

First Nations Child and Family Services (FNCFS)

Q'S AND A'S

Q1. How does this proposal support the Government's agenda?

- A1. Issues discussed at the Canada/Aboriginal Peoples Roundtable held on April 19, 2004 and the subsequent sectoral roundtables in support of lifelong learning, health and housing will have an impact on First Nations Child and Family Services. Child and Family Services contributes to the safety and health of children and families which improves children's readiness to learn, and increases the probability of their attachment to the workforce, lifelong learning and is conducive to and encourages community involvement.

The Speech from the Throne 2004 addressed the issue of closing the gaps between Aboriginal communities and Canadian communities. The intent of this proposal is to deliver on these commitments, strengthen Canada's social foundations, promote healthier Aboriginal communities and caring for children.

Providing incremental funding will assist in fulfilling the department's strategic objective of improving individual and family well-being.

Q2. Why is incremental funding over a 2-year period only being sought?

- A2. Since having completed a National Policy Review in 2000, the department has been working with the Assembly of First Nations, Child and Family Services agency directors, and other government departments, to assess and implement recommendations stemming from the policy review.

A proposal for long-term transformative change will require additional research to assess requirements (including financial resources) for the provision of provincially comparable services. This work will be completed during the summer of 2005, prior to the Social Authorities renewal in 2006. Interim incremental funding will assist agencies better cope with funding pressures, including salaries, legal fees, insurance costs, and the cost of operating in northern and remote areas of Canada while a more comprehensive strategy is being developed.

Q3. Why should an interim funding strategy be accepted when a comprehensive plan will be developed by March 31, 2006?

- A3. Circumstances are dire. Inadequate resources may force individual agencies to close down if their mandates are withdrawn, or not extended, by provinces. This

would result in provinces taking over responsibility for child welfare, likely at a higher cost to Indian and Northern Affairs Canada (INAC).

While transformative change via the Authorities renewal process will aim to decrease the number of children in care and associated expenditures, it is anticipated that overall Maintenance expenditures will rise roughly by 7% annually for the next two years.

Q4. What other issues need to be resolved prior to Authorities renewal in March 2006 to clarify funding requirements?

A4. The department will need to continue working with Health Canada to clarify non-insured health benefit expenses related to children in care. Likewise, the department will work with the Department of Finance and the Canada Revenue Agency to clarify, what if any action INAC should take with respect to INAC Maintenance funding for children in care which is a reimbursement of actual expenditures and Canada Revenue Agency payments made under the Children's Special Allowance Act (\$219.33 month/child) for children in care. (That is, does the \$219.33 represent double funding from the federal government to provincial and First Nations child welfare providers on behalf of children in their care?)

Q5. Why is the Children's Special Allowance an issue with respect to INAC funding of First Nations Child and Family Services?

A5. Provisions of the First Nations Child and Family Services Program contribution authority require that any other government funding received by provinces or First Nations Child and Family Services agencies will result in a reduction in the department's contribution. However, INAC does not reduce these payments.

Legal advice on this issue from the Department of Justice and discussions with the Department of Finance and Canada Revenue Agency are required.

The potential value of Children's Special Allowance payments transferred to First Nations Child and Family Services agencies for the year 2003-2004 are approximately \$22.8M.

Q6. What is the objective of the First Nations Child and Family Services Program?

A6. The main objective of the First Nations Child and Family Services Program is to assist First Nations in providing access to culturally appropriate child and family services in their communities, and to ensure that the services provided to First Nations children and their families on-reserve are comparable to those available to other provincial residents in similar circumstances.

Q7. What is the jurisdiction of the First Nations Child and Family Services Program?

Historically, provincial/territorial child welfare practices were seen as not addressing the needs of First Nations since children were usually put in out of home placements outside their community. As provincial and territorial child welfare practices were proving to be inadequate and First Nation communities wanted to assert responsibility for these services, First Nations Child and Family Services started to develop in the 1980s. These agencies are funded by INAC for on reserve services according to a national formula, and receive their statutory authority through the provincial government. The delegated model then, allows First Nations to manage and deliver child welfare services.

Accordingly, INAC provides funding for the delivery of the First Nations Child and Family Services Program to First Nations children and families as a matter of policy, not legislation. The delivery of First Nations Child and Family Services must be in accordance with provincial/territorial legislation as per Section 92 of the Constitution Act, 1982, which stipulates that social services to children, youth, and families are the responsibility of the provinces and territories. Section 91 of the Constitution Act empowers Canada to enact legislation in respect to Indians and Indian lands. To date, Canada has chosen not to exercise this discretionary power in relation to child and family services. Thus, First Nations Child and Family Services has policy authority only. Section 88 of the Indian Act states that laws of general application apply on reserve unless and to the extent that such laws conflict with the Indian Act and its treaties. Thus, consistent with Section 88, First Nation persons on reserve fall under the child and family services legislation of the reference province/territory as these are laws of general application.

Q8. What growth trends have the First Nations Child and Family Services Program experienced?

A8. Since the 1990s, there has been a significant increase in the number of First Nations Child and Family Services agencies; from 34 in 1989, to 102 in 2003-2004, with another 16 currently in development. Program expenditures have grown from \$122M in 1990-1991 to approximately \$360M in 2003-2004 and are forecast to grow by roughly 7% for 2004-2005. Several factors have contributed to the growth in costs, including: devolution of Child and Family Services to First Nations and the extension of services to communities that previously had little or no services; increasing costs for children in care; and, an increasing reliance on child welfare in the provinces as a consequence of the cuts to other social programs in the 1990s. The incidents of children on reserve coming into care increased 71.5% during the period of 1995-2001.

Q9. What do current First Nations Child and Family Services authorities provide funding for?

A9. Current authorities provide funding of 3 components: (1) Maintenance, which covers actual costs for children outside of the parental home (i.e. foster care, group homes, or institutions); (2) an Operational formula for administration of agencies and all other expenses not covered under the child welfare maintenance, including prevention; and (3) Development for one time only costs related to community planning and start-up for a new agency.

Q10. What is INAC doing to ensure that First Nations Child and Family Services agencies can provide the services mandated by legislation by directing additional resources towards prevention services?

A10. Over the past decade the trend in child welfare has been towards prevention or least disruptive measures. INAC recognizes that the current funding formula is not flexible enough to follow this trend and needs to be revised. In addition to undertaking measures to redesign the national funding formula, INAC received authority in 2004-2005 to implement a Flexible Funding Option for Maintenance resources. This will permit some agencies to reprofile Maintenance resources to allow for greater flexibility in how these funds are utilized by placing greater emphasis on prevention services.

Incremental Operations funding will assist agencies to a very limited extent in providing additional prevention services. Additional Operations resources will assist agencies in coping with funding pressures resulting from increased legal fees, insurance costs and other operational expenses that have not been adjusted for since Program Review was implemented in 1994-1995.

Q11. Will every region receive incremental funding?

A11. No, not all First Nations Child and Family Services agencies can expect to receive incremental funding. INAC does not fund First Nations Child and Family Services in Nunavut or the North West Territories where funds are included in the territorial transfer payment for these territories to provide their own services. In Ontario, First Nations Child and Family Services is administered by the Province of Ontario under the provisions of the 1965 Indian Welfare Agreement. Thus, while these regions may not benefit directly from incremental funding, it should also be noted that they were not subject to a freeze in operational funding formula in 1994-1995 as a result of Program Review.

Q12. What are the implications of First Nations Child and Family Services agencies withdrawing from service delivery?

- A12. If First Nations Child and Family Services agencies were to withdraw from service delivery as a result of inadequate funding, consequences could be severe.

Pursuant to an 18-month long review involving the Province of Alberta, INAC, and one Alberta-based First Nations Child and Family Services agency, it was determined that expenses would likely double if the province were to assume responsibility for service delivery.

In addition to escalating child welfare costs for INAC, culturally appropriate services would be compromised. This would be contrary to the United Nations Convention on the Rights of the Child which guarantees specific rights for children including the right to non-discrimination and preservation of families and indigenous culture.

- Q13. What are the legal implications of INAC providing inadequate resources for Child and Family Services on reserve?**

- A13. While the Department of Justice has indicated that the Government of Canada's position is legally defensible because of the Program's basis in policy (versus legislation), it is possible that a Charter challenge may be initiated claiming that residents of a province in similar circumstances are receiving a higher level of service than residents on-reserve.

Further, as a consequence of providing inadequate prevention resources, it is foreseeable that civil proceedings could be initiated against the Government of Canada as a result of neglect or abuse suffered by children in care.