interactions with the *Youth*

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<sup>31</sup> Kenn Richard, (2007) “On the matter of cross-cultural Aboriginal adoptions” in I. Brown, F. Chaze, D. Fuchs, J. Lafrance, S. McKay, & S. Thomas Prokop (Eds.), *Putting a human face on child welfare: Voices from the Prairies* (pp. 189-202). Prairie Child Welfare Consortium [www.uregina.ca/spr/prairechild/index.html](http://www.uregina.ca/spr/prairechild/index.html) / Centre of Excellence for Child Welfare [www.cecw-cepb.ca](http://www.cecw-cepb.ca)

<sup>32</sup> *CYFSA, supra*, s. 2(1). Many Indigenous communities, especially Anishinaabe peoples in Ontario, refer to “all our relations” this means something very different to these communities. It encompasses all of our human relations (not just limited to certain defined categories such as grandparents, etc.) but also refers to our non-humans and inanimate relations who include the animals, the water, and the rocks. See Aaron Mills (Wapshkaa Ma’ingan), “Aki, Anishinaabek, kaye tahsh Crown” (2010) 9:1 Indigenous L J 107 at pp. 117.

<sup>33</sup> *CYFSA, supra*, s. 2(1). In many Indigenous communities, “youth” is properly understood as those people who are between the ages of approximately 12 to 29. This is the second stage of life represented in the southern direction. “The south represents the summertime, a time where everything is growing and coming to fruition. This direction also represents adolescence, a stage in life where we are learning new things, trying to figure out life’s lessons, and understanding our place on this journey.” See page 7 [https://www.beststart.org/resources/hlthy\\_chld\\_dev/pdf/CBS\\_Final\\_K12A.pdf](https://www.beststart.org/resources/hlthy_chld_dev/pdf/CBS_Final_K12A.pdf)

*Criminal Justice Act*. However Indigenous understanding of life stages may be different, and may for example include a concept of “youth” which includes both teenage years and young adulthood.<sup>34</sup>

First Nations may have different views on who should be heard when children are vulnerable. In the development of the *CYFSA*, COO, among others, recommended that grandparents be automatically added as parties to matters involving First Nations children if they want to participate. This recommendation was not incorporated into the Act. As such, grandparents with something to say have to make costly and time consuming applications to be involved in child welfare matters, delaying stability for the child, and sometimes resulting in the child becoming established with other caregivers. In a Eurocentric worldview, the privacy of the nuclear family may take precedence, but for many First Nations, raising children is not just a parental responsibility and the priority may be to make it as easy as possible for extended family members to participate, know what is happening with the child, discuss, and help.

### “CHILD IN NEED OF PROTECTION”

The *CYFSA* outlines the specific situations that may lead to a determination that a child is in need of protection.<sup>35</sup> These include circumstances in which the “risk of harm” is sufficient to determine that intervention in a family is necessary. It is important to ensure that children are removed from situations in which there is actual harm, or a likelihood of harm. The concept of ‘risk’ and its application can and does extend child welfare decisions far beyond the cases in which actual harm has resulted or is likely.

This definition of risk is linked to past behaviours or experiences of the parent. This does not account for the development of the parent, a parent’s own involvement with child welfare services (which occurs at much higher rates for First Nations), the existence of a potentially abusive partner even where the parent is no longer involved with that person. Other such facts about the parent have been used as tools to remove children prematurely, supported by stereotypes and biases about the abilities of First Nations parents to care for their children. Mainstream laws and policies do not reflect or account for First Nations child welfare laws, standards and circumstances.

First Nations communities are in the best position to understand the personal histories, successes and failures of their citizens. The existence of risk should not be determined on the basis of perceived risk or bias, it needs to be realistically assessed with detailed local knowledge and according to First Nations standards. It also needs to be balanced against the risk of harms to the child from any removal and time in care, which are frequently disruptive and can be alienating.

First Nations have called for changes to the definition of “child in need of protection” to encourage an approach focusing on child and family well-being, ensuring that family supports are provided, and prioritizing family integrity in most cases while reserving apprehension for serious cases. These recommendations were not taken up, and the definition of a child in need of protection under the

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<sup>34</sup> *Youth Criminal Justice Act*, S.C. 2002, c. 1.

<sup>35</sup> *CYFSA*, *supra*, s. 74(2).

CYFSA remains very broad. Its application, through standardized risk assessment tools and related policies, continues to bring First Nations children into the system.

## PROVINCIAL STANDARDS

All Indigenous and non-Indigenous societies designated under the *CYFSA* are required by the *CYFSA* to operate in accordance with prescribed standards.<sup>36</sup> These standards have a history of unsuccessfully providing for the well-being of Indigenous children. The continued application of provincial standards to First Nations children is problematic and requires additional consideration. For example, an ICWBA developed HEART and SPIRIT programs to replace the use of the SAFE home study assessment tool and the PRIDE training program for foster and adoptive parents, given that it had been long recognized that these standardized programs do not consider the unique circumstances of Indigenous children and families. The Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) took up the HEART and SPIRIT program in order to pursue its recognition by the Ontario government, to be used by CASs and ICWBAs. The Ministry of Children, Community and Social Services (MCCSS) has yet to authorize its use with Indigenous children.

## CUSTOMARY ADOPTION

The *CYFSA* does not address customary adoptions conducted by a First Nation.

Under the Quebec Civil Code, customary Aboriginal Adoptions allow First Nations significant autonomy to administer their own adoption processes.<sup>37</sup> There are no licensing requirements, only the requirement that a customary adoption certificate be registered within 30 days of being issued.<sup>38</sup> While relatively few details are included in the Code, this allows for the flexibility necessary for Indigenous nations to determine and administer their own customary practices, so long as the rights of the child and their best interests are upheld. For example, the Cree Nation Government has set up committees that will review proposed adoptions and meet with families and local Elders to arrange details before the certificate is issued by a Cree government authority.<sup>39</sup> While this approach continues to uphold a definition of the “best interests of the child” that may or may not align with the particular Indigenous

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<sup>36</sup> *CYFSA*, *supra*, s. 35(2).

<sup>37</sup> Arts. 132.0.1, 152.1 and 543.1 CCQ. Art. 132.0.1 recognizes that there may be continuing relationships and responsibilities between birth parents and children beyond adoption. The adoption certificate includes information about the birth parents and the adoptive parents, providing information to the child where connections are not maintained. Art 152.1 allows the Aboriginal nation to designate a body “competent to issue an Aboriginal customary adoption certificate”. Art 543.1 allows customary adoptions, so long as they are “in harmony with the principles of the interest of the child, respect for the child’s rights and the consent of the persons concerned may be substituted for conditions prescribed by law.”

<sup>38</sup> CCQ, *supra*, art. 129.

<sup>39</sup> CBC, “Cree customary adoption system taking shape”, April 10, 2019.

community's worldview, the degree of space for interpretation afforded Indigenous customary laws is promising.

Similarly, the Northwest Territories and Nunavut have long-standing laws which allow for territorial recognition of customary adoptions through application for a certificate.<sup>40</sup> In British Columbia, customary adoption may be recognized on application as having the effect of an adoption under the legislation.<sup>41</sup> Broadly speaking, the courts have recognized customary adoptions if the following criteria are met: both the natural and adoptive parents consent; the child's placement with the adopting parents is voluntary; the adopting parents are Aboriginal or entitled to rely on Aboriginal custom; and the court deems that there is an appropriate rationale for the particular Aboriginal custom adoption.<sup>42</sup>

While recognition of customary adoptions is a beneficial move toward the exercise of Indigenous inherent jurisdiction, its exercise in today's context requires adaptations from more informal traditional practices to ensure the safety of the child. First Nations and other parties in Ontario are acutely aware of the need for transparency in the vetting process of potential adoptive parents and mechanisms for oversight and support.

Customary care under the *CYFSA* affords a bit of a middle ground that is still growing and changing in its use by First Nations and their ICWBAs. It may develop further now that First Nations finally have access to funding for their own Band Representative(s) (*Caring Society* 2018 CHRT 4, para. 427). However it is not customary adoption, and it remains quite regulated and standardized under the *CYFSA*'s rules. The space for First Nations to fully and safely govern their own adoptions or customary care placements is not yet available in Ontario.

### OPPORTUNITIES FOR FIRST NATIONS CONTROL UNDER THE *CYFSA*

Though it does not recognize the inherent rights of First Nations in self-government, the *CYFSA* provides limited opportunities to exercise control over child welfare matters. One is the ability to create a First Nations child and family service authority that may be recognized as a children's aid society.<sup>43</sup> Most, though not all, First Nations in Ontario now have their own authority, i.e. ICWBA, although they must still adhere to the *CYFSA* laws and policies.

The *CYFSA* also provides the ability for First Nations to apply for an exemption of the application of its provisions.<sup>44</sup> Theoretically, this could provide flexibility for First Nations to provide services in a manner that may better align with traditional values. However, exemptions are extremely difficult to obtain and

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<sup>40</sup> *Aboriginal Custom Adoption Recognition Act*, S.N.W.T. 1994, c. 26, s. 2(1).

<sup>41</sup> *Adoption Act*, R.S.B.C. 1996, c. 5, s.26(2).

<sup>42</sup> *Tagornak, Re*, 1983 CarswellN.W.T. 51, 50 A.R. 237, [1984] 1 C.N.L.R. 185. (NWT SC)

<sup>43</sup> *CYFSA*, *supra*, s. 70.

<sup>44</sup> *CYFSA*, *supra*, s.342.



have very rarely been issued. Regardless of the limitations of the *CYFSA*, some First Nations are moving forward to develop and implement their own child welfare laws and standards.

### CHANGES THROUGH FEDERAL LEGISLATION

The key solution is to affirm First Nations' jurisdiction over child welfare in federal and provincial legislation.<sup>45</sup> Though the *CYFSA* promotes some incremental increases in First Nations' control over program delivery within the existing *CYFSA* scheme, it avoids the recognition of jurisdiction.

The federal government has recently passed *An Act respecting First Nations, Inuit and Métis children, youth and families*, legislation on Indigenous child and family services that establishes minimum standards for the delivery services nationwide and creates a pathway for the exercise of First Nations jurisdiction.

The promise of recognized jurisdiction sounds positive, but the reality of the *Act respecting First Nations, Inuit and Métis children, youth and families* creates a number of complications. The Act does not contain funding terms. With funding left up to each negotiation of a "Coordination Agreement", the exercise of jurisdiction is not likely to come quickly or easily.

In addition, the Act creates a complex patchwork of laws, in which all laws – provincial, federal and Indigenous – apply together unless inconsistent with one another. In the case of a conflict or inconsistency, an Indigenous law would take precedence over a provincial law, and most other federal laws. The Act also says that the provisions of an Indigenous law would not even apply if they were found not to be in the best interests of a child, which is a vague and open-ended exception. Further, parts of the Act, which establish national "minimum standards," would prevail over Indigenous laws and over provincial law.

The *Act*, which comes into force on January 1, 2020 and was not specifically part of this Study, will require further discussion and analysis as system transformation unfolds.

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<sup>45</sup> Cynthia Wesley-Esquimaux, "Reforming First Nation child welfare: Summary of Engagement" (Canada: September 2017). Online: <<https://www.sac-isc.gc.ca/eng/1507122976766/1533315997269>>.

## CHAPTER THREE: ADDRESSING FIRST NATIONS DETERMINANTS OF WELL-BEING TO PREVENT CHILDREN COMING INTO CARE

### Key points

- Addressing the First Nations Determinants of Well-Being is essential to supporting children and families and keeping children out of the child welfare system.
- Language, culture and place are key to individual and collective identity, and ultimately, well-being.
- A concerted approach is needed to address and dismantle the historical and continued impacts of colonial interference, including systemic racism.

The literature reviewed (e.g., Blackstock, et al., 2005; Sinha et al., 2011) describes the well-known factors bringing children into the child welfare system, such as poverty, neglect, caregiver risk factors and household characteristics, the impacts of intergenerational trauma, and systemic racism (see Appendix B). This chapter contends that these factors are directly connected to what the First Nations Caucus of the Technical Table calls the First Nations Determinants of Well-Being (see Appendix C).<sup>46</sup> In the report *Aboriginal Children in Care – Report to Canada’s Premiers* by the Aboriginal Children in Care Working Group (2015), these determinants are considered to be the “conditions in which people are born, grow, live and work” (p. 1). Encompassed within First Nations self-determination and jurisdiction, these determinants include:

- Language, culture and place;
- colonization and systemic racism;
- intergenerational trauma and legacy of child welfare policies (i.e., residential schools, 60s scoop, and the mainstream child welfare system);
- poverty and income;
- health and social services;
- housing;
- education and employment;
- water quality; and
- food security.

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<sup>46</sup> These determinants are adapted from the work of Charlotte Loppie Reading (2018) and her previous work with Fred Wien (2009). These authors contend that these determinants of Indigenous health go beyond the social determinants identified by non-Indigenous researchers and practitioners (see Appendix C).

The following diagram (see Figure 3.1) illustrates the relationship between First Nations systems of well-being and the determinants.

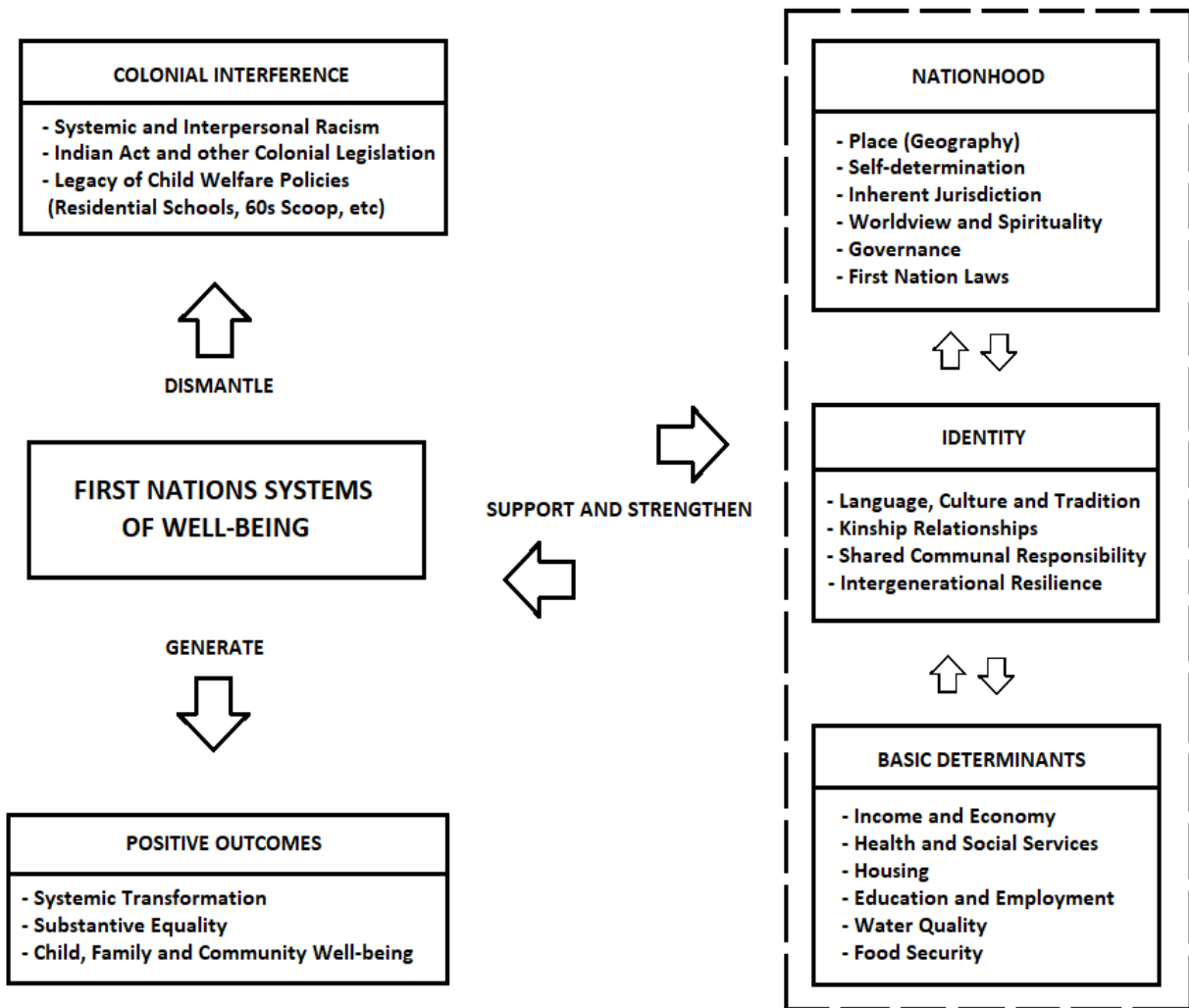


Figure 3.1 Relationship between First Nations systems of well-being and their determinants.

These determinants are interconnected, synergistic, and cumulative in their effects. Addressing them supports well-being and reduces the number of First Nations children in the child welfare system. Each determinant is discussed in turn.

### LANGUAGE, CULTURE AND PLACE

First Nations have persistently contended that language, culture and place are key to individual and collective identity. The Assembly of First Nations (AFN) noted in 1994 that

language is necessary to define and maintain a world view. For this reason, some First Nation Elders to this day will say that knowing or learning the native language is basic to any deep

understanding of a First Nation way of life, to being a First Nation person. For them, a First Nation world is quite simply not possible without its own language. For them, the impact of residential school silencing their language is equivalent to a residential school silencing their world. (as cited in TRC, 2015b, p. 6)

First Nations languages reflect a relational experience and interaction with the natural world. They reflect the energy and rhythm of the land and the accumulated knowledge of the ancestors (Ermine, 1995). The languages “communicate through descriptions of movement and activity” always deepening one’s awareness of the constant flux and changing rhythms of their particular ecological system (Alfred, 2004, p. 98). The Anishinabek Nation says

Anishinabek societies [are] based upon the principle that we are a direct part of nature and that all of nature is interconnected and must be kept in careful balance for the health of our people and all of Creation. It was shared that our lands and nature held various natural laws and teachings that were highly respected by our people and which we depended upon for survival. (Anishinabek Nation, 2018, p. 14)

Language, culture and place are essential to developing identity. Evidence (First Nations Information Governance Centre [FNIGC], 2018) suggests that those who speak their language and participate in cultural activities are more resilient, have a stronger sense of identity, and have better outcomes in health and education (p. 162). The same report also suggests “a growing interest in the young population living on reserve to relearn their culture and language” (p. 163).

The TRC (2015a), in its final report, called on the federal government to sufficiently fund “language revitalization and preservation” which includes reflecting the “diversity of Aboriginal languages” (p. 157). The best approach is for each First Nation to manage their own revitalization of language and culture, which are integral to improving all aspects of well-being (p. 157).

## COLONIZATION AND SYSTEMIC RACISM

The *Aboriginal Children in Care – Report to Canada’s Premiers* (Aboriginal Children in Care Working Group, 2015)<sup>47</sup> contends that “the ongoing impact of colonization is a key factor” in children coming into care and thus must be addressed to improve outcomes (p. 15). Authors contributing to the *Determinants of Indigenous Peoples’ Health in Canada: Beyond the Social* (Greenwood, de Leeuw, & Lindsay, 2018) concur, and indicate that colonization has yet to be consistently “fully or consistently accounted for” (p. xxii) in addressing well-being. Colonization is considered a structural determinant as it

Generate[s] or reinforce[s] social stratification in the society and that define[s] individual socioeconomic position. These mechanisms configure the health opportunities of social groups

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<sup>47</sup> In 2014, the Premiers across Canada created a working group to address the disproportionate number of Aboriginal children in care. The working group included “provincial and territorial (PT) Ministers [and was] co-led by the Premier ... of the Northwest Territories and the Minister ... of Manitoba, and assisted by Premier ... of British Columbia” (Aboriginal Children in Care Working Group, 2015, p. 3).

based on their placement within hierarchies of **power, prestige and access to resources** (economic status) [author's emphasis]. (Solar & Irwin, 2010, p. 30)

The fundamental implication is that improvements on the determinants of well-being require addressing the distribution of power. Because “micro-level” modifications within the child welfare system in isolation are insufficient on their own, changes in the distribution of power need to include “macro-sphere” or structural level changes (e.g., governance, economics, politics, etc.) to address inequities (Solar & Irwin, 2010, p. 22). Self-determination and jurisdiction are inherent rights and their recognition is critical to the success of all these changes.

The Ontario Human Rights Commission (2018) initiated an inquiry “to examine the involvement of Indigenous and other racialized children and youth in the child welfare system” (p. 2). The Commission was particularly interested in “whether Indigenous and Black children [were] over-represented in CASs, particularly in admissions in care” (p. 2). The Commission found serious concerns with the disproportionate number of Indigenous children and youth, particularly in mainstream CASs, and called on mainstream organizations to review their “structures, policies, practices, processes, decision-making practices and organizational cultures that may adversely affect Indigenous and Black families, and potentially violate the Ontario *Human Rights Code*” (p. 3). The Commission further indicated the necessity of addressing the broader determinants of well-being that contribute to overrepresentation and called for a “multi-pronged response by governments, CASs and civil society to create truly equitable outcomes” (p. 5).

The Action Group on Access to Justice (TAG) highlights the interactions of the child welfare system with the justice system and their combined impact on the overrepresentation of Indigenous children in both systems, stemming from experiences such as:

- Mistrust of lawyers, social workers, courts, decision-makers and institutional settings
- Lack of communication, transparency and accountability to communities
- Lack of resources for navigating police, justice and child welfare systems
- Failure at every level to listen to Indigenous children, families and communities
- Perceptions of discrimination, disrespect and indifference to outcomes
- Barriers to understanding, accessing and receiving resources and support at all levels, even when such resources exist (2016, pp. 2-3)

Indigenous youth in Ontario are overrepresented not only in foster care but in correctional institutions as well, at an astounding 64.5 per 10,000 population, a rate even higher than Indigenous adults, while the non-Indigenous youth rate is 8.2 per 10,000 (TAG, 2016, p. 7). Family breakdown was determined to be a driving factor in these elevated rates of incarceration (p. 7).

In 2016, over half of children (52.2%) under age 15 in foster care in Canada were Indigenous, despite Indigenous children only accounting for 7.7% of the child population. There are more Indigenous children in care today than there were in residential schools at the height of their use. (Ontario Human Rights Commission, 2018, p. 7)

The Ontario Human Rights Commission (2018) asserts that discrimination against Indigenous children is present both systemically as well as personally in the provision of child welfare, from discriminatory underfunding of on reserve services, to the bias evident in worker interactions that may favour non-Indigenous worldviews, modes of communication, or negative stereotypes about Indigenous families (pp. 26-27, 46). The Commission points to the findings and landmark ruling of the CHRT as further evidence of discrimination (pp. 18-19).<sup>48</sup> One example is reallocating housing and infrastructure funding to child welfare services, undercutting the very supports that families need to prevent their children from going into care (Ontario Human Rights Commission, 2018, p. 19).<sup>49</sup> The Wen:de report (Blackstock, et al., 2005), a seminal report on Indigenous child welfare across Canada, references that the current funding arrangements may promote a “perverse incentive” to bring children into care rather than employing family-based approaches (p. 18). Because of the 1965 Indian Welfare Agreement, a bilateral cost-sharing agreement made between Canada and Ontario, a separate study was recommended.

Colonization and systemic racism interfere with First Nations children and families at every opportunity. This disrupts individual and collective identity, increases the likelihood of poor outcomes, and denies a child’s fundamental right to well-being. Evidence (First Nations Development Institute & Echo Hawk Consulting, 2018; McBride, 2015), indicates that a multifaceted solution (e.g., curriculum, positive peer contact, positive narratives through media, etc.) is necessary to change “racist habits” (Ngo, 2016) which are deeply embedded in systems, structures, and peoples.

### INTERGENERATIONAL TRAUMA AND LEGACY OF CHILD WELFARE POLICIES

Collective trauma has occurred because of the direct assault on First Nations culture, including the relationship between parent, child and community. The data on caregiver risk factors and household characteristics “cannot be properly interpreted without recognition of the ongoing implications of the historic pattern of mass removal of First Nations children from their homes and communities” (Sinha et al., 2011, p. xiii).

In a 2002–03 survey by the First Nations Centre, 71.5% of residential school Survivors reported that they had witnessed the abuse of others and had experienced abuse themselves in the schools. In the same survey, 43% of intergenerational Survivors believed that they were affected by their parents’ experience at residential schools, and 73.4% reported that their parents were affected by their grandparents’ experience at residential schools. (TRC, 2015b, p. 32)

The severe, repetitive, and often fatal acts of physical, sexual and emotional abuse that took place in residential schools have left an enduring legacy of pain and suffering that cannot be quantified, the lasting effects of which have only been exacerbated and compounded by the widespread removal of

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<sup>48</sup> For further information see *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2, January 17.

<sup>49</sup> For further information see *Caring Society* 2016 CHRT 2, para. 390; and *Canada knows better and is not doing better: Federal Government documents show ongoing discrimination against First Nations children receiving child welfare services on reserve and in the Yukon* by First Nations Child and Family Caring Society of Canada, 2015.

First Nations children from the Sixties Scoop to the present day (Sinha et al., 2011, pp. 6-7; TRC, 2015b, pp. 11-12). The systematic dismembering Indigenous bonds of family and identity constitutes a cultural genocide that removes children from their inherent sources of love and resilience:

The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. (Johnston as cited in TRC, 2015b, p. 16)

The Indian Residential Schools Adjudication Secretariat, at the request of the TRC (2015b), conducted an analysis of claims submitted through the Independent Assessment Process. The results demonstrated an overwhelming occurrence of lasting impacts of abuse in survivors of residential schools, including depression and low self-esteem, relationship problems, substance abuse, sexual issues and parenting problems (p. 32).

One-third (33%) of the claimants reported having an encounter with the criminal justice system (40% of males and 24% of females). This is significant because a parent who has been charged with a crime or has been the victim of a crime may be particularly vulnerable to child welfare investigations and apprehensions. (p. 32)

A number of reports (e.g., Amnesty International, 2009; Mandell, Clouston Carlson, Native Women’s Association of Canada, 2014; Ontario, Commission to Promote Sustainable Child Welfare, 2012; Royal Commission on Aboriginal Peoples, 1996; Sinha et al., 2011; TRC, 2015a) illuminate the linkage between child welfare policies; including residential schools, the subsequent Sixties Scoop, and the current child welfare system. Regardless of form, the result has been the disruption of relationships between the children and their families, community, and particular location. William Aguiar and Regine Halseth (2015, p. 9), in a publication for the NCCAH, offer Table 3.1 to illuminate the complexity of the relationships between historic trauma and the resulting social problems.

Table 3.1 Relationships between historic trauma and social problems

Historic Traumas	Effects of Historic Trauma	Resulting Social Problems that perpetuate traumas for subsequent generations
<ul style="list-style-type: none"> <li>• Decimation by disease</li> <li>• Loss of land, culture, language, culture and traditional ways of life</li> <li>• Residential schools</li> <li>• A severing of familial and community connections</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of resources (both financial and coping) to support healthy living</li> <li>• Lack of cultural identity and spirituality</li> <li>• Unresolved grief and shame</li> <li>• Helplessness and disempowerment</li> <li>• Shame-bound families</li> <li>• Loss of cultural tools that can assist with healing losses, grief and shame</li> </ul>	<ul style="list-style-type: none"> <li>• Chronic anxiety and depression</li> <li>• Domestic and other forms of relational violence</li> <li>• Sexual abuse</li> <li>• Addiction</li> </ul>

Historic Traumas	Effects of Historic Trauma	Resulting Social Problems that perpetuate traumas for subsequent generations
<ul style="list-style-type: none"> <li>• Social welfare policy</li> <li>• Institution of reserves</li> <li>• Imposition of patriarchy</li> <li>• Racism</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of self-determination</li> <li>• Socio-economic disadvantages including poverty and education</li> <li>• Loss of knowledge about healthy parenting/relationship skills</li> </ul>	<ul style="list-style-type: none"> <li>• Traumatic bonding<sup>50</sup></li> <li>• Self-destructive behaviours</li> <li>• High suicide rates</li> </ul>
<p>Source: “Addressing the Healing of Aboriginal Adults and Families Within a Community-Owned College Model” by William Aguiar and Regine Halseth, 2015, p. 9. Copyright by the National Collaborating Centre for Aboriginal Health.</p>		

The FNIGC (2018) in its third phase of the *National RHS* specifically explored “attendance at Indian Residential Schools (IRS) and how these experiences [were] linked with various indicators of health and wellness” (p. 140). Some key findings addressed the widespread impacts of the legacy of residential schools, with “nearly three quarters of adults ... [having attended or having] ... a parent or grandparent who attended” (p. 140). Of those adults who attended, nearly two thirds reported “a negative effect on their overall health and wellbeing” (p. 140). Descendants of residential school survivors were more likely to have “seriously considered suicide” and have higher rates of drug and alcohol consumption than the general First Nations population (p. 141).

While the legacy of the ongoing colonial project in its entirety is beyond the breadth of this analysis, all of the information presented in this section must be understood within the lens of intergenerational trauma that has compounded over the past century. The consequences of this trauma continue to be borne by the survivors of Canada’s child welfare system and their families.

**POVERTY AND INCOME**

Existing research shows a consistent pattern in which low-income families are more likely to be investigated by the child welfare system than other families, and poverty rates are higher for the First Nations population than for the non-Aboriginal population. (Sinha et al., 2011, p. 101)

Melissa Brittain and Cindy Blackstock (2015) that poverty is a significant “structural risk factor” (p. 12) for First Nations children coming into care. In an interview for *The Tyee*, Nico Trocmé (Hyslop, 2018, May

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<sup>50</sup> William Aguiar and Regine Halseth (2015) refer to traumatic bonding as “the relationships based on terror and abuse of power (Bloom, 1999). In these relationships, victims develop strong relationships to their abusers, seeing them not only as a source of pain and terror, but also as a source of relief from that pain” (Dutton & Painter, 1981; Bloom, 1999 as cited in, p. 9).



14), director of McGill University's School of Social Work, indicated "Most Indigenous children end up in care because their parents are poor" (para. 5). As David Macdonald and Daniel Wilson (2016) indicate

In actuality, poverty can be exacerbated by other conditions, creating additional barriers for children trying to achieve their full potential. On reserve, these barriers include chronic underfunding of schools and child welfare services, crowded housing, and undrinkable water, to name just a few of many examples. (p. 6)

Macdonald and Wilson (2016) found that 51% of [First Nations children] ... live in poverty, rising to 60% on reserve" (p. 5). According to the *National Report RHS Phase 3* (FNIGC, 2018), "Unemployment for First Nations adults is high; however, labour force participation is also high, which may point to a lack of opportunities in First Nations communities" (p. 15).

Figure 3.2 speaks to the median after-tax income for First Nations on-and off-reserve as compared to the non-Indigenous population. Figure 3.3 addresses low-income prevalence<sup>51</sup> for First Nations off-reserve compared to non-Indigenous peoples (Statistics Canada, 2016).

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<sup>51</sup> **Low Income Prevalence:** Percentage of persons in economic families, persons not in an economic family aged 15 years or over, or households in low income according to the Low-income measure after-tax income (LIM-AT). The LIM-AT is not calculated for the on-reserve population due to the existence of substantial in-kind transfers such as First Nations band housing and sizeable barter economies or consumption from own production such as product from hunting or fishing that make the interpretation of low-income statistics more difficult.

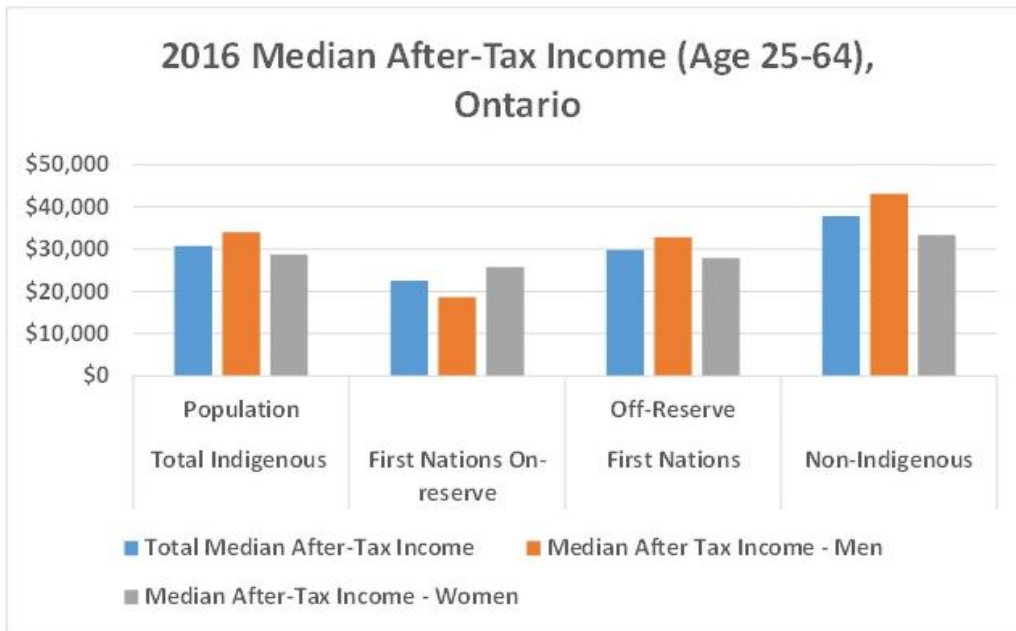


Figure 3.2 2016 Median after-tax income (age 25-64) Ontario. Source: Statistics Canada, 2016 Census of Population, custom tabulation.

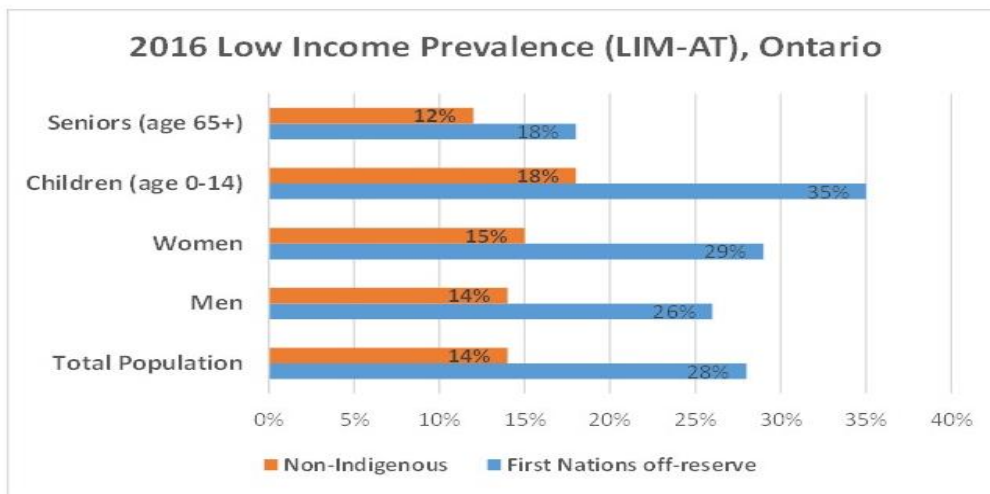


Figure 3.3 2016 Low income prevalence (LIM-AT) in Ontario. Source: Statistics Canada, 2016 Census of Population, Catalogue no. 98-400-X2016173.

The *Aboriginal Children in Care – Report to Canada’s Premiers* (Aboriginal Children in Care Working Group, 2015) stresses the importance of the social determinants of health, including poverty and the ongoing impacts of colonization, on the wellbeing of First Nations Families (p. 15).

The association between poverty and child neglect is particularly strong. Children from low income families are many times more likely than other children to experience neglect. Given that First Nations people on average have higher unemployment rates, lower incomes, and more pervasive poverty compared to non-Aboriginal people, First Nations children also have a much higher likelihood of being placed in care as a result of a substantiated neglect investigation. (p. 11)

The 2011 Aboriginal Advisor's Report (Beaucage) highlights the disparity between the rate of First Nations children that live in poverty (1 in 4) and those of the wider Canadian child population (1 in 10), and identifies the connection not only to poverty and the intergenerational impacts of residential schools, but to the intersection of stigma and racism with these as well: "It is the perception of First Nation families that, when police are called and alcohol and drugs are involved, the children have a far greater likelihood of being apprehended than if they were non-Aboriginal" (p. 4).

Economic stability and income are essential in order to meet the basic needs of children and prevent their entry into the child welfare system.

## HEALTH AND SOCIAL CIRCUMSTANCES AND SERVICES

Several studies using Canadian child welfare data over time have found that neglect is reported as the main reason Indigenous children enter the child welfare system, which is associated with household and caregiver risk factors that stem from chronic family concerns, such as poverty, poor and unsafe housing, substance use, mental health issues, and social isolation. The rate of 'neglect only' investigations for First Nations children is six times higher than that of non-Aboriginal children. (Ontario Human Rights Commission, 2018, p. 18)

Investigation rates correlate to the risk factor profiles of caregivers, which in the case of Indigenous caregivers demonstrate proportionally higher rates of multiple presenting risk factors than for non-Aboriginal caregivers (Sinha et al., 2011, p. xii). The most frequently identified risk factors in First Nations investigations are as follows: substance abuse, domestic violence, social isolation, and caregiver history of living in foster care or a group home (p. xii). In the last case especially, it is important to recognize the intergenerational legacy of residential schools, the sixties scoop, and "ongoing implications of the historic pattern of mass removal of First Nations children from their homes and communities" (p. 48).

The 2008 First Nations component of the Canadian Incidence Study of Reported Child Abuse and Neglect (FNCIS) study (Sinha et al., 2011) which reports on the involvement of First Nations children in child welfare investigations across Canada, and profiles the child maltreatment concerns addressed by child welfare agencies (p. ix) found that child maltreatment investigations involved more lone parent households in First Nations than in the non-Indigenous population. It is worth noting that the degree to which extended family and community involvement in the family was outside the scope of the study (p. 61). In addition, a larger household size can contribute to an increased number of child maltreatment investigations, considering that "a greater proportion of the First Nations investigations conducted by sampled agencies involved households with four or more children (29% vs. 15%), and a lesser proportion involved households with one or two children (49% vs. 63%)" (p. 62). The above pattern points to the reality, and the stress, of fewer parents and more children per household.

In terms of caregiver functioning, it is clear that First Nations caregivers are facing more pressures than their non-Aboriginal counterparts. Although First Nations caregivers on reserve are less likely to be single parents than their non-Aboriginal peers, they are more likely to rely on benefits for income and to live in public housing, in unsafe housing, and overcrowded conditions. (Blackstock et al., 2005, p. 14)

Other factors such as lower family income, higher frequency of residential moves in a twelve-month period, the presence of health and safety hazards in the home, and overcrowding all demonstrated disparity between the First Nations and non-Aboriginal populations studied (Sinha et al., 2011, pp. 62-63).

## HOUSING

[A]ccess to safe and affordable housing is essential to developing healthier, more sustainable Indigenous communities, improving social well-being, and supporting the full participation of Indigenous peoples in Canada's political, social and economic development to the benefit of all Canadians. (Indigenous and Northern Affairs Canada, 2016, para. 1)<sup>52</sup>

Housing as a determinant of wellbeing is more than just the physical structure, and includes “the social and natural environment” (NCCAH, 2017, p. 1). The Canada Mortgage and Housing Corporation (CMHC) defines acceptable housing as “housing that is adequate in condition, suitable in size, and affordable” (n.d., Housing Standards). Housing is acceptable when major repairs are not required, there are enough bedrooms for the size of the family, and it costs less than 30% of family household income (Housing Standards).

According to the CMHC (2016) and based on data from the National Household Survey in 2011, “The overall incidence of inadequate housing in Aboriginal households in First Nations communities (at 39%) was more than five times that in all Canadian households (at 7%). This is despite dwellings in First Nations communities being relatively newer” (p. 1).

First Nations living on reserve are seven times more likely than the non-Indigenous population to require major home repairs (Statistics Canada, 2016). Within this context, those most disproportionately affected by this discrepancy are foster children (Statistics Canada, 2016). Overcrowding is 2.5 times more likely for First Nations living on reserve than for their non-Indigenous counterparts (Statistics Canada, 2016). See Table 3.2. Further, the availability of existing infrastructure (e.g., water infrastructure, sewers, roads, etc.) within the First Nation has a direct impact on the availability of safe housing (Canada, Parliament, Senate. Standing Committee on Aboriginal People, 2015, p. 9).

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<sup>52</sup> In 2017, The Prime Minister dissolved Indigenous and Northern Affairs Canada (INAC) and created two new departments: Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada (ISC).

Table 3.2 Housing Condition and suitability for First Nations and non-Indigenous peoples in Ontario, 2016

2016 Housing Condition and Suitability, Ontario				
	Total Indigenous Population	First Nations On Reserve	First Nations Off Reserve	Non-Indigenous
Housing in Need of Major Repairs	17%	42%	13%	6%
Housing Not Suitable (Overcrowded)	24%	38%	18%	15%
Source: Statistics Canada, 2016 Census of Population, Catalogue no. 98-400-X2016164.				

## EDUCATION AND EMPLOYMENT

First Nations assert the importance for “children to receive equitable education that provides access to learning their language and culture, so that they can understand these ways of knowing and being, and be proud of who they are” (Brittain & Blackstock, 2015, p. 118). This early education is foundational to future participation in education and employment.

The *RHS National Report Phase 3* (FNIGC, 2018) indicates that educational attainment among First Nations adults improved between 2008-2010 and 2015-2016 (p. 21). Despite this progress, a gap remains between First Nations and the general population (p. 15). Table 3.4 compares the educational attainment of First Nations living on- and off-reserve in Ontario to the non-Indigenous population.

According to Statistics Canada (2017, November 29), “First Nations ... living on reserve face greater barriers in accessing educational opportunities. For example, many have to leave their communities to attend educational institutions, including high school” (p. 8).

Education is inextricably connected to employment (see Table 3.3). Table 3.4 speaks to labour market outcomes for First Nations on-and off-reserve as compared to the non-Indigenous population (Statistics Canada, 2016).

Table 3.3 2016 Highest Level of educational attainment (age 25-64) for First Nations and non-Indigenous peoples in Ontario

<b>2016 Highest Level of Educational Attainment (Age 25-64), Ontario</b>				
	<b>First Nations</b>	<b>First Nations On Reserve</b>	<b>First Nations Off Reserve</b>	<b>Non-Indigenous</b>
No certificate, diploma or degree	25%	39%	21%	10%
Secondary (high) school diploma or equivalency certificate <sup>53</sup>	26%	19%	28%	24%
Postsecondary certificate, diploma, or degree	49%	41%	51%	65%
Apprenticeship or trades certificate or diploma	9%	10%	8%	6%
College, CEGEP or other non-university certificate/ diploma	28%	23%	29%	25%
University certificate or diploma below bachelor level	2%	3%	2%	25%
University certificate, diploma or degree bachelor level or above	11%	5%	12%	32%
Bachelor's degree	8%	4%	9%	21%
University certificate, diploma or degree above bachelor level	0.7%	0.4%	0.8%	2%
Medicine	0.1%	0.04%	0.1%	0.9%
Master's Degree	2%	0.6%	2%	7%
Doctorate Degree	0.3%	0.1%	0.3%	1%
Source: Statistics Canada, 2016 Census of Population Catalogue no. 98-400-X2016266.				

<sup>53</sup> This refers to those who have completed secondary school as their highest level of attainment, rather than those who have attained at least secondary school completion.

Table 3.4 2016 Labour Market Outcomes (Age 25-64) for First Nations and non-Indigenous peoples in Ontario

2016 Labour Market Outcomes (Age 25-64), <sup>54</sup> Ontario				
	First Nations (total)	First Nations On Reserve	First Nations Off Reserve	Non-Indigenous
Labour Force Participation Rate	69%	64%	70%	81%
Employment Rate	61%	53%	63%	76%
Unemployment Rate	12%	18%	10%	6%
Source: Statistics Canada, 2016 Census of Population Catalogue no. 98-400-X2016266.				

<sup>54</sup> Definitions of labour market indicators include:

Age 25-64 is commonly considered to be the “working age population” in economic analysis, although in reality this age group does not perfectly capture the workforce.

**Labour Force Participation Rate:** The number of labour force participants expressed as a percentage of the population. This is an accepted standard measure of economic health. The labour force consists of people who are of working age, who are working or looking for work. The Rate does not include people under 16, full time students (even if they might have part time work), stay at home parents, retired people, or others who choose not to work but are of working age. It also does not include people who are incarcerated or in other custodial institutions, or people working in the military.

**Employment Rate:** The number of persons employed expressed as a percentage of the population. This is sometimes called the employment-to-population ratio. This figure does include those people excluded from the labour force participation rate (under 16, those in school full time, those living in institutions, those who are retired, those working in the military, and those who have chosen not to work) and the unemployment rate (those who have become discouraged and stopped looking for work).

**Unemployment Rate:** The number of unemployed persons expressed as a percentage of the labour force. This refers to the percentage of the population who are: 1) in the labour force, 2) not employed, 3) available for work, and 4) actively looking for work. The unemployment rate does not include what is sometimes called the “discouraged worker”: those people who have been looking for work without success who stop trying to find a job.

## WATER QUALITY

Access to safe drinking water is an extremely important public health issue, as access can save lives, improve education outcomes, result in health care savings and strengthen local economies (World Health Organization, 2008a).

Children with access to safe drinking water are less likely to be sick and spend less time collecting water from alternative sources, and therefore have more time and energy to devote to their education. Adults, similarly, benefit from improved access to safe drinking water and, in turn, are able to be more productive in their local economies. (FNIGC, 2018, p. 35)

A Trilateral Technical Working Group, comprised of program and technical experts from ISC, the Ontario Ministry of Conservation and Parks (MECP), and the Ontario First Nation Technical Services Corporation (OFNTSC) was established in September 2016 to develop an action and implementation plan to eliminate Long Term Drinking Water Advisories affecting First Nation communities in Ontario. The action and implementation plan puts focus to strategies for implementing infrastructure investment on reserve to eliminate Drinking Water Advisories that have been in place for greater than one year. The plan identifies roles, responsibilities and concrete actions that can be taken by each partner organization, and identifies an estimated schedule to eliminate each long term drinking water advisory (LTDWA). Funding to the implementation of the action plan comes from ISC.

Through its progress monitoring activity, the Trilateral Technical Working Group is identifying methods by which project schedules can be compressed while still adhering to ISC's policies and procedures for project implementation and investment on reserve. The Trilateral Technical Working Group reports to the Trilateral Steering Committee, a group that includes First Nation partners, OFNTSC, MECP and ISC.

The Trilateral partners are also tracking drinking water advisories that are at risk of becoming long-term. Short term advisories (STDWAs) of greater than two months in duration are monitored and projects to address them are supported by the Trilateral Technical Working Group.

The Trilateral Steering Committee is working to eliminate all long-term drinking water advisories (LTDWAs) by 2021 and to prevent further advisories. ISC data indicate that from 2015-2016 to 2017-2018, \$63 million has been expended to address LTDWAs, including sustainability initiatives such as, enhanced operations and maintenance, HUBs, a Circuit Rider Training Program and First Nation Operator Training. To date, 32 of 75 LTDWAs have been resolved in Ontario.

Table 3.5 provides additional information about the state of water quality for First Nations.



Table 3.5 Water quality for First Nations

Water quality	
RHS National Report 2018 First Nations in Canada	Indigenous Services Canada First Nations in Ontario
<ul style="list-style-type: none"> <li>• 27.5% of First Nations adults reported main source of water not suitable for drinking year-round. This is an improvement compared to 2008-2010 results (35.8%) (p. 35)</li> <li>• Water treatment plants are in a state of disrepair due to poor maintenance or design (McClearn as cited in, p. 35)</li> </ul>	<p>Information available as of June 2019 indicates</p> <ul style="list-style-type: none"> <li>• 16 short-term boil water advisories in 16 First Nations</li> <li>• 42 long-term advisories remain in 22 First Nations (advisories in effect more than 12 months)</li> </ul>
Source: “National Report of the First Nations Regional Health Survey Phase 3: Volume One” by First Nations Information Governance Centre, 2018.	Source: Indigenous Services Canada.

## FOOD SECURITY

Food security can be defined as “Physical and economic access by all people to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life” (Chan et al., 2014, p. xiii).<sup>55</sup> The number of First Nations adults who were unable to buy enough food rose from 30% in 2011 to 37% in 2017 (Chiefs of Ontario, 2017, p. 55). High food prices contribute to food insecurity and impact the ability to eat healthy meals (Chan, et al., 2014, p. xvii).

Recent information about the state of food security can be found in Table 3.6.

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<sup>55</sup> Concepts of food security differ slightly for the data sources used in this section.

**From Health Canada and Statistics Canada:** According to Health Canada, food security is commonly understood to exist in a household when “all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life” (Food and Agriculture Organization, 1996, World Food Summit Plan of Action, para. 1). The definition of “food insecurity” in the Canadian Community Health Survey is “the inability to acquire or consume an adequate diet quality or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so” (Davis & Tarasuk as cited in Health Canada). Food insecurity is often directly related to financial ability to access food.

**From the First Nations Regional Health Survey Phase 2 (2008/10) Ontario Region:** “Food security is built on three pillars: 1) food availability meaning sufficient quantities of food available on a consistent basis; 2) food access meaning having sufficient resources to obtain appropriate foods for a nutritious diet; and, 3) food use meaning appropriate use based on knowledge of basic nutrition and care, as well as adequate water and sanitation. Food security was calculated using a food security index provided by the First Nations Information Governance Centre for analysis of the Ontario Region 2008/10 Regional Health Survey data” (p. 46).

Table 3.6 Food security and First Nations

Food security	
First Nations Food, Nutrition and Environment Survey, Ontario 2011 - 2012 <sup>56</sup>	Statistics Canada, Canadian Community Health Survey (CCHS), 2013-14
<ul style="list-style-type: none"> <li>• Food insecurity is a major issue</li> <li>• 29% of families experience food insecurity (Chan et al., 2014, p. xvii) compared to 12.4% of families for all of Canada.</li> <li>• The cost of groceries per week to feed a family of four ranged from \$161 - \$344 (Chan et al., 2014, p. xvii) compared to an average of \$164 per week for all of Canada.</li> <li>• 32% of households said that they worried that their traditional food supplies would run out before they could get more (Chan et al., 2014, p. xvii)</li> </ul>	<ul style="list-style-type: none"> <li>• The Indigenous population living off-reserve in Ontario experiences household food insecurity at a rate 2.5 times higher than the non-Indigenous population (20% vs. 8%)</li> <li>• The gap in food insecurity between Indigenous children living off-reserve and non-Indigenous children in Ontario doubled from 6% to 12% between 2009 and 2014</li> <li>• The Indigenous population living off-reserve in Ontario experiences household food insecurity at a rate 2.5 times higher than the non-Indigenous population (20% vs. 8%)</li> <li>• The gap in food insecurity between Indigenous children living off-reserve and non-Indigenous children in Ontario doubled from 6% to 12% between 2009 and 2014</li> </ul>
<p>Source: “First Nations Food, Nutrition and Environment Survey, Ontario 2011 – 2012” by Chan et al., 2014; Statistics Canada, Canadian Community Health Survey (CCHS), 2011-2012  <a href="https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110012501">https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110012501</a></p>	<p>Source: Statistics Canada, Canadian Community Health Survey (CCHS), 2013-14.</p>

In its 2014 report, *Aboriginal Food Security in Northern Canada: An Assessment of the State of Knowledge*, the Expert Panel on the State of Knowledge of Food Security in Northern Canada found that:

Evidence indicates that people who are food insecure are more susceptible to malnutrition and infection, as well as chronic health problems such as obesity, anemia, cardiovascular disease, diabetes, stress, and child developmental issues. Mental health effects of food insecurity include reduced ability to learn, depression, and social exclusion. (p. xix)

Participants also identified a number of barriers to accessing traditional food. Community barriers included “a lack of: time for harvesting; a hunter; and equipment or transportation [while] external factors ... included forestry operations and government restrictions” (Expert Panel on the State of

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<sup>56</sup> A little over 1,400 First Nations from 18 First Nations participated in this survey (Chan et al., 2014, p. xvi).

Knowledge of Food Security in Northern Canada, 2014, p. xvi). Ninety-three percent of adults reported that eating traditional food improved their dietary quality (p. xvi).

Dietary quality was much improved on days when traditional foods were consumed, as traditional foods are important contributors of protein, iron, zinc, vitamin D, and other essential nutrients. When only market food was consumed, intakes of saturated fat (the type of fat associated with heart disease), sugar, and sodium were significantly higher than when traditional food was included in the diet. (p. xvii)

Food insecurity comes in many forms, and no one approach can solve the issue (Expert Panel on the State of Knowledge of Food Security in Northern Canada, 2014, p. xxii). Food security cannot be addressed in isolation. It requires First Nations and government working across departments to ensure food security, including availability of and access to traditional foods (p. xxi).

### **MOVING FORWARD**

Addressing these interlinking determinants supports well-being, keeping children and families together in community, and reduces the number of First Nations children in the child welfare system. The challenge is to ensure that policies and funding support progress on each of these determinants in order to sustain well-being.

## CHAPTER FOUR: DELIVERING SERVICES FOR CHILD AND FAMILY WELL-BEING

This chapter emphasizes the necessity of First Nations governed, designed, and delivered child and family well-being system of services and supports. This system supports the child and family regardless of where they live (on or off reserve). This involves shifting from a focus on protection to prevention and the primacy of First Nations approaches to holistic well-being and customary care.

A snapshot is offered of the current supports and services, highlighting the need for diverse, integrated, and culturally appropriate strategies and practices to ensure the safety and well-being of First Nations children, families and communities. This includes the equitable provision of services to children and youth with special needs, those who are leaving care, and those needing access to supports under Jordan's Principle.

### Key Points

- The current service delivery system encourages use of protection services.
- There is no legislative mandate to fund child and family well-being, and to ensure the substantive equality, equity, and sustainability of these services and supports.
- A service delivery model that emphasizes child and family well-being minimally includes:
  - First Nations governed, designed, and delivered well-being and customary care services to support the child and family regardless of where they live (on or off reserve) and through age 25.<sup>57</sup>
  - Federal and provincial legislation and policies to ensure the substantive equality, equity, and sustainability of these services and supports.
  - Language and culture integral to all programs, services, and supports.
  - Funding that meets or exceeds substantive equality for the special needs of children and youth and the elimination of barriers to their access to education and service.
  - Affirm Jordan's Principle, as defined by the CHRT, and include it in federal legislation and federal and provincial agreements that deal with funding First Nations services.

### DEFINING WELL-BEING AND PREVENTION

The *Wen:de* report (Blackstock, et al., 2005) spoke briefly of the distinction of the First Nations view of well-being in contrast to prevention, a commonly used public health concept that demarcates separate levels of services “distinguished by risk exposure for the child and family” (Loxley & Deriviere, 2005, p.

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<sup>57</sup> For more information about providing services and supports to youth through age 25, see “Youth Leaving Care” in this chapter.

116). For purposes of this Special Study, a clear distinction is offered between well-being and prevention.

A First Nations approach to well-being emphasizes what is necessary to maintain balance; spiritually, emotionally, and in mind and body. Rather than preventing a future occurrence, emphasis is on maintaining well-being each and every day; a process always underway. Well-being services and supports are holistic in design and are not segmented or differentiated by primary, secondary, and tertiary approaches. There is fluidity in services and supports that wrap around the child and family within community that strengthen and benefit all involved. By nature, the approaches to well-being are defined by each First Nation and reflect their language, culture, and traditions.

The word prevention is generally defined as “an action of stopping something from happening or arising.”<sup>58</sup> In health and child welfare, prevention has been defined as the range of population based or community development services to prevent child maltreatment, prevent recurrences of child maltreatment in contexts where it has already occurred, and to reduce the likelihood of inter-generational transmission (Blackstock, et al., 2005; Holzer, J. Higgins, Bromfield, Richardson, & D. Higgins, 2006, p. 2).

Prevention services are typically divided into three categories by health and health-related institutions: primary, secondary and tertiary. Primary prevention services are aimed at the community as a whole, and include the ongoing promotion, public awareness, and education on the healthy family, and how to prevent or respond to child maltreatment (Blackstock, et al., 2005; Holzer et al., 2006). Secondary prevention services are triggered when concerns begin to arise and early intervention could help avoid a crisis (Blackstock, et al., 2005; Holzer et al., 2006). And tertiary prevention services target specific families when a crisis or risks to a child have been identified (Blackstock, et al., 2005; Holzer et al., 2006). As opposed to separating a child from his or her family, tertiary prevention services are designed to be “least disruptive measures” (*Caring Society* 2016 CHRT 2, para. 343) that try and mitigate the risks of separating a child from his or her family.

## CHILD AND FAMILY WELL-BEING SERVICES AND SUPPORTS

An approach that invests in the community and engages the community at all levels – children, adolescents, youth, parents and Elders means directing resources at growth and development of the people rather than the breakdowns of the people in the community. This approach demonstrates long term commitment to the growth of a child and family and invests in the future of contributing members to society. (Loxley et al., 2005, p. 20)

An overview of the current environment and what is needed follows. Calls for the approach above minimally date back to the 1960’s with the inclusion of language, culture, and traditions to heal, strengthen, and maintain well-being. The provision of these well-being services and supports is

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<sup>58</sup> Retrieved from <https://en.oxforddictionaries.com/definition/prevention>

inextricably linked to addressing the determinants that give these services strength. All of the areas work together to strengthen children, families and community.

The current provision of First Nations prevention services and supports related to child welfare by the government of Canada and the government of Ontario has been influenced by First Nations and their continued call for well-being services and supports with the inclusion of language, culture, and traditions, and by at least the following five events:

- The work of the Ontario Commission to Promote Sustainable Child Welfare (2012)
- The report by the Aboriginal Advisor to the Minister of Children and Youth Services (2011)
- The findings of the TRC (2015a)
- The political environment that supported and acknowledged the necessity of reconciliation
- The rulings of the CHRT

Taken together, these events have directly influenced funding and service delivery in Ontario. Equally important, however, is the absence of a legislative mandate to fund child and family well-being, and to ensure the substantive equality, equity, and sustainability of these services and supports. A brief description of these events and some of the services and investments by the governments of Ontario and Canada follows.

In its conversations with ICWBAs and First Nations communities, the Ontario Commission to Promote Sustainable Child Welfare (2010) heard the necessity of children and youth growing up in their communities with their culture and traditions. The Commission shared this vision and recommended that the Aboriginal Advisor to the Ontario Minister of Children and Youth Services<sup>59</sup> and First Nations leaders from the communities and agencies identify the necessary steps to prevent their removal.

John Beaucage (2011), the Aboriginal Advisor to the Ontario Minister of Children and Youth Services [now MCCSS] worked with First Nations leaders to identify those next steps, which included:

- application of Jordan's Principle (p. 9);
- "repatriation" of traditional values including language and culture (p. 10);
- emphasize the practice of First Nations customary care to prevent children and youth coming into care (p. 12);
- establish recovery/reunification coaches, trained in alternative dispute resolution, whose sole goal is reunification with family/kin (p. 13);

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<sup>59</sup> In 2010, John Beaucage (Eyaabay), a member of the Bear Clan from Wasauksing First Nation, was appointed the Aboriginal Advisor to the Minister of Children and Youth Services (now MCCSS). His mandate was to "provide advice on Aboriginal child welfare issues for a period of one year" (Ontario, MCCSS, 2010, April 14, para. 1).

- ensure that Indigenous Child and Family Well-Being Agencies have the capacity to deliver services (p. 15);
- reinstitute the Band Representative program (p. 16);
- establish “an inter-ministerial process whereby representatives of government ministries meet regularly to discuss coordinated approaches to programs and services” (p. 17); and
- develop medium and long-term goals to reduce the number of First Nations children and youth in care (p. 18).

The value of culture and identity cannot be overstated. The provision of cultural links and language must not be considered optional. (Beaucage, 2011, p. 10)

The TRC reports (2015) were seminal in calling for systemic changes in order to repair and strengthen families and move toward reconciliation. In its review of child welfare, the Commission called for governments to work together to reduce over-representation in child welfare and promote the well-being of children and families in community. This includes “develop[ing] culturally appropriate parenting programs for Aboriginal families” (TRC, 2015a, p. 144). The findings of the TRC (2015a) created an environment that resulted in governments and organizations developing approaches toward reconciliation.

The Ontario premier apologized to residential school survivors on May 30, 2016 on behalf of the Ontario government, and released *The Journey Together: The Government of Ontario’s Commitment to Reconciliation with Indigenous Peoples* with a commitment of 250 million dollars over three years (Ontario, Office of the Premier, 2016a, May 30) supporting initiatives under five key pillars:

- **Understanding the legacy of residential schools:** The province will ensure that Ontarians develop a shared understanding of our histories and address the overt and systemic racism that Indigenous people continue to face
- **Closing gaps and removing barriers:** Ontario will address the social and economic challenges that face Indigenous communities after centuries of colonization and discrimination
- **Creating a culturally relevant and responsive justice system:** The province will improve the justice system for Indigenous people by closing service gaps and ensuring the development and availability of community-led restorative justice programs

- **Supporting Indigenous culture:** Ontario will celebrate and promote Indigenous languages and cultures that were affected after generations of Indigenous children were sent to residential schools
- **Reconciling relationships with Indigenous Peoples:** The province will support the rebuilding of relationships between Indigenous and non-Indigenous people through trust, mutual respect and shared benefits (Ontario, Office of the Premier, 2016b, May 30)

Since 2016, the rulings of the CHRT have had a significant influence on funding for the delivery of well-being services and supports by the government of Canada. In February 2018, the CHRT ordered federal government funding for prevention services and supports (*Caring Society* 2018 CHRT 4, Schedule B, Annex to Ruling amended order para. 411), stating that the federal government

cease its discriminatory funding practice of not fully funding the costs of prevention/least disruptive measures, building repairs, intake and investigations and legal fees. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada, to provide funding on actual costs for least disruptive measures/prevention, building repairs, intake and investigations and legal fees in child welfare to be reimbursed retroactive to January 26, 2016 within 15 business days after receipt of documentation of expenses.

Further, the CHRT ruled

In line with Canada's approach, the spirit of the UNDRIP and reconciliation, the Panel makes the orders above for actual costs for child welfare prevention/least disruptive measures, intake and investigations, building repairs, legal fees to be reimbursed following the accountability framework and methodology agreed to by the parties and also following and according to the parameters below. (*Caring Society* 2018 CHRT 4, para. 235)

Until such time as one of the options below occur:

1. Nation (Indigenous)-to Nation (Canada) agreement respecting self-governance to provide its own child welfare services.
2. Canada reaches an agreement that is Nation specific even if the Nation is not yet providing its own child welfare services and the agreement is more advantageous for the Indigenous Nation than the orders in this ruling.
3. Reform is completed in accordance with best practices recommended by the experts including the NAC and the parties and interested parties, and Eligibility of reimbursements from prevention/least disruptive measures, building repairs, intake and investigations and legal fees services are no longer based on discriminatory funding formulas or programs.
4. Evidence is brought by any party or interested party to the effect that readjustments of this order need to be made to overcome specific unforeseen challenges and is accepted by the Panel. (para. 236)



The CHRT ordered the federal government (*Caring Society* 2018 CHRT 4, Schedule A, Annex to Ruling amended order paras. 306 and 426)

to fund actual costs of mental health services to First Nations children and youth from Ontario, including as provided by First Nations, Tribal Councils, First Nations Child and Family Services Agencies, parents/guardians or other representative entities retroactively to January 26, 2016, by February 15, 2018, or within 15 business days after receipt of the documentation of expenses.

The CHRT also ordered “Canada ... to provide funding on actual costs for the child service purchase amount in child welfare to be reimbursed retroactive to January 26, 2016 by April 2, 2018 (*Caring Society* 2018 CHRT 4, para. 241). Further, Canada was ordered to fund the actual costs of Band Representatives in Ontario

The Panel, pursuant to Section 53 2 (a) and (b) of the CHRA, orders Canada to fund Band Representative Services for Ontario First Nations, Tribal Councils or First Nations Child and Family Services Agencies at the actual cost of providing those services, retroactively to January 26, 2016 by February 15, 2018 or within 15 business days after receipt of the documentation of expenses and until such time as studies have been completed or until a further order of the Panel. (*Caring Society* 2018 CHRT 4, Schedule A, Annex to Ruling amended order paras. 336 and 427)

A discussion follows about the importance of the First Nations Band Representative and an overview of prevention services and supports through the government of Canada and the government of Ontario through MCCSS.

### **Band Representative Services**

The Commission to Promote Sustainable Child Welfare (2011b) indicated that Band Representatives can be vital to working with CASs when children are in care or at risk of coming into care, noting a number of functions, such as

serving as the main liaison between a Band and CAS, providing cultural training and advice to CASs, monitoring Temporary Care Agreements and Voluntary Service Agreements with CASs, securing access to legal resources, attending and participating in court proceedings, ensuring that the cultural needs of a child are being addressed by the CAS, and participating in the development of a child’s plan of care. Some are also involved in recruiting customary care homes. (p. 26)

The Commission (2011) also noted that funding for the position was eliminated in 2003 (p. 26), and recommended reinstatement of the funding (p. 45). Subsequently, requests were made by the Ministry to support this funding.

Despite requests by the Ontario Ministry of Children and Youth Services (now MCCSS) to support this funding, including a letter sent to AANDC (now ISC) in 2011 which stated

The paramount purpose of the CFSA is to ‘promote the best interests, protection and well-being of children.’ The band representative function supports not only the purpose of the Act but also

the other important purposes and provisions to which the Act pertains. A lack of sufficient capacity within First Nation communities limits their ability to respond effectively and in accordance with legislated times frames for action. The withdrawal of [INAC's] (sic) funding for band representation functions has eroded First Nations' ability to participate as intended in the CFSA. (*Caring Society* 2016 CHRT 2, para. 237, Annex, ex. 26 at p. 2)

According to the CHRT

Despite the discordance between Ontario's Child and Families Services Act and AANDC's policy to no longer fund Band Representatives, Minister Duncan indicated that 'it falls within the responsibilities of First Nation governments to determine their level of engagement in child welfare matters' [and] 'we do not foresee the Government of Canada providing funding support in this area.' (*Caring Society* 2016 CHRT 2, para. 238)

Subsequently, the CHRT ordered funding for the Band Representatives (*Caring Society* 2018 CHRT 4, Schedule A, Annex to Ruling 2018 CHRT 4, amended orders paras. 336 & 427), and that Canada "shall not deduct this funding from existing funding or prevention funding, until such time as studies have been completed or until a further order of the Panel" (*Caring Society* 2018 CHRT 4, para. 428).

An analysis of this funding is discussed in *Chapter Six: Funding Transformation*.

### Prevention services and family supports

The federal government's funding for prevention services and supports is primarily a result of two 2018 CHRT 4 rulings, which ordered Canada

to cease its discriminatory funding practice of not fully funding the costs of prevention/least disruptive measures, building repairs, intake and investigations and legal fees. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada, to provide funding on actual costs for least disruptive measures/prevention, building repairs, intake and investigations and legal fees in child welfare to be reimbursed retroactive to January 26, 2016 by April 2, 2018.<sup>60</sup> (para. 411; sometimes referred to as "Order 411")

The Panel, pursuant to Section 53 2 (a) and (b) of the CHRA, orders Canada to fund actual costs of mental health for services to First Nations children and youth in Ontario with CFI or otherwise retroactively to January 26, 2016, by February 15, 2018. (para. 426)

For the purposes of this study, ISC, Ontario Region provided the following progress on CHRT Order 411 pertaining to ICWBAs as of February 13, 2019:

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<sup>60</sup> This CHRT ruling which includes the need for child welfare protection funding to cover actual costs of building repairs, intake and investigations, and legal fees is addressed in *Chapter 6: Funding Transformation*.

- 107 claims under Order 411, amounting to \$79,894,986.41, have been submitted by Ontario for ICWBAs retroactive and current-year actual costs. This is comprised of 13 retroactive claims, and 94 current-year claims.
- Claims for the next fiscal year (2019-2020) are being reviewed as they are received. In accordance with the annual Receiver General's payment issuance process, approved amounts will be reimbursed to recipients in April 2019, and the 15 business day timeline will be applicable at that time, or 15 business days after contribution agreement is in place. As of February 13, 2019, 12 claims under Order 411 for 2019-2020 have been received.

Indigenous Services Canada, Ontario Region also provided a non-exhaustive list of First Nations programs available on reserve from 2011-2018 (see Appendix D). Two programs<sup>61</sup> exist that address the factors bringing children into care, and two CHRT initiatives<sup>62</sup> have been implemented. These include:

- The Family Violence Prevention Program, in operation since 1988, funds the operations of 41 shelters across Canada and provides funding for community-driven proposals for prevention.
- Brighter Futures and Building Healthy Communities, in operation respectively since 1992 and 1994, funds Supports community-based activities to enhance the wellbeing of children, individuals and families.
- Funding for Community Well-Being and Jurisdiction Initiatives for First Nations-directed projects in Ontario began in 2018 with an allocation of \$17,616,255.00 (March 6, 2019) and a commitment for five years.
- Prevention and Immediate Relief Funding for First Nations-directed prevention services began in FY 2016-2017 with \$5,833,524.00 allocated, rising to \$34,188,693.00 in FY 2018-2019 and \$22,286,186.00 allocated for FY 2019-2020 as shown in the following figure. This ongoing funding disbursed directly to First Nations reflects actual budgeted amounts, however, there is no guarantee for future funding.

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<sup>61</sup> These programs are included given their direct impact on factors bringing children into care. There are other factors and programs through health and social services, mental health and addictions, and education that are not included in this review.

<sup>62</sup> Information about these programs/initiatives provided by ISC, Ontario Region on March 6, 2019.

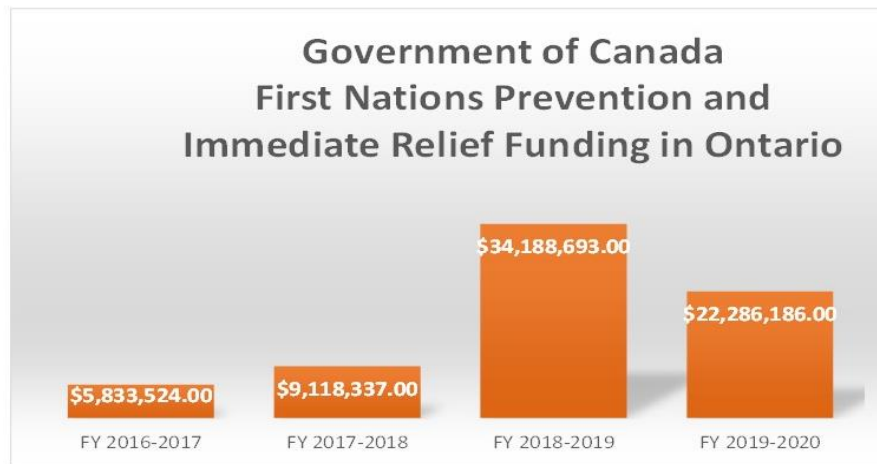


Figure 4.1 Government of Canada CHRT prevention and immediate relief funding to Ontario First Nations.

FNCFS program funding increased in FY 2018-2019 and to a lesser extent in 2019-2020 as ISC accelerated the ramp up of Budget 2016 funding to the jurisdictions that had not received funding under the previous Enhanced Prevention Focused Approach (EPFA). This allowed all jurisdictions to be receiving their full amount of new prevention funding earlier than what Budget 2016 had initially outlined.

Supports are also being provided through the Indian Residential School Resolution Health Support Program which provides direct payment to an Indian Residential School Mental Health Counsellor to provide services to those persons “who attended an Indian Residential School listed in the 2006 Indian Residential Schools Settlement Agreement”<sup>63</sup> and their family. According to data from ISC, Ontario Region, the final costs in 2017/2018 combines operating costs (\$11,270,356) and dollars flowed through Contribution Agreements (\$4,800,719) for a total of \$16,071,075. For 2018/2019, operating costs were \$10,997,654 and \$4,790,311 flowed through Contribution Agreements that resulted in a total of \$15,787,965.<sup>64</sup>

In Ontario, MCCSS provided a list of programs provided to First Nations communities along with an analysis of prevention services dating from FY 2012-13 through FY 2017-18 (see Appendix D). Review of the information indicates that the majority of prevention funding provided by the Ministry is not cost-shared with Canada under the 1965 Agreement, and is predominantly distributed to First Nations

<sup>63</sup> See Program Eligibility at <https://www.canada.ca/en/indigenous-services-canada/services/first-nations-inuit-health/health-care-services/indian-residential-schools-health-supports/indian-residential-schools-resolution-health-support-program.html>

<sup>64</sup> This financial data was received after the research period on July 11, 2019, and as a result, is not reflected in the funding analysis.

communities. Prevention funding for FY 2015/16 was \$48,780,875 increasing by 47% to \$71,470,443 in FY 2016/17, and increasing again by 21% to \$86,447,586 in 2017/2018 (see *Chapter 6: Funding Transformation*, Figures 6.2 and 6.3).

This increase in funding appears to be largely attributed to the introduction of community-based prevention programs (i.e., Family Wellbeing Program), and an increase in mental health funding. This increase also suggests that programming and funding was largely influenced as a result of the *TRC Calls to Action* (2015d) and in the spirit of reconciliation.

An overall analysis indicates that provincial and federal funding has resulted in at least 44 distinct programs/services from two governments and different departments (see Appendix D). For Ontario the programs include community-based prevention (e.g., Aboriginal FASD, Family Wellbeing Program, Children Nutrition Program), child and youth mental health services (e.g., service coordination, intensive treatment services, child and family intervention, mental health and addiction workers) and youth justice (e.g., restorative justice, community partnerships, youth and policing). Federal funding, for this analysis, includes Jordan’s Principle, including Choose Life; CHRT rulings for prevention funding and Band Representatives; violence prevention; intergenerational trauma; and reimbursement to the Province of Ontario through the 1965 Agreement.

There is no legislative mandate to fund First Nations child and family well-being to ensure the substantive equality, equity, and sustainability of these services and supports.

It is important to reinforce that there is no legislated mandate to continue funding First Nations community-based prevention or well-being programs. Furthermore, First Nations have not had the opportunity, nor funding that meets or exceeds substantive equality, to develop a consistent method to assess current well-being services and supports, including identifying gaps. The ground on which these services are provided is precarious.

### Well-being: What is needed

The calls for prevention services and supports minimally date back to the 1960’s. For instance, an internal Indian Affairs report and a subsequent report by George Caldwell, a child care specialist with the Canadian Welfare Council, which investigated and reported to the federal government on placements in nine Saskatchewan residential schools, indicated the necessity of recognizing the importance of prevention and providing services “to strengthen and maintain family life” (TRC, 2015b, p. 16).

In a 2014 youth forum held by the Chiefs of Ontario, youth brainstormed and selected their top three priorities concerning mental, physical, spiritual and emotional health. Their priorities emphasize: learning our history; learning traditional ways of life/teachings, languages, and medicines; participating in ceremonies; eating healthy and traditional foods; speaking with Elders; and expressing themselves through art (pp. 14-15). In 2012, Indigenous youth and their families living off-reserve and in Toronto were asked about their experiences with mental health and addictions. Three sessions were held one with youth 16-19 years of age, one with youth 20-24 years of age, and one with “parents and caregivers of youth experiencing or having experienced mental health and addictions issues” (Hermiston 2012, p.

5). The messages from these sessions concerned “what works” and are outlined in nine key messages. Those messages are:

1. Services based in Language, Tradition and Culture.
2. Programs that foster resiliency, self-worth and self-identity.
3. Aboriginal youth/ peer led initiatives – youth leading youth.
4. Harm reduction approaches to services in mental health and addictions.
5. Support circles, Talking Circles for families, parents and caregivers of youth.
6. Programs that offer opportunities for artistic expression.
7. Programs that offer support and incentives.
8. Better and more access to information about programs and services in the community.
9. Opportunities for workers to build knowledge and deal with vicarious trauma. (pp. 6-8)

Dr. Cynthia Wesley-Esquimaux (2017), in her role as a special representative of Minister Carolyn Bennett during her tenure as the Minister’s Special Representative to the Minister of former Indigenous and Northern Affairs, conducted consultations on First Nation child welfare throughout Canada. In Ontario, she heard the need for “early intervention programming to restore healthy families” from First Nations. The report, *Aboriginal Children in Care – Report to Canada’s Premiers* (Aboriginal Children in Care Working Group, 2015), echoed this approach, stating “This report suggests that the programs most successful at reducing the number of Aboriginal children in care are well coordinated, culturally responsive and prevention focused” (p. 2).

By facilitating family preservation, preventative programs promote children’s safety and well-being while reducing or eliminating the need for further child welfare interventions. These preventative services can include home visiting, mental health and substance abuse treatment. (p. 2)

First Nations Child and Family Well-Being Agencies and social and well-being personnel that participated in consultations in Ontario (Wesley-Esquimaux, 2017) indicated:

- need to look at open adoptions that allow children to stay connected with their culture, history, and community
- strong need for First Nations to have band representatives to work closely with the agencies
- call to increase the number of Indigenous foster homes, develop early intervention approaches, and provide appropriate levels of training and support to agency employees (p. 11)
- healing lodges and safe places and spaces at the community level for children
- suggestion to consider building Indigenous urban institutions such as group homes and transition houses for Indigenous children, given Indigenous people move on and off reserve (p. 12)

They add that this is not to imply a one size fits all approach. While the complexity of the child welfare system varies across jurisdictions, programs and services are most effective when designed and controlled by their respective First Nation in order to reflect the unique needs of the children and families within their context.

Summarily, supports for children and families are necessary to reduce the number of First Nations children in care and improve outcomes. For purposes of this discussion, supports are defined as those “supports that address the social and economic factors (root causes) affecting Aboriginal peoples” (Aboriginal Children in Care Working Group, 2015, p. 1). These reaffirm the necessity of addressing the First Nations determinants of well-being, and include additional supports for children and families and the personnel who serve them.

### SPECIAL NEEDS

*“Our children are alone and isolated. They don’t go to school because there are not enough workers and the workers that are there are not trained. They stay home. They have no friends. No one thinks about them, no one helps us. They are the forgotten people.”* (Participant Parent Focus Group as cited in Nishnawbe Aski Nation, 2016, p. 38).

Transforming service delivery means that the special needs of children and youth are addressed with funding that meets or exceeds substantive equality for, and the elimination of barriers to, their access to education and services. A snapshot of the current system indicates

- First Nations children and youth with special needs are the “forgotten people” in service delivery;
- A lack of capacity, services, supports, and funding in community leaves the child behind and family members are often forced to place their child in care or leave the community to seek services;
- Children and youth “face the double and interacting discrimination” of being First Nations and a person with special needs (Durst, Manual, & Bluechardt, 2006, p. 42); and
- Little data are available about First Nations children and youth with special needs; and
- *Bill C-81 An Act to ensure a barrier-free Canada*<sup>65</sup> received Royal Assent on June 21, 2019, and requires ongoing work to address First Nations concerns.

According to the *Federal Disability Reference Guide of Canada* (Human Resources and Skills Development Canada, 2013), a harmonized definition of disability does not exist in Canada (p. 2). The Guide highlights that the most frequently used definition is provided by the World Health Organization, which states:

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<sup>65</sup> For more information see <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/royal-assent>

Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.

Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives. Overcoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers.<sup>66</sup>

Understanding the current incidence and types of disabilities experienced by First Nations children and youth is a difficult task. For instance, the Canadian Survey on Disability (CSD) does not collect data within First Nations reserves. The *National RHS 2002/03* (First Nations Centre, 2005) reports data provided by the federal Office for Disability Issues in 2001, which indicates disability rates were "1.5 times more prevalent among First Nations children from birth to 14 years than among non-Aboriginal children in Canada" (p. 176). Results of the *National RHS 2002/03* (First Nations Centre, 2005) found that

Youth with disabilities tend to be affected by more than one long-term health condition and to be limited in their activities by more than one of these. Their general health is poorer and they are more likely to be overweight/obese. They are just as likely to have consumed alcohol and marijuana/hash and to be sexually active. Between one-fifth and one-third *did* engage in each of these activities.

Youth with disabilities have lower self-esteem and tend to exhibit lower dexterity in certain areas of personal control/mastery. They are more likely to experience loneliness, stress and depression, and to have contemplated suicide. (p. 175)

For Indigenous youth (aged 15-34) living off-reserve, the 2002 Aboriginal Peoples Survey found the disability rate "was more than three times higher than that of non-Aboriginal youth" (Demas as cited in Hanvey, 2002, p. 6).

Nishnawbe Aski Nation (2016) examined the special needs of children and youth, bringing to life the stories and challenges that children, youth, and their families face each day. NAN highlights the story of a child and his mother who are unable to receive evaluation, diagnosis, treatment and supports within the community, and so at age 11 he and his mother move to a city. Navigating the city and its services offer additional challenges (e.g., access to housing, education and health services) and diagnosis and intervention do not occur until he is a teenager and falsely accused of a serious crime. Although the accusation is known to be false by all involved, he remains in prison for over a year and a half. He is now 24 years of age and deals with all of the challenges of daily living that result from being forgotten.

This and other stories through focus groups and surveys with support and service workers and educators in NAN schools highlight an unresponsive, crisis-oriented system that is underfunded and often requires

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<sup>66</sup> <https://www.who.int/topics/disabilities/en/>



children coming into care to receive services. The key message is that these are the system's "forgotten people" (NAN, p. 10), and change requires

- the capacity and expertise to screen and refer children for early diagnostic testing
- a system that can respond to special needs while also addressing acute health concerns
- access (e.g., funding, distance, travel, and wait times) to specialists for assessment and intervention
- seamless supports to wrap around children and family members for well-being. These supports include: daycare services, personal care workers, teaching assistants in the classroom and/or tutors, accommodations in the home, respite services, etc.
- system supports through rehabilitation services (i.e., speech-language therapy, occupational therapy, physiotherapy) and case management to navigate the spectrum of services (child and family supports, participation in education, health and social services)
- community education including "stigma reduction and anti-bullying initiatives" (p. 8)
- a funding approach that addresses the needs of children and families, including capital and infrastructure (e.g., special housing for special needs, home accommodations, confidential office space, etc.) requirements, the determinants of well-being (e.g., housing, water safety, healthy foods, etc.)
- addressing Non-Insured Health Benefits (NIHB) to ensure reimbursement of services and accommodations

In the case of the Pinaymootang First Nation in Manitoba, Vives and Sinha (2019) asserted that "First Nations children face systemic barriers in their access to health, education, and social services ordinarily available to other Canadian children (p. 1)," which can manifest in drastically-reduced access to allied health services (p. 8), assistive devices and prescription medication (p. 10), transportation (p. 11), early diagnosis and intervention (p. 12). These barriers are compounded by the massive underfunding, or in some cases complete lack of funding, for a majority of essential health services for Indigenous children with special needs (p. 15), as well as the "intentional geographic isolation of First Nations reserves" (p. 18).

First Nations families of children with special health needs can face a three-fold dilemma of staying on reserve with dwindling resources, moving to a city with a greater number of services, yet with relatively high demand and low availability for children with special health needs, or transferring child into care in the hopes of greater access to services for the child (Vives & Sinha, 2019, p. 13).

First Nations families of children with special health needs can face a three-fold dilemma of staying on reserve with dwindling resources, moving to a city with a greater number of services, yet with relatively high demand and low availability for children with special health needs, or transferring children into care in the hopes of greater access to services for the child (Vives & Sinha, 2019, p. 13).

Other obstacles included navigating the “notoriously” unresponsive and obscure health services, resulting in delayed, undelivered, or unreimbursed supports (Vives & Sinha, 2019, p.11), and unilateral policy changes made “without warning or consultation” that lead to severe and disempowering impacts to children and families with special needs (p. 12). Discriminatory attitudes at the point of service delivery also come into play, as study participants, caregivers, and even regional health authorities have asserted or acknowledged the impact of systemic racism in healthcare towards Indigenous people (pp. 7-8).

Durst, Manual, and Bluehardt (2006), who completed a two-year exploratory study examining the challenges of First Nations living with physical disabilities in Regina, Saskatchewan, found similar results to the above reports. Individuals with disabilities experience significant pressure to leave the reserve in search of services and supports at the expense of connection to relationships, community and culture (p. 42). Compounded discrimination against both their Indigenous identity and their disabilities interferes in their access to “resources, economic opportunity and social integration,” and they are funneled into long-term dependence on social assistance (p. 42). First Nations, in this study, called for a comprehensive review of policies and programs, including jurisdictional issues, inclusion in the review, and subsequent change.

In a related report, the Ontario First Nation Special Education Working Group, a COO joint technical and advisory body, examined previous reports, identified key issues, and provided recommendations to ensure that children with special needs receive equitable and fair services, supports, and associated funding (Garrow, 2017). The report asserts that, for example, special needs children have not had access to speech-language services for decades. Left untreated, these children have difficulty with communication, often develop behavioral problems, and suffer negative impacts to their future well-being. Often, they may be denied the opportunity to learn in on reserve schools due to funding constraints that cannot accommodate access to specialists, support personnel, and special education programming.

The Ontario Provincial Advocate for Children and Youth (2017), in its report to the legislature, reported that “An estimated one in nine children (Indigenous and non-Indigenous) under the age of 18 in Ontario have a special need. This can include behavioral, developmental, neurological and/or medically complex need” (p. 36). He emphasized the voices of these youth need to be heard and that the gaps in the education and service system need to be addressed.

The AFN (2017a), guided by a 2016 Resolution that called on the “federal government to develop a First Nations-specific and distinct engagement process to inform [forthcoming] federal accessibility legislation” (p. 3), embarked on a preliminary process to do so. Their findings echoed previous results and reinforced that the approaches must “come from the determinants of health perspective” (p. 28). This means a holistic approach that reflects First Nations cultures and “incorporate[s] Indigenous definitions of disability and Indigenous care practices” (p. 28). The engagement process also articulated that

Since confederation Ottawa has been imposing laws on-reserve without respecting the culture and language of the people that the laws effect. In 175 years it has been proven that this

practice doesn't work. Legislation that works must be co-developed in an atmosphere of mutual respect. This is the only way to ensure success of the legislation. (p. 26)

Early in 2018 at the national emergency meeting on Indigenous child and family services (McKay, 2018, January 25-26) in Ottawa, participants called on Health Canada to support an assessment concerning children with disabilities to determine needs, service gaps, and strategies to address these gaps. Subsequently, the Assembly of First Nations (2019) “passed Resolution 24/2018, First Nations Disabilities Program on Reserve, at the AFN Special Chiefs Assembly in December 2018, calling on Canada to work directly with First Nations to determine the needs for an on reserve disabilities program” (p. 1). While, *BILL C-81 An Act to ensure a barrier-free Canada* received Royal Assent on June 21, 2019, it is unclear whether this Act, as implemented, will address First Nations concerns.

These reports mutually reinforce the need to address the special needs of children and youth. While Jordan's Principle is available to address some of these needs, system transformation is needed to ensure that their needs are funded and barriers to access education and services are eliminated. Further, the realities of First Nations children and families with special needs require inclusion in any legislation.

## FIRST NATIONS CUSTOMARY CARE

First Nations customary care is an inherent right defined by each First Nation. It can be short- or long-term, and includes well-being, protection, healing, and reunification. Federal and provincial legislation and policies co-developed with First Nations are necessary to address the full spectrum of supports and services for First Nations customary care. It is through this spectrum, in combination with language and culture, that children's identity and well-being are supported to remain with their family and in community.

This section provides some background on First Nations customary care and discusses the current environment and challenges concerning placement of children and youth for First Nations within Ontario.

### Background

First Nations who attended a Tripartite Technical Table Meeting on Child Welfare in Ontario (Johnson, 2011) discussed customary care as an inherent right.

They emphasized that there is no one form of customary care - it is defined by each First Nation. They described customary care as the spiritual and cultural transmission of knowledge for the next generation. Customary care empowers a way of life. For example in one First Nation community it involves extended family, with grandparents, aunts and uncles doing everything to help accommodate a child. Safety and security is at the core of traditional child care – customary care - and the ultimate purpose of child welfare. (p. 5)

Colonization and mainstream child welfare policies interfere with these First Nations approaches. First Nations continue to challenge and influence these government policies. In Ontario, customary care remains in transition, and First Nations are working to prevent children coming into care within the

legislative and policy requirements. Some of the mainstream legislation and policies have progressively influenced the existing child welfare system (see Appendix E).

According to one agency representative, the *CYFSA, 2017* “has a number of provisions that, while not preventing children from coming into care, emphasize the importance of keeping indigenous children connected to community and culture” (personal communication, February 25, 2019). For instance according to the *CYFSA, 2017*, customary care consists of “the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community” (Definitions).

Data support the evolution of this approach and indicate a 57% increase in the use of customary care between FYs 2008-09 and 2017-18 (see Figure 4.2).<sup>67</sup> This increase is likely related to mainstream legislative and policy changes and the increase in the number of ICWBAs (from 7 in 2008 to 14 in 2018). The reasons behind the lower use of customary care by non-Indigenous CASs is unclear. One reason could include the case transfers of First Nations children and families to ICWBAs. Additionally, quality data are not available on the number of Indigenous children who are currently served by non-Indigenous CASs.<sup>68</sup>

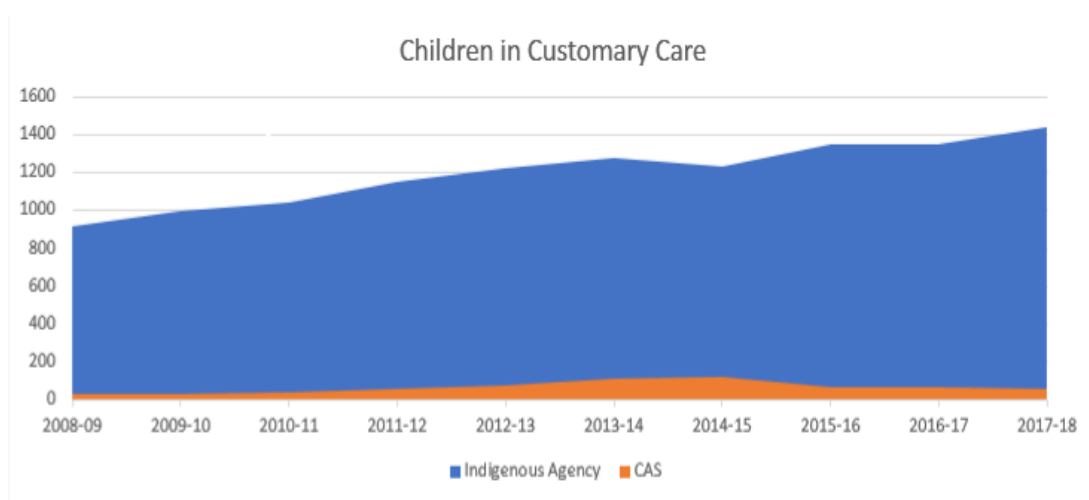


Figure 4.2 First Nations children in customary care. Source: Ontario Ministry of Children, Community and Social Services, *Indigenous Child and Wellbeing Branch, 2019*

While mainstream legislation and policies have incrementally moved child welfare from institutional care to customary care, the mainstream child welfare system essentially remains a protection system

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<sup>67</sup> The Ministry began collecting data on customary care in Ontario in 2006-2007, and the average number of children in customary care for that year was 451.

<sup>68</sup> This challenge associated with identifying the number of Indigenous children in non-Indigenous CASs is discussed in the next chapter.

rather than one that allows for the full spectrum of services and supports to keep children and families safe and well in community.

**Practice**

First Nations continue to develop their customary care practices (i.e., admission prevention agreements, and First Nations laws and standards, including adoption protocols<sup>69</sup>) which are not addressed within the *CYFSA*. These practices, intended to prevent children from coming into care, require legislative and policy recognition and supports. As one agency representative said,

They have found however that First Nation parents would rather work with prevention than with CAS workers and structures.... They suggested that early intervention and support of families be funded at the front end, to reinforce traditional customary care before CAS and institutions are obligated to get involved. (Johnson, 2011, p. 7)

Another representative of an agency described this approach as a “win-win” and stated “Since establishing their protocol with the First Nation, there have been no apprehensions. It was noted that this has resulted in substantial cost saving to the ministry for the number of children in care” (Johnson, 2011, p. 8).

Table 4.1 offers an overview of the current approaches to caring for the safety and well-being of the child. The majority of these approaches occur as a result of the child and family coming to the attention of the child welfare agency. As well, it is through agency involvement that financial assistance occurs. Finally, existing provincial laws and standards do not recognize First Nations laws and standards.

Table 4.1 Approaches to caring for the safety and well-being of First Nations children in contact with child welfare

<b>First Nations Approaches to Caring for the Child</b>			
Approach	Definition	Standards	Financial Assistance
First Nations Customary Care	Care throughout an individual’s lifespan; a way of life in which the community takes care of its own members according to its own customs, traditions and standards. (Note: this definition is not included in the current <i>CYFSA, 2017</i> )	Some First Nations have their own child welfare laws and standards  Some First Nations have Admission Prevention Protocols with ICWBAs or CASs that may include a First Nation	Some financial assistance may be available with an agreement that includes the ICWBA or CAS

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<sup>69</sup> See, for instance, the Wabaseemoong adoption protocol.

First Nations Approaches to Caring for the Child			
Approach	Definition	Standards	Financial Assistance
	Child welfare agency may be involved usually at the request of the First Nation to prevent the child coming into care	Customary Care Declaration	
Customary Care as defined within the <i>CYFSA, 2017</i>	<p>Customary care is defined for the purpose of the <i>CYFSA</i>, as “the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community (s.2 (1)). Section 80 of the <i>Child, Youth and Family Services Act</i> requires all societies to make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child,</p> <p>(a) is in need of protection;</p> <p>(b) cannot remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part or, where there is an order for the child’s custody that is enforceable in Ontario, of the person entitled to custody under the order; and</p>	<p>The criteria for granting a subsidy for customary care through the <i>Ontario Permanency Funding Policy Guidelines</i> (2016) include:</p> <p>A society determines that a First Nations child is in need of protection and removal of the child from the parents/caregiver is required.</p> <p>There is a Band Council Declaration by the band of either parent that declares that the child will be cared for under customary care according to the custom of the First Nation.</p> <p>The home must meet foster care licensing regulations and standards.</p> <p>The child is supervised by a society pursuant to</p>	<p>A society will grant an ongoing subsidy for customary care in accordance with eligibility criteria in the 2016 <i>Ontario Permanency Funding Policy Guidelines</i>.</p> <p>A caregiver providing customary care will be paid at regular, specialized or treatment foster care rates in accordance with the child’s needs. The caregiver will be entitled to the same reimbursements, training and support systems as foster parents.</p> <p>Ongoing financial assistance will not exceed foster care rates.</p> <p>A society will provide one-time funding of up to \$5,000 per child subject to a Customary Care Agreement to assist customary caregivers with initial costs associated with accommodating a child in the home (e.g. furniture/mattress) and home modifications in order to meet foster care licensing regulations and standards (e.g. window/door safety locks). One-time financial assistance may be</p>

First Nations Approaches to Caring for the Child			
Approach	Definition	Standards	Financial Assistance
	(c) is a member of or identifies with a band, or is a member of or identifies with a First Nations, Inuit or Métis community	the Band Council Declaration. There must be a Customary Care Agreement in place.	provided to customary caregivers in addition to the ongoing subsidy for customary care. Societies are responsible for providing one-time financial assistance within the 60-day exemption period before a customary care home must meet prescribed foster care licensing regulations and standards.  Note. In the case of a safe home declaration child can receive financial support through Temporary Care Assistance through Ontario Works not to exceed alternative care rates.
Kinship Services –  May or may not have a supervision order	The child is determined by the society to be in need of protection, removal from the parent/caregiver is required, and the child is placed with a relative of a member of the child’s extended family or community. Goal may be reunification of the child with family and/or a permanent home with an extended family member through legal custody; child is not “in care” although there is involvement with the agency and child is not living with parents; kin or birth parents make	Families are assessed in accordance with provincial kinship service standards and regulations; status reviewed under the <i>CYFSA, 2017</i> if there is a supervision order	Kin/community members may be eligible for Temporary Care Assistance through Ontario Works (e.g., prescription drugs, dental and vision care, back-to-school & winter clothing allowance). Episodic financial support may be provided by the child welfare agency to stabilize the kinship placement, prevent the child’s admission into care and assist with the costs of integrating the child into the family; not eligible for an agency per diem

First Nations Approaches to Caring for the Child			
Approach	Definition	Standards	Financial Assistance
	decisions and worker monitors		
Kinship Care	The child is admitted into the care of a society and placed with a member of their extended family or community; child is “in care” with an agency; the agency makes decisions about care	Provincial children in care standards and regulations apply. Families must meet provincial foster care requirements after 60 days, if the child remains in the society’s care and custody	Ongoing financial assistance up to the regular foster care rate by the agency to support the needs of the child in the extended family’s home until the child returns to the parent(s) or a plan for a long-term or permanent home for the child has been established
Youth leaving care	<p>Societies must enter into Continued Care and Support for youth agreements with the following youth, in accordance with the regulations.</p> <ol style="list-style-type: none"> <li>Youth who were the subject of extended society care of legal custody orders under the CYFSA that expired when they turned 18.</li> <li>Youth who entered into Voluntary Youth Services Agreement with the society that expired when they turned 18.</li> <li>First Nations</li> </ol>	Eligible youth are entitled to receive financial and non-financial supports through the Continued Care and Support for Youth Program, as set out in policy directive CW 004-16.	<p>Financial assistance is provided through the Continued Care and Support for Youth (CCSY) Program. This program provides eligible youth ages 18-21 (including youth subject to customary care agreements, for which the society paid a subsidy immediately prior to their 18<sup>th</sup> birthday) with a minimum of \$850/month, as well as non-financial supports, to help them meet their goals during their transition into adulthood. Through CCSY, societies provide supports and guidance that will assist youth to achieve physical and emotional well-being, acquire basic life management skills and develop social networks that include connections to caring adults and the community.</p> <p>The Aftercare Benefits Initiative (ABI), administered by the</p>



First Nations Approaches to Caring for the Child			
Approach	Definition	Standards	Financial Assistance
			<p>OACAS, provides eligible youth from care between the ages of 21 to 25 with access to prescription drug, dental, extended health and employee assistance-type benefits, for a maximum of 4 consecutive years. Eligible youth include those who received or were eligible to receive CCSY including youth who were subject to a Customary Care agreement, for which a society paid a subsidy, immediately prior to the youth's 18th birthday.</p> <p>The ABI program is also available to youth who were adopted from extended society care on or after June 1, 2016, and who are between the ages of 18 to 25. The program also provides counselling and life skills support services to ABI plan members up to their 29th birthday.</p>
<p>Sources: "2016 Ontario Permanency Funding Policy Guidelines" by Ontario, MCCSS, 2016; "Permanency: Supports and Subsidies for Adoption" by OACAS, 2018; Ontario; and "25 is the New 21: The Costs And Benefits Of Providing Extended Care &amp; Maintenance To Ontario Youth In Care Until Age 25" by the Ontario, Provincial Advocate for Children &amp; Youth, 2012a.</p>			

The Ministry of Children, Community and Social Services (MCCSS) provides supports for adoptive families and children and youth in and leaving care to improve outcomes for children and youth transitioning to adulthood. This includes:

- Targeted subsidies for families with a net annual income of \$93,700 and under and who have adopted or obtained legal custody of children in extended society care, where the children are aged 8 years or more, or are part of a sibling group of two or more. Eligible families receive \$1,035 per month/\$12,420 per year for each eligible child up to the child's 21st birthday

provided the child remains in the care of the family and the family continues to meet the financial eligibility criteria on an annual basis;

- Post-adoption supports to help adoptive families respond to the needs of their children after the adoption has been finalized:
  - Pathways to Permanence 2: Parenting Children who have Experienced Trauma and Loss Curriculum, a specialized training program delivered by the Adoption Council of Ontario, for parents who adopt through children's aid societies. The curriculum provides adoptive parents with the knowledge and skills they need to help them respond to the challenges presented by their adopted children;
  - The Parent2Parent Support Network, a peer support program to provide adoptive parents with opportunities to share with, and learn from, other adoptive parents who are facing similar challenges raising their adopted child(ren). Parents who adopted from a society prior to the start of the program can access services. This program is run by Adopt4Life, the association for adoptive parents in Ontario.
- The Living and Learning Grant (LLG) provides eligible youth between the ages of 21-24 who were formerly in extended society care with financial support to help them with costs associated with pursuing post-secondary education and training programs. Youth who received or were eligible to receive CCSY (including youth who were subject to a customary care agreement, for which a subsidy was paid, immediately prior to their 18<sup>th</sup> birthday) can also access support through the LLG pending all other eligibility criteria are met. The grant does not reduce the amount of OSAP grant and loan funding a student may be eligible to receive. Youth must be enrolled in full-time postsecondary programs that are approved under the Ontario Student Assistance Program (OSAP). The grant provides eligible youth with \$2,000 a semester (\$500 per month) of full-time postsecondary studies to a maximum of \$6,000 per academic year to help with educational expenses. Eligible youth may receive the grant for a maximum of four academic years.

Furthermore, the MCCSS has provided a policy directive to the CASs to use Parent Resources for Information, Development and Education (PRIDE) and Structured Analysis Family Evaluation (SAFE) as “the assessment and pre-service preparation and support for parents” who are providing foster care or plan to adopt children. While these tools have been used by CASs since 2006 and 2007, respectively, they are not culturally relevant. As Beaucage indicated in 2011, these programs should be removed “until they can be modified to reflect Aboriginal values and culture” (p. 12). The Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) has developed a culturally relevant approach titled *Heart and Spirit*, which has yet to be authorized by MCCSS for use with Indigenous children and families.

First Nations-defined customary care requires a full range of services and supports to keep children with their families and in community. Federal and provincial legislation and policies are needed to support this spectrum of care.

## YOUTH LEAVING CARE

First Nations youth leaving care require access to and funding of a system of well-being and customary care services to enable healthy transitions to adulthood. Federal and provincial legislation and policies co-developed with First Nations need to address the provision of supports and services for First Nations youth through age 25. A snapshot of the current environment indicates

- youth leaving care tend to have poorer outcomes in key areas (housing, education, employment, health) related to well-being (Gaetz, O'Grady, Kidd, and Schwan 2016; Kovarikova, 2017; Rutman, Hubberstey, Feduniw, & Brown, 2007);
- they struggle with identity, experience trauma from the experience, mistrust institutions, and lack supports to thrive (Crawford, Pharris, & Dorsett-Burrell, 2018);
- Indigenous youth, in particular, have the added burden of suffering the impacts of intergenerational trauma and the legacy of child welfare policies (see Chapter Three, “Intergenerational Trauma and the Legacy of Child Welfare Policies”); and
- economic studies suggest the risk of doing nothing is substantial (Annie E. Casey Foundation, 2013, 2019; Conference Board of Canada, 2014; Ontario, Provincial Advocate for Children and Youth, 2012a).

As advocates for reform in the seventies indicated, “too much attention had been given to families’ inability to meet their children’s ‘best interests’, while not enough consideration was being given to the impact [of] child welfare interventions, and in particular the effects of substitute care” (Trocmé, 1991, p. 65). This section explores what is known about the outcomes for youth aging out of care, including the perceptions of youth and service providers, and opportunities for moving forward.

In Ontario, at least five studies/reports have been undertaken that address youth leaving care. They include:

- *Youth Leaving Care: An OACAS Survey of Youth and CAS Staff* by the Ontario Association of Children’s Aid Societies in 2006
- *25 is the New 21: The Costs and Benefits of Providing Extended Care & Maintenance to Ontario Youth in Care Until Age 25* by the Office of the Provincial Advocate for Children & Youth in 2012
- *My Real Life Book: Report from the Youth Leaving Care Hearings* by the Office of the Provincial Advocate for Children & Youth in 2012
- *Indigenous Justice: Examining the Over-Representation of Indigenous Children and Youth* by The Action Group on Access to Justice [TAG], Law Society of Upper Canada in 2016
- *Exploring Youth Outcomes after Aging-Out of Care* by Jane Kovarikova in 2017

The majority of these reports highlight the available evidence across Canada and in other jurisdictions about outcomes for youth aging out of care.

Across Canada, the age at which youth “age out” of care varies – from 16 in some provinces/territories, to 18 in others – and can extend longer if youth are in school. In Ontario, the legal age at which youth age out of care is 18. Youth in the child welfare system at age 18 are simultaneously aging out of a protection system, taking on more autonomy and responsibility, and transitioning from childhood to adulthood (Goodkind, Schelbe, & Shook, 2011).

This period of “emerging adulthood” that youth are going through, regardless of being in care, can take a number of years. While youth not previously in the child welfare system can often rely on emotional and financial support from their parents/guardians, youth that are transitioning out of care cannot usually rely on that same support (Goodkind et al., 2011; Fowler, Marcal, Zhang, Day, & Landsverk, 2017). With young adults typically living at home longer than previous generations (Statistics Canada, 2017), the transition to adulthood has become increasingly complex, and without those supports that youth not in care typically experience, youth aging out of care have been seen to fare worse on a number of indicators/outcomes.

Generally, youth aging out of care are likely to have experienced family instability, maltreatment, and exposure to adverse childhood experience, which is generally problematic and correlated with poor adult outcomes (Crawford, Pharris, & Dorsett-Burrell, 2018). According to several studies on youth aging out of care, youth with previous involvement with the child welfare system generally have low academic achievement; are more often unemployed or underemployed; experience homelessness / unstable housing; have earlier pregnancies; and have worse health outcomes (Kovarikova, 2017; Rutman, Hubberstey, Feduniw, & Brown, 2007).

Current studies about outcomes predominantly include both Indigenous and non-Indigenous youth ageing out of care. Given the overrepresentation of Indigenous children and youth in child welfare systems across the country, it is expected that outcomes cited below apply to Indigenous youth equally or even at more significant rates.

### **Low academic achievement**

Former youth in care are more likely to have poor academic outcomes, and youth in care often struggle to complete high school (Kovarikova, 2017). More frequent movement of youth in care creates challenges for academic progress, which is hard to make up (Kovarikova, 2017). Being a former youth in care is a significantly larger obstacle to post-secondary achievement than living in a low-income family, being of a particular gender or race, or being a first-generation newcomer student alone (Kovarikova, 2017). In Ontario, only 44 per cent of youth in care graduate from high school, compared to 81 per cent of their peers. (Kovarikova, 2017).

### **Employment**

Former youth in care are more likely to have poor employment outcomes as compared to same age peers as well as peers from other disadvantaged backgrounds, with the majority of youth aging out of care living in poverty (Kovarikova, 2017). Low academic achievement is related to poor employment outcomes, in addition to other factors common to youth in care, including racial marginalization, disability, early pregnancy, and criminal convictions (Kovarikova, 2017). Youth aging out of care may additionally be more reliant on income assistance as their primary source of income (Rutman et al.,

2007). Youth aging out of care are also likely to experience loneliness and isolation, which can further interact with academic and career outcomes (Kovarikova, 2017).

### Homelessness and housing insecurity

Youth aging out of care experience higher rates of homelessness and are most vulnerable in the first six months after aging-out (Kovarikova, 2017). In Ontario, approximately 43 per cent of homeless youth have been involved with the child welfare system (Kovarikova, 2017). Social support (real or perceived) decreases the risk of homelessness for youth aging out of care, and youth are more at risk of homelessness after care if they have run away from care, or experienced group care, physical abuse, or delinquency in care (Kovarikova, 2017). Family reunification after youth age out of care may lower the probability of a youth experiencing homelessness after care (Fowler et al., 2017).

Gaetz, O'Grady, Kidd, and Schwan (2016), in their seminal work on youth homelessness in Canada, found that approximately 71% of Indigenous youth who were homeless had been involved with the child welfare system (p. 9). They emphasize the necessity of putting families first, providing early prevention, including housing, and implementing “transitional supports for young people leaving care” (pp. 11-12).

Studies within the United States (Courtney, Dworsky, Brown, Cary, Love, & Vorhies, 2011; Annie E. Casey Foundation, 2013; Rosenberg & Kim, 2017) found similar results, and one national study concerning non-Indigenous youth aging out of care and homelessness suggested that “Reunification with families among adolescents placed into foster care is associated with the lowest probability of literal homelessness” (Fowler et al., 2017, p. 9).

### Criminal justice involvement

Compared to same age peers, rates of convictions for youth aging out of care are high, although criminal behaviour is said to lessen over time (Kovarikova, 2017). Other factors interact with criminal justice system involvement, including race, cultural background, and gender, as well as placement type and stability of placement (Kovarikova, 2017). While youth in care are detained at higher rates than those not involved in care, there is no evidence to suggest that they commit more frequent or severe crimes (Kovarikova, 2017). Involvement in the criminal justice system is in turn associated with negative consequences for youth (Shook et al., 2013).

### Pregnancy

Youth aging out of care are more likely to experience early pregnancy (ages 17-19) (Kovarikova, 2017). While there are cases where youth have indicated that they wanted these pregnancies, it is suggested that in some cases the lack of reliable information about sex contributes to the early pregnancy rate (Kovarikova, 2017). There are a number of factors that may delay pregnancy, including experiencing group care, as well as educational attainment and caregiver attachment (Kovarikova, 2017). It should be noted, however, that in certain cases, the experience of pregnancy/being pregnant could provide the impetus for youth to cease using substances and can provide a connection for youth to the community through parenting and pregnancy programs (Rutman et al., 2007).

## Health and Social Outcomes

Youth who have aged out of care report worse health and less access to health care as their same age peers (Kovarikova, 2017). In Ontario, a majority of youth in care identify with having special needs, and one third of Ontario's permanent Wards have mental health needs (Kovarikova, 2017). Depression is also a frequently cited health condition for youth aging out of care (Rutman et al., 2007).

Further, Courtney, Dworsky, Brown, Cary, Love, and Vorhies (2011)<sup>70</sup>, in their longitudinal study which followed young people aging out of foster care and who were now 26 years of age, found "that young people are aging out of foster care without the knowledge and skills they need to make it on their own" (p. 114).

Important to the discussion is that all of these outcomes fundamentally reflect basic needs for youth in transition and likely compound one another when addressed in isolation rather than through a holistic approach. The additional burden of intergenerational trauma and the legacy of child welfare policies further impacts Indigenous youth (see Chapter Three, "Intergenerational Trauma and the Legacy of Child Welfare Policies").

A number of Ontario studies/reports included consultations with youth and service providers who offer their experience and advice about what is needed. For instance, the Office of the Provincial Advocate for Children and Youth set the stage for the Youth Leaving Care Hearings held in 2011. One of the outcomes of those hearings resulted in the report, *My Life Book: Report from the Youth Leaving Care Hearings* (2012b). Youth indicated "feeling silenced, ignored and given what many youth in care call 'the boot'" (p. 5).

The Action Group on Access to Justice (2016) in its consultations with youth and service providers found that "Placement in care causes long-term trauma that is left unresolved and unaddressed" (p. 14). For Indigenous youth, it "fosters a deep feeling of cultural disenfranchisement and loss of identity, particularly for those children placed in non-Indigenous homes" (p. 14). As well, youth mistrust institutions and lack the necessary supports to transition and thrive (p. 14).

Youth who have successfully transitioned to adulthood often express that having a support person made the difference (Ontario, Office of the Provincial Advocate for Children and Youth, 2012a). They also indicated the need for additional financial support, assistance with education and employment, opportunities to develop life skills, and for these supports to continue through to age 25 (Ontario, Office of the Provincial Advocate for Children and Youth 2012a; OACAS, 2006).

Youth are emphatic; they want to be listened to and heard. They want to be included in discussions and decisions about their lives. This includes legislative and policy deliberations.

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<sup>70</sup> This study was a collaborative effort among child welfare agencies in three states (Illinois, Iowa, and Wisconsin), Chapin Hall at the University of Chicago, and the University of Wisconsin Survey Center. Its purpose was to examine how youth fared as they transitioned into adulthood since the enactment of the John Chafee Foster Care Independence Act 1999 (Courtney, Dworsky, Brown, Cary, Love, & Vorhies, 2011, p. 3).

Finally, economic studies (Annie E. Casey Foundation, 2013, 2019; Conference Board of Canada, 2014; Ontario, Provincial Advocate for Children and Youth, 2012a) suggest that the cost of doing nothing is substantial. Irwin Elman, the Ontario Provincial Advocate for Children and Youth in 2012 made the case for the long-term benefit of investments in services and supports for youth transitioning from care. Another study (Ringel, et al., 2017) hypothesized the necessity of achieving improved outcomes through a combination of prevention and treatment.

## JORDAN'S PRINCIPLE

Every individual is equal before and under the law and has the right to equal protection and benefit under the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (Canadian Charter of Rights and Freedoms, Section 15)

The well being and safety of the child must be the paramount consideration in resolving jurisdictional disputes – the child must come first in all instances. (Blackstock, et al., 2005, p. 17)

Jordan's Principle is a child-first principle that "is a legal requirement resulting from the Orders of the Canadian Human Rights Tribunal (CHRT) and is not a policy or program" (AFN, 2018, p. 1). Despite this legal requirement, it is beneficial to include Jordan's Principle in federal legislation, as such legislation can help ensure implementation is more consistent, smooth and predictable. There is further need to affirm the Principle in government-to-government funding agreements. A snapshot follows about the history and the current environment which suggests that some of the funding under Jordan's Principle may be addressing underfunding of First Nations community-based services.

Jordan River Anderson, a First Nations child from Norway Cree House Nation was born in 1999 with a rare medical condition which required specialized care. He subsequently died in the hospital as governments argued for two-years about who was responsible for the provision and reimbursement of specialized in-home care. Jordan "was 5 years old and had never spent a day in a family home" (Caring Society, 2017, para. 1). At issue was the refusal by both the governments of Canada and Manitoba to assume responsibility for the cost of services; a jurisdictional dispute.

Evidence indicates that these jurisdictional disputes were not new and were previously identified in the 1967 Hawthorne Report (MacDonald & Walman, 2005). Reviews by MacDonald and Ladd (2000) and MacDonald and Walman (2005) found that these disputes continued with the needs of children secondary to disputes about responsibility for reimbursement. Consultations during the development of the *Wen:de* report (Blackstock et al., 2005) found

**12 agencies had experienced 393 jurisdictional disputes this past year requiring an average of 54.25 person hours to resolve each incident.** The most frequent types of disputes were between federal government departments (36%), between two provincial departments (27%) and between federal and provincial governments (14%). Examples of the most problematic disputes were with regard to children with complex medical and educational needs, reimbursement of maintenance, and lack of recognition of First Nations jurisdiction [author's emphasis]. (p. 15)

Jordan's Principle was created in response to the tragic two-year failure to address Jordan's needs and the inferior services provided to First Nations children living on reserve.

Championed by First Nations with support from "governments and national and international organizations" (Blumenthal & Sinha, 2015), Jordan's Principle was subsequently passed unanimously in the House of Commons through Private Member Motion-296 in 2007. Jordan's Principle "call[ed] on the governments of first contact to ensure First Nations children can access public services on the same terms as other children" (Caring Society, 2014, para. 2). As the Jordan's Principle Working Group (2015) indicates, in their report *Without denial, delay, or disruption: Ensuring First Nations children's access to equitable services through Jordan's Principle*,

Jordan's Principle responds to complex systems for funding and delivering services, which treat Status First Nations children differently than other children in Canada. Responsibility for services to First Nations children is often shared by federal, provincial/territorial and First Nations governments; in contrast, funding and delivery of these same services to most other children in Canada falls solely under provincial/territorial jurisdiction. Accordingly, First Nations children face unique challenges in accessing services, and Jordan's Principle is an essential mechanism for ensuring their human, constitutional, and treaty rights. (The Jordan's Principle Working Group, 2015, p. 4)

Despite this endorsement, subsequent evidence (Blumenthal & Sinha, 2015) and testimony before the CHRT indicated that implementation did not reflect the intended vision. The CHRT found that one of the major adverse impacts was "The narrow definition and inadequate implementation of Jordan's Principle, results in service gaps, delays and denials for First Nations children" (*Caring Society* 2016 CHRT 2, para. 458). They ordered "AANDC [now ISC] ... to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle" (para. 481). Concerns about the interpretation and application of Jordan's Principle continued and resulted in additional orders by the CHRT (see *Caring Society* 2016 CHRT 10, para. 33; 2016 CHRT 16, para. 118 & para. 160, A1).

In 2017, the CHRT ordered that the definition and application be immediately "based on the following key principles" (*Caring Society* 2017 CHRT 35, para. 135, 1B, author's emphasis and changes as presented):

- i. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.
- ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.
- iii. When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child,



without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child's case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government;

- iv. When a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. Where such services are to be provided, the government department of first contact will pay for the provision of the services to the First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii). Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is provided, the government department of first contact can seek reimbursement from another department/government.
- v. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e., between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle."

Further, the CHRT ordered INAC (now ISC) to "not decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle" (*Caring Society* 2016 CHRT 16, para. 160, A1)

Jordan's Principle can be accessed through an individual or group application. Table 4.2 provides an overview of the number of individual and group applications and dollar amounts approved within 2017-

18 and 2018-2019 as respectively reported January 2019 and October 18, 2019.<sup>71</sup> According to ISC, “In 2018/19, approximately \$72.5 million in Jordan’s Principle funding was provided reaching more than 36,187 children including both group and individual requests” (2019, October 18).

Table 4.2 Jordan's Principle in Ontario

<b>Jordan’s Principle in Ontario region</b>				
	Individual applications		Group applications	
	2017-2018	2018-2019	2017-2018	2018-2019
Number of unique children served	745	2,000		
Number of products/services approved	1,331		74	
Dollar value approved	\$2,393,113.15	\$16,080,301.16	\$25,151,191	\$55,919,698.84
Source: Indigenous Services Canada, Ontario Region for 2017-2018 provided January 2019. Data for 2018-2019 provided October 18, 2019.				

The types of services<sup>72</sup> funded in Ontario fell within three broad categories: health, social, and education. Services appear to be related to:

- assessment and screening (i.e., psycho-educational assessments);
- supports (e.g., services from Elders, personal support workers, tutors, teaching assistants, respite care, land-based activities);
- interventions (e.g., mental health services, allied health therapy, addiction services, residential services);
- medical supplies and equipment (i.e., assistive technology and electronics) including mobility devices, ramps for wheelchair accessibility); and
- transportation expenses to access education and health services.

In Ontario, Jordan’s Principle is specifically referenced in the preamble of the *CYFSA*.

<sup>71</sup> The financial data provided October 18, 2019 is not reflected in the funding analysis within this Study.

<sup>72</sup> See <https://www.canada.ca/en/indigenous-services-canada/services/jordans-principle/submit-request-under-jordans-principle-step-1.html>

Where a First Nations, Inuk or Métis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan’s Principle. (CYFSA, preamble)

The Ministry of Children, Community and Social Services (MCCSS) received less than 10 requests in the past year in reference to Jordan’s Principle. These requests primarily concerned access to or navigation of disability services, mental health services, and education. The requests also concerned questions about services provided or recommended by a CAS. In all cases, the families were connected to existing resources to resolve the issue.

Related to Jordan’s Principle, NAN sought an immediate relief order from the CHRT “with respect to the provision of mental health services to First Nations in Ontario” (*Caring Society* 2017 CHRT 7, para. 5). The panel heard that two twelve-year-old girls committed suicide in Wapekeka First Nation. The First Nation had previously uncovered a suicide pact and submitted a proposal to the federal government to fund “an in-community mental health team as a preventative measure” (para. 8). No action occurred on the 2016 proposal. While the lack of response remained unanswered before the panel and given the gap in mental health services created by the 1965 Agreement, a representative of the federal government indicated that this situation “could rightly be considered a Jordan’s Principle case” (para. 15).

As a result, NAN sought a “‘Choose Life’ order that Jordan’s Principle funding be granted to any Indigenous community that files a proposal (akin to the Wapekeka proposal) identifying children and youth at risk of suicide” (*Caring Society* 2017 CHRT 7, para. 16). The panel heard that Health Canada and NAN had committed to a process and development of a simplified process for a “Choose Life” initiative under Jordan’s Principle. According to ISC, Ontario Region, from April 2017 through January 20, 2019, \$73 million has been allocated through this initiative to support 22,126 children. Examples of Choose Life activities include:

- Community-Based Mental Health Services
  - One-on-one intervention counselling, psychological and psychiatric assessments, development of treatment plans, counsellors in schools, etc.
- Capacity Building
  - Training of front-line staff, community members and youth through training sessions and workshops:
  - ASIST, SafeTALK, First Aid, Naloxone, Mental Health First Aid, How to Deal with Loss, bullying, suicide prevention, warning signs.
- Youth Empowerment
  - Creation of youth councils, forums, youth driven programming, mentoring programs, peer support programming, etc.
- Land-based Healing

- Land-based healing camps, detox camps, traditional hunting and gathering in groups, canoe trips on traditional water routes, cultural teachings and gatherings etc.

Jordan's Principle continues to be an important mechanism to ensure funding for the provision of services to First Nations without delay, denial, or disruption, and needs to be recognized in government-to-government agreements.

## MOVING FORWARD

There are challenges in moving from a system designed for child welfare protection to a holistic system of well-being. Some of these challenges follow.

### Service delivery

There appear to be five major challenges to transforming service delivery. First, the current child welfare system is characterized by reactive responses (i.e., removing children). While there is consensus about moving away from reactive approaches, this will require an adjustment in thinking and practice. All parties will be challenged to change how they respond.

The second challenge concerns how well-being services and supports are designed. While services and supports may currently include some culturally relevant attributes, they remain primarily a reflection of non-Indigenous practice requirements. First Nations governed, designed, and delivered holistic well-being services and supports with emphasis on language, culture and tradition are essential and way forward.

Third, the development of a holistic system of well-being services and supports that are not funded or delivered in silos necessitates that departments within federal and provincial governments work together with First Nations to support transforming child welfare to focus on well-being. This includes addressing the special needs of children and youth to eliminate barriers to education and other services.

Fourth, funding for these services and supports is not mandated through federal or provincial legislation and thus is ultimately precarious. Well-being services and supports need to be mandated with unified funding to enable the flexibility to support the child and family regardless of where they live (on or off reserve).

The fifth challenge is to allow the time for adjusting services and supports in order to realize impacts. The current situation is a result of long-term child welfare imposed interventions. All parties must manage their own expectations and allow for adjustments and mistakes going forward.

### First Nations customary care

There are three fundamental challenges to practicing First Nations customary care. The first challenge is that the current mainstream definition of customary care requires children to leave their parents. Therefore, it is necessary to adopt the First Nations definition of customary care which addresses the needs of children and families regardless of what services and supports (prevention and protection) they may need. This definition includes supporting youth leaving care as they transition into adulthood. Legislation, policies and funding need to support this spectrum of services.

The second challenge is to support the relationship between First Nations and their respective ICWBA. The ICWBAs serve their respective First Nations in supporting the well-being of children and families in community. This is critical to the full implementation of First Nations customary care.

Third, First Nations and ICWBAs require the time and resources to develop First Nations customary care, including the tools and resources necessary to support children and families. After all, “there are many resources for foster parents but none for when children are with their parents” (Johnson, 2011, p. 10).

### Jordan’s Principle

It is unclear to what extent the funds provided through Jordan’s Principle, including the Choose Life Initiative, are indicative of the underfunding of programs, services, and supports in community. Related to this is extent to which the current implementation of Jordan’s Principle maintains a reactive approach to child and family well-being. While a series of case studies on the delivery models for Jordan's Principle has been completed<sup>73</sup> which may inform the implementation processes and methods, further examination of Jordan’s Principle in Ontario is warranted to inform well-being service delivery, family supports, and funding. This information could inform the work of ISC and AFN as they seek to co-develop a long-term approach to Jordan’s Principle. Finally, recognition of Jordan’s Principle in government-to-government agreements is essential.

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<sup>73</sup> The findings from these case studies were not available during the research period of January through March 2019.

## CHAPTER FIVE: ADDRESSING SERVICE DELIVERY SUPPORTS

System change requires the right people, in the right place, and at the right time, to deliver key services and supports. They need the information technology and capital infrastructure to enable their work. They also need to know they are supported when extraordinary circumstances arise.

### Key points

- A comprehensive human resource assessment and management plan of First Nations community and agency-based programs and services is needed. Such a plan would include a labour market study.
- First Nations information governance requires the infrastructure and human resource capacity to collect data, ensure quality, and use information to inform policy and service delivery.
- Capital infrastructure is required to enable system transformation.
- An envelope of funding needs to be set aside in order to respond to extraordinary circumstances that arise.

### HUMAN RESOURCES

A comprehensive review is required of human resources needs in First Nations communities and within Indigenous Child and Family Well-Being Agencies. This review should minimally include:

- A labour study
- Human resources requirements, including professional mix and caseload assumptions, housing and office space
- Recruitment and retention strategies
- Ongoing supervision, training and development
- Strategies to increase the participation of First Nations in education and careers
- Data requirements with a plan to monitor and measure progress; and
- Funding requirements associated with these activities

A limited search was conducted to obtain a perspective on health and social services within First Nations communities. Reports largely date to 2005 through 2010 when there was an emphasis on and funding for health human resources reform. A 2013 evaluation report by the Evaluation Directorate, Health Canada and Public Health Agency of Canada found:

There is a continued need to increase the representativeness of First Nations, Inuit and Métis health care workers in the health care system and to address First Nations and Inuit health human resource needs on-reserve, particularly for rural and remote communities. (p. 25)

A 2006 literature review (Oopiks Health Associates, 2006) explored the attributes and activities necessary for Indigenous participation in health careers. The analysis resulted in a conceptual framework (see Figure 5.1) that included the key areas of cultural match, structure, processes, capacity, and policies. The authors outline particular attributes that must be addressed in each of these areas. Cumulatively, these reflect an integrated approach necessary to increase participation.

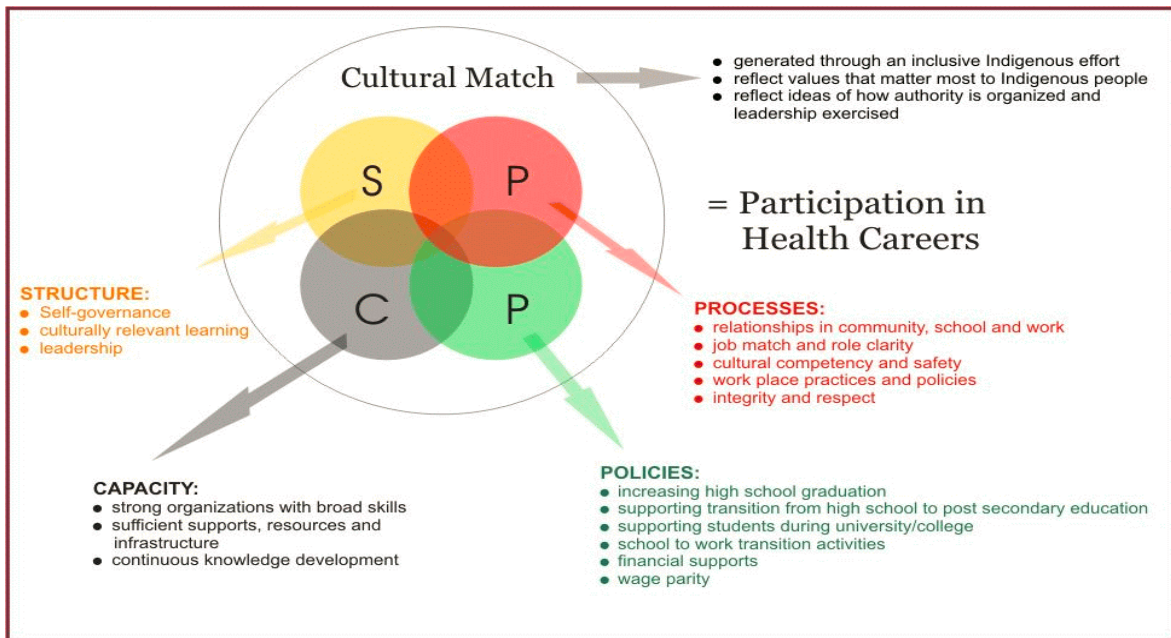


Figure 5.1 First Nations participation in health careers. Reproduced with permission of the author, Oopiks Health Associates, 2006.

Minore, et al., prepared a snapshot for Health Canada in 2007 on Aboriginal health human resources In Ontario. The report indicated the need to encourage and increase First Nations participation in health and social services related careers and support them once they graduate through continuing education and career ladders. Investments were also necessary to address work environments, competitive salaries and benefits, information infrastructure, and other improvements to enhance recruitment and retention.

According to ANCFSAO members, staff recruitment and retention is a significant challenge due to such factors as lack of wage parity, high caseloads, large geographic area to cover with a number of communities being remote, and lack of trained workers and training opportunities (ANCFSAO, 2018, p. 10). These factors also impact “worker safety and wellness” (p. 10) creating an added burden when a team member requires leave for stress or other related health events. The CHRT acknowledged these concerns and ordered

Canada to analyze the needs’ assessments completed by First Nations agencies in consultation with the Parties, interested parties (**see protocol order below**), and other experts and to do a cost-analysis of the real needs of First Nations agencies, including prevention/least disruptive

measures, intake and investigation, building repairs and legal fees related to child welfare, taking into account travel distances, case load ratios, remoteness, the gaps and/or lack of surrounding services, and all particular circumstances they may face. (*Caring Society* 2018 CHRT 4, para. 231, author emphasis)

Reports by Institute of Fiscal Studies and Democracy [IFSD] (2018) and the Canadian Association of Social Workers (2018) offer similar findings and additional context. For instance, IFSD (2018) reported that during workshops the majority (62%) of agencies indicated that they were unable to “remunerate employees at provincial salaries rates” (p. 102). The reasons for this were unclear. Agency personnel also reported that “the scope of duties of their employees exceeded those that were contractually defined” (p. 102). This was particularly true for executive directors (92%) and social workers (81%) (p. 102). The Canadian Association of Social Workers (2018) similarly found that “Social workers are responsible for unmanageable workloads and high caseloads that are often the result of staff turnover” (p. 87).

Child welfare experts and social workers across Canada expressed the gravity of excessive workloads and increasing administrative requirements without having adequate supports in place for workers or for the complex needs of clients and communities (Canadian Association of Social Workers, 2018, p. 87). The lack of mental health wellness strategies in organizations is an aggravating factor to the vicarious trauma and post-traumatic stress disorder experienced by social workers exposed to traumatic and dangerous situations in the workplace (p. 87). This negatively impacts client wellness due to staff turnover in a system where Indigenous children and families are over-represented and systematically misunderstood (p. 87).

In an already complex environment, ANCFSAO members indicate an additional burden associated with the launch in 2017 of a new provincial process that requires successful completion of

16-week Child Welfare Pathway to Authorization training series. This includes the Ontario standardized Authorization Candidacy Exam. Only upon completion of the exam will the new worker be eligible to be authorized by their Local Director to do protection work.... Agencies have stated that this new process could take 6-8 months for staff to complete.

This training has a major impact on the agencies capacity to deliver child protection services. The focus for new staff will be the training and the burden of case management and extra responsibilities will be on the senior workers. Some mainstream agencies have the capacity to hire extra workers while this transition process occurs. This is not the case for the Indigenous agencies due to funding constraints and travel expenses. (ANCFSAO, 2018, p. 10)

According to an ANCFSAO needs assessment, member agencies indicated the need for training modules that are de-colonized, trauma-informed, and culturally relevant for working with First Nations (ANCFSAO, 2018, pp. 10-11). As well, “education is needed regarding mental health, addiction, harm reduction, history of colonization ... intergenerational trauma, and culturally-relevant training on traditional teachings, parenting, suicide” (p. 11). Members contend that cultural competency training should be mandatory for all non-Indigenous workers (p. 11). Development of leadership and supervisory skills and travel expenses for training are also needed.



The OACAS (2014) has developed a second edition of the *Other Side of the Door: A Practice Guide for Child Welfare Professionals Working with First Nations, Inuit and Métis Peoples*. It is not clear whether or not ANCFSAO members were involved in the development of this manual.

## INFORMATION GOVERNANCE

First Nations have always maintained an understanding and relationship of its information, recognized and respected protocols pertaining to the collection, use and passing on of information. Information governance among First Nations is multi-layered. First Nations communities 'own' their stories, families 'owned' certain songs and/or stories and protocols governed how, when and who these could be passed on. Individuals within the communities and families had certain rights and responsibilities as dictated by their position and capabilities.... Most of these protocols are not documented in writing but are part of the First Nations 'ways of knowing' and stories that have been handed down to generation to generation. (AFN, 2007, p. 1)

A discussion about data gaps and challenges begins with understanding First Nations information governance. Research and the process and methods for collecting and using data and information have always been an inherent right and a part of living in each First Nation. Data inform ongoing decision-making processes including identifying and acting on priorities, developing policies and other related initiatives, and living in balance within the particular place. Data also continue to inform non-First Nations policies and decision-making. This has been particularly evident in research and practice concerning the environment, although opportunities extend beyond this sector.

The analysis and interpretation of the data and information are as important as the data collected. Leroy Little Bear (2004) offers some sage advice when he says

Worldview is important because it is the filter system behind the beliefs, behaviour, and actions of people. It is the tacit infrastructure people use for their beliefs, behaviour, and relationships. Two persons with differing worldviews can look at or experience the same event and come away with very different interpretations. (p. 26)

"The gathering of information and its subsequent use is inherently political" (Canada Royal Commission on Aboriginal Peoples, 1996a, p. 4) and continues to occur without meaningful participation of First Nations. In response, First Nations developed a framework for information governance; a set principles that address the ownership, control, access, and possession (OCAP®)<sup>74</sup> of First Nations data/information. According to the First Nations Information Governance Centre [FNIGC] (2014),

Although there may be a good degree of consensus, the interpretation of OCAP™ [sic] is unique to each First Nation community or region. OCAP™ [sic] is not a doctrine or a prescription. It is a

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<sup>74</sup>"Originally coined as OCA [or Ownership, Control and Access] ... during a 1998 brainstorming session of the National Steering Committee of the First Nations and Inuit Regional Longitudinal Health Survey (RHS). The original acronym has been attributed to Cathryn George, a member of the committee representing the Association of Iroquois and Allied Indians" (FNIGC, 2014, p. 4).

set of principles that reflect First Nation commitments to use and share information in a way that brings benefit to the community while minimizing harm. It is also an expression of First Nation jurisdiction over information about the First Nation. (pp. 4-5)

An overview of each principle follows.

**Ownership:** The notion of ownership refers to the relationship of a First Nations community to its cultural knowledge/ data/ information. The principle states that a community or group owns information collectively in the same way that an individual owns their personal information. Ownership is distinct from stewardship. The stewardship or custodianship of data or information by an institution that is accountable to the group is a mechanism through which ownership may be maintained.

**Control:** The aspirations and inherent rights of First Nations to maintain and regain control of all aspects of their lives and institutions extend to information and data. The principle of 'control' asserts that First Nations people, their communities and representative bodies must control how information about them is collected, used and disclosed. The element of control extends to all aspects of information management, from collection of data to the use, disclosure and ultimate destruction of data.

**Access:** First Nations must have access to information and data about themselves and their communities, regardless of where it is held. The principle also refers to the right of First Nations communities and organizations to manage and make decisions regarding who can access their collective information.

**Possession:** While 'ownership' identifies the relationship between a people and their data, possession reflects the state of stewardship of data. First Nation possession puts data within First Nation jurisdiction and therefore, within First Nation control. Possession is the mechanism to assert and protect ownership and control. First Nations generally exercise little or no control over data that is in the possession of others, particularly other governments. (FNIGC, 2014, pp. 5-6)

A significant requirement for information governance is having the resources and capacity to address the core functions of information management, including:

- Undertaking day-to-day administrative requirements
- "Managing caseloads, service delivery, and resources" (Loo, 2005, p. 146)
- Managing legislated requirements and performance management
- Producing performance reports for continuous quality improvement and regular reporting
- Sharing electronic datasets with external organizations (i.e., FNIGC, university research centers) (Loo, 2005, pp. 146-147)

Institute of Fiscal Studies and Democracy (2018) found that,

on average, agencies are not investing/spending adequately on technology versus industry benchmarks. Agencies surveyed cover the entire spectrum from very current technology with major upgrades in the past 12 months to those who have not seen updates in more than five years. (p. 99)

They assert that “Failure to make adequate investments can hamper productivity, security and even staff retention” (p. 99).

Within this context some of the data/information gaps relevant to First Nations child welfare follow.

- **Population data** – Determining the First Nations population is a challenge for a number of reasons including: some First Nations do not participate in Statistics Canada requests for data; Indigenous Services Canada (formerly INAC) collects data through the Indian Registration System which does not include those First Nations who may be citizens of the First Nation but are not counted within the system.
- **Identity-based data** – The availability and data quality of identity-based data about First Nations children in the child welfare system continues to be a challenge. According to the Ontario Human Rights Commission (2018),

data collection processes and practices are a patchwork across the province.... More than 40% did not know the racial backgrounds or Indigenous identities of more than one in five children served by their agencies.... Four agencies did not know the racial backgrounds or Indigenous identities of over half the children placed in care. (p. 4)

The Ontario Ministry of Children, Community and Social Services Policy Directive CW005-17 Collection and Reporting of Identity-Based Data (2017, December 18) in response to the *Child and Family Services Act* (CFSA) under s.20.1 requires those agencies using the Child Protection Information Network (CPIN)<sup>75</sup> to report on identity-based data (socio-demographic information including race, ethnicity, sexual orientation and gender identity) effective February 5, 2018 or when CPIN is implemented within the agency.<sup>76</sup> Non-Indigenous CASs are expected to have CPIN operational by 2020. Anecdotal evidence suggests that there are challenges with ascertaining identity of clients, particularly when someone does not appear Indigenous.

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<sup>75</sup> Implemented in 2010, “CPIN is an integrated system built on four commercial off-the-shelf software applications for case management, financial management, document management and reporting” (Ontario, Office of the Auditor General, 2015, p. 145 ).

<sup>76</sup> See [http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/CYFSA/policy\\_directive\\_CW005-17.aspx](http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/CYFSA/policy_directive_CW005-17.aspx)

- **Factors bringing children into contact with child welfare** – Accurate and accessible data are not available to obtain a snapshot about the factors bringing First Nations children into care in Ontario. For instance, the challenges with identity data directly impact the resulting data concerning these factors. Second, the agencies are currently using different information systems and data elements, and it is unknown whether these systems with enhancements could provide such a report. Third, the status of continuing the First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect (FNCIS) is unclear.
- **Children in care** – There are children who are not considered to be formally in care, even though they are in need of protection and living outside of parental care, with agency supervision. As well, there are "customary care" placements that may be with non-Indigenous foster parents outside the community. Data about these different types of care situations for children require monitoring.
- **Children and youth leaving care** – There are limited data concerning children and youth leaving care. For instance, CPIN asks if the child or parent coming into contact with the child welfare system has previous experience with the system. An exploratory research project was conducted by Jane Kovarikova (2018) on behalf of the Provincial Advocate for Children and Youth recommending that a "longitudinal study of youth outcomes after aging-out of Ontario's systems of care be undertaken to improve institutional outcomes" (Abstract). The United States of America implemented a National Youth in Transition<sup>77</sup> database in 2010 which collects information about youth in foster care and about outcomes once they age out of care.
- **Community-based comprehensive asset and needs assessment** – Currently, there are a variety of sector reports that identify some of the assets and needs within each First Nation. Some of the challenges with these reports include: varying data collection methodologies; partial or incomplete data elements (e.g., identifies a program but not the scope, manpower and associated funding, salaries and benefits, delivery of funding, etc.); and data and information are difficult to access. The opportunity resides in a holistic asset and needs mapping assessment for each First Nation which includes geographical service mapping with distances to access basic services (e.g., primary care services, hospital services, specialized services, particularly for children and youth with special needs, etc.). Agreement on the categories (determinants, programs and services, human resources, costing, etc.) and associated data elements, the methodology and methods, and the timeframe with routine updates (i.e., every five years in line with strategic planning) would be essential.
- **Human resource data** – Data about First Nations human resources and participation in health and social services careers and employment (e.g., First Nations communities, agencies, etc.) and education remain limited. The Community Based Reporting Template (CBRT) attempts to identify FNIHB health and social services human resources within First Nations communities,

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<sup>77</sup> For more information see <https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/nytd>

although this is challenged by the burden associated with data collection and resulting data quality. The results of efforts to address these challenges are unclear.

Human resource data for child welfare agencies appears to be locally available through the particular agency, although not accessible in aggregate for human resources planning and management. Further, data are currently limited concerning First Nations participation in education, although recent legislation could improve the availability of this information.

- **Financial data** – Financial data are fragmented throughout multiple programs in multiple departments within and across governments. This means that accessing and ensuring comparability of financial data are difficult.
- **Data needed for outcome measures** – There are current data elements associated with some key indicators (safety, permanency, and well-being)<sup>78</sup> for measuring performance within the child welfare system. The challenge is that these indicators are not able to provide a holistic view of the interactions between the determinants, well-being/prevention and protection. Nor do they take into consideration the investments and the outcomes for children who have been in care. Association of Native Child and Family Services Agencies of Ontario has developed some Indigenous performance indicators. These indicators are discussed in Chapter Eight.

First Nations information governance with the implementation of the OCAP<sup>®</sup> principles is the major challenge and opportunity to data gathering and use. Related are at least three practical issues within the current environment that require attention. First, the identification, collection, and use of data are sector and program/initiative driven. This means resources are expended on the development, gathering, analysis, and use of administrative and outcome indicators of performance for every sector and/or program/initiative. These processes and the associated expenditure of resources are at a minimum costly and a burden, in particular, to First Nations. They maintain the silos and as a result miss the opportunity for a holistic view.

Second, imperative to data collection is the assumption that the resources (human and infrastructure) and capacity (human resource skills) exist to collect data and ensure data quality. While some agencies have some capacity, most First Nations organizations and communities do not have the infrastructure or human resources and capacity to collect data and ensure quality.

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<sup>78</sup> According to Gharabaghi, Trocme, and Newman (2016) “Safety is measured on the basis of two indicators of recurrence of investigation. Permanency is tracked on the basis of two additional indicators: days of care, by placement type and the time it takes for a young person to be reunified, placed in a permanent alternative home or discharged from care; and well-being is measured for young people in long-term care who report on the quality of their relationship with their caregiver” (p. 82).

Third, First Nations do not have the information system and human resource capacity to enable data quality and analysis, financial modeling, and indicator assessment. Rather, there is a reliance on obtaining information from governments, which is not easily accessible.

Attention to First Nations information governance and these associated issues can result in meaningful data and information for decision-making.

## CAPITAL AND INFRASTRUCTURE

### *Large capital assets - Resource needs*

The establishment of ICWBAs post-dated Canada's funding commitment through the 1965 Agreement with the result that

[m]any of the First Nations agencies on reserve are operating out of small sub-standard buildings or trailers, while mainstream agencies have larger, higher-quality facilities. Adequate funding is not available to First Nations agencies to acquire capital infrastructure or provide building maintenance and repair. (Rae, 2009, p. 56)

Several recent studies and reports continue to echo this substantial and ongoing deficiency (KPMG 2018; Loepky & Loxley, 2017, for example).

The large capital investment needs include construction, maintenance, and retrofitting of space for

- (1) Administrative offices
- (2) Recreation (Community room, daycare, gymnasium/fitness)
- (3) Temporary residence (for visiting staff, emergency housing needs)
- (4) Group homes

For small communities, needs (#1-3) could be serviced by one small multi-use building. For larger communities, depending on the size of the population (for residence and recreation needs) or the size of the staff (for administration space), larger, multiple structures would be required.

In determining the ICWBA space needs, the IFSD (2018, p. 96) recommends using the government of Canada federal space allocation approach that assigns square footage based on the number of employees.<sup>79</sup> Notably, any recommendation that large capital expenditures be based on historical population counts assumes that historical rates are stable predictors of future Agency activity and related capital needs.

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<sup>79</sup> *Wen:de* (Blackstock et al., 2005) applies population-based formula to allocate the needed funds by recommending a per child per worker ratio formula approach for distributing total capital expenditures across Agencies.

## Information and Communications Technologies (ICTs)

### Resource needs

There are two categories of relevant costs associated with ensuring communities are supported by the appropriate Information and Communications Technologies. One is the capital infrastructure to support broadband access. “Broadband access is more than an issue of internet connectivity, but one of access to services that connect to health, education, and well-being” (IFSD, 2018, p. 80). The second is the ongoing expenses related to operations.

### Information and Communications Technologies capital infrastructure

Broadband is available when an Internet Service Provider (ISP) offers broadband Internet services in a certain area (Centre for the Study of Living Standards [CSLS], 2013, p. 14). Using 2011 data, Ontario reserves with no broadband access was 39.6%, higher than the average for all reserves Canada-wide at 30% (CSLS, 2013, p. 19). In their comprehensive review of Indigenous connectivity, adoption and use of digital technologies in remote and northern Indigenous communities in Canada, O’Donnell et al, (2016, p. 30) echo a widely recognized need for significant new and ongoing investment in broadband capacity. They report as well on examples across Canada of partnerships with existing networks and a proposal to establish a Northern Infrastructure and Services Fund to support this infrastructure development.

### Ongoing ICT equipment and supports

Beyond ensuring the broadband availability and relevant data systems infrastructure, every community and Agency requires basic ICT equipment and services including computer and peripheral equipment, communications equipment, audio and video equipment, equipment repair and maintenance, software and computer services, and data processing.

## EXTRAORDINARY CIRCUMSTANCES AND CONTINGENCIES

In a Full Funding Framework, there must be an envelope to cover Extraordinary Circumstances and Contingencies. This envelope serves at least two important purposes.

First, it serves as a contingency fund for all 133 communities<sup>80</sup> to cover costs of exceptional events that are routine across the sector but only occasional expenses for any given community. In this way, the envelope acts as a type of insurance against the costs of exceptional events. Such exceptional costs would include costs related to exceptional Child Protection and Family Services crisis intervention-management-mitigation, exceptional legal costs, or funding the use of an Alternative Dispute Resolution process, (Chief John Paul, 2018, p. 106). One aspect of the insurance function of the fund would be used then to address the high costs of exceptional Admission-Prevention efforts.

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<sup>80</sup> The Government of Canada recognizes 126 First Nations and works with 127 Chiefs and Councils in Ontario.

Second, the envelope serves as a “last resort” funding source to cover expenses that are, in spirit, costs to be reasonably included in the funding model but inadvertently omitted. This might include funds to cover exceptional remoteness costs as well (see Thoppil, 2018, p. 12).



## CHAPTER SIX: FUNDING ANALYSIS AND OPTIONS

### Key points

- A baseline amount for funding First Nations child and family well-being services in Ontario is indeterminate. Actual funding for 2017-2018 remains in a state of flux due to the complexity of multiple CHRT Orders, ongoing applications (for example, under Jordan's Principle) and retroactive changes to funding in response to these applications.
- A comparison between known total funding in 2017-2018 (inclusive of funding to comply with 2016 CHRT Orders and other reconciliation efforts) and the earlier 2015-2016 funding illustrates the extent of historical underfunding of First Nations child and family well-being in Ontario.
- Indigenous agencies receive funding for child protection and prevention directly from MCCSS through a complex funding formula. The current funding formula underfunds Indigenous agencies.
- The 1965 Agreement is an agreement between Canada and Ontario that sees Canada reimburse Ontario for its eligible child welfare expenses. The inadequacy of the 1965 Agreement is apparent in the gap between services eligible for cost-sharing and the culturally appropriate services needed to achieve a holistic focus on well-being, and for preventing children coming into care.
- Funding gaps include gaps in meeting the distinct needs for First Nations children and families, and inadequate or irregular funding to cover costs for large capital expenditures, information communications technologies, dispute resolution, and exceptional events; as well, there is no formula allowance to cover annual inflation.
- Gaps in funding are only partly filled by other program funding from other federal departments and from the Ontario MCCSS without reimbursement from the 1965 Agreement.
- Gaps in funding include inadequate funding to restore First Nations Determinants of Well-Being, where deficient community housing and high levels of poverty especially are critical and ongoing reasons for why children come into care; these funding gaps are not expected to be addressed in a First Nations child welfare funding model, however.
- Multiple funding envelopes complicate funding administration; funds currently flow to either Indigenous agencies or First Nations communities through *at least* 44 different programs located in multiple departments across 2 levels of government. Options for a new funding framework might best consolidate funding into a distinct First Nations funding envelope.
- Three structurally different funding model options include (1) a community-based approach for assessing costs of and supporting the delivery of protection, admissions-prevention and community-based child and family wellbeing (prevention) services, (2) a complex funding formula adapting the current MCCSS formula for funding Indigenous agencies, and (3) a simplified funding formula for First Nations communities and agencies.
- Options for adjustments to address community cost differences include the NAN Remoteness Quotient, the Statistics Canada Remoteness Index, and the Community Wellbeing Index.

## Preamble

Where all previous related studies focus only on funding child protection and admissions prevention services through Indigenous *agencies*, this chapter is broader in its scope. This chapter considers options consistent with funding a First Nations community-based and directed system that is holistic and focused on First Nations Child and Family Well-Being, designed and governed under First Nations jurisdiction if a First Nation wishes to exercise its right to do so.

This chapter anticipates system transformation discussed in the other chapters in this study. The report focuses on funding relevant services; it remains silent on which entity (ICWBA or the First Nation community itself) offers these services. In a transformed system, there is an interconnected relationship between First Nations and the respective ICWBA they govern. It assumes First Nations communities will each determine how best to implement the spectrum of well-being services and supports needed.

## Introduction

This chapter presents an analysis of the current framework for funding First Nations child and family well-being services in Ontario. It reviews the current MCCSS formula for funding Indigenous agencies and identifies the reimbursement resulting through the 1965 Agreement. It identifies gaps in funding by considering what is currently cost-shared with Canada under the 1965 Agreement, what is currently funded by either Canada or Ontario outside of the 1965 Agreement including what is funded due to CHRT orders and other reconciliation efforts, and compares these amounts to what is needed (as far as this study can determine with the data provided).

Following the analysis of the current funding framework and gaps is a summary of three structurally different funding model options and an evaluation of their effectiveness for adhering to the principles governing the development of the First Nations Funding Framework.<sup>81</sup> A brief discussion of ways to compensate for significant community cost differentials concludes the chapter. In total, this chapter provides information and background for the funding recommendations to follow in Chapter Eight below.

## PRINCIPLES AND ATTRIBUTES OF A NEW FIRST NATIONS FUNDING FRAMEWORK

Principles governing the development of the First Nations Funding Framework (COO, Request for Proposals, 2018),

- Privileges the restoration of healthy communities
- Recognizes the myriad of interactions stemming from the legacy of policies of cultural eradication, historical trauma of residential schooling, and colonization and how this context has caused unhealthy First Nation communities

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<sup>81</sup> The detailed scenario analysis illustrating the operation of the different funding frameworks is omitted. This background information was used to inform the considerable work undertaken by First Nations' representatives participating in this study for producing their recommendations.

- Acknowledges the critical importance of the unhealthy community directly contributing to the high proportion of First Nation children in non-Indigenous care
- Recognizes First Nation right to self determination
- Recognizes the success of some communities to overcome some of these barriers

*Required Attributes of New First Nations Funding Framework* include (COO, Request for Proposals, 2018),

- Sustainable
- Community-based and directed
- Prevention focused
- Holistic (non-siloed)
- Supports First Nations jurisdiction
- Supports substantive equality and be non-discriminatory
- Respects diversity of First Nations communities
- Reflects the unique needs of individual First Nations (e.g. remoteness, large child populations)

### TOTAL ACTUAL AND NEEDED FUNDING TO AGENCIES AND COMMUNITIES

Table 6.1 presents the known actual funding as at January of 2019 from different sources and summarizes proposed estimates of funding needs, as far as available data and information permit. The presentation of the information differentiates funding by the direct source of funds (Provincial or Federal), the use of the funds (child protection; capital renewal, repairs and maintenance; etc.), CHRT Orders, and Jordan’s Principle monies, as at January 2019. Missing data and delayed processing of applications under CHRT orders and rulings, as well as differing opinions between First Nations, Ontario and Canada about minimum funding requirements and scope of respective responsibilities to be included in any revision to the 1965 Agreement, prohibit these actuals (as at January 2019) from defining a consensus baseline amount of appropriate funding.

Comparing total funding before and after the CHRT decisions and noting the absence of dedicated, regular funding for large capital assets illustrates, but only partly, the extent of the historical underfunding of First Nations child and family well-being in Ontario. Prior to the CHRT ruling in 2016, Indigenous agencies received \$154.6M, with communities receiving an additional \$46.5M from provincial contributions and nearly \$20M from federal contributions, for a total funding amount of \$221.2M in 2015-2016. Compliance with the CHRT orders and other reconciliation efforts saw funding increase in 2017-2018 to at least \$508M, an increase of 129.7 percent.<sup>82</sup>

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<sup>82</sup> “FNCFS program funding increased in FY 2018-2019 and to a lesser extent in 2019-2020 as ISC accelerated the ramp up of Budget 2016 funding to the jurisdictions that had not received funding under the previous Enhanced

The contested amounts for inclusion in a baseline are, primarily, prevention funds (specifically, which funds are appropriately eligible for cost-sharing under a future agreement) and the monies associated with CHRT Order 426.<sup>83</sup> Where some prevention funding is eligible for cost-sharing (included in the italicized “IWA reimbursement” figure in Table 6.1), noted as a separate line entry is that additional prevention funding reasonably considered critical for preventing children coming into care but currently outside of the 1965 Agreement. A detailed list of the relevant prevention programs funded by both Canada and Ontario appears in Appendix D.

The last two columns of Table 6.1 report a low and high estimate of funding needs, to the extent these needs can be determined at this time. Where funding components are now deemed minimally adequate, actual 2017-2018 amounts are carried forward. In two instances, there exist guidelines for establishing a minimum amount of funding where no amount of funding currently exists (information and communications technologies operation and maintenance and large capital assets for agencies). Finally, there is evidence to suggest that an equitable share of the current MCCSS budget for child welfare should be between 13 per cent and 19 percent (see the discussion of Gaps, below). Adequacy of these estimates can only be confirmed by a full community needs assessment of a robust sample of key communities, if not all communities.

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Prevention Focused Approach (EPFA). This allowed all jurisdictions to be receiving their full amount of new prevention funding earlier than what Budget 2016 had initially outlined,” (ISC correspondence with Project Team, 28Oct19). Where there were missing data for 2017-2018 programs, the 2018-2019 data were used instead. In one case, (Prevention and Immediate Relief Funding) there were data for both years reported but the 2018-2019 was considerably higher (\$34.2M versus \$9.1M in 2017-2018) and assumed necessary for meeting Ontario First Nations funding needs. For a detailed accounting of the programs considered and the amounts reported, see Appendix D.

<sup>83</sup> Funds flowing under CHRT Orders 426 and 427 were reported to the OSS as a combined cumulative sum from 2016 to January 2019. As of March 31, 2019, ISC reported 7 claims under Order 426 paying a total of \$1,684,406.

Table 6.1 Total actual and needed funding to First Nations communities and ICWBAs, as at January 2019.

Funds received by Agency/Community by Principal Category of Expenditure*	PROVINCIAL Contributions (before IWA reimbursements)	FEDERAL Contributions (before IWA reimbursements)	TOTAL FUNDING	PROVINCIAL Contributions (before IWA reimbursements)	FEDERAL Contributions (before IWA reimbursements)	TOTAL FUNDING	LOW estimate of funding needs	HIGH estimate of funding needs
<b>PROGRAM FUNDING</b>	<b>2015-2016</b>			<b>2017-2018</b>			<b>PREPARATION FOR TRANSFORMATION</b>	
<b>To Agencies</b>								
Capital Renewal, Repairs & Maintenance Information & Communications Technologies - Operations & Mtce**	\$2,247,593		\$2,247,593	\$2,044,003	\$0	\$2,044,003	\$2,044,003	\$2,044,003
Protection*** (funds in italics are \$\$ reimbursed by Canada to Ontario under the Indian Welfare Agreement (IWA))	\$152,399,691	<i>IWA reimbursement = \$123,468,903</i>	\$152,399,691	\$188,375,460	<i>IWA reimbursement = \$124,898,457</i>	\$188,375,460	\$195,000,000	\$285,000,000
<b>SUB-TOTAL - FUNDS TO AGENCIES</b>	<b>\$154,647,284</b>		<b>\$154,647,284</b>	<b>\$190,419,463</b>		<b>\$190,419,463</b>	<b>\$206,794,003</b>	<b>\$304,144,003</b>
<b>To Communities or Agencies</b>								
Prevention - outside scope of current IWA	\$46,533,283	\$19,976,969	\$66,510,252	\$84,403,583	\$85,706,348	\$170,109,931	\$170,109,931	\$170,109,931
Extraordinary Circumstances & Contingencies - CHRT Order 411					\$18,386,800	\$18,386,800	\$18,386,800	\$18,386,800
Extraordinary Circumstances & Contingencies - CHRT Orders 426 & 427					\$57,727,066	\$57,727,066	\$57,727,066	\$57,727,066
<b>SUB-TOTAL - FUNDS TO COMMUNITIES</b>	<b>\$46,533,283</b>	<b>\$19,976,969</b>	<b>\$66,510,252</b>	<b>\$84,403,583</b>	<b>\$161,820,214</b>	<b>\$246,223,797</b>	<b>\$246,223,797</b>	<b>\$246,223,797</b>
<b>SUB-TOTAL PROGRAM FUNDING</b>			<b>\$221,157,536</b>			<b>\$436,643,260</b>	<b>\$453,017,800</b>	<b>\$550,367,800</b>
<b>JORDAN'S PRINCIPLE &amp; INFRASTRUCTURE FUNDING</b>								
Jordan's Principle - All Ontario					\$27,544,304	\$27,544,304	\$27,544,304	\$27,544,304
Jordan's Principle - NAN (\$73M Apr2017-Jan2019; monthly avg*12mos)					\$43,800,000	\$43,800,000	\$43,800,000	\$43,800,000
Large Capital Assets - Agencies						\$17,000,000	\$17,000,000	\$25,000,000
Large Capital Assets - Communities (Multi-use Building; Safe housing)							as needed	
Information & Communications Technologies - Broadband							as planned	
<b>TOTAL FUNDING including Jordan's Principle (before IWA reimbursements)</b>	<b>\$201,180,567</b>	<b>\$19,976,969</b>	<b>\$221,157,536</b>	<b>\$274,823,046</b>	<b>\$233,164,518</b>	<b>\$507,987,564</b>	<b>\$541,362,104</b>	<b>\$646,712,104</b>

\*See Appendix D - ON1.1 for Ontario figures; See Appendix D - GC 3.0 for Federal figures; blank cells not applicable or unknown

\*\*ICTs low/high estimate = Industry benchmark at 5% (of low) and 6% (of high) operating costs

\*\*\*Protection low/high estimate = 13% and 19% share of Total Provincial Agency Budget of \$1.5B

## CURRENT FUNDING STRUCTURE

### MCCSS Funding Formula

Indigenous Child Well-Being Agencies are currently funded within the MCCSS funding envelope. The MCCSS complex funding model guides the allocation of these funds to all child welfare agencies including ICWBAs. The structure of the MCCSS child welfare funding model accounts for several factors, including, four volume-based factors, five socio-economic factors, pre-formula adjustments, a set aside to fund policy priorities, and mitigation funding. This complex model

was the result of work that had been completed by the Ontario Commission to Promote Sustainable Child Welfare. Further development work on the model was also undertaken by the Ontario Ministry of Child and Family Services (now MCCSS) and third-party consultants that the Ministry contracted prior to the implementation of the funding model for the 2012/13 fiscal year. (Loepky & Loxley, 2017, p. 9)

Loepky and Loxley (2017, p. 41) offer a schematic of the current MCCSS model for funding child welfare in Ontario (see Figure 6.1). According to KPMG (2017, p. 28), the pre-formula set aside was 16.1 percent of the total funding envelope in 2016-17. Pre-formula adjustment funding is based on 2011-2012 audited actual expenditures for travel (direct service and administration), operating infrastructure (staff, building occupancy, audits, and non-client legal expenses), and IT expenses (IT staff, computers, network services).

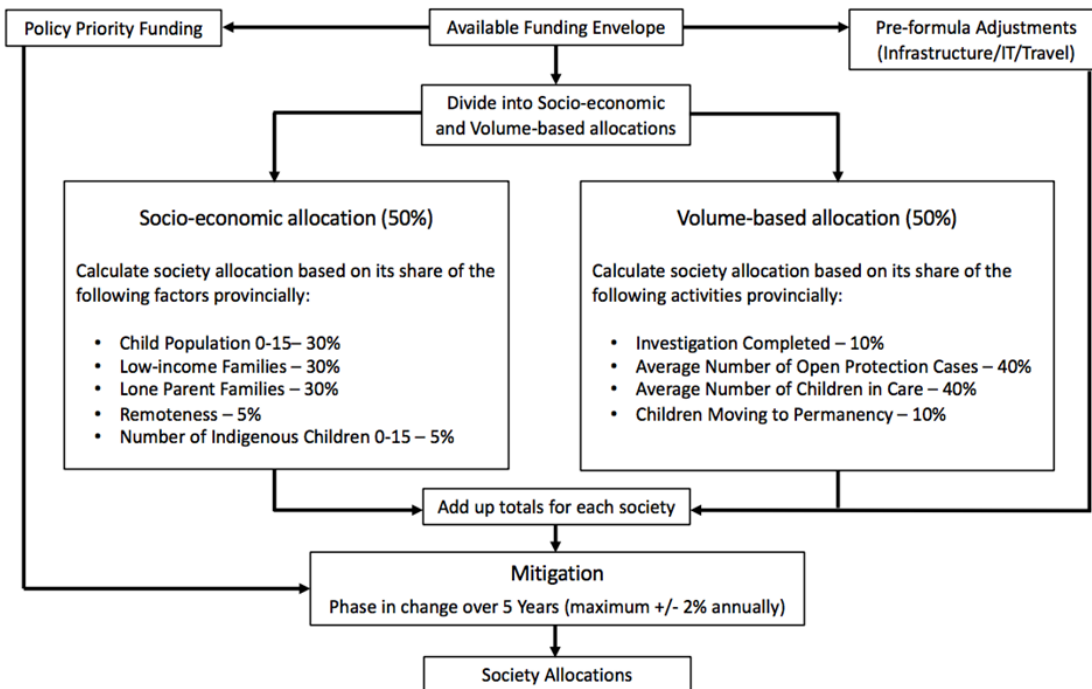


Figure 6.1 Schematic of the current MCCSS model for funding child welfare in Ontario. (Adapted from Ministry of Children and Youth May 18, 2017 Child Welfare Model Overview: Indigenous Funding Model Review PowerPoint Presentation (Loepky & Loxley, 2017, p. 41)

The current funding formula underfunds Indigenous agencies relative to other agencies. According to the 2013 Ontario Incidence Study, First Nations children comprise approximately 3.4 percent of the total child population but comprise 8.9 percent of the substantiated maltreatment cases. The total child population-based factors in the funding formula deliver a share of funding to Indigenous agencies below the share of First Nations children in the system that is only partly offset by a separate factor accounting for the number of Indigenous children in the system.

Loeppky and Loxley (2017) offer a detailed analysis of the 2016-2017 funding model allocations to Ontario ICWBAs as a concrete example of how the different cost drivers relevant to Indigenous agencies support a structurally different and so separate First Nations funding envelope. With the particular weights assigned in the formula across categories, and despite the considerable and relatively significant contribution of socio-economic factors to *why* First Nations' children come into care, socio-economic factors in the formula's application generated "less than 10 percent of the total funding," (Loeppky & Loxley, 2017, p. 46). In the volume-based envelope, by contrast, "70 percent of the volume funding of ICWBAs comes from the number of children in care and children moving to permanency, for which the model allows only 50 percent," (op. cit., pp. 46-47).<sup>84</sup> Loeppky and Loxley recommend (op. cit., p. 47) that "Indigenous child welfare societies should have their own funding model giving greater emphasis to their own socio-economic reality than does the general funding model."

### Ontario Prevention Funding

The MCCSS provided a list of programs with an analysis of prevention services dating from 2012-13 through 2017-18 (see Appendix D). It notes that other Ministry departments offered services and supports that were not reflected within their information. Review of the information provided indicates that the majority of prevention funding lies outside the 1965 Agreement and is predominantly distributed to First Nations communities directly. Prevention funding for 2015/16 was \$48.8M increasing by 47 percent to \$71.5M in 2016/17 and increasing again by 21 percent to approximately \$86.4M in 2017/2018 (see Figures 6.2 and 6.3).

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<sup>84</sup> These effects of the funding formula are attenuated somewhat by the mitigation (+2 percent) and remoteness (+2.5 percent) funding.

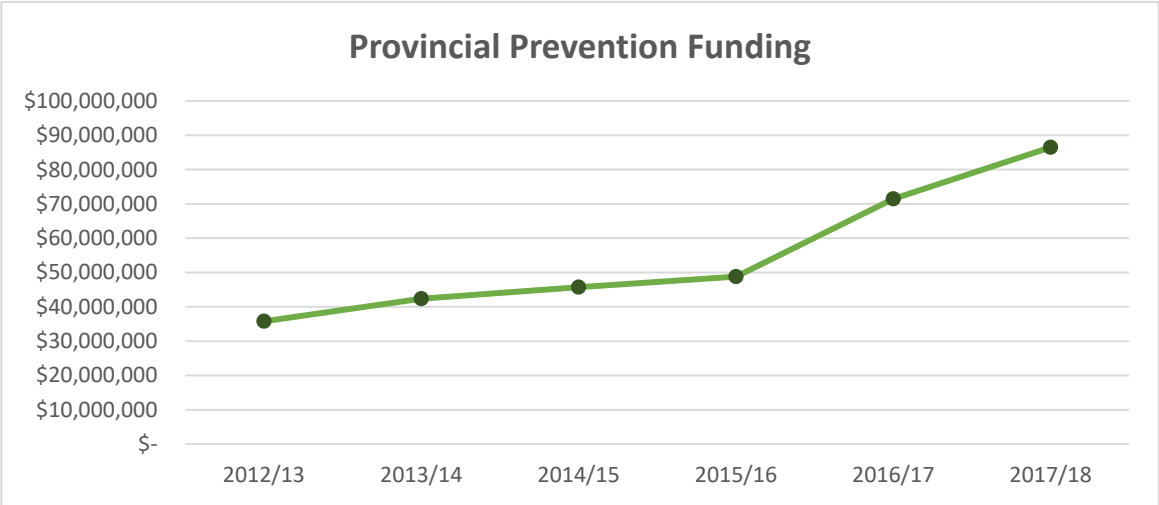


Figure 6.2 Ontario prevention funding 2012-2018 Source: Strategic Policy and Aboriginal Relationships Branch, Ministry of Children, Community and Social Services, March 1, 2019.

This increase in funding appears to be largely attributed to the introduction of community-based prevention programs (i.e., Family Wellbeing Program), and an increase in mental health funding. The timing of this increase also suggests that programming and funding was largely influenced as a result of the TRC Calls to Action (2015d) and in the spirit of reconciliation.

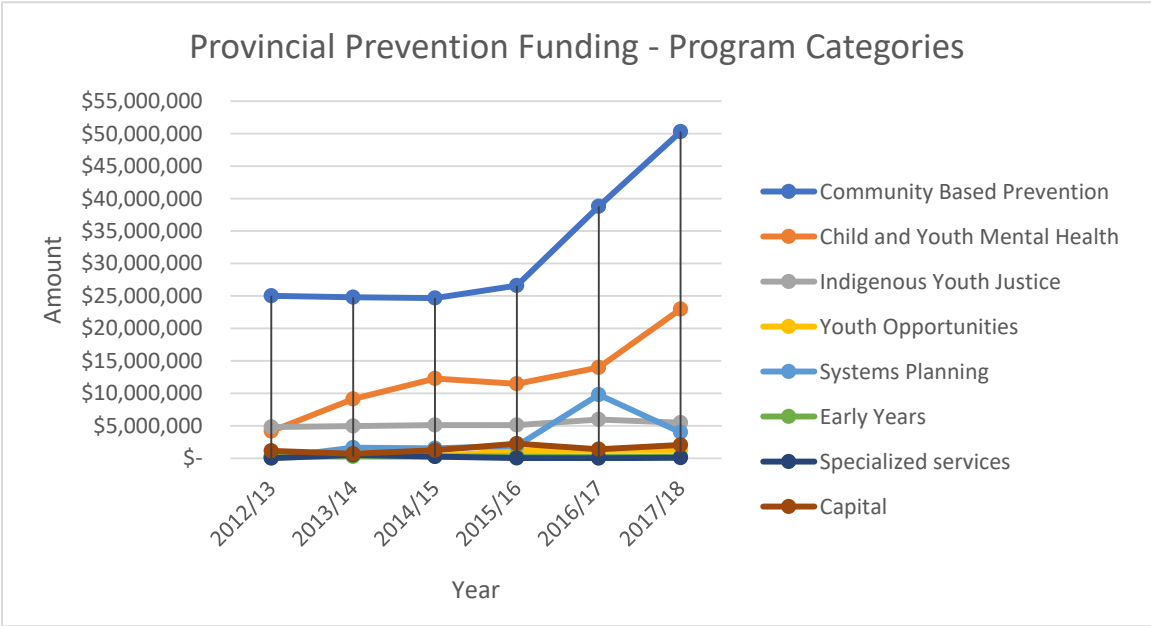


Figure 6.3 Ontario prevention funding by program. Source: Strategic Policy and Aboriginal Relationships Branch, Ministry of Children, Community and Social Services, March 1, 2019.



## THE 1965 AGREEMENT

The 1965 Agreement is a bilateral cost sharing agreement between Canada and Ontario, by which Canada reimburses Ontario for eligible social services expenditures, including child welfare.<sup>85</sup> For child welfare expenditures, Canada reimburses Ontario at a rate of ~92-93 percent for eligible child protection expenditures and ~80 percent for eligible prevention expenditures. The inadequacy of the 1965 Agreement is apparent in the gap between services eligible for cost-sharing and the culturally appropriate services needed to achieve a holistic focus on well-being, and for preventing children coming into care.

The 1965 Agreement is based on an outdated and siloed notion of child welfare resulting in a restricted interpretation of “prevention” activities eligible for reimbursement. As Rae (2009, p. 10) noted a decade ago, the “outdated set of programs defined in the 1965 Agreement is now arbitrary and restrictive,” (see Chapter Seven for a current comparison of relevant programs inside and outside the 1965 Agreement). The highly limited list of eligible of “prevention” activities contributes to the problem identified earlier in this chapter, namely contentious disagreement over which prevention activities are, or should be, eligible for reimbursement.

The indexing formula is tied to “financial assistance within the social assistance program,” (Rae, 2009, p. 17). Depending on the relative costs of social assistance on- and off-reserve in Ontario, the actual costs reimbursed may be less than the 90 per cent. Loepky and Loxley (2017, p. 59) summarize the implications of the current 1965 Agreement formula as follows.

Based on the formula used now:

- The federal government recognizes that costs for social programs on-reserve are higher than those off-reserve;
- The 1965 reimbursement formula is based on social assistance costs, not child welfare costs. The program requirements for child welfare and social assistance are significantly different;
- To maintain the current percentage of the cost sharing agreement, the Province has to keep a ratio between social assistance rates on-reserve to those off-reserve. This is not an appropriate basis for seeking reimbursement of child welfare expenditures.
- The Province would experience a decrease in the amount that they would receive from the Federal government through the cost sharing formula if they raised off-reserve social assistance rates relative to the rates on-reserve;

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<sup>85</sup> Canada’s reimbursements go directly into Ontario’s Consolidated Revenue Fund and, according to MCCSS, do not impact the Ministry’s in-year budget allocation. It is reasonable to expect, however, that any significant change to either the scope or the magnitude (or both) of the reimbursements in a revised agreement will ultimately impact Ontario’s budget allocation to the Ministry for funding First Nations child and family well-being.

Finally, where the 1965 Agreement once anticipated the necessary large capital expenditures required to set up an agency, the agreement to reimburse these expenditures was time-limited and has long since expired. “The 1965 Agreement has not provided for the cost-sharing of capital expenditures since 1975,” (*Caring Society* 2016 CHRT 2, para. 245). There is no report of dedicated funding to this sector for new capital investment since that time. Ontario funding for renewal projects, retrofits, building repairs and maintenance since 2012/13 averages 0.71 % of Total Expenditures over the last six years, significantly less than the IFSD (2018, p. 97) recommended minimum of 2 percent annual “recapitalization” rate, based on industry standards.

From Table 6.1 above, the 2017-18 funding is enhanced by the CHRT rulings and other dollars associated with reconciliation, as apparent by the increase over 2015-16 funding amounts. Further, most of the increased funding by the province has not been cost-shared under the 1965 Agreement. Further, most of the increased funding by the province is not eligible for reimbursement under the 1965 Agreement.

In 2015-2016, Canada reimbursed \$123.5M to Ontario under its 1965 Agreement obligation; in addition, Canada spent on other prevention programs a total of almost \$20M, for a total of \$143.4M. As a result of the various CHRT rulings and orders, this amount increases to \$161.8M with an additional \$71.3M monies to fund Jordan’s Principle. Together with its reimbursement of \$124.9M to Ontario under the 1965 Agreement, Canada contributed a total of \$358.1M to First Nations child protection and prevention in 2017-2018. Notably, this amount for 2017-18 is understated as claims for example under Jordan’s Principle are still being processed.<sup>86</sup>

In 2015-2016, Ontario paid \$201.2M to ICWBAs, for which Ontario was reimbursed by Canada \$123.5M, or 61.4 percent of its costs. In 2017-2018, ICWBAs received \$274.8M from Ontario, for which Ontario was reimbursed by Canada \$124.9M, or 45.4 percent of its costs and a net increase in funding by the province of \$72.2M. The considerable gap in funding between the cost of services eligible for cost-sharing under the 1965 Agreement and those delivered by the province illustrates the inadequacy of the 1965 Agreement. In addition, there were no reported capital expenditures for new investment in large capital assets by either government to First Nations communities or their agencies.

Indicators of the gaps in the scope of the 1965 Agreement funding include the increase in the overall amount of money that has been necessary to comply with CHRT rulings, the difference between what

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<sup>86</sup> “For 2017-2018: An audit related to the 1965 Agreement is underway, but has not been completed yet. It will need to be clarified that the reimbursement amount of \$124,898,457.19 (listed in Appendix D) has been made available to Ontario through a contribution agreement for Maintenance and Operation Costs for the 1965 Agreement. This amount is subject to change depending on the completion of the audit.

For 2018-2019: An audit related to the 1965 Agreement cannot be completed until the fiscal year has ended. An updated amount of \$132,214,318 (for Appendix D) has been made available to Ontario through a contribution agreement for Operation and Maintenance related to the 1965 Agreement. This amount is subject to change depending on the completion of the audit.” (ISC correspondence with Project Team, 28Oct19)

Ontario is required to spend and Canada's reimbursement, the precarity of this additional funding over the longer term, and the absence of any ongoing commitment to fund large capital assets.<sup>87</sup>

### CHRT Orders

As at January of 2019, funds flowing in direct compliance with CHRT Orders 411, 426 and 427 and its rulings on Jordan's Principle resulted in an additional \$147.4M in 2017-2018, (for additional discussion of the CHRT Orders and Jordan's Principle, see Chapter Four above). These funds are expected to increase as additional claims for fiscal year 2017-2018 are processed.<sup>88</sup> These additional funds flow for as long as CHRT orders and rulings remain in effect.

### FUNDING GAPS

#### Gap in meeting distinct needs for First Nations

Several weaknesses of the model identified by advisors to this study echo those identified in other studies. As relate directly to the MCCSS formula funding First Nations children and agencies, the weaknesses include:

- Under-reporting of First Nations child population, which bias downward population shares and resulting population-based funding, (KPMG, 2017, p. 50)<sup>89</sup>
- Under-funding of the high costs of remoteness (KPMG, 2017, pp. 73-39)
- Under accounting for relevant child population: (1) older children (up to 25 years of age) require well-being supports,<sup>90</sup> and (2) Ontario offers extended supports to children in care up to age 21<sup>91</sup>
- Underfunding of special needs and multiple needs children (KPMG, 2017, p. 53)

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<sup>87</sup> See Chapter Seven for a discussion of the legal dimensions of the 1965 Agreement, including the difference between Ontario's and Canada's legal obligations.

<sup>88</sup> For example, as of March 2019, Order 426 had paid out \$1,684,406 and claims under Jordan's Principle were still being processed. Further, the Government of Canada Budget for 2019 announced \$1.2B over three years for Jordan's Principle.

<sup>89</sup> Current Ontario efforts to compensate for the under-reporting of the First Nations child population include taking the higher of the following estimates of on-reserve child population counts: "2017 population estimate (0-17), 2016 Census population with Indigenous identity (0-17), and 2016 CIRNAC data (0-17)" in addition to considering "Indigenous child and youth population including on-reserve and off-reserve child and youth population aged 0-17" and off-reserve population aged 0-17 reported in the 2016 Census data, (MCCSS communication to OSS, July 5, 2019).

<sup>90</sup> Chapter Four: Youth Leaving Care discusses the rationale for changing the age for service provision to 25 years of age.

<sup>91</sup> See Ontario supports for children leaving care, <http://www.children.gov.on.ca/htdocs/English/childrensaid/leavingcare.aspx>

- Underfunding of travel to serve on-reserve families and to fly in Band Chiefs quarterly (KPMG, 2017, p. 53)
- Underfunding of Child Protection Investigations in NAN communities (Barnes Management Group, 2018, p. 60)
- Underfunding of Open Protection Cases in NAN communities (Barnes Management Group, 2018, p. 60)
- Deteriorated state of First Nations housing stock, relatively high rates of poverty, mental health and addictions issues present exceptional challenges, (KPMG, 2017, p. 56)

Intergenerational trauma and deficient community infrastructure explain these and other weaknesses of the current funding model and produce the different cost drivers relevant to ICWBAs. Earlier studies support a structurally different and separate First Nations funding envelope. The Report of the Commission to Promote Sustainable Child Welfare (2011a) called for separate FNCFS Agency envelope, noting that both the “cost structures and service needs of the ... designated Aboriginal CASs and the communities they serve are markedly different from those of the mainstream CAS” (p. 16). Subsequent academic researchers and authors of more recent studies echo this recommendation, (Sinha & Kozlowski, 2013; Loepky & Loxley, 2017; IFSD, 2018, for example). The results of a comprehensive survey of the Ontario Child Welfare sector conducted by KPMG (2017, p. 56) acknowledges “almost unanimous” sector-wide support for this separate funding framework.<sup>92</sup>

In addition to the different cost drivers summarized above, distinct service needs (discussed above in Chapter Four) further justify a separate funding arrangement.

- Language, Culture and Ceremony place Child Protection and Prevention in a distinct cultural context
- Respects Indigenous right to self-determination and First Nations jurisdiction over children and community well-being
- Mandate of Indigenous agencies is distinct from CASs:
  - Defined by Band Councils (via Agency Boards of Directors)
  - Broader scope of services beyond child protection and admission prevention (i.e., to reduce admissions) out to well-being interventions
  - Protection and Prevention services aligned with distinct cultural practices

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<sup>92</sup> KPMG dismisses the possibility of a separate Indigenous funding envelope arguing that while it may be important to incorporate First Nations differences in, for example, ensuring the availability of cultural services, “the ultimate desire for all children in child welfare remains similar and this should be reflected by a unified funding model,” (2017, p. 14).

### Gap between actual and equitable share of the MCCSS funding envelope

The funding flowing to ICWBAs for child protection and admissions prevention services has historically been equal to approximately 10 per cent of the annual MCCSS budget for funding child welfare services. In 2017, the KPMG (2017, p. 5, emphasis added) undertook a study on behalf of the then Ministry of Children and Youth Services to “assess the capacity of the funding model to *increase equity by allocating funding across societies in a way that is proportionate to need.*”

If we consider ICWBAs’ entitlement to an equitable share of funding determined by the equity criteria KPMG uses in its scenario analyses, the share of funding is higher than 10 percent. Twenty-one of the 38 incremental scenarios analysed by KPMG support an increased share between 13 percent and 19 percent of the total funding to Indigenous agencies, (KPMG, 2017, pp. 116-124). Many of these scenarios examined changes that would address in part some of the weaknesses of the MCCSS funding model in meeting the distinct needs of Indigenous agencies identified above. Given the annual budget remains fixed at \$1.5B, this suggests an equitable share of between \$195M and \$285M, as reported in Table 6.1 above.

In 2017-2018, Provincial expenditures on Indigenous agencies increased to \$188.4M or just under 13 percent of the budget.<sup>93</sup> In Table 6.1 above, a low and high estimate of an equitable share of the fixed \$1.5B MCCSS budget suggests a remaining gap of between \$6.6M and \$96.6M.

### Gap in funding extraordinary circumstances and contingencies

In addition to ensuring that monies for prevention/least disruptive measures (411), mental health (306 and 426), Band Representatives (336 and 427), and Jordan’s Principle are guaranteed for the longer term, there are other gaps that call for an enhanced Extraordinary Circumstances and Contingencies Fund.

Chapter Five above outlined the need for such a fund beyond what the CHRT identified: as a type of an insurance fund against costs that are exceptional for a given community but expected across the sector and as a type of “last resort” funding.

### Gap in funding large capital assets

There is no ongoing or secure funding of new investment in large capital assets for either First Nations communities or their ICWBAs to deliver relevant child and family well-being services. Chapter Five above discusses these needs for supporting service delivery.

Estimating total expenditures in large capital assets requires an audit of the size and condition of the existing capital infrastructure in communities and in agencies. As a partial estimate of needed funding, the capital infrastructure for agencies only, the IFSD estimates that the Canada-wide will be “\$116 million to \$175 million to rebuild agency headquarters,” (IFSD, p. 97). In proportion to Ontario’s share (14.5 percent) of the Total Agency Budgets Canada-wide, this amounts to approximately \$17 million -

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<sup>93</sup> Early estimates of the 2018-2019 funding (at \$210M) suggests this gap is closing further, (MCCSS communication to OSS, July 5, 2019).

\$25 million just to rebuild Agency headquarters.<sup>94</sup> This partial estimate is used above in Table 6.1 to indicate the scale of the investment that might be needed but notably excludes any estimate of the large capital asset requirements in community.<sup>95</sup>

### Gaps in funding information and communications technologies (ICTs)

Chapter Five above outlines the infrastructure needed for supporting broadband internet access consistent with the universal service objective established by the Canadian Radio-television and Telecommunications Commission.<sup>96</sup> Funding the ICT Capital infrastructure is part of Canada's Broadband initiative. It is anticipated that 90 percent of Canadians will have access to the targeted level of service by 2021.

Beyond investing in the required broadband infrastructure, every community and agency requires basic ICT equipment and services including computer and peripheral equipment, communications equipment, audio and video equipment, equipment repair and maintenance, software and computer services, and data processing.

In the low and high estimate of funding needs reported above in Table 6.1, the industry standard benchmarks were used. These benchmarks suggest an average technology budget for hardware, software, consulting and the like, ranges from between 5-6 percent of operating costs (Hulshof-Schmidt, 2017, p. 9). From a broader review, IFSD confirms that "[t]his approach was considered to be the most reliable based on the consistent available industry benchmarks for IT spending for the education and not-for-profit sectors, (IFSD, 2018, p. 101).

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<sup>94</sup> IFSD (2018, p. 44, Fig. 12) reports Average Total Agency Budget, by Province. Author's calculations yield an estimate of 14.5% for Ontario's share of Canada's Total First Nations Agency Budgets.

<sup>95</sup> For Ontario First Nations agencies, Loeppky and Loxley (2017, p. 17) recommend that the Agency and community infrastructure be included in a new funding model; they are unable, however, to provide an estimate of these costs. For the KPMG Ontario study (2017, p. 5), the Ministry deemed funding society needs for investment in new buildings out of scope. In terms of funding the capital infrastructure, it is important to note that the Province of Ontario currently uses the Public-Private-Partnership model to fund large capital infrastructure projects under the rubric of Alternative Financing and Procurement and administered by Infrastructure Ontario (<https://www.infrastructureontario.ca/AFP-FAQs/>).

<sup>96</sup> In the Telecom Regulatory Policy 2016-496, the CRTC established the universal service objective "Canadians, in urban areas as well as in rural and remote areas, have access to voice services and broadband Internet access services, on both fixed and mobile wireless networks. To measure the successful achievement of this objective, the Commission has established several criteria, including, Canadian residential and business fixed broadband Internet access service subscribers should be able to access speeds of at least 50 megabits per second (Mbps) download and 10 Mbps upload, and to subscribe to a service offering with an unlimited data allowance; and the latest generally deployed mobile wireless technology should be available not only in Canadian homes and businesses, but on as many major transportation roads as possible in Canada" (<https://crtc.gc.ca/eng/archive/2016/2016-496.htm> (retrieved September 6, 2019)).

## Gap in Inflation Protection

Where the 1965 Agreement reimburses Ontario for all eligible expenses at cost, the Ontario budget has remained fixed at \$1.5B for several years. The absence of any escalator adjustment for inflation in the formula erodes the real value of funding. Several previous studies have called for the inclusion of an inflation adjustment and the 2016 CHRT 2 mandated a 3 percent inflation adjustment applied retroactively to 2012.<sup>97</sup>

## Other Gaps

Gaps in funding extend out to include inadequate funding to restore First Nations Determinants of Well-Being, where deficient community housing and high levels of poverty especially are critical and ongoing reasons for why children come into care. Chapter Three discusses these determinants at length. While considerable and considerably important for restoring children and family well-being, these funding needs are not expected to be addressed in a First Nations child welfare funding model.

## Multiple envelopes

Consistency with First Nations holistic approaches to child and family well-being demand broadening the set of services considered beyond agency services to include community-based well-being services designed to prevent children from coming into care. In this broader web of services, there exists multiple programs addressing various dimensions of well-being, many with their own funding agreement (see Appendix D for a detailed listing of the current protection, prevention and well-being services considered).

Multiple funding envelopes across two levels of government (Canada and Ontario) are funding multiple programs in many of the 133 First Nations communities.<sup>98</sup> Figure 6.4 offers a visual mapping of the myriad of programs from source to users of funding. These multiple envelopes suggest an administrative complexity that is undesirable and unreasonable from an efficiency perspective.<sup>99</sup>

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<sup>97</sup> Under the current operation of the MCCSS funding model, Indigenous agencies receive a mitigation increase of +2 percent per year. While approximately equal to the recent annual average increases in the Canadian Consumer Price Index, this is not the same as embedding an inflation adjustment in the formula. Moreover, it is not retroactive and is less than the mandated 3 percent.

<sup>98</sup> ISC recognizes 126 First Nations and works with 127 Chiefs and Councils.

<sup>99</sup> A similar problem exists in Australia. "New public management reforms have led to an increase in small, short-term grants under highly prescriptive terms...Fragmentation is exacerbated by a siloed approach to the 'governance of governments', which has undermined integrated implementation and resulted in significant inefficiencies in the allocation of resources," (Moran, Porter, Curth-Bibb, 2016, p. 361).

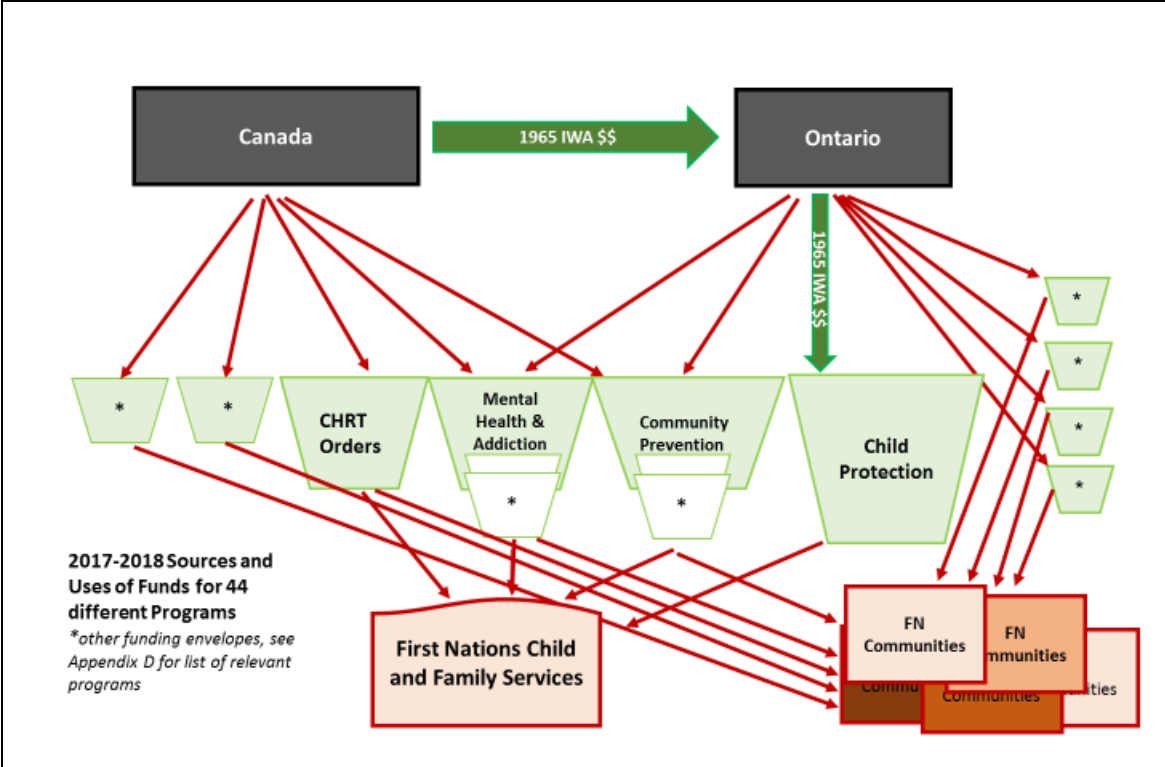


Figure 6.4 Illustration of multiple sources and directions of funding.

Options for a new funding framework might best consolidate funding into a distinct First Nations funding envelope. Figure 6.5 offers a visual image of the streamlined possibilities of such a one-window Funding arrangement within a distinct First Nations funding envelope.



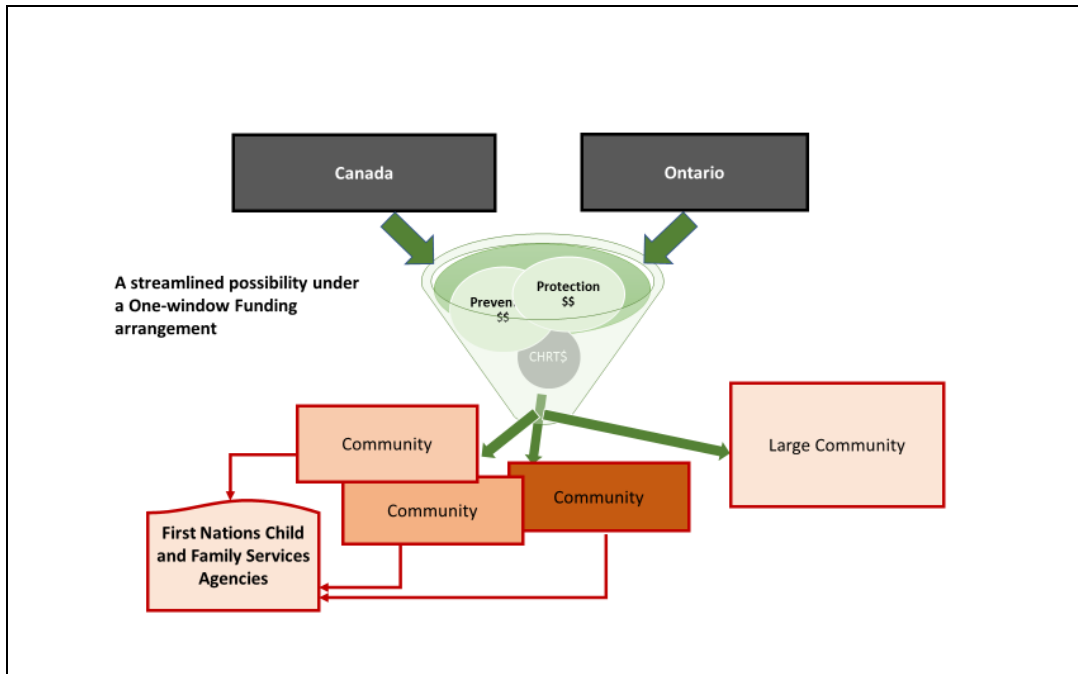


Figure 6.5 Consolidating funding for delivery to First Nations.

## FUNDING METHODS

The perspective implicit in any consideration of Funding Model options is that the transfer of funds enables the production of something. Conceived of as a production process, the funds pay for the inputs/resources into the production of an output/activity, the result of which is a desired outcome. In the case of child protection and family well-being services, the inputs/resources of skilled labour services, transportation services, buildings and the like create the outputs/activities of caring for children and broadening a family's and community's capacity to care for children. The desired outcome is the holistic wellbeing of First Nations communities.

### Primary service activities and resource needs

Table 6.2 Primary service activities and resource needs

OUTPUTS/ACTIVITIES	INPUTS/RESOURCES
<b>Restoring Community Wellbeing</b>	
Safe housing	New Housing Stock; Housing Repairs & Maintenance
Subsistence requirements	Household Income
<b>Delivering Child Protection &amp; Family Wellbeing Services</b>	

OUTPUTS/ACTIVITIES	INPUTS/RESOURCES
<p><u>Protection</u>: Investigations, Protection, Non-residential Client and Family Services, Kinship Services, Customary Care, Permanency</p> <p><u>Prevention</u>: Language Programs, Cultural Programs, Life &amp; Relationship Skills, Family Supports, Youth Programs, Mental Health &amp; Addictions<sup>100</sup></p>	<p><u>Fixed Inputs – Capital Assets</u>:</p> <p>Community Capital &amp; Infrastructure – New Capital Investment, Broadband Infrastructure; Management Information Systems Infrastructure</p> <p><u>Fixed Inputs – Core Operating Costs</u>:</p> <p>Basic staffing with associated training and travel, Basic overhead for utilities, building occupancy, supplies, etc.</p> <p><u>Variable Inputs – Variable Operating Costs</u>:</p> <p>Additional staffing, Ongoing technology upgrades, Training &amp; Recruitment, Building Occupancy and Maintenance, Utilities, Promotion &amp; Publicity, Travel</p>
<p><u>Jordan’s Principle</u></p>	<p>Unmet needs</p>
<p><u>Extraordinary Costs</u> (see Chapter Five above for definition)</p>	<p>Contingencies</p>

Prior consideration of the full scope of funding model options considered the trade-offs inherent with different funding methods. Table 6.3 lists the types of methods considered and Appendix F elaborates on their operation, advantages and disadvantages.

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<sup>100</sup> Mental Health & Addictions services clearly and directly impact Child Protection and are therefore included in the set of required Prevention Services. “There are clear correlations between substance misuse and levels of neglect or maltreatment. Substance misuse is an important factor contributing to the over representation of Aboriginal children in care, alongside other factors such as poverty and poor housing,” (INAC, 2014, p.18).

Table 6.3 Funding methods

	Funding Method	Funding Base	Related Examples
INPUT-BASED FUNDING	Block or global funding	Historical total spending	Manitoba Child Welfare Services
	Input costing; often line-by-line	Actual costs by input type	Directive 20-1; Ontario and Alberta Indigenous education funding <sup>101</sup>
	Facilities funding	Characteristics of the organization e.g., size or type	Ontario “Partner Facility Renewal and Capital Grants” for FN communities and Agencies
	Proposal funding	Applications for discrete projects	Capital funding projects, Ontario “Alternative Financing and Procurement”
OUTPUT-BASED FUNDING	Case-mix funding	Actual cases serviced	MCCSS volume factors
	Per capita or population-based funding	Demographic and other population characteristics	Socio-economic factors in MCCSS, CPSCW (2011), and Loeppky & Loxley (2017)
OUTCOMES-BASED FUNDING	Performance funding	Specified outcomes	IFSD (2018) Recommendation for First Nations Child and Family Services; Commission on the Reform of Ontario's Public Services (2012)
	Policy funding	Specified policy targets	MCCSS pre-formula adjustments

<sup>101</sup> Indigenous education funding formulas in both Ontario and Alberta “contain over 15 components reflecting different cost inputs/resources. Each component is calculated based on school board-level data related to the local student population, number, and size and condition of schools, as well as community and geographic characteristics. The different components are summed to arrive at an annual projection for each board. This allocation is then divided by the average daily enrolment (full-time equivalents) to arrive at the per-student amount. This per-student amount is roughly equivalent to the tuition rate that INAC pays for students on reserve attending provincial schools,” (Frechette, 2016, p. 14).

## No One-size Fits All – A Decision Guide

The choice of Funding Model involves critical choices and trade-offs related to transparency, operational ease, accountability, risk of cost overruns, and behavioral incentives. The choice depends importantly on how the funding incentives align what can be measured with what is desired and the temporal distance between the inputs, the outputs and the outcomes. With these considerations in mind, the following questions guide the key decisions.

Where is the desired locus of control and responsibility? Self-autonomy is consistent with greater decision-making authority and more control. Block funding aligns well with self-autonomy, but the total funding amount is more easily capped at the funder's discretion. As such, a corollary question is where are risks of cost-overruns best tolerated? The options include at the level of the originator of the funds (i.e., Canada or Ontario), the agency and/or the community.

If inputs/resources – outputs/activities – outcomes are not equally, easily measured, which should be targeted? Funding Models should target that which can be measured as accurately and as consistently as possible.

What is the temporal distance between inputs, outputs and outcomes? Funding Models should ensure the timing of the funding determination as set by the Funding Base delivers the funds needed in time to meet the target. The greater the temporal distance between inputs, outputs and outcomes, the more effective will be an inputs-focused Funding Base.

Are the costs of key inputs/resources large and relatively fixed (such as new investment in a building) or are they highly variable, fluctuating with the scale of the operation? Large fixed costs are better funded by facility-based or possibly proposal-based funding mechanisms. Highly variable costs are better suited to case-based, population-based methods. If certainty in the future budget is important, the population-based method may be preferred.

In situations where the answers to these questions still do not offer a basis upon which to decide a unique *best* option, there will remain significant trade-offs between transparency, operational ease, and accuracy in choosing between either a simpler or a more complex Funding Model.

The simpler the Funding Model, the

- more transparent it will be,
- easier it is to operationalize,
- less able it is to accurately reflect community-specific detail, and
- less able it is to accurately represent the complexities in the underlying cost drivers.

The more complex the Funding Model, the

- less transparent it will be,
- more reporting demands there will be on communities, and
- better able it will be to reflect community-specific detail and cost drivers.

Systematically examining Funding Model options requires structuring the multi-dimensional considerations outlined above. The objective is to map out the Funding Model options in detail and to expose the trade-offs inherent in each choice, (see Appendix F for more detail).

## FUNDING MODEL OPTIONS

Three structures of funding models are summarized here. Two of these structures (Community-based Approach and a version of a Simplified Formula Funding model) are brought forward in Chapter Eight as part of the funding framework supporting system transformation.<sup>102</sup>

### THE COMMUNITY-BASED APPROACH

This funding model option focuses on costing input needs directly, self-assessed by each community.<sup>103</sup> As such, the cost differences across communities is assured of being reflected as accurately as possible. To aid in the collection and aggregation of information, a schedule of approved factors would be developed and made available to each community in the first stage of implementing transformation as well as the services of an on-going support team. Appendix G offers a preliminary template for assessing community services. Appendix H offers a preliminary template for ICWBAs adapted from the one used by Barnes Management Group (2018).

The organization responsible for overseeing the collection of community information may choose to establish an audit mechanism for ensuring consistency in self-assessments across communities. An audit mechanism could serve to promote a cross-community sense of fairness in the distribution of the funding as well.

This Funding Model would be used to determine the total funding needs of all First Nations communities.

1. Anticipated funding needs to cover all costs for the upcoming funding period would be estimated and reported by each community according to a pre-determined template listing main cost categories, applicable prices/wages, with embedded allowances for contingent expenses (e.g., funds for training per staff as a percentage of total staff) and options to explain cost deviations (due to Remoteness, for example).
2. Total Funding Needs for all communities would be calculated by summing the individual community's self-assessed needs. This total defines the Baseline for the True Total Funding Envelope.

The valuable and accurate information obtained will inform both the total funding envelope as well as the calculation and refinement of the Steady State First Nations Funding Formula.

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<sup>102</sup> Guiding the decision was a 6-case scenario analysis (not reported) comparing the Complex Formula distributions to the Simple Formula distributions for 3 archetypical communities.

<sup>103</sup> Some literature (and earlier drafts of this report) refer to this community-based approach as a “bottom-up” approach.

This approach could also be used as a method for distributing funding, where self-assessed funding needs would determine a community’s share of any total funding envelope. The advantages and disadvantages of this approach as a distribution method are listed in Table 6.4.

**Advantages and Disadvantages of a Community-based Approach Model**

Table 6.4 Advantages and disadvantages of Community-based funding

Some Advantages of the Community-based Approach	Some Disadvantages of the Community-based Approach
No separate remoteness factor needed since the impact of remoteness included in community’s own estimate of costs	Requires assistance from an on-going support team and possibly an audit mechanism to ensure consistency across communities
Near-ideal estimate of expected needs and related costs in community	Diminished perspective on relative priorities and needs across communities
Factors affecting the numbers and different types of child protection cases embedded in actual self-assessed costs	Limits savings from coordinating services, projects & sharing resources
Well-being Services at community’s discretion	High reporting demands for many different services (complex reporting template and high time costs of calculating and forecasting)
<p><b>Examples of a Community-based Approach:</b></p> <p>Barnes Management Group (2018) – Input costing of agency expenditures (NAN Agencies only)</p> <p>Garrow (2017) recommends direct input costing for Ontario First Nations Special Education funding</p>	

**Formula Funding**

Formula funding models simplify funding calculations and administration by using average cost estimates to assess funding entitlements instead of community-specific inputs and related costs. Funding formulas vary in complexity depending on how many primary cost drivers the formula includes. This report presents a complex and a simplified formula as two different types of funding formula options.

By the very process of calculating an average, the use of cost averages in a funding formula obscures community-specific differences in costs and risks introducing funding inequities if these differences are large. Significant cost deviations from cost averages may be partly compensated, though, by including a

formula adjustment. Two such adjustments are important for First Nations communities: (1) an adjustment for the high costs of remoteness, and separately, (2) an adjustment for the high costs of restoring First Nations social determinants of well-being in under-resourced communities. The section on Community Cost Differentials (below) elaborates.

### COMPLEX FORMULA FUNDING

The Complex Formula Funding Model uses a formula funding approach and includes as many of the primary cost drivers as is advisable within such an approach. The funding base is an activity-based framework targeting activities included in child protection and a full scope of prevention and well-being services.

In this funding model option, the child protection and prevention components of the model adapt the *structure* of the current MCCSS funding framework, but would be applied to an *expanded* Total First Nations Funding Envelope comprised of (1) a greater share of the sector's current Child Welfare budget to ensure substantive equality (i.e., 13-19 percent, see Table 6.1), (2) separated into a distinct First Nations Funding Envelope, and (3) augmented by the additional prevention funds currently available.

The detailed analysis by KPMG (2017) of the model's design offers suggestions for adjustments to the illustrated weights and are noted in Table 6.5, in addition to the activity weights suggested by the NAN agencies' information contained in the Barnes Management Group (2018) report. Those elements of the current MCCSS formula focused on admissions prevention (i.e., the socio-economic factors) are consistent in structure with the recommendations of both the Commission for Sustainable Child Welfare (2011) and the Loeppky and Loxley (2018) report which adopt a Local Needs Based Approach.

If the total envelope is separated into a distinct First Nations envelope, with protection funds directed to Indigenous agencies and prevention funds to communities, such a separation would be consistent with the suggestion by Wesley-Esquimaux (2017), namely "to consider a two-pronged funding approach which allocates resources to agencies to continue protection work and directly to communities to do healing and prevention work; with percentages to be agreed upon at tables involving Indigenous leadership, provinces/Yukon and the federal government."<sup>104</sup> A First Nations Child Welfare Law would place this decision exclusively with First Nations.

This complex funding formula accounts (or could account) for the following factors:

- 1) Population-based factor for funding Operations and Travel
  - Child population (0-25)<sup>105</sup>
- 2) Volume (Case)-based factors for funding Child Protection

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<sup>104</sup> "Reforming First Nations child welfare: Summary of engagement" September 2017 <https://www.sac-isc.gc.ca/eng/1507122976766/1533315997269>

<sup>105</sup> Ontario's current Child Welfare legislation now covers children ages 0-18 years of age. Ontario currently offers extended supports to children in care up to age 21, (<http://www.children.gov.on.ca/htdocs/English/childrensaid/leavingcare.aspx>). See discussion in Chapter Four: Youth Leaving Care.

- Number of Child Protection Investigations
  - Average number of Open Protection Cases
  - Average number of Children in Care
  - Number Children moving to Permanency
  - Number of Children in Customary Care
  - Number of Children with Special Needs or Multiple Needs
- 3) Socio-economic (Population)-based factors for funding Prevention
- Child population (0-25)
  - Proportion of Low-income families
  - Proportion of Large families
- 4) Remoteness Adjustment

Table 6.5 lists the current MCCSS model details with comments addressing some of the weaknesses noted. The option of using a Complex Formula would require re-balancing the MCCSS formula to minimize some of its weaknesses.

### Complex formula funding model: The MCCSS Example

Table 6.5 Complex formula funding model

Formula Factor	Current MCCSS Agency Funding	Notes
<b>Pre-Formula Adjustments for Capital (Operations &amp; Maintenance) ITCs (Operations) and Travel</b>	17 % (IT, Capital, Travel)  4 % for Policy Priorities <i>(percent based on 2016-2017 distribution, per KPMG, 2017, p. 28)</i>	Set aside for Capital (Operations & Maintenance); ITCs (Operations)  Travel costs as a percent of employees travelling to support on-reserve families (in pre-formula adjustments, KPMG, 2017, p. 52)  Travel costs as a percent of Bands served (for flying in band chiefs...) (KPMG 2017, p. 51)  NAN Agency need expenditures ranging from 23 percent-35 percent, (Barnes Management Group, 2018, p. 60)
<b>Volume-based</b>	40 % of Total Funding Envelope (50 % after Pre-formula adjustments)	



Formula Factor	Current MCCSS Agency Funding	Notes
Number of Child Protection Investigations	5 % (= .5*10 %)	Barnes Management Group (2018, p. 60) report NAN Agency needed expenditures range from 5 percent-7 percent
Average number of Open Protection Cases	20 % (= .5*40 %)	Barnes Management Group (2018, p. 60) report NAN Agency needed expenditures range from 21 percent-23 percent
Average number of Children in Care	20 % (= .5*40 %)	
Number Children moving to Permanency	5 % (= .5*10 %)	Increase weight to incentivize (KPMG, 2017, p. 68, p. 87)
Number of Children in Customary Care	Included in Children in Care and Children moving to Permanency	Create incentives to Children in Customary Care (KPMG, 2017, p. 50; as a separate factor, p. 55; to incentivize cultural services, p. 55; count as # of days to “incentivize use of more local-based family homes rather than out-of-district group care” p. 89)
Number of Children with Special Needs or Multiple Needs	Omitted	Children with Special Needs or Multiple Needs as a percent of cases (KPMG, 2017, p. 50, p. 87)  Current separate Provincial funding for Children with Special Needs is 0.2 percent of 2017-2018 budget
<b>Socio-economic</b>	40 % of Total Funding Envelope (50 percent after Pre-formula adjustments)	<i>*Smaller proportion of Child Protection &amp; Admissions-Prevention but larger overall as a percent of Total Prevention</i>
Child population (0-18)	15 % (= .5*30 %) <i>(Child Population 0-15)</i>	Increase to age 25  KPMG – not relevant for high income communities, p50; too high a weight, p. 73
Low-income families	15 % (= .5*30 percent)	Highly correlated with Lone Parent Families but lower explanatory power (KPMG, 2017, p. 106)
Lone-parent families	15 % (= .5*30 %)	

Formula Factor	Current MCCSS Agency Funding	Notes
Proportion of Large families	Omitted	
Proportion of Indigenous Children	2.5 % (= .5 * 5 %)	
Remoteness Index	2.5 % (= .5 * 5 %)	

**Complex funding formula calculations in a full funding framework**

To determine a community’s total funding requires careful calculation. The following adapts the current MCCSS operational steps for illustration.

1. Determine Total Funding Envelope
2. Remove a percent (to be determined) to cover Remoteness adjustment (see Step 7 below).
3. Remove a percent (to be determined) for pre-formula adjustments, setting aside funds for Capital (Operations & Maintenance), ITCs (Operations), Travel costs (for employees travelling to support on-reserve families, for flying in band chiefs).
4. Calculate population-based factors as Share of relevant population<sup>106</sup>
5. Calculate the Complex Formula as a percentage share and apply share to the Net Funding Envelope (= Total Funding Envelope – Remoteness Fund – Pre-formula adjustments) to determine each community’s share of the Net Funding Envelope.
6. Add Pre-formula adjustments back to each community, distributed as a percent of community’s CWB-adjusted population.
7. Add community’s share of the Remoteness Fund (= Remoteness Index \* Remoteness Fund)<sup>107</sup>

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<sup>106</sup> The share of the relevant population in Steps 4 and 6 could be adjusted by an index of community well-being to better reflect community-specific cost differentials originating in the relative under-resourcing of some communities. See section on Community Cost Differentials, below.

<sup>107</sup> See section on Community Cost Differentials, below for a discussion of Remoteness index options

8. Add One-time-only Expenditures from Separate Fund for Capital infrastructure, ICTs infrastructure, Jordan’s Principle, and Extraordinary costs, to be determined for each community on an as-needed, proposal basis.
9. Community’s Total Funding = 6 + 7 + 8 + 9

### Advantages and Disadvantages of a Complex Formula Funding Model

Table 6.6 Advantages and disadvantages of a complex formula funding model

Some Advantages of Complex Formula Funding	Some Disadvantages of Complex Formula Funding
Fairness is ensured <i>if</i> the formula is understood to be a fair formula, but...	...transparency is lost due to complexity of formula, separation and distance from actual cost calculations
Opportunity to carve out funds to address urgent needs by altering the pre-formula portion	Ability to fairly allocate funds based on relative need erodes over time as both community situations and relative costs change, diverge from historical costs
Incentive to coordinate services, projects & share resources across communities, e.g., via an agency	
“inclusion of socio-economic factors ...a significant improvement” over the pre-2013 volume-based funding model (KPMG, 2017, p.50)	
Fewer reporting demands than the Community-based approach	
<p><b>Examples of Complex Formula Funding</b></p> <p>MCCSS Funding Model (2012 – current)</p> <p>Commission to Promote Sustainable Child Welfare (2011a)</p> <p>First Nations Schools Funding; see Frechette (2016)</p>	

### SIMPLIFIED FORMULA FUNDING

Within a distinct and consolidated First Nations Funding Envelope, a simplified funding formula is a third option that could be used to distribute funding to communities. The simplification over the complex formula lies in the reduction of primary cost drivers used to calculate funding entitlements. With fewer

primary cost drivers, adjusting for significant community-specific cost differences becomes all that more critical.

The simplified formula funding model might have the following key factors.

- A base equally divided among all communities
- The number of First Nations children and youth (0-25) in each community as a proportion of all First Nations children and youth in Ontario, possibly weighted by the 2016 Community Wellbeing Index (see below)
- Remoteness

Once the Remoteness Index is decided on, it would be used to distribute the Remoteness portion of the total funding.

The decision is then how to allocate the total funding among the 3 components. It may be helpful to note that other funding formulas under development in other First Nations sectors (e.g., the home care formula) are working with a simplified formula that translated to the formula structure above would mean allocating 35 percent to the community base, 55 percent to the population component (Proportion of Children and Youth), and 10 percent to Remoteness. For funding Indigenous agencies in remote communities, however, the remoteness allocation may be too low; see the next section for further discussion.

### Advantages and Disadvantages of the Simplified First Nations Funding Distribution Formula

Table 6.7 Advantages and disadvantages of the Simplified First Nations Funding Formula

Some Advantages of a Simplified First Nations Funding Formula	Some Disadvantages of a Simplified First Nations Funding Formula
Easy to understand and easy to calculate community entitlements	Connection with detailed cost drivers is distant and erodes over time with changes in costs and community situations; deviations from true cost drivers creates funding inequities
Easiest to shift funds between protection and prevention services as needed	Unfair if there are large differences in cost drivers across communities beyond those accounted for in a Remoteness Index
Creates incentive to develop prevention services over more costly protection services since funding is same regardless of which activity	Unfair if there are large high Child Protection costs in a subset of communities
Promotes sense of fairness insofar as community shares are transparent to others	

Some Advantages of a Simplified First Nations Funding Formula	Some Disadvantages of a Simplified First Nations Funding Formula
Fewest reporting demands	
<b>Examples of a Simplified Formula Funding Model</b> Ontario’s First Nations Health Action Plan (2018-2019)	

**COMMUNITY COST DIFFERENTIALS – COMMUNITY WELL-BEING AND REMOTENESS INDEXES**

As mentioned above, since funding formulas rely on cost averages to determine funding entitlements, any blunt application of the formula will result in an inequitable distribution of funds where significant cost differences across communities exist. While some inequity is inevitable in the application of a funding formula, the inclusion of a redistribution adjustment can mitigate the worst of it. Significant cost differences for First Nations communities stem from two principal sources: (1) differences across communities in the First Nations determinants of well-being, especially housing and poverty (i.e., the root causes for why many First Nations children come into care) and (2) the high costs of remoteness.

The extent to which an adjustment returns a fair distribution of funding depends critically on the ability of the chosen index to reflect the true or “evidence-based” cost differences. An imperfect index that inadequately reflects true cost differences risks distorting the distribution in a way that can create even greater inequities and thus undermine the intent of the adjustment. The community needs assessments to be undertaken in Stage 1 of the transformation will generate the detailed information necessary to evaluate the effectiveness of any proposed funding formula adjustment.

**Community Well-being**

Community cost differences derive, in part, from the differences across communities in their current state of community well-being as reflected in the state of the housing stock, employment, food security, and water safety, for example. Where rebuilding the housing stock, building the needed community capital infrastructure and ensuring a minimum level of household Income directly eliminates some of the adverse impact community well-being has on the need for child protection, it will be some time before the community well-being is fully restored. Cost drivers may differ across communities depending on gaps in First Nations determinants of community well-being. Accordingly, some adjustment for cost differentials stemming from different states of community well-being is required to ensure appropriate compensation.

The Community Well-being (CWB) Index “measures socio-economic well-being for individual communities across Canada. It has 4 components: education, labour force activity, income and housing. The CWB:

- provides a systematic, reliable summary measure of socio-economic well-being for individual communities in Canada

- illustrates variations in well-being across First Nations and Inuit communities and how they compare to non-Indigenous communities
- enables the tracking of well-being over time
- is compatible with other community-level data to facilitate a wide variety of research on the factors associated with well-being”<sup>108</sup>

Until community health is restored with the requisite investments in infrastructure, one option for adjusting the funding formula is to use the CWB to adjust the population counts. Where a community has a low-quality housing stock or high rates of unemployment, for example, one could account for the impact of this directly on the population base by amplifying the population counts in these communities by a CWB factor. Specifically, multiplying a community’s population by a factor equal to  $100/\text{CWB}$  would increase the proportionate share of the population for communities with lower CWBs.

### Remoteness

Community cost differentials are significantly affected by the higher cost of everything in remote and northern communities. For example, the Assembly of First Nations Fact Sheet (2013, p. 2) states that in Ontario “it is estimated that it costs 30 percent more to build a house in the north compared to the south.” The NAN remoteness study (Barnes Management Group, 2019, pp. 7-8) estimates costs to be between 47 percent and 68 percent higher for delivering child welfare services in NAN communities.<sup>109</sup>

Other First Nations funding models in Ontario include a 10 percent allocation distributed as a remoteness adjustment. The pertinent questions here are (1) whether a 10 percent allocation is potentially enough to cover the higher costs of delivering child and family well-being services in remote communities, and then (2) how should this allocation be distributed and to which communities?

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<sup>108</sup> <https://www.sac-isc.gc.ca/eng/1421245446858/1557321415997>. There are Indigenous concerns with this Index as a measure of Wellbeing. “[T]here are issues with the nomenclature used by the CWB Index. In this index, well-being is composed of four elements: income, education, housing, and employment, which roughly constitute socioeconomic status. However, the construct of wellbeing, particularly for Indigenous Peoples, is often much more holistic and incorporates connection with culture, nature, and the spiritual world. ... Therefore, a community with a low score on the CWB Index is likely impoverished, but community members may still report high levels of well-being due to cultural Connection,” (Drawson, Mushquash, & Mushquash, 2017, p. 20). Additionally, one may question the appropriateness of the “Education” variable, since the variable measured by formal western education levels is at best only part of the relevant First Nations’ education.

<sup>109</sup> “[T]he remoteness coefficient is a variable that can be applied to child and family services funding agencies to determine the additional funding required to provide the same standard of service to these communities. The remoteness coefficient for Tikinagan, at 1.68, indicates an increase in funding of 68 per cent, for Payukotayno at 1.59 an increase of 59 per cent, and for Kunuwanimano at 1.47 an increase of 47 per cent,” (Barnes, 2019, p. 7-8). The remoteness coefficient is “is the component of the cost ratio associated with the remoteness index,” (Barnes Management Group, 2019, p. 19)

Currently, the 10 percent allocation for remoteness in other models is distributed to 40 of the 133 Ontario communities<sup>110</sup>; that is, 30 percent of the communities receive a top-up equal to 10 percent of the total funding available. This distribution yields an *average* top-up of 37 percent to remote First Nations communities in Ontario, (see Table 6.8 below).<sup>111</sup> The average (weighted by population) percentage higher costs due to remoteness in the 3 Indigenous agencies serving NAN communities is, however, 63 percent. If the (Barnes Management Group, 2019) calculations are more widely applicable to all child and family well-being services, a remoteness allocation of 16 percent may be required to deliver an *average* top up equal to 63 percent, see Table 6.8 below.

The second question concerns the fair distribution of the remoteness funding. Ensuring a fair distribution of the remoteness funding across remote communities requires knowing relative community remoteness costs. In other models, distribution is determined based on relative on-reserve populations, which may not be an accurate reflection of the relative community remoteness costs. The NAN study's Remoteness Quotient offers an alternative index for distributing funds. Yet, while the NAN Remoteness Quotient directly reflects relative remoteness costs, it does so only for agencies and agency services.

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<sup>110</sup> The Government of Canada recognizes 126 First Nations and works with 127 Chiefs and Councils in Ontario.

<sup>111</sup> According to the NAN remoteness study, only 4 out of the 43 agencies in Ontario studied had a cost ratio due to remoteness in excess of 37 percent, (see Barnes Management Group, 2019, Appendix I, pp. 75-76). The cost ratio due to remoteness, i.e., the remoteness coefficient, for Tikinagan is 1.68, for Payukotayno is 1.59 for Kunuwanimano is 1.47, and for Kenora-Rainy River is 1.39. Of the 40 communities receiving a top-up for remoteness under other Ontario funding formulas, 32 of them are NAN communities, with most served by Tikinagan or Payukotayno. The remaining 8 communities are either Treaty 3, Anishinabek Nations, and 2 Independent First Nations. Notably, none of the communities served by Kunuwanimano currently receive any share of the remoteness funding under other Ontario funding formulas.

**Table 6.8 Illustration of average funding formula distributions with top ups for remoteness**

<b>Basic information:</b>			
Total number of communities = 133			
Total number of remote communities = 40			
Proportion of remote to total communities = $40/133 = 30.0\%$			
Total actual on-reserve population (2019-INAC) = 96292			
Total actual on-reserve population of 40 remote communities = 28768			
Proportion of remote on-reserve population to total on-reserve population = $28768/96292 = 29.9\%$			
<b>Examples of average distributions with top ups for remoteness:</b>			
Total funds to be distributed = \$148			
<u>Distribution 1: 90-10</u>	<u>Remote Community</u>	<u>Non-remote community</u>	<u>% top up</u>
90% of \$148 to 133 communities	\$1.00	\$1.00	
10% of \$148 to 40 communities	\$0.37		
Total funding received	\$1.37	\$1.00	37%
<u>Distribution 2: 84-16</u>	<u>Remote Community</u>	<u>Non-remote community</u>	<u>% top up</u>
84% of \$148 to 133 communities	\$0.93	\$0.93	
16% of \$148 to 40 communities	\$0.59		
Total funding received	\$1.52	\$0.93	63%

The NAN Remoteness Quotient calculates the proportion of agency cost differences due to remoteness as measured by the Statistics Canada Remoteness Index (SCRI). The SCRI is an index of geographic and accessibility indicators of remoteness. Specifically, the SCRI measures the distance and travel time thresholds to reach a “population centre” divided by the travel cost and covers all Census Subdivisions that reported some population in 2011.<sup>112</sup>

The authors of the SCRI (Alasia, et al., 2017, p. 28) report a high correlation (0.93) between the Remoteness Index and All Health Services but a lower correlation between the SCRI and Hospitals (0.74) suggesting that the SCRI is a close proxy for the cost differential of travelling to obtain some but not all child welfare services. An advantage of using the SCRI directly is that it is directly comparable to the CWB, since both are based on Census Subdivisions.<sup>113</sup>

<sup>112</sup> A population centre is defined as a town or city with a minimum 1000 persons *and* 400 persons per square km.

<sup>113</sup> Another index option briefly considered was the Ontario Medical Association Rurality Index. This index measures travel time to an advanced referral centre, which might offer a more relevant set of services for child welfare. The actual index excludes First Nations on reserve, however, and so was omitted as an option, (see Kralj, 2009).



Confirming both the average amount required to fairly compensate for remoteness together with its equitable distribution requires additional information obtained from the community needs assessments to be done in Stage 1 of transformation. The final choice of the remoteness adjustment to be included in any funding formula will best be informed by an analysis of this information.<sup>114</sup>

### FULL STRUCTURE OF NEW FIRST NATIONS FUNDING FRAMEWORK

The Full Structure of a New First Nations Funding Framework would contain the following elements.

1. Secured Funding Source under some form of Agreement
  - i. Include the legal standard of substantive equality as a minimum, a dispute resolution process, and an escalator allowance for inflation
2. Distinct & Consolidated First Nations Funding Envelope that includes all current funding (Protection, Prevention, CHRT orders) as well all funds for Capital and infrastructure needs
3. A First Nations Funding Formula for distributing the Distinct and Consolidated First Nations Funding Envelope
4. Exceptional Needs to communities
  - i. Extraordinary Circumstances & Contingencies (National) Fund
  - ii. Jordan's Principle Fund

### Implementation and further model refinements

Further work required beyond the scope of this study would be necessary to

- collect and compile the data needed to better inform the Funding Options, as outlined in Stage 1 of the transformation process described in Chapter Eight below.
- refine the Funding Models for a more precise comparison
- test/re-test the Funding Model Options on First Nations communities to determine how closely formula calculations compensate for high or exceptional costs, and
- finalize operational details, for example, whether it is preferable to use a 3-year average of volumes (or population) over a 2-year average.

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<sup>114</sup> The NAN study reaches a similar conclusion. "Though the remoteness quotients provide a credible means to allocate a pool of funds, the only way to truly determine appropriate funding for the NAN communities is to factor in actual community conditions, resource requirements and gaps," (Barnes Management Group, 2019, p. 8).

## CHAPTER SEVEN: THE 1965 AGREEMENT

### Key points

- There are different options for revisiting the 1965 Agreement.
- First Nations, Ontario and Canada could appoint negotiation teams to explore a new agreement on Child and Family Well-Being, as a starting point.

### WHAT IS THE 1965 AGREEMENT?

The 1965 Agreement is a bilateral cost-sharing agreement made between Canada and Ontario<sup>115</sup> that sets out cost-sharing provisions for eligible social services provided on reserve. The original intention behind the establishment of the 1965 Agreement was to make available the full range of provincial welfare programs available off reserve, to status First Nations living on reserve. The 1965 Agreement establishes that the province will deliver, and the federal government will provide reimbursement for, welfare programs available to the general Ontario population to First Nations people who live on reserve, and it requires Canada to provide Ontario with funding to support that.

The services covered are listed in schedules that reference provincial legislation, and they consist of: child welfare, Ontario Works "(financial assistance)", child care "(day care)", and homemakers services. The formula for calculating Canada's reimbursement to Ontario is complicated, and is based on the proportion of First Nations people who use social assistance and how much that population cost differs from the mainstream cost. It is written as an open-ended, uncapped reimbursement that varies depending on how much Ontario spends. Under the agreement, Ontario has generally been reimbursed approximately 93% of eligible costs for services for First Nations on reserve (or living off-reserve for less than 12 months). Ontario is responsible for and continues to bear the full cost of services for people off reserve.

First Nations are not parties to the agreement. The agreement does say that First Nations have the right to consent before the extension of a new service. This was implemented once, after First Nations brought a legal challenge, when "workfare", now Employment Assistance, was added within the Ontario Works program.<sup>116</sup> However consent was never sought or obtained prior to the extension of child

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<sup>115</sup> This paper will generally refer to the "1965 Agreement". When discussing a new version, we will say "an updated agreement". The original agreement, from 1965, is often called the 1965 Agreement, and sometimes called the "IWA" or "Indian Welfare Agreement". The full name on the document is the "Memorandum of Agreement Respecting Welfare Programs for Indians".

<sup>116</sup> *Mushkegowuk Council v. Ontario*, 1999 CanLII 3772 (ON CA).

welfare services. Only many years later, in the Sixties Scoop class action, was this recognized as a breach of the agreement.<sup>117</sup>

While there have been comments on the 1965 Agreement during reviews of child welfare services and social assistance, there has never been a full tripartite review of the 1965 Agreement. Canada supported capital costs under the agreement until 1975, but then did not renew those clauses. References to provincial legislation in the agreement have not been kept up to date for many years.

Chiefs of Ontario commissioned a report on the 1965 Agreement in 2009, completed by Judith Rae, now with Olthuis Kleer Townshend LLP.<sup>118</sup> It concluded that the agreement is a double-edged sword, in that it has many deficiencies, yet the provincial mainstream funding that it guarantees has provided certain benefits over the federal government's First Nations-specific funding programs as a general rule. First Nations in Ontario have raised many concerns with the 1965 Agreement but have been understandably cautious about disrupting it, due to the risks involved and the importance of avoiding a worse outcome.

In the *Caring Society* case at the Canadian Human Rights Tribunal, the Tribunal found that the 1965 Agreement has not been kept updated, and has not covered the full range of child and family services reflected by Ontario's legislation. The Agreement was never updated after Ontario overhauled child welfare and created the *Child and Family Services Act* in 1984 (let alone since the more recent introduction of the *Child, Youth and Family Services Act* in 2017, which came into force after the Tribunal's decision).

The Tribunal found that, for instance, child and youth mental health, youth justice, and Band Representative programs were not being cost-shared through the 1965 Agreement even though they were in the provincial legislation. Prevention was not being fully supported through the 1965 Agreement, and capital costs had not been covered under the Agreement since 1975. In addition, the Tribunal noted that the provincial funding model for child and family services agencies is not well-suited to the needs of First Nations communities and families.<sup>119</sup>

In preparation for this Ontario Special Study, the government of Ontario was asked to provide a list of the programs it is funding outside the 1965 Agreement (i.e. these are not cost-shared in the 1965 Agreement; note that the federal government still contributes some of the cost indirectly through the usual fiscal federalism measures providing health and social transfers payments to all provinces and equalization calculations). Ontario provided the list below as of June 18, 2018, although it cautions that the list may not be complete (Figure 7.1). Some of the elements of the current child welfare system in Ontario that are **not** being covered under the 1965 Agreement include:

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<sup>117</sup> This was confirmed in *Brown v. Canada (Attorney General)*, 2017 ONSC 251, which found Canada had breached the 1965 Agreement in failing to consult or obtain concurrence from First Nations before the provincial child welfare system was imposed on them.

<sup>118</sup> Rae Report, 2009

<sup>119</sup> *Caring Society* 2016 CHRT 2, at paras. 217-246.

- transition supports for youth exiting care
- alternative dispute resolution
- the process of designating ICWBAs and building their capacity
- a wide variety of well-being services, including addictions program, mental health services (both residential and non-residential), infant and early childhood programs, suicide prevention and response, FASD supports, special needs, autism, and more
- capital costs for “partners”, i.e. agencies, First Nations and others delivering protection or prevention

Examples of Provincial programs and services funded outside of the 1965 Agreement	
Protection Services	
Designation – Indigenous Child Well-Being Agencies	
Child Protection Transformation Fund (CPTF) <ul style="list-style-type: none"> <li>• Alternative Dispute Resolution</li> <li>• Youth in Transition Worker</li> <li>• Community Capacity Building</li> </ul>	
Child Welfare Training	
Partner Facility Renewal (minor capital)	
Primary Prevention	Secondary & Tertiary Prevention
Aboriginal Healthy Babies Healthy Children	Rehabilitation
Family Well-Being Program	Special needs
First Nations Student Nutrition Program	Autism
On Reserve Child Care and Family Support programs (Early Years Learning)	Fetal Alcohol Spectrum Disorder (FASD)
Aboriginal Mental Health and Addiction Workers	Partner Facility Renewal (minor capital)
Tele-mental Health	Core child and youth mental health services <ul style="list-style-type: none"> <li>• Counselling, therapy services</li> <li>• Family, caregiver building skills and support</li> <li>• Access intake service planning</li> <li>• Service coordination process</li> <li>• Intensive treatment services</li> <li>• Specialized consultation, assessment services</li> <li>• Targeted prevention</li> </ul> Other child and youth mental health services <ul style="list-style-type: none"> <li>• Children’s mental health 0-6</li> <li>• Children and Family intervention, operating residential</li> <li>• Children and Family intervention, operating non-residential</li> </ul>
Life Promotion Prevention/Mobile Response Teams	
Prevention Initiatives for Youth in Remote High-Need First Nations	

Figure 7.1 Ontario, Ministry of Children and Youth services (now MCCSS) outside of the 1965 Agreement as of June 2018.

## A FRAMEWORK FOR A NEW AGREEMENT

An important component of the Special Study concerned identifying multiple approaches to revisit the 1965 Agreement (also known as the “Indian Welfare Agreement” or “IWA”).

In the RFP for the Ontario Special Study, the study team was asked to:

*Provide multiple approaches on how to revisit the IWA, consider policy implications, the cost of these alternatives, and provide practical steps for implementing these recommendations.*

*Note: These proposed approaches to the IWA must: support the goal of substantive equality, be non-discriminatory, support First Nations jurisdiction, and respect the diversity among First Nations. (p. 4)*

In its 2016 *Caring Society* decision, the Canadian Human Rights Tribunal ordered Canada to “cease its discriminatory practices and reform the ... 1965 Agreement to reflect the findings in this decision”. Reform of the agreement requires not just Canada, but of course Ontario, and also First Nations, to determine the type and scope of an agreement for moving forward.

This section provides options for addressing the following questions.

- Do you want to update/replace the 1965 Agreement, or end it, or keep it?
- Should updates be made for Child and Family Well-Being only, or overall?
- Who should be a party to a new agreement?
- How could a new agreement support substantive equality and avoid discrimination?
- How could a new agreement help facilitate First Nations’ jurisdiction and control?
- What should be the scope of a new agreement on/off reserve?
- How could an updated agreement avoid gaps in current programs?
- How to promote accountability, dispute resolution and keeping up to date?
- Considerations down the road – looking at other programs

Various options are analyzed below against the RFP criteria: *support the goal of substantive equality, be non-discriminatory, support First Nations jurisdiction, and respect the diversity among First Nations.*

This analysis has led to the following recommendations from the First Nations Caucus of the Technical Table:

- 1. That First Nation, federal and provincial governments each appoint negotiation teams to enter into exploratory discussions on creating a new inter-governmental agreement(s) with respect to First Nations child and family well-being services in Ontario. The new agreement(s) would either supplement, update or replace the child welfare provisions of the 1965 Agreement, depending on the details negotiated.**

Some considerations for the negotiations could include:

- a. The exploratory discussions would aim to develop agreed points for a negotiation mandate, that, if approved by the parties, would allow the details of a new agreement(s) to be fully negotiated and potentially concluded.
- b. The 1965 Agreement should remain in place for child welfare until all parties sign off on a new agreement(s), and it should be changed only in accordance with the new agreement(s). The new agreement(s) would either supplement, update or replace the child welfare provisions of the 1965 Agreement, depending on the details negotiated.
- c. For the time being, the 1965 Agreement would remain in place for the services it covers other than child welfare (Ontario Works "(financial assistance)", child care "(day care)", and homemakers services). A new agreement on child and family well-being would be used as a model and test case. Depending on the outcome the parties should consider similar (or other) agreements on the other 1965 Agreement services and/or other service areas.

**2. That the following points be considered by the negotiation teams to frame a new agreement(s):**

- a. Parties – First Nations should be represented as parties, either through an agreed representative body or several bodies (e.g. PTOs) or as individual signatories.
- b. Flexibility in Participation – Consider providing First Nations the ability to opt in or out. The federal funding systems available in other provinces would take effect in an opt-out, or the First Nation may want to exit in favour of another arrangement they have negotiated such as through an agreement relating to the exercise of their jurisdiction.
- c. Scope – Child and Family Well-being would be within the new agreement. It should be defined broadly and flexibly to encompass the full range of services that Ontario, First Nations and their ICWBAs currently provide in the sector, as well as new developments as the system transforms. Definitions should avoid the need for frequent updating. Sector elements that have been historically excluded from the 1965 Agreement should be confirmed as within scope, such as prevention, Band Representative services, mental health services, capital costs, and other elements of child and family well-being systems as determined by the parties.
- d. Flow of funds and services – Canada would continue flowing funds to Ontario, in a formula to be determined, and Ontario would offer one-window funding to First Nations and ICWBAs. Funding consolidation could be promoted, as recommended elsewhere in this report. This continues a current benefit of the agreement in that it is simpler for First Nations and ICWBAs to deal regularly with one Crown government that can offer for both on and off reserve funding and that involved within the sector in the

mainstream. In addition, the new agreement would present three key innovations over the current agreement: it would reflect the legal standard of substantive equality (see “e”), redress inadequacies in scope (see “c”), and help support the exercise of First Nations jurisdiction (see “f”).

- e. Substantive Equality – The agreement should(s) require Ontario to ensure that its program funding, and prior to the exercise of jurisdiction its program design, ensure substantive equality for First Nations children, families and communities. This would reflect and help to implement the legal principles outlined in the *Caring Society* CHRT decision (e.g. meets diverse needs, captures remoteness and other realistic costs, addresses historical disadvantage, recognizes intergenerational trauma, closes gaps in outcomes, allows for cultural compatibility, and ensures service levels are not worse than in the mainstream).
- f. Promoting First Nations Jurisdiction – The agreement(s) should consider a variety of terms to help support and facilitate First Nations’ exercise of their jurisdiction in child and family well-being. This could include, for instance:
  - i. affirming that First Nations have that jurisdiction and the right to exercise it;
  - ii. providing access to a minimum set of start-up funds, while affirming First Nations’ rights to negotiate additional or different terms for transitional funding as needed if they choose to;<sup>120</sup>
  - iii. guaranteeing a minimum base of funds for the exercise of ongoing governance costs, while affirming First Nations’ rights to negotiate additional or different terms for governance funding as needed if they choose to;<sup>121</sup>
  - iv. confirming that existing funding streams for operational costs in child and family well-being can be redirected and applied within First Nations jurisdiction systems at the First Nation’s option, as a minimum, while allowing First Nations to negotiate additional or different operational funding as needed if they choose to;
  - v. providing opt-in and opt-out abilities to allow for choices and flexibility in different arrangements appropriate to the exercise of jurisdiction in each Nation (see “b” above).

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<sup>120</sup> Those costs include, for instance: First Nations’ policy-development, law-making, and system development; internal and external consultations; related negotiations (among First Nations working together on a legal framework, protocols between those First Nations and other First Nations and their systems, and between those First Nations and the Crown governments); related technical/legal support; training and capacity-building; etc.

<sup>121</sup> This base would include aspects such as ongoing policy review and updating, system monitoring and accountability processes, maintenance of governance institutions, liability changes and related insurance for governance roles, etc.

- g. Affirm Jordan's Principle – Ensure that jurisdictional disputes do not become a basis for denial or delay of any services.
- h. Consent to New Programs – Continue to require First Nations' consent to the extension of any new program by Ontario. This remains relevant while First Nations are transitioning to their own jurisdiction.
- i. Liability – Liability should be addressed in the agreement, to ensure clarity for all parties. We recommend that liability flow according to matters within each party's control and their roles and responsibilities. For instance, funders (Ontario and Canada) should remain responsible for funding adequacy. First Nations and their agencies, among others, would remain responsible for their roles in service delivery. The agreement should recognize Ontario's liability within its current control over legislation, policy and related standards, while also recognizing that liability in those roles will shift to First Nations in the exercise of their jurisdiction.
- j. Systems for Monitoring & Coordination – Consider addressing systems for monitoring of key outcomes relevant to First Nations, and coordination among systems as First Nations exercise jurisdiction.
- k. Enforcement & Dispute Resolution – Provide efficient and appropriate enforcement systems, such as culturally appropriate mediation and arbitration.
- l. Reviews and Updates – Require the parties to conduct 5-year reviews to encourage updating and the ability to address problems in a timely and pro-active way.

## OPTIONS TO REVISIT THE 1965 AGREEMENT

The charts below discuss options for considering the type and scope of a new agreement with related opportunities and challenges. We present a wide variety of options for consideration. To help with the analysis of the 4 factors given to us (substantive equality, non-discrimination, supporting First Nations jurisdiction and respecting diversity) we have highlighted the option that has the best fit with these 4 factors, and where applicable we have offered additional policy notes for that option.



**Do you want to update/replace the 1965 Agreement, or end it, or keep it?**

Table 7.1 Do you want to update/replace the 1965 Agreement, or end it, or keep it?

<b>(A) Update/Replace the Agreement</b>	<b>(B) End the Agreement without a replacement</b>	<b>(C) Keep it as is</b>
<p>What it means</p> <ul style="list-style-type: none"> <li>• Child and family services would continue to be <b>funded provincially by Ontario</b> under Ontario’s funding terms, as a default, perhaps under new criteria (see below), with federal reimbursement to Ontario behind the scenes. A new agreement could also facilitate transitions to First Nation jurisdiction.</li> </ul> <p>Pros</p> <ul style="list-style-type: none"> <li>• History has shown that provincial funding in Ontario has been comparatively better than federal funding outside of Ontario because it rises with the mainstream tide. <b>This is the core benefit of the 1965 Agreement.</b><sup>122</sup></li> </ul>	<p>What it means</p> <ul style="list-style-type: none"> <li>• First Nations communities and agencies could receive <b>direct federal funding</b> for children and families on-reserve in accordance with federal government policies. The government of Ontario would fund services for children and families off-reserve. The mechanics of that system would be new in Ontario.</li> </ul> <p>Pros</p> <ul style="list-style-type: none"> <li>• The federal government is improving its funding policies lately in child and family services, due to the orders of the CHRT in the <i>Caring Society</i> case.</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• Long-term national reform in CFS is still pending, and we don’t know how it will evolve.</li> <li>• It’s not clear yet if Canada will make one federal funding system, or several by region.</li> <li>• Over time, history has shown a tendency for federally-funded First Nations services to fall far</li> </ul>	<p>What it means</p> <ul style="list-style-type: none"> <li>• The 1965 would continue as is.</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• This is not recommended, due to the many well-known deficiencies of the current agreement (e.g. out of date, lacks First Nation participation, fails to affirm or facilitate First Nations jurisdiction, many aspects of the child welfare sector have not been properly funded under it, including Band Reps, mental health, and prevention)</li> </ul>

<sup>122</sup> Rae Report 2009.

<b>(A) Update/Replace the Agreement</b>	<b>(B) End the Agreement without a replacement</b>	<b>(C) Keep it as is</b>
<p>Cons</p> <ul style="list-style-type: none"> <li>• Mainstream provincial funding has been better than federal funding to date, but it has had shortcomings that fall short of substantive equality. First Nations still experience discriminatory gaps and their diverse needs have not always been met.</li> </ul> <p>Policy Note</p> <ul style="list-style-type: none"> <li>➤ An updated agreement provides an <b>opportunity to help implement the standard of substantive equality</b> and to <b>promote First Nation jurisdiction</b></li> </ul>	<p>behind mainstream standards. So far no structural steps have been taken to try to ensure that substantive equality will be implemented consistently, despite some changes since the <i>Caring Society</i> decision. The <i>Act respecting First Nation, Inuit and Métis children, youth and families</i>, recently approved federally, has no funding requirements, i.e. nothing to help uphold the standard of substantive equality over time. The risk of falling behind over time remains strong.</p> <ul style="list-style-type: none"> <li>• There could be practical fallout from not having an agreement. This could disrupt services.</li> </ul>	

The remaining questions are based on choosing 1(A) – update or replace the Agreement, or part of it.

**Should updates be made for Child and Family Well-Being only, or overall?**

Table 7.2 *Should updates be made for Child and Family Well-Being only, or overall?*

<b>(A) Make a new agreement for Child and Family Well-Being only, leaving it “as is” for the other 3 programs</b>	<b>(B) Make a new agreement to update / replace the entire 1965 Agreement</b>
<p>Pros</p> <ul style="list-style-type: none"> <li>• Could be a little bit simpler, faster and easier to negotiate, since each program has some unique elements to be considered (e.g. defining the scope of the program, monitoring and information sharing, what kinds of funding issues arise that need to be addressed in the agreement)</li> <li>• Minimizes risk, in that a new approach to child and family well-being can be implemented. If it works well, it can be considered (or variations considered) for other programs</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• It delays potential improvements that could benefit the other programs.</li> </ul> <p>(For example, promoting jurisdiction and control, requiring Ontario to ensure substantive equality and setting criteria, adding dispute resolution mechanisms, allowing for First Nation enforcement, adding periodic reviews, etc.)</p> <p>The 3 other programs would not see any benefits until they pursue their own update / replacement.</p> <p>Policy Notes</p> <p>It would be important to encourage a way to revisit the question of applying the model of the new agreement to the other 3 programs in the 1965 Agreement and/or other programs now outside it.</p>	<p>Pros</p> <ul style="list-style-type: none"> <li>• It is a high-level agreement, and most terms will be able to apply across the board to all programs without additional negotiation work.</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• It would take more time and effort to fully capture the needs and interests of all programs.</li> <li>• Reforming the 1965 Agreement for other programs was not ordered by the Canadian Human Rights Tribunal.</li> <li>• Other program areas are not anticipating “opening” the 1965 Agreement at this time and are wary of the risks and uncertainties of doing so.</li> </ul>

**Who should be a party to a new agreement?**

Table 7.3 *Who should be a party to a new agreement?*

<b>(A) Continue as currently: Only ON &amp; CA</b>	<b>(B) Add each First Nation as a party</b>	<b>(C) Add PTOs or Chiefs of Ontario as one or more representative parties for First Nations' interests</b>
<p>Pros</p> <ul style="list-style-type: none"> <li>• It could help keep First Nations from being caught in the middle of funding disputes between Canada and Ontario that should not become “their problem”. First Nations should not become the authors of discrimination against themselves.</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• It does not reflect respect for First Nations, or apply FPIC. Without clear consent from any First Nation party, it risks having ON and CA decide on their own terms again (unilaterally or with merely some kind of “consultation”).</li> <li>• It also excludes First Nations from enforcement. History suggests strongly that First Nations may need more direct enforcement power to help ensure substantive equality is implemented.</li> </ul>	<p>Pros</p> <ul style="list-style-type: none"> <li>• It more closely reflects a government-to-government relationship with full consent by each First Nation.</li> <li>• Any First Nation could take steps to enforce if it wanted.</li> </ul> <p>Cons &amp; Policy Notes</p> <ul style="list-style-type: none"> <li>• There is a significant practical challenge of asking all Ontario First Nations to sign on to one agreement. It would require a “plan B” to take effect for non-signatories. However, a Plan B is recommended anyway (falling under federal funding systems as First Nations do elsewhere in Canada, unless the First Nation has another agreed funding system in place).</li> <li>• It would add to the cost and time of concluding the updated agreement.</li> <li>• If there were any legal proceedings for enforcement, every other First Nation would be joined as parties, making enforcement very costly and time consuming unless there was significant coordination.</li> <li>• There could be liability concerns for First Nations, who often administer programs, to become parties. That would need to be addressed with clear terms.</li> </ul>	<p>Pros</p> <ul style="list-style-type: none"> <li>• It respects the principle of First Nation consent, exercised in a different way through collective organization.</li> <li>• The time and cost of negotiations, updates, and enforcement, would be easier to manage.</li> </ul> <p>Cons &amp; Policy Notes</p> <ul style="list-style-type: none"> <li>• First Nations will need to consider what is politically appropriate for them in terms of signatories.</li> <li>• Liability concerns for any First Nation party/ies will need to be addressed.</li> <li>• To better respect First Nations’ diversity and jurisdiction, it would be helpful to ensure First Nations could exit in favour of exercising their own arrangements under own jurisdiction if they wish, as well as exit in favour of direct federal funding if they wish.</li> </ul>

## How could a new agreement support substantive equality and avoid discrimination?

The options here are not exclusive; we recommend using all of them (see Table 7.4).

Table 7.4 How could a new agreement support substantive equality and avoid discrimination?

What could be included in an updated agreement	Comments
<p>(A) Require Ontario to ensure that its programs and related funding meet the standard of substantive equality. Set out criteria for that standard, from the test in <i>Caring Society</i>, and reflect key points that have been an issue here in Ontario. E.g. Programs and funding must:</p> <ul style="list-style-type: none"> <li>• Meet real needs, e.g. different needs of First Nations vs others, needs of specific First Nations, and needs of specific children</li> <li>• Address variations in cost so that northern &amp; remote communities are not disadvantaged</li> <li>• Ensure equity of First Nations children regardless of residency</li> <li>• Ensure the quality of services is at least as good as those services in the mainstream</li> <li>• Not perpetuate historical disadvantage</li> <li>• Address intergenerational trauma</li> <li>• Be culturally appropriate</li> <li>• Narrow the gaps in outcomes between First Nations and others</li> <li>• Break the cycle of outside control, i.e. help restore First Nations control</li> </ul>	<p>An updated agreement is a great opportunity to help implement substantive equality as set out in <i>Caring Society</i>. It is a long-term document providing high-level authority, and can be enforced as a contract.</p> <p>It is important to have these terms imposed on Ontario, because Ontario controls the program funding. The agreement already requires Ontario to extend its services to First Nations (i.e. the services covered in the agreement), but sets no standards in doing so. Instead, Ontario should be required to meet the legal standard in avoiding discrimination and ensuring equity.</p> <p>Canada’s internal funding to Ontario does not cover 100% of the costs, and that’s fine. It’s primarily up to Ontario and Canada to determine their reimbursement terms (either as is, or new).</p> <p>But the key from an outcome perspective, and as it impacts First Nations, is what funding comes out the door for programs.</p>
<p>(B) Reflect Jordan’s Principle, but with terms applicable to people of all ages, to ensure that jurisdictional disputes on funding are managed in a way that prioritizes service and avoids delays or exclusions</p>	<p>JP principle is already an existing legal principle required by the CHRT orders. The principle and related processes should be reflected in the agreement.</p>
<p>(C) Deal clearly with particular funding issues that have become barriers to equity, such as capital costs. (If new agreements are made in the non-CFS programs, “municipal shares” will need to be addressed in this category too).</p>	<p>Capital costs need to be covered, with clear responsibilities. Its exclusion from the current agreement since 1975 has limited capital investments.</p>

### How could a new agreement promote First Nations' jurisdiction and control?

The current 1965 Agreement does not comment on jurisdiction; it doesn't prevent it but neither does it help facilitate it in any way. It only supports First Nations control in one respect: it says that First Nations have the right to consent to extension of any new program. This has been unevenly applied, e.g. it was applied for Workfare, now Employment Assistance, but it was never applied for child welfare. The options here are not exclusive; we recommend all of them (see Table 7.5).<sup>123</sup>

Table 7.5 How could a new agreement promote First Nations' jurisdiction and control?

What could be included in an updated agreement	Comments
(A) Continue the provision that First Nations have the right to consent before the extension of any new program.	While this still involves the application of externally-created programs, it is an important element of control for First Nations. Supporting jurisdiction can include interim steps, as here where a First Nation is respected to make its own decision on allowing an external program or not.
(B) Allow any First Nation to exit the agreement in favour of direct federal funding under existing federal policies, and require Canada to provide it.	This was mentioned above. It would provide First Nations with more flexibility and an alternative, if federal funding models are better than Ontario's for their community.
(C) Allow any First Nation to exit the agreement in favour of exercising their own jurisdiction.	Usually a First Nation will use this once it has a separate funding agreement or other unique funding arrangements in place for the exercise of its jurisdiction.
(D) Allow any First Nation (or group of FNs) to access specified resources and supports for the development of their own law and system, in preparation for exercising their jurisdiction, in any program area covered by the Agreement.	Ensures that capacity support will be available to support the transition phase towards exercise of jurisdiction. Costs may include research (oral and written), meetings, legal support, training, and so on.
(E) Allow any First Nation to opt in to a second part of the agreement that provides an off-the-shelf funding model for the exercise of their jurisdiction. A First Nation could use this if they are ready to apply their own laws and systems and would rather use this ready-made funding model rather than negotiating their own.	An off-the-shelf funding option for jurisdiction may not fit the needs of all First Nations; some may prefer to negotiate their own agreements. But for others, a ready-made option will be quicker and worthwhile. It could help more First Nations exercise their jurisdiction, and reduce the time and cost of getting there.

<sup>123</sup> Options (A) and (B) help support First Nations control though not full jurisdiction. Options (C), (D) and (E) help support jurisdiction.

**What should be the scope of an updated agreement on/off reserve?**

Table 7.6 *What should be the scope of an updated agreement on/off reserve?*

<b>(A) Agreement continues to apply on-reserve only &amp; off-reserve residency for under 12 months</b>	<b>(B) Whole agreement, including federal funding, applies to all First Nations citizens both on and off reserve</b>	<b>(C) CA/ON funding split may remain as is, but other aspects of the agreement extend off reserve</b>
<p>Pros</p> <ul style="list-style-type: none"> <li>• It is simpler because it continues the status quo, so it has no new cost implications and would not take up negotiating time</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• In some programs, this has limited the scope of First Nations’ control. But that hasn’t been an issue in child and family services (e.g. First Nations agencies are usually able to serve a catchment area both on and off reserve, for instance).</li> </ul>	<p>Pros</p> <ul style="list-style-type: none"> <li>• Would promote a wider scope of FN delivery</li> <li>• Could promote more equal access on/off reserve</li> </ul> <p>Cons</p> <ul style="list-style-type: none"> <li>• This would dramatically expand the federal government’s share of funding vs Ontario’s. Because of the significant cost implications, we could expect that issue to bog down negotiations and be opposed by Canada. That may not be worthwhile, since the split of the bill between Canada and Ontario does not need to affect services if other barriers are addressed.</li> </ul>	<p>Pros</p> <ul style="list-style-type: none"> <li>• Would leave cost-sharing basically the same between CA and ON, simplifying negotiations</li> </ul> <p>Cons &amp; Policy Notes</p> <ul style="list-style-type: none"> <li>• To address the concerns with the status quo, the agreement would need to implement new measures to promote substantive equality on/off reserve and increase support for FN jurisdiction and control. For example:             <ul style="list-style-type: none"> <li>(i) Require Ontario to ensure its programs and funding support substantive equality. The criteria for substantive equality should include the principle of equity on/off reserve.</li> <li>(ii) Require Ontario to facilitate First Nation delivery of programs to their own citizens both on and off reserve, to the extent First Nations wish to do so.</li> <li>(iii) In affirming First Nations’ jurisdiction, that jurisdiction includes citizens both on and off reserve.</li> <li>(iv) Include capital costs in the agreement, both on and off reserve</li> </ul> </li> </ul>

### How could a new agreement avoid gaps in current programs?

The current way of listing programs in the 1965 Agreement is both too restrictive and unclear, and has led to discriminatory gaps as shown in the *Caring Society* case.

In defining services eligible for reimbursement it sets overlapping restrictions.<sup>124</sup> Technically, the Agreement sets out Canada's obligation to reimburse Ontario for certain services. Ontario's obligation to provide services is actually broader; it includes any "welfare program" funded by the province.<sup>125</sup> This might help to explain in part why Ontario has extended some additional programming beyond what is funded by Canada. However "welfare program" is vague and not defined. The restrictions in the Schedules seem to have been influential, and service gaps even within statutes have been common, such as the exclusion of Band Representative funding.

Continuing with that model is not an option worth considering to avoid discrimination and support substantive equality. Finding good solutions depends in part on legal drafting. **Obtaining further legal advice on this issue is recommended if a new agreement is negotiated** (see Table 7.8).

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<sup>124</sup> It lists specific services in Schedule A ("allowances payable" for example); those services have to be within specific statutes in Schedule A (e.g. "... under the Blind Persons Allowances Act"); and it also lists certain eligible types of costs in Schedule E (salaries of certain types of personnel, etc.).

<sup>125</sup> Ontario "undertakes... to extend the Aggregate Ontario Welfare Program" to Indians in s. 2(1). That includes Schedule A but is not limited to it; it includes any "welfare program" funded by the province: ss. 1(1) (a) and (d).



Table 7.8 *Ideas for further legal advice when a new agreement is considered*

Idea for further consideration	Comments
(A) In defining Canada’s funding obligation to Ontario, make it clear that the reimbursement does not limit or define Ontario’s program and funding obligations	The method of calculating Canada’s reimbursement to Ontario should not be mistaken as a limit on services. Ontario’s obligation to provide funding to the standard of substantive equality, both on and off reserve, should be made clear.
(B) In defining the scope of what programs are covered, drafting will need to be broad enough and clear enough to avoid gaps, while built to last as long as possible over time	Ideas for further consideration (subject to legal drafting advice): (i) Consider an approach that does not rely too heavily on listing statutes; if a statute is listed, include “as amended or replaced from time to time” (ii) Avoid limiting the scope of services within a statute (iii) Consider concepts like “including but not limited to” (iv) Consider mentioning certain program elements for greater certainty, especially where they have been disputed or unfunded in the past. For example, in Child and Family Well-Being, this might include things like Band Representatives, child and youth mental health, prevention, Indigenous dispute resolution systems, agency designation processes, youth in transition services, capital, etc.
(C) In defining Canada’s funding obligation to Ontario, consider updating the method of calculation	The calculation is currently based off ratios in a totally different program area, social assistance. Ontario and Canada, in particular, will need to consider if they want to update that scheme. First Nations will need to consider whether they have a position on how Canada and Ontario “split the bill”.

## How to promote accountability, dispute resolution and keeping up to date?

The options here are not exclusive; we recommend using all of them (see Table 7.9).

Table 7.9 *How to promote accountability, dispute resolution and keeping up to date?*

Options	Comments
<p>(A) Draft the agreement in a way that minimizes the need for updates (see e.g. Q6)</p> <p>(B) Include a process for administrative updates that is as easy and accessible as possible, in addition to a general amendment process</p>	<p>The last update to the 1965 Agreement was over 20 years ago, in 1998. That update was limited to one program, Ontario Works. The other statutes in the schedules have not been updated since 1981.</p> <p>The agreement has always allowed the Schedules to be updated by the relevant Ministers or their designates (s. 7). That sounds simple enough, but clearly it has not been sufficient. More is needed.</p> <p>As a preliminary step, it would be helpful to know more from Ontario and Canada about why the agreement has not been updated. What are the barriers or disincentives to updating?</p>
<p>(C) Include a periodic review, for example every 5 years</p>	<p>There has never been a full tripartite review of the 1965 Agreement. An updated agreement should build this in on a regular basis. When negotiating the updated agreement, specific plans should be built in around what the first review will look like and how it will take place. The agreement could, potentially, set minimum agenda items or minimum process elements and/or objectives for the reviews.</p>
<p>(D) Build in an effective and efficient dispute resolution system</p>	<p>This should be a significant new feature of an updated agreement, with details to be negotiated. A standard model to consider might be meetings between the parties, followed by mediation, followed by binding arbitration.</p>
<p>(E) Consider adding elements for monitoring performance</p>	<p>Parties can be more accountable to each other and to their citizens if they have relevant, transparent information at hand that links directly to the desired goals. An updated agreement could set benchmarks and address information collection and sharing to facilitate effective monitoring of those performance standards.</p> <p>To speed negotiations and facilitate updates, any details should be in schedules to be added program by program.</p>

### Considerations down the road – looking at other programs

The 1965 Agreement has come to mean four programs: Child welfare, Ontario Works "(financial assistance)", child care "(day care)", and homemaker services. These flow from what Ontario and Canada considered to be "welfare programs" in the early 1960s. They do not reflect a particularly current or holistic approach.<sup>126</sup>

The recommendation is to start with Child and Family Well-Being to create a new agreement. If the model is successful, the parties may want to look at other programs both *within* the current 1965 Agreement and those *outside it* to consider a similar model.

\* \* \*

Addressing the 1965 Agreement is, first of all, necessary. The Canadian Human Rights Tribunal and numerous others have noted the overdue need for an update, and found the current system discriminatory. An update is also realistic, and not an insurmountable task.

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<sup>126</sup> For example, major programs like health and education are not in the agreement. Even within the 4 programs, the agreement has taken a limited scope approach. Of note, the exclusion of the Ontario Disability Support Program is particularly odd, as it divorces one type of direct social assistance (Ontario Works) from the other (ODSP). They might merge, as was recommended in a 2012 report. It also recommended that First Nations be able to deliver both, and noted that First Nations people have high rates of disability but can find ODSP hard to equitably access. (see: Commission for the Review of Social Assistance in Ontario, *Brighter Prospects: Transforming Social Assistance in Ontario*, A Report to MCSS, 2012). Excluding ODSP also seems inconsistent with the original intent of the 1965 Agreement, which included allowances under the *Disabled Persons Allowances Act* and *Blind Persons Allowances Act*, for instance.

## CHAPTER EIGHT: TRANSFORMATION PROCESS AND RECOMMENDATIONS

The findings from this Study call for a new approach—system transformation—to ensure substantive equality and well-being for First Nations children and families in Ontario. This means First Nations design, direct, and deliver (or choose who delivers) services and supports for well-being. System transformation based on First Nations self-determination meets the basic needs that most Canadians take for granted.

### Key points

- System change requires significant reform with funding that meets or exceeds substantive equality.
- System transformation requires approximately ten years to reach a steady state.
- Change occurs at the pace determined by each First Nation.
- The approach to system change makes no distinction about which services and supports are community-based or agency delivered. Because there is an interconnected relationship between First Nations and the respective Indigenous agency they govern; they determine how best to implement the spectrum of well-being services and supports.
- There are seven pillars of transformation. Choosing one in isolation of the other will not produce the desired results or meet the intent of the CHRT ruling.

The governments of Canada and Ontario concur with the need for system change. Prime Minister Justin Trudeau stated in his Minister of Indigenous Services Mandate Letter (2017, October 4) that one of the top priorities of the federal government is to:

Develop and implement an improved response to the provision of child welfare and health care under Jordan’s Principle that focuses on the best interests of the child. This will require a holistic approach to the delivery of services that focuses on prevention, family preservation and well-being, and community wellness. It should include responding to immediate pressures to deliver health, child, and family services while working with the Minister of Crown-Indigenous Relations and Northern Affairs on self-governance frameworks.

Indigenous Services Canada (ISC) reiterated this mandate in their 2017-2018 Departmental Results Report that “ISC has been mandated to create systemic change in how the federal government delivers services to Indigenous peoples and ultimately transfer the design, the planning, management and delivery of these services under to (sic) Indigenous control” (2018, p. 10).

The Political Accord Between First Nations and the Government of Ontario (2015, August 24) recognizes that First Nations are self-governing, and the parties involved agree to “move forward together in a

spirit of respectful co-existence and with a view to revitalizing the treaty relationship.”<sup>127</sup> The parties also agree to “work together to identify and address common priorities and issues, that will include, but are not limited to, the treaty relationship, resource benefits and revenue sharing and jurisdictional matters involving First Nations and Ontario.”<sup>128</sup>

As this Ontario Special Study is being prepared for distribution, the CHRT on September 6, 2019 ruled

The Panel finds there is sufficient evidence and other information ... in this case to establish, on a balance of probabilities, that Canada’s systemic racial discrimination found in the Tribunal’s Decision 2016 CHRT 2 and subsequent rulings: 2016 CHRT 10, 2016 CHRT 16, 2018 CHRT 4, resulted in harming First Nations children living on reserve and in the Yukon Territory who, as a result of poverty, lack of housing or deemed appropriate housing, neglect and substance abuse were unnecessarily apprehended and placed in care outside of their homes, families and communities and especially in regards to substance abuse, did not benefit from prevention services in the form of least disruptive measures or other prevention services permitting them to remain safely in their homes, families and communities. (*Caring Society* 2019 CHRT 39, para 245)

## THE STAGES OF TRANSFORMATION

The current child welfare system has operated over a long period of time. System change requires significant reform along with funding that meets or exceeds substantive equality. System transformation requires approximately ten years to reach a steady state. Four stages have been identified to reach this steady state. Those four stages are illustrated in the following figure (see Figure 8.1).

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<sup>127</sup> Political Accord between First Nations and the Government of Ontario, August 24, 2015, Whereas, No. 1.

<sup>128</sup> Political Accord, Whereas, No 4.No. 4.

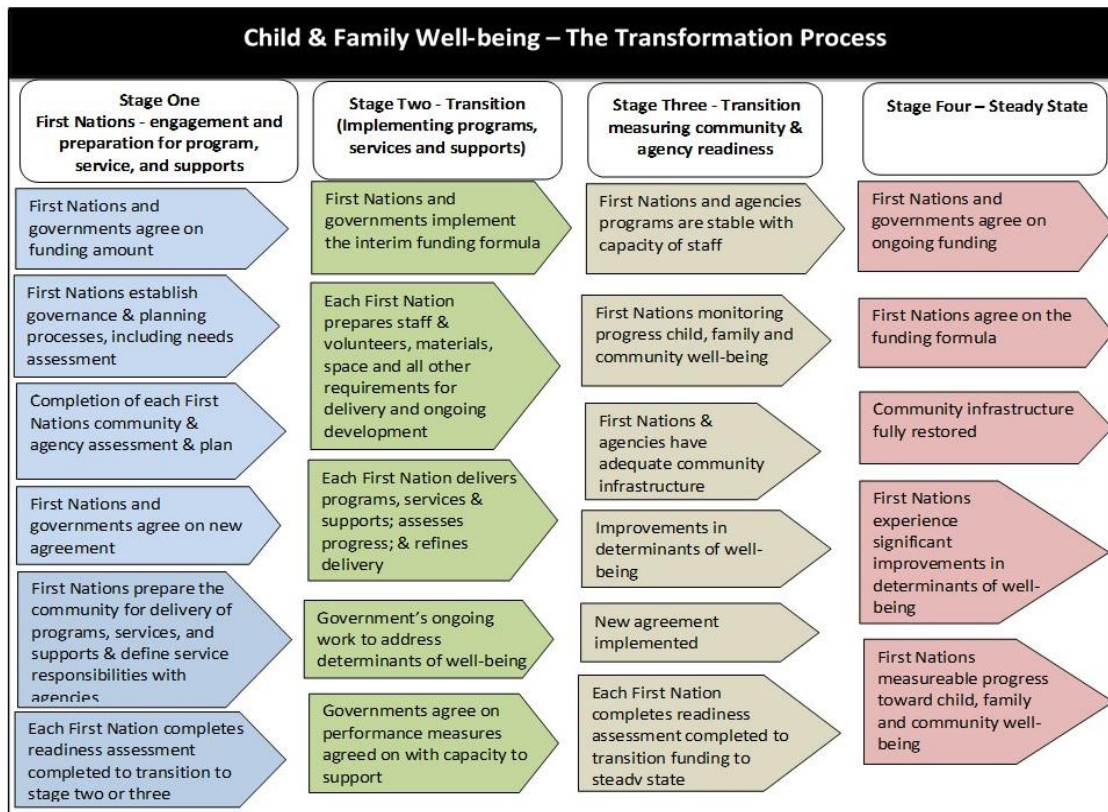


Figure 8.1 The child and family well-being transformation process.

**Stage One: Preparation for Change** – First Nation(s), the government Canada, and the government of Ontario begin to negotiate a new agreement. They may start by appointing team(s) to develop a negotiation mandate. Then, focused negotiations can take place on a new agreement(s).

In this stage, First Nations are resourced and supported in the exercise of their jurisdiction, and in planning how they transform child and family well-being for their citizens and their Nation. Some First Nations already have their own child welfare laws, others may choose to develop them. First Nations plan out what their child well-being system will look like, and who their partners are in that system (i.e., other First Nations, agencies, organizations, new institutions). The relationship with the provincial system is determined.

As part of the planning process, each First Nation community and agency conducts a comprehensive inventory of assets, needs, and anticipated costs based on a common template to establish a baseline. A preliminary template for First Nations communities and ICWBAs is included in Appendices G and H respectively for discussion purposes. Each First Nation, based on this assessment, would determine whether they move to Stage Two or Three.

A human resources assessment study and plan is conducted, at the option of the First Nation, for child well-being services within the communities and ICWBAs. The plan, based on an

assessment of the current environment (i.e., labour market), includes a number of features discussed below (see Equitable Human Resources and Capacity). This assessment should be completed in concert with the First Nations transformational assessment and plan in order to facilitate strategic planning and avoid duplication.

This stage is informed by the work of NAN who examined and developed “a remoteness coefficient methodology that can be readily applied to funding for child and family services to determine the additional funding needed to provide the same standard of service as found in non-remote areas of the province” (Barnes Management Group, 2019, p. 6). The Technical Table undertakes a review of this and other methodologies in conjunction with information obtained from the community needs assessments.

This period requires interim funding terms to be negotiated and in place for the prevention services and related supports within First Nations communities and for protection and prevention services within ICWBAs. Funding will also need to support the planning and cost assessment process, and supporting First Nations in exercising their jurisdiction for those who wish to do so.

**Stage Two: Initial Transition Implementing Programs and Services** – First Nation(s), the government Canada, and the government of Ontario conclude negotiations on Child and Family Well-Being to create a new agreement(s). If the model is successful, the parties may want to look at other programs both *within* the current 1965 Agreement and those *outside it* to consider a similar model.

In this stage, First Nation(s) agree on and implement a funding formula. This funding formula enables First Nation(s) community(s) and ICWBA(s) to complete the transition period to reach steady state. The parties also evaluate and refine results of the cost assessments and begin analysis to prepare options for future steady state funding.

First Nation(s) continue exercise of their jurisdiction and related planning (i.e., child welfare laws and policies), begin set-up and initial implementation of their new systems including well-being programs and services, related capacity building and coordination of transitions. Appendix I offers some service innovations uncovered during the course of this study. The relationship(s) with the federal and/or provincial system is implemented.

The recommendations from the human resource plan, including labour market study, are implemented. Work continues on First Nations infrastructure and the First Nations Determinants of Well-Being as needed.

In this stage, First Nations agree on and initiate an approach to information governance and performance monitoring while adhering to the principles of OCAP (see Information Governance and System Performance below). Performance measures can be global and community/agency specific and inform system performance, child and family well-being, and/or process improvement approaches.

**Stage Three: Transition Community and Agency Readiness** - First Nation(s), the government of Canada and the government of Ontario implement the new agreement(s). The parties continue work on the steady state funding details.

First Nation(s) exercise of their jurisdiction and are implementing child welfare laws and policies, if they so choose, and are implementing child and family well-being systems and related programs and services. In this stage, there are some immediate child, family, and community changes. First Nations communities/agencies are assessing and managing those changes and adjusting services as needed.

First Nations are continuing to implement recommendations from the human resource plan. There is measurable progress on First Nations infrastructure and the First Nations Determinants of Well-Being.

First Nations communities and agencies are revisiting and updating their respective community/agency assessments to assess whether they are ready for transition to the steady state.

**Stage 4: Steady State** – First Nation(s) and the governments of Canada and/or Ontario agree on a steady state approach to funding. First Nations agree on the funding formula (how funds are distributed) as needed.

First Nation(s) exercise of their jurisdiction and child welfare laws and policies are fully implemented, if they so choose. Child and family well-being systems and related programs and services are fully operational, and change has moved to a steady state. First Nation(s) are experiencing measurable progress toward child, family and community well-being.

First Nation(s) are continuing to implement recommendations from the human resource plan. First Nation(s) community infrastructure is fully restored and there is measurable progress on the First Nations Determinants of Well-Being.

These stages assume that transformation occurs at the pace determined by each First Nation. This allows First Nations to assume responsibility for programs and services based on their own plans and at their own pace. It allows for various pathways to put in place the necessary infrastructure, to make progress on the First Nations determinants of well-being, and to ensure human resources capacity exists to deliver services.

This approach makes no distinction about which services and supports are community-based or ICWBA delivered. Because there is an interconnected relationship between First Nations and the respective ICWBA they govern; they determine how best to implement the spectrum of well-being services and supports. For instance, an ICWBA that serves five communities may offer different services and/or supports to each of those communities based on their needs and wishes. Over time, the assumption is that communities and ICWBA transform in function and service delivery.

Establishing funding that meets or exceeds substantive equality for the well-being of children and families is integral to transformation. The table (8.1) at the end of this Chapter illustrates the staged implementation with a focus on funding.



The transformation process is organized according to seven pillars for transformation, including: First Nations self-determination and inherent jurisdiction; language and culture; First Nations determinants of well-being;<sup>129</sup> service delivery which emphasizes well-being and customary care; equitable supports and capacity to support well-being (i.e., capital, human resources, information governance); predictable funding that meets or exceeds substantive equality; and a new agreement(s).

Choosing one in isolation of the other will not produce the desired results or meet the intent of the *Caring Society* 2016 CHRT 2 decision. Fundamental change must move beyond incremental approaches that only provide the appearance of change. Child and family well-being can be realized through concerted ongoing efforts to address these pillars. Each is discussed in turn.

### **FIRST NATIONS SELF-DETERMINATION AND JURISDICTION**

There is a desire to make positive change, but we need a whole new paradigm shift within the whole system of child welfare. The framework for such a shift, which would involve jurisdiction, is provided for in Section 35 of the Canadian Constitution. (Beaucage, 2011, p. 5)

First Nations self-determination and their inherent right to jurisdiction are critical to realizing the well-being of children and families. Self-determination and jurisdiction, central themes throughout this Special Study, affirm a path toward reconciliation; “the ongoing process of establishing and maintaining respectful relationships” (TRC, 2015c, p. 12).

### **Government-to-Government Relationships**

The TRC (2015a) called on the Government of Canada,

on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:

- i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.
- ii. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

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<sup>129</sup> The First Nations Determinants of Well-Being are considered to be the “conditions in which people are born, grow, live and work” (Aboriginal Children in Care Working Group, 2015, p. 1) and, for purposes of this study, include: language and culture; colonization and systemic racism; intergenerational trauma and legacy of child welfare policies (i.e., residential schools, 60s scoop, and child welfare system); poverty and income; health and social services; housing; education and employment; water quality; and food security.

- iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
- iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements. (p. 199)

Minister Carolyn Bennett, Minister of Crown–Indigenous Relations,<sup>130</sup> in her speech to the United Nations in May 2016, said “By adopting and implementing the declaration [UNDRIP], we are excited that we are breathing life into Section 35 and recognizing it as a full box of rights for Indigenous Peoples in Canada” (AFN, 2017b, p. 4). First Nations agree that recognizing the “full box of rights” are vital. According to the AFN (2018)

Current federal policy and legislative frameworks do not align with hard won court cases and international human rights standards – whether the topic is commercial fishing rights, making space for inherent title and jurisdiction or enforcing Treaty rights – either pre-1975 Treaties or so-called modern Treaties. (p. 2)

Measurable progress is required on these Calls to Action. Bill C-262<sup>131</sup> to harmonize Canadian laws with the UNDRIP is moving to its third reading before the Senate as of June 11, 2019. A major concern about the bill is having language that prioritizes free, prior, and informed consent (FPIC), which includes

- A thorough consultation process that starts as early as possible
- The means and mechanisms to participate in the process
- Meaningful time and funds to participate, including preparing the evidence

As a step toward reconciliation, the Premier of Ontario and the Ontario Regional Chief (on behalf of the political Confederacy) signed a political Accord in 2015. The Accord is framed around the First Nations treaty rights and their inherent right to self-governments. The province has agreed to respect those rights and committed to work with First Nations to “build upon and link to existing bilateral or other community-led initiatives ... address common priorities and issues ... and resolve key challenges and impasses that impact the parties” (#s 2, 4 & 5).

### **First Nations self-determination and jurisdiction recommendations**

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

1. That federal and provincial policy and legislation regarding child and family well-being that applies to First Nations be made on a Nation to Nation basis.

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<sup>130</sup> Minister Bennett was the Minister of Indigenous and Northern Affairs at the time of this speech.

<sup>131</sup> For more information see <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=8160636&Language=E>

2. That federal and provincial policy and legislation support and respect First Nations inherent jurisdiction in child and family well-being and provide opt-out clauses for any First Nation that has developed their own child and family well-being laws.
3. That federal and provincial policy and legislation support and respect First Nations inherent jurisdiction in governing citizenship of their own Nations.
4. That federal and provincial policy, legislation and decisions support First Nations inherent jurisdictional right to define and develop their own programs, services, training, and standards.
5. That federal and provincial governments ensure that existing and new legislation are compliant with the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child.
6. That First Nations and federal and provincial governments work together to eliminate racism across the child welfare sector.
7. That First Nations, federal and provincial governments enter into a comprehensive First Nations child well-being transformation process, anticipated to last up to 10 years.
  - a. The process must be First Nations defined and directed, and encompass on/off reserve citizens and ICWBAs.
  - b. This transformation process will support each First Nation in assessing its needs, planning the future of its child and family well-being system, and implementing that system.
  - c. First Nations laws, programs, standards and systems will generally take shape and begin operating during this period.
  - d. The process will begin with an assessment and planning stage that supports each First Nation in determining what its system landscape will look like. Costs will be assessed and forecasted based on the needs of each transformed system, and adjusted as these systems begin operations.
  - e. During the transformation process, transitional funding measures would be in place (see below).
  - f. A First Nations assessment and planning template and support team would be created, within Chiefs of Ontario and/or within PTOs, to help each First Nation work through similar issues while tailoring their plans to their specific situation, and to help gather information for overall cost assessment and understanding of the transformation process (in line with OCAP principles).

The implementation of these requirements and the TRC Calls to Action, and continued implementation of the 2015 Accord are vital to the government-to-government relationship and ensuring the well-being of children and families.

## LANGUAGE AND CULTURE

Throughout this Study emphasis has been placed on the revitalization of language, culture and traditions. While they are determinants of First Nations well-being, they require special consideration as they directly contribute to the individual and collective identity and well-being of First Nations. The TRC (2015a) called upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:

- i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
- ii. Aboriginal language rights are reinforced by the Treaties
- iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
- iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
- v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages. (pp. 155-156)

Bill C-91, *An Act Respecting Indigenous Languages*<sup>132</sup> has received Royal Assent and will soon become law. The TRC has also called “upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages” (p. 157).

The primary challenge remains with providing the resources and supports for First Nations to revitalize their language, culture and traditions. The transformation process through its funding formula and service delivery includes this emphasis.

### Language and culture recommendations

The recommendation for transformation by the First Nations Caucus of the Technical Table include:

8. That federal and provincial governments expand on their supports to revitalize language, culture, and land-based healing.

## FIRST NATIONS DETERMINANTS OF WELL-BEING

The majority of First Nations face challenges with having the basic requirements for child and family well-being. These are associated with specific determinants of well-being (e.g., poverty, housing, water safety, food security). This has impacted the ability of the community to protect the safety and well-being of children and families without external involvement. In essence, obtaining resources to meet the basic needs has meant engagement with the child welfare system. Policy, service delivery, and

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<sup>132</sup> For more information see <https://openparliament.ca/bills/42-1/C-91/>

associated funding are needed to address the basic needs of children and families without the child coming into the child welfare system. The transformation process discussed below and the funding framework reflect the necessity of material and measured progress on these determinants.

Colonization, a structural determinant of well-being, requires strategies and action (e.g., legislation, policy, programs, public relations campaigns, etc.) in all areas (e.g., health, social, environment, etc.) to address its historical and continued impacts, and to prevent further harm.

### **First Nations determinants of well-being recommendations**

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

9. Given that poverty, poor housing, mental health and addictions, and intergenerational trauma are leading drivers of Indigenous children coming into care at a disproportionate rate, the federal and provincial governments must make substantial investments in First Nations communities to alleviate these issues for on and off-reserve members. These substantial investments should be both inside and outside child and family well-being services. When these issues arise in a context that could put children at risk, First Nations communities and Indigenous Child Well-Being Agencies must be empowered to take proactive measures to support child and family well-being and address these risks.
10. That the federal and provincial governments fund the First Nations determinants of well-being to ensure the basic needs of families (i.e., income, health and social services, housing, education, employment, water safety, food security) are met. It is acknowledged that making investments in these areas there will reduce the number of children coming into care.
11. The federal and provincial governments support the National Advisory Committee's request that the Parliamentary Budget Officer cost out all inequities in services affecting First Nations children, youth and families to provide a baseline cost of the aggregate shortfalls to inform a comprehensive and public plan to be developed in consultation with First Nations to fix the inequities.

There is a collective responsibility, for the health and well-being of all our children. Together, as governments, a comprehensive strategy with sustained implementation, regardless of political climate, can achieve First Nations substantive equality with all Canadians.

### **YOUTH PARTICIPATION IN TRANSFORMATION**

First Nations youth participation is highlighted as a key component to transforming the child welfare system. Earlier discussion has emphasized their interest in being involved in the changes that affect them and other children. This means supports and resources for their participation in all aspects of system change. For instance, youth should be involved at local, area-wide, provincial, and national tables. Youth voices matter.

## **CHILDREN AND FAMILY WELL-BEING SERVICES AND SUPPORTS**

First Nations emphasize maintaining the well-being of children and families, and this begins with the entire community supporting and strengthening the child and family. Approaches to well-being are not segmented between prevention and protection, rather the system works fluidly using a strength-based approach to address the needs of the child and family. The existing approach to child welfare in Ontario runs counter to this approach. For instance, there is a prevailing false dichotomy between prevention and protection which has emphasized an interventionist approach. The challenge is to move beyond this false dichotomy to a system that supports First Nations customary care as defined by each First Nation. This means governments recognize and support this approach and practice. This includes addressing procedural barriers which have to do with legal guardianship and the associated liability with implementing these agreements (Johnson, 2011, p. 9).

In this process, child welfare fundamentally transforms from an emphasis on protection to an emphasis on child and family well-being. Conceptually, the change occurs through offering a spectrum of well-being services and supports and First Nations customary care to keep children with their parents and/or families and in community. As well, children and youth leaving care have access to well-being supports and services to assist their transition into adulthood.

Standards and protocols address the spectrum of well-being services and supports and First Nations customary care, including what occurs when a child is in need of protection. First Nations and the ICWBAs require the time and resources to develop First Nations customary care, including the tools and resources necessary to support children and families. After all, “there are many resources for foster parents but none for when children are with their parents” (Johnson, 2011, p. 10).

### **Children and family well-being services and supports recommendations**

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

12. That federal and provincial governments actively support First Nations understandings of child and family well-being, which are generally broader, more holistic and conceptually different than mainstream models of “child protection” and “prevention”. Legislation, policies, funding, and negotiated agreements reflect this understanding.
13. That federal and provincial governments recognize and support First Nations customary care, and that both primary and alternative caregivers have access to the full range of professional, cultural and financial supports available in the provincial system. These supports should be enhanced to account for the intergenerational effects First Nations families experience, and to address the reasons why they are accessing child and family well-being supports.

14. That First Nations and/or ICWBAs enter into agreements with mainstream societies/agencies to reach more children in mainstream care and provide access to community and/or Indigenous agency-based child and family well-being services and cultural supports.<sup>133</sup>

### **EQUITABLE HUMAN RESOURCES AND CAPACITY**

Service delivery relies on the availability of the right mix and number of trained First Nations professionals. Policies support reasonable workloads, ongoing supports and learning, retention, and career advancement. There is a need for a comprehensive First Nations human resource plan for First Nations communities and within Indigenous Child and Family Well-Being Agencies. The plan, based on an assessment of the current environment (i.e., labour market), would minimally include:

- Human resources requirements, including professional mix and caseload assumptions
- Recruitment and retention strategies
- Ongoing supervision, training and development
- Strategies to increase the participation of First Nations in education and careers
- Data requirements with a plan to monitor and measure progress; and
- Funding requirements associated with these activities

This assessment should be completed in concert with the First Nations transformational assessment and plan in order to facilitate strategic planning and avoid duplication.

First Nations support the pre-budget submission by the Canadian Association of Social Workers (2018) for national study to collect data and develop standards for reasonable caseloads (IFSD, 2018).

Approaches to staff development and supervision are changing and becoming more relational in real time. Rather than focusing on performance reviews that emphasize deficit approaches, companies are doing real-time discussions that focus on strengths. While this approach is congruent with a First Nations worldview, it does mean adjusting existing models of performance evaluations and funding the time to provide real-time supervision.

### **Equitable human resources and capacity recommendation**

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

15. That the federal and provincial governments, at the option of First Nation(s), fund a human resources assessment and plan to be undertaken in conjunction with the transformation process to understand the human resources capacity needs of First Nations communities to successfully facilitate child and family well-being transformation. This assessment and plan should include:

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<sup>133</sup> There are regulation provisions under the *CYFSA* that require consultation and require that CASs reach out to bands to pursue drafting of protocol agreements (addressing notice and consultation).

- a. Assessments/plans particular to each First Nations child well-being system.
- b. A broader labour market study and strategy to support the child welfare sector to successfully facilitate child and family well-being transformation.
- c. Measures to encourage and support First Nations individuals in pursuing careers in this sector and increasing culturally-appropriate training opportunities.

## **INFORMATION GOVERNANCE AND SYSTEM PERFORMANCE**

This section discusses OCAP® as a path to information governance, including insuring the resources and capacity to use information

OCAP™ [sic] is the path to First Nations Information Governance. By building information governance capacity, enacting their own laws, entering into data sharing agreements, creating regional data centres and repatriating their own data, First Nations are exercising jurisdiction over their information. (FNIGC, 2014, p. 49)

The implementation of the principles of ownership, control, access and possession OCAP® toward information governance are a central consideration for developing approaches to and implementing system performance measures. Previous discussion (See Chapter Four, Data Gaps and Challenges) has spoken about the application of the principles of OCAP®. Evolved to address and transform information development, management and dissemination, they illustrate self-determination in research. They relate to the collective ownership of group information; control over the research and information; management of access to data; and physical possession of data. This means active participation throughout the process, including:

ensur[ing] cultural safety; foster[ing] Indigenous employment where possible; establish[ing] partnerships and equitable outcomes for participants and researcher(s); and enabl[ing] the sharing of information in a way that recognizes Indigenous concerns about knowledge ownership and respects the way knowledge is transferred by Indigenous peoples. (Lui-Chivizhe & Sherwood, 2000, p. 4).

Inherent is mutual respect and reciprocity. It is this process that engages community members in the conduct and analysis of research; builds capacity within the community; strengthens contextual understanding; and provides meaningful information for community well-being.



The Royal Commission on Aboriginal Peoples (1996b) stressed this point stating that First Nations “governments would need at their disposal, the human resource skills, technologies and equipment necessary to meet the challenges of managing information” (p. 335).

The implementation of OCAP® and the development of information governance requires First Nations having the resources and capacity to use their information. This includes the availability of information and communications technology and the human resources and capacity to manage: day-to-day administrative requirements; service delivery (e.g., case management, service delivery, human resources, etc.); performance reporting; and planning and other research activities.

#### **Developing and measuring system and process performance: An approach**

Holistic measures to aid in prevention should be encouraged and patience must be exhibited in determining the success of these measures. It has been said that we need to measure our success by the generation, not by the fiscal year or political mandate. (Beaucage, 2011, p. 19)

In the practice of measuring a program or intervention, there is a tendency to equate outcomes with outputs or impact. As a result, many organizations’ measurement tools and approaches are fragmented and program-specific. This can create significant barriers to achieving systems-level outcomes measurement that is aligned across the sector. (LaLande & Cave, 2017, p. 3)

Information should inform system performance, child and family well-being, and/or process improvement approaches. Each of these have different requirements. Identifying measures and indicators should inform the purpose for and minimize the burden of collection, and data should be accessible. Howard White and Shagun Sabarwal (2014), in their discussion of *Developing and Selecting Measures of Child Well-Being*, assert four main points. They are

- Indicators provide a signal to decision to First Nations about whether, and to what extent, change has occurred.
- Indicators can be used to measure “inputs, activities, outputs, outcomes and impacts.” (p. 3)
- A balanced set of indicators are selected to reflect the expected causal relationships.
- There are multiple sources of data for indicators: “administrative data, existing census or survey data, project monitoring data, or data collected by conducting a new survey. Each of these sources has its own pros and cons.” (p. 3)

The most important consideration, however, is that the resulting information is useful to understanding the performance of the system and informs the well-being of children and families. Human resource capacity is critical to using the information for planning, adjusting services, and reporting.

### ***System performance***

The approach for measuring system performance could include:

- Governance measures selected by First Nations
- The CWB Index - The existing CWB Index could be used. There are at least two advantages to this approach. First, the Index has been in use since 2004 and its strengths and limitations are known. It provides useful information for funding related to housing, income, and education. Alternatively, this Index could be used until a revised First Nations Well-Being Index is developed. The major challenge with developing a new index is that it diverts energy from other facets of the transformation process, and may not yield the intended results. The challenge is to limit the number of measures and where possible identify those that are currently being collected
- The First Nations Regional Longitudinal Survey (RHS) and related surveys in Ontario, information could supplement the CWB Index. Data could include progress on language, education, housing, food security, and water safety

The combination of using select governance indicators, the CWB Index, and data from surveys could enable each First Nation a snapshot of their progress over time. Collectively, the information could inform policy and other strategies.

### ***Child and family well-being***

While one option is to collect and report on the child protection indicators identified by MCCSS, this approach does not provide information about preventing children from entering child welfare nor does it measure child well-being or outcomes once leaving care.

A First Nations approach could include reviewing the set of indicators developed by ANCFSAO (see Appendix J) and agreeing on a selection of core indicators which would be collected by communities/agencies. Each community/agency would be able to select one or two additional unique indicators. These indicators could work across sectors and identify measures that consider improvement in early childhood development and well-being. These measures could include indicators for physical health, and cognitive, language, motor and socio-emotional development (White & Sabarwal, 2014, p. 14). This enables an overall analysis of progress, while enabling each First Nation to address unique issues that they want to monitor.

### ***Process improvement***

Process improvement can be powerful in identifying and reducing barriers to access, addressing process improvements, and improving service value and outcomes.

## Information governance and system performance recommendations

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

16. Systems for Monitoring & Coordination – That a First Nations Working Group be established to develop a set of common outcome measures for system transformation and child and family well-being with the ability for each First Nation to contribute their own priority indicators.
17. First Nations undertake a study funded by the federal and provincial governments to examine the feasibility of a First Nation child and family well-being information system that can link with mainstream and other First Nations community systems.
18. That a First Nations Working Group be established to consider an Ontario-based First Nations information institute that could serve as the data steward facilitating First Nations capacity in information governance.

## NEW FISCAL RELATIONSHIP

The government-to-government relationship means

moving away from the grants and contributions approach that has characterized funding for First Nations to-date to a new form of fiscal transfers that provide predictability of revenues, potentially along the lines of provincial or territorial transfers and potentially negotiated at those negotiation tables. (Nickerson, 2017, p. 19)

This means equitable, sustainable funding that is consolidated into fewer streams and ultimately a single stream. This funding ensures: stable service delivery; no lapses in funding; and access to the services and supports enjoyed by most Canadians. Further, this funding ensures equitable resources for remote First Nation communities.

## New fiscal relationship recommendations

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

19. That federal and provincial governments commit to supporting the First Nations child and family well-being transformation process (see figure-transformation process-above and recommendation #7) and provide all necessary funding for communities to complete bottom-up costs assessments to support their transformed systems, and provide the transitional costs associated with putting those systems into place (e.g. consultations, negotiations, law and policy development, institution-building, start-up of new programs and services, developing culturally appropriate models, creating local and culturally-appropriate placement resources, training and capacity-building, etc.). Actual costs should be covered throughout the transformation process.

20. That all federal and provincial funding directed towards First Nations child and family well-being be consolidated into fewer streams and ultimately a single stream, to be directed to First Nations or distributed according to their child welfare system. This consolidation should take place during the transformation process, while maintaining actual cost reimbursement in accordance with the CHRT orders.
21. That First Nations, federal and provincial governments review cost and system information throughout the transformation process, and continue to develop and refine a long-term funding approach to take effect following the transformation period.
22. That processes for First Nations to exercise self-determination over child and family well-being are fully funded by federal and provincial governments, and include ongoing governance, capacity building, operations, and additional liability, both during and after the transformation period. Funding should extend beyond existing sources so as to cover the costs associated with working out relationships among First Nations, working out relationships with other governments, internal consultation with members, policy-making and law-making processes, system development, capacity-building and start-up within new bodies within that system, training, and legal support.
23. Required capital and infrastructure projects for child and family well-being transformation in First Nations communities and Indigenous Child Well-Being Agencies are fully funded by federal and provincial governments both during and after the transformation period.
24. All information and communication technologies (ICTs) and broadband services requirements to enable all First Nations communities, community-based child and family well-being programs, and ICWBAs to run their programs are fully funded by federal and provincial governments both during and after the transformation period.
25. Community- and/or land-based culturally appropriate placement and treatment options, such as group homes, family healing centres, and youth treatment centres are fully funded by federal and provincial governments. This funding should be made available to First Nations communities, Tribal Councils, PTOs or agencies willing to establish such necessary placements both during and after the transformation period.
26. First Nations child and family well-being funding will not be reduced, even if the number of protection cases decrease as a result of an increase in prevention services.
27. That First Nations carry over child and family well-being funding year-over-year, any accumulation of which to enhance service delivery.

## **A NEW AGREEMENT(S)**

Addressing the 1965 Agreement is necessary. The CHRT has found the current system to be discriminatory and noted the overdue need for an update.

## A new agreement(s) recommendation

The recommendations for transformation by the First Nations Caucus of the Technical Table include:

28. That First Nation(s), federal and provincial governments each appoint negotiation teams to enter into exploratory discussions on creating a new inter-governmental agreement(s) with respect to First Nations child and family well-being services in Ontario. The new agreement(s) would either supplement, update or replace the child welfare provisions of the 1965 Agreement, depending on the details negotiated.

Some considerations for the negotiations could include:

- m. The exploratory discussions would aim to develop agreed points for a negotiation mandate, that, if approved by the parties, would allow the details of a new agreement(s) to be fully negotiated and potentially concluded.
- n. The 1965 Agreement should remain in place for child welfare until all parties sign off on a new agreement(s), and it should be changed only in accordance with the new agreement(s). The new agreement(s) would either supplement, update or replace the child welfare provisions of the 1965 Agreement, depending on the details negotiated.
- o. For the time being, the 1965 Agreement would remain in place for the services it covers other than child welfare (Ontario Works "(financial assistance)", child care "(day care)", and homemakers services). A new agreement on child and family well-being would be used as a model and test case. Depending on the outcome the parties should consider similar (or other) agreements on the other 1965 Agreement services and/or other service areas.

Some additional points that could be considered by the negotiation teams to frame a new agreement:

- d. Parties – First Nations should be represented as parties, either through an agreed representative body or several bodies (e.g. PTOs) or as individual signatories.
- e. Flexibility in Participation – Consider providing First Nations the ability to opt in or out. The federal funding systems available in other provinces would take effect in an opt-out, or the First Nation may want to exit in favour of another arrangement they have negotiated such as through an agreement relating to the exercise of their jurisdiction.
- f. Scope – Child and Family Well-being would be within the new agreement. It should be defined broadly and flexibly to encompass the full range of services that Ontario, First Nations and their ICWBAs currently provide in the sector, as well as new developments as the system transforms. Definitions should avoid the need for frequent updating. Sector elements that have been historically excluded from the 1965 Agreement should be confirmed as within scope, such as prevention, Band Representative services, mental

health services, capital costs, and other elements of child and family well-being systems as determined by the parties.

- p. Flow of funds and services – Canada would continue flowing funds to Ontario, in a formula to be determined, and Ontario would offer one-window funding to First Nations and ICWBAs. Funding consolidation could be promoted, as recommended elsewhere in this report. This continues a current benefit of the agreement in that it is simpler for First Nations and ICWBAs to deal regularly with one Crown government that can offer for both on and off reserve funding and that involved within the sector in the mainstream. In addition, the new agreement would present three key innovations over the current agreement: it would reflect the legal standard of substantive equality (see “e”), redress inadequacies in scope (see “c”), and help support the exercise of First Nations jurisdiction (see “f”).
- q. Substantive Equality – The agreement should(s) require Ontario to ensure that its program funding, and prior to the exercise of jurisdiction its program design, ensure substantive equality for First Nations children, families and communities. This would reflect and help to implement the legal principles outlined in the *Caring Society* CHRT decision (e.g. meets diverse needs, captures remoteness and other realistic costs, addresses historical disadvantage, recognizes intergenerational trauma, closes gaps in outcomes, allows for cultural compatibility, and ensures service levels are not worse than in the mainstream).
- r. Promoting First Nations Jurisdiction – The agreement(s) should consider a variety of terms to help support and facilitate First Nations’ exercise of their jurisdiction in child and family well-being. This could include, for instance:
  - vi. affirming that First Nations have that jurisdiction and the right to exercise it;
  - vii. providing access to a minimum set of start-up funds, while affirming First Nations’ rights to negotiate additional or different terms for transitional funding as needed if they choose to;<sup>134</sup>
  - viii. guaranteeing a minimum base of funds for the exercise of ongoing governance costs, while affirming First Nations’ rights to negotiate additional or different terms for governance funding as needed if they choose to;<sup>135</sup>

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<sup>134</sup> Those costs include, for instance: First Nations’ policy-development, law-making, and system development; internal and external consultations; related negotiations (among First Nations working together on a legal framework, protocols between those First Nations and other First Nations and their systems, and between those First Nations and the Crown governments); related technical/legal support; training and capacity-building; etc.

<sup>135</sup> This base would include aspects such as ongoing policy review and updating, system monitoring and accountability processes, maintenance of governance institutions, liability changes and related insurance for governance roles, etc.

- ix. confirming that existing funding streams for operational costs in child and family well-being can be redirected and applied within First Nations jurisdiction systems at the First Nation's option, as a minimum, while allowing First Nations to negotiate additional or different operational funding as needed if they choose to;
  - x. providing opt-in and opt-out abilities to allow for choices and flexibility in different arrangements appropriate to the exercise of jurisdiction in each Nation (see "b" above).
- s. Affirm Jordan's Principle – Ensure that jurisdictional disputes do not become a basis for denial or delay of any services.
- t. Consent to New Programs – Continue to require First Nations' consent to the extension of any new program by Ontario. This remains relevant while First Nations are transitioning to their own jurisdiction.
- u. Liability – Liability should be addressed in the agreement, to ensure clarity for all parties. We recommend that liability flow according to matters within each party's control and their roles and responsibilities. For instance, funders (Ontario and Canada) should remain responsible for funding adequacy. First Nations and their agencies, among others, would remain responsible for their roles in service delivery. The agreement should recognize Ontario's liability within its current control over legislation, policy and related standards, while also recognizing that liability in those roles will shift to First Nations in the exercise of their jurisdiction.
- v. Systems for Monitoring & Coordination – Consider addressing systems for monitoring of key outcomes relevant to First Nations, and coordination among systems as First Nations exercise jurisdiction.
- w. Enforcement & Dispute Resolution – Provide efficient and appropriate enforcement systems, such as culturally appropriate mediation and arbitration.
- x. Reviews and Updates – Require the parties to conduct 5-year reviews to encourage updating and the ability to address problems in a timely and pro-active way.

**Table 8.1 Staged Implementation of the transformation process with a focus on funding**

The Transformation Process - Preliminary Outline	Stage One: 2019-2021		Stage Two: up to 10 years	Stage Three: Transition	Stage Four: Steady State
	2019-2020	2020-2021			
<b>Funding Arrangement</b>	<u>Ongoing funding</u> : Prevention, protection and CHRT Orders, Community Infrastructure, etc.; PLUS <u>Implementation funding</u> for governance, planning, community needs assessments, etc.		Assessment of Funding Formula; analysis confirms suitability (or adaptation) as Final First Nations Funding Formula		Final First Nations Funding Formula with new Baseline amount informed by community-based costing of community needs
	<i>Funding Formula factors and weights to be confirmed</i>				
<b>PROGRAM FUNDING</b>	<b>Preliminary* Estimate of Funding Needs</b>		Consolidated total funding = inflation		Community Infrastructure fully



	<p><i>*Preliminary funding estimates understate needs; actual funding for 2017-2018 remains in a state of flux due to the complexity of multiple CHRT Orders, ongoing applications, and retroactive changes to funding in response to these applications.</i></p>		<p>adjusted total; distributed via Simplified First Nations Funding Formula <i>*PLUS Contingencies Fund PLUS funds to cover any remaining infrastructure deficits - distributed outside Funding Formula to communities as needed</i></p>		<p>restored; significant improvements in determinants of well-being; measuring and monitoring progress toward child, family and community well-being</p>
<b>To ICWB Agencies</b>					
Capital Renewal, Repairs & Maintenance	\$2,044,003	\$2,105,323			
Information & Communications Technologies - Operations & Mtce	\$17,100,000	\$17,613,000			
Protection	\$285,000,000	\$293,550,000			

<b>The Transformation Process - Preliminary Outline</b>	<b>Stage One: 2019-2021</b>		<b>Stage Two: up to 10 years</b>	<b>Stage Three: Transition</b>	<b>Stage Four: Steady State</b>
<b><i>SUB-TOTAL - FUNDS TO ICWB AGENCIES</i></b>	\$304,144,003	\$313,268,323			
<b><i>To Communities or Agencies</i></b>					
Prevention	\$170,109,931	\$175,213,229			
Extraordinary Circumstances & Contingencies - CHRT Order 411	\$18,386,800	\$18,938,404			
Extraordinary Circumstances & Contingencies - CHRT Orders 426 & 427	\$57,727,066	\$59,458,878			
Extraordinary Circumstances and Contingencies (liabilities, disputes resolution, etc)	TBD		ongoing		ongoing
<b><i>SUB-TOTAL - FUNDS TO COMMUNITIES or AGENCIES</i></b>	\$246,223,797	\$253,610,511			
<b>SUB-TOTAL PROGRAM FUNDING</b>	\$550,367,800	\$566,878,834			
<b>INFRASTRUCTURE &amp; OTHER FUNDING</b>					
Jordan's Principle - All Ontario (as of January 2019)	\$27,544,304	\$28,370,633			
Jordan's Principle - NAN (\$73M Apr2017-Jan2019; monthly avg*12mos)	\$43,800,000	\$45,114,000			
Large Capital Assets - Agencies	\$25,000,000	\$25,750,000			
Additional Infrastructure Requirements	TBD	TBD	ongoing at 5-10% of Total Cost		
Implementation Costs: governance, planning, community needs assessments, etc.	\$2,000,000	\$2,000,000	\$1.5M (2021-22 only)		

The Transformation Process - Preliminary Outline	Stage One: 2019-2021		Stage Two: up to 10 years	Stage Three: Transition	Stage Four: Steady State
<b>SUB-TOTAL INFRASTRUCTURE &amp; OTHER FUNDING</b>	\$98,344,304	\$101,234,633			
<b>TOTAL TRANSITION FUNDING including estimates of Jordan's Principle and Implementation costs, excluding Additional Infrastructure Requirements</b>	<b>\$648,712,104</b>				
Inflation-adjusted Total Funding (estimated @ 3% per year)		<b>\$668,173,467</b>	minimum 3% per year		minimum 3% per year
<b>ADDITIONAL INFRASTRUCTURE REQUIREMENTS</b>				community infrastructure; improvements in determinants of well-being; FNs and agency programs are stable with staff capacity	
Large Capital Assets - Communities (Multi-use Building; Safe housing; Vehicles)	TBD			Multi-purpose well-being building, vehicles available	
Information & Communications Technologies - Broadband	Broadband - 16 FNs without; 90% by 2021			Broadband service available in community	

The Transformation Process - Preliminary Outline	Stage One: 2019-2021		Stage Two: up to 10 years	Stage Three: Transition	Stage Four: Steady State
Safe water	Water -Trilateral Accelerated Action Plan			Long-term Drinking Water Advisories resolved by 2020	
Safe Housing	Housing - Assessment in progress			Housing safety	
Housing for fly-in personnel	Housing for fly-in personnel			Housing for fly-in personnel available	
Multi-purpose well-being building	Multi-purpose well-being building for services delivery			Multi-purpose well-being building for services delivery	
Safe house	Safe house in each community			Safe house in each community	
<b>IMPLEMENTATION REQUIREMENTS</b>					
Governance structures and planning processes	Governance structures and planning processes developed and implemented			Functioning governance structures and planning processes	

The Transformation Process - Preliminary Outline	Stage One: 2019-2021		Stage Two: up to 10 years	Stage Three: Transition	Stage Four: Steady State
Community Needs Assessments	Community Assessment Preparation - existing community information compiled; template agreed to; assessment method/advisory team identified; Assessment Guide prepared				
		Community Assessments conducted	Assessment of Services Quality and Risks for confirming /supporting transition to community well-being		Community Assessments and Strategic Planning engaged routinely (every 5 years)
Community-Agency Relationship	Community prepares for internal/own servicing OR agrees with Agency servicing community needs			Child Protection Services secured (internal capacity achieved OR agreement with FN Agency for service delivery)	Community well-being restored; exceptional reasons children come into care minimized
1965 Agreement	New Agreement(s) negotiated		New Agreement(s) reached	New Agreement(s)	

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