

The Association of Native Child and Family Services Agencies of Ontario



Pre-mandated Native Child and Family Services Agencies: Issues and Recommendations

July 2001

©2001 by the Association of Native Child & Family Service Agencies of Ontario

All rights reserved. The use of any part of this paper reproduced, transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, or stored in a retrieval system, without the prior written consent of the Association of Native Child and Family Services Agencies of Ontario is an infringement of copyright law.

Report prepared by a committee of the Association of Native Child & Family Service Agencies of Ontario:

Lyn Miller, M.S.W.
Social Policy Analyst, ANCFSAO

(Editing) Vicky Corbiere
Project Coordinator, ANCFSAO

(Editing) Larry Jourdain, H.B.S.W.
Executive Coordinator, ANCFSAO

Committee members:

Bill Gillespie, Executive Director
Kunuwanimano Child and Family Services

Kenn Richard, Executive Director
Native Child and Family Services of Toronto

Ulrich Krings, Interim Manager
Nog-Da-Win-Da-Min Family and Community Services

Anna McGregor, Executive Director
Kina Gbezhgomi Child and Family Services

The support of Indian and Northern Affairs Canada, and the support of Ontario's Ministry of Community and Social Services is acknowledged.

Statement of the Association of Native Child and Family Service Agencies of Ontario (ANCFSAO):

The Association of Native Child and Family Service Agencies of Ontario (ANCFSAO) is an association committed to quality services to aboriginal children and families. The ANCFSAO has a membership of ten agencies that are tribally, provincially and federally sanctioned to provide family services to aboriginal children and families. The membership is comprised of mandated child welfare authorities, pre-mandated family service agencies and federally funded tribal family services. The ANCFSAO is not a political organization and we are primarily concerned with policy, operations and delivery of family services to aboriginal populations. Additionally, the ANCFSAO has the responsibility for protecting aboriginal interests in child and family matters. While advocating for improved services for aboriginal children and families, the ANCFSAO should not be construed as representing any agencies, band-based programs, or other First Nation programs outside of our membership. To this end, the ANCFSAO will periodically get involved with projects that seemingly appear to compromise our mandate. The opinions expressed in this paper, and ANCFSAO's participation in discussions with federal and/or provincial government representatives regarding these and other aboriginal child and family service concerns, are not to be construed as consultation with aboriginal communities, nor derogation or abrogation of treaty, aboriginal or inherent rights, but as a sole active engagement by the ANCFSAO to promote quality services to aboriginal children and families.

TABLE OF CONTENTS

Executive Summary	i
Section A: Introduction	1
i. Brief history of Native child welfare in Ontario	
Section B: Context	4
i. Authority	...4
Tribal authority	
FN political mandate	
ii. Legislative context	...5
Section 88 of Indian Act	
1965 Indian Welfare Agreement (IWA)	
Part X of CFSA	
Other Native Provisions in the CFSA	
INAC PD 20-1	
iii. Co-existence with mainstream CAS	...10
iv. Demographics	...12
v. Academic and professional research	...13
Section C: Issues & Concerns	17
i. Moratorium	...17
ii. Aboriginal Units in 'mainstream' CASs	...20
iii. Relationships with Ministry representatives	...22
iv. Relationship with 'mainstream' CASs	...23
v. Funding	...25
vi. Capacity Building	...26
vii. Retaining staff	...27
Section D: Concluding Remarks	29
Section E: Summary of Recommendations	30

Executive Summary

The Association of Native Child and Family Services Agencies in Ontario (ANCFSAO) is an association of ten agencies that are tribally, provincially, and federally sanctioned to provide child welfare and family support services to children and families. The ANCFSAO is committed to quality services, and considers the development of competent, culturally congruent, and appropriate child welfare programs and services to be a high priority.

The pre-mandated Aboriginal Child and Family Services Agencies face numerous barriers to the maintenance and development of these services. This paper examines those barriers, and offers recommendations on how they may be addressed and overcome. The pre-mandated agencies believe that the Ministry of Community and Social Services, by following these recommendations, can help facilitate the development and delivery of high-quality, culturally competent child welfare services.

One of the barriers faced by the pre-mandated agency is a moratorium on further designation of mandated Children's Aid Societies (CASs). First and foremost, the pre-mandated agencies recommend that the Ministry of Community and Social Services lift the moratorium on designation of new CASs, in so far as it applies to development and designation of Aboriginal agencies. The agencies also recommend that the Ministry of Community and Social Services release their final version of the Aboriginal Child Welfare Review, so the Ministry may no longer use the delay of release of the report as an pretext to prevent further designations of Aboriginal agencies.

It is imperative that a transitional period be identified where the Ministry of Community and Social Services will provide time-limited funding for the pre-mandated agencies to adequately develop into fully mandated agencies. Adequate funding must be provided for this transitional phase, and overall funding for the agencies must be provided on an annualized core funding basis, sufficient to meet agency service demands.

Other recommendations put forth in this paper include training and capacity building, a protocol template, and other supports for staff, management, and boards of the pre-mandated agencies. The pre-mandated Native Child and Family Services Agencies believe that by working together with various service providers and levels of government, we may overcome current barriers and contribute to the goal of ensuring high-quality, culturally competent child welfare services for our First Nation children, families, and communities.

Section A: Introduction

i. Brief history of Native child welfare in Ontario

The purpose of this paper is to outline a number of concerns of the five pre-mandated Native Child and Family Service agencies in Ontario. In order to better understand the current picture of Native child welfare in Ontario, it is beneficial to begin with a historical overview. Thus, this section will give a brief overview of the development of First Nation child welfare agencies in Ontario.

Before 1951, there were no explicit federal or provincial child welfare programs offered to First Nations children and families on-reserve. Although Native societies had well-established methods of caring for children through extended family systems, clan systems, and other tribal systems, the federal government had seen fit to 'care' for Native children in residential school systems. This system of 'caring' for children was entirely unacceptable; the horrific tales of abuse at residential schools are now widely known. From the very beginning, First Nations organized to prevent the loss of children to residential schools. In 1951, changes to the federal *Indian Act* facilitated the extension of provincial social services to on-reserve populations. In 1984, changes to provincial child welfare legislation enabled the development and designation of Native Child and Family Service authorities as child welfare agencies, and Children's Aid Societies.

Native Child and Family Services were developing in Ontario even before changes to provincial legislation facilitated their becoming full Children's Aid Societies. When the changes to the legislation came into effect, a number of agencies sought society status. There are presently four Native Child and Family Service agencies in Ontario that possess their full provincial designation. Tikinagan Child and Family Services and Payukotayno James & Hudson Bay Family Services were the first Native child and family service agencies in Ontario, and received their provincial designations in 1987. Weechi-it-te-win Family Services began its development in 1982, and also received full mandate as a Children's Aid Society in 1987. Wabeseamong Family Services (which later became Abinoojii Family Services, and is now a branch office of Weechi-it-te-win Family Services) received its mandate in 1994, and Dilico Ojibway Child and Family Services was the last to receive agency status, getting its mandate in 1995.

Other Native child and family service agencies were developing in Ontario during the same time period. These agencies have not received their full provincial mandate as societies, and as such are authorized to provide prevention and support services only. Kunuwanimano Child and Family Services, which provides services to eleven (11) First Nation communities in the Timmins area, was incorporated on May 15, 1989. Nog-Da-Win-Da-Min Family and Community Services was the next to be incorporated on August 1, 1990, and serves seven First Nation communities along the north shore of Georgian Bay. Kina Gbezhgomi Child and Family Services was incorporated in 1991, and serves seven (7) Aboriginal communities on Manitoulin

Island. Six Nations of the Grand River, which provides services to the large First Nation community of Six Nations near Brantford, had their child and family service agency incorporated in May 1993. There are also a number of other band-based prevention and support programs, which have been developing for some time—these programs currently exist in various stages of development throughout the province of Ontario¹.

Another of the pre-mandated agencies, Native Child and Family Services of Toronto, was established to provide quality child welfare services to all Aboriginal people living in the city of Toronto, regardless of their status and home community. Both the province of Ontario and the Toronto Native community undertook to develop a response to the child welfare needs of Toronto's estimated 40,000-60,000 Native people. It was agreed by both parties that the Native population of Toronto was sufficiently large to warrant the development of its own child welfare response, and from 1985 to April 1998 the developmental phase of the agency took place. The process involved extensive community consultation within both the Native and non-Native communities, the development of an incorporated board, by-laws, mission statement, and related service objectives. The agency presented its first service plan to the Ministry of Community and Social Services in January 1988, service funding was provided in April of that year, and service operations began shortly thereafter. The agency has continued to grow and develop since its inception in 1988, and offers a wide-range of culturally competent and appropriate services to Toronto's Native community.

In January 1985, Ojibway Tribal Family Services (OTFS) began its development, given mandate by fourteen (14) First Nations in the Treaty #3 area; it was incorporated in March of the same year. OTFS was opened to provide preventive child welfare services, yet operated under a different form of agreement than the other "pre-mandated" agencies. Instead of being designated through Section X of the provincial CFSA and funded through the 1965 Welfare Agreement, the agency was funded and authorized by way of a direct bilateral arrangement with the federal government. Protective services for the communities served by OTFS continued to be provided by the provincial CAS in the nearby community of Kenora.

Altogether, there are ten Native agencies serving 96 of the 134 First Nation communities in Ontario. The mandated agencies serve fifty-nine (59) First Nation communities and five (5) non-Native communities, and the pre-mandated serve 26 First Nation communities. This means that approximately twenty percent (20%) of First Nations in Ontario are receiving services from a pre-mandated Native Child and Family Services agency. In actual fact, those figures under-represent the population served, as they do not account for the off-reserve populations provided services by Native Child and Family Services of Toronto.

Native Child and Family Services in Ontario, including the prevention programs, pre-

¹ There are well-developed child welfare programs in many First Nation communities, such as Mohawks of Akwesasne and Chippewas of Mnjikaning (Rama).

mandated, and mandated agencies, were established in order to provide high quality and culturally appropriate child welfare services to Native children and families. Another reason for development of the agencies was to reverse the trend of ever-increasing numbers of Native children being apprehended and placed in care outside of their own communities. Since their development, the agencies and programs have made great strides in advancing high quality and culturally appropriate child welfare services for Aboriginal children, families, and communities.

Despite the successes facilitated by culturally appropriate Aboriginal services, since the designation of Dilico Ojibway Child and Family Services in 1995, the Ontario Ministry of Community and Social Services has not designated any new Native agencies. The province put a moratorium on further designations in the late 1990s, and continues to refuse to consider mandating any more agencies, regardless of the agency's readiness or stage of development. To continue to move forward in terms of providing appropriate and competent services in Aboriginal child welfare, these Aboriginal services must be supported in their continued development. There are a number of issues that must be addressed to facilitate this development, and this paper will examine these issues and make recommendations as to how we may move ahead and help contribute to a better future for our First Nation children and families.

Section B: Context

Today in Ontario, child welfare *protection* services are delivered to First Nations through provincially mandated Children’s Aid Societies. *Prevention* services are delivered through various arrangements—some First Nations receive their prevention services from family support workers and other band-based programs, some are served by a bilateral family service agency,² and others are served by pre-mandated Native Child and Family Service agencies.

According to the *Constitution Act, 1982*, social services fall under the realm of provincial jurisdiction. Given that constitutionally, the primary responsibility for “Indians and lands reserved for Indians” falls under the auspices of the federal government, and responsibility for social programs is that of the provinces, jurisdictional arrangements are somewhat complicated when it comes to Native child welfare. This section describes the factors of authority for Native child welfare, and outlines the legislative arrangements that dictate how child welfare protection services are delivered to First Nations in Ontario.

i. Authority

Tribal authority:

The responsibility for the safety and security of the next generations was bestowed upon First Nations by the Creator—it is an inalienable and inherent right that has not, and *could never be*, extinguished by any agreement, Treaty or otherwise. Thus, when speaking of Native child welfare issues in Ontario, it is important to understand that regardless of the federal and provincial legislative environments, First Nations are first and foremost governed by tribal authority. Programs on First Nations are accountable above all to their respective Chief and Council; when programs are delivered to off-reserve Native populations, they remain accountable to tribal authority.

Thus, in the realm of programs, provincial reforms, and other related policy implications, it is of the utmost importance to consider the multifaceted authority environment of the Native agencies. Programs, reforms, and policies must facilitate the agencies accountability to Chief and Council, even before their accountability to “mainstream” government systems.

First Nations political mandate:

In 1981, the All Ontario Chiefs in Assembly passed Resolution 81/19, which directed that First Nations in Ontario create Indian child welfare laws, policies, and programs based on the protection of children and the preservation of Aboriginal culture within the family.

² Ojibway Tribal Family Services is an agency in Kenora that offers preventive services to a number of northern First Nations, and receives its funding directly from the federal government.

Given the direction of AOCC Resolution 81/19, it was made clear to MCSS by the OISSC during the drafting of the Native provisions of the *Child and Family Services Act* that the provisions were to be considered an interim measure only. In a presentation to the Standing Committee on Social Development in February 1984, the Chiefs of Ontario Executive Council maintained that the goal of First Nations was to reclaim and exercise full jurisdiction over social services.

Recently, at an All Ontario Special Chiefs' Assembly held in Thunder Bay (Feb.29-Mar.2, 2000), SCA Resolution #00/17 was passed. Resolution #00/17 mandates (in part) that the province recognize First Nations authority in child welfare. It resolves that First Nations governments will choose whether elements of the Province's Child Welfare Reform Initiative will apply to their citizens, and that a moratorium be placed on implementation of the provincial child welfare reforms in First Nations *at least* until an impact analysis has been completed. Most recently, during the All Ontario Chiefs' Conference held in Couchiching First Nation, AOCC Resolution #00/63 was passed, which demanded the Province of Ontario recognize a moratorium on any further implementation on Ontario child welfare reform initiatives "until such time as meaningful consultation can occur with First Nation governments".

It is clear that First Nations political mandate has been to reclaim full jurisdiction over matters relating to our children and families, and this remains the goal of First Nations in Ontario today.

ii. Legislative context

Despite the inherent right to care for our children, First Nation authority has not yet been fully recognized in practice by mainstream governments. Thus, the child welfare services that are given recognition as such by federal and provincial governments are currently mandated through federal and provincial statutes.

Section 88 of the *Indian Act*.

Before 1951, *explicit* Canadian child welfare policy relating to Native peoples in Ontario did not exist. There were no provisions in the federal *Indian Act* that facilitated the provision of child welfare services to First Nations on reserve.

In 1951, in response to a submission presented to a committee of the Senate and House of Commons,³ a number of revisions were made to the *Indian Act*, including the addition of Section 88, which enabled the extension of provincial child welfare services to First Nations people living on reserve. Section 88 reads:

88. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province

³ Canadian Welfare Council and Canadian Association of Social Workers, 1947. Joint submission to the special joint committee of the Senate and House of Commons appointed to examine and consider the Indian Act. Ottawa: Canadian Welfare Council.

are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

Initially, Section 88 did not have a significant impact on services offered to on-reserve populations. This was primarily due to conflicts between the federal and provincial government in regards to funding, as Section 88 transferred *legislative* responsibility to the provinces, but it did not specify which level of government would be responsible for *funding* those services. The province argued that funding remained the responsibility of the federal government, and was reluctant to extend child welfare services on reserve unless they were guaranteed the federal government would pay. An agreement put in place during the mid 1960s was meant to resolve the jurisdictional concerns in regards to funding.

1965 Indian Welfare Agreement (IWA)

In 1964, an agreement was negotiated to resolve the confusion in terms of funding social services for First Nations on reserve. The agreement, now commonly known as the “1965 Welfare Agreement”⁴, is a formula-based funding agreement whereby the federal government agrees to reimburse Ontario for approximately 97 percent⁵ of the charges incurred for providing social services to First Nations. The agreement was intended to cover “the aggregate of all provincial welfare programs available to the general population of the province”, which included those services delivered under the *Child Welfare Act, 1960*. Since the time the agreement was originally signed, the 1965 IWA has been amended to include coverage for services delivered under the *Ontario Works Act, 1997*. As well, services delivered under the *Child and Family Services Act, R.S.O. 1990* (which replaced the *Child Welfare Act, R.S.O. 1978*) are now covered. To give an example of the magnitude of this funding arrangement, in the early 1990’s approximately five million dollars was transferred from the federal government to the mainstream Children’s Aid Societies *in the Toronto area alone*⁶.

Other elements of the 1965 IWA have impacts upon the development and delivery of child welfare services to First Nations in Ontario. Section 2(2) of the IWA states that “no provincial welfare program shall be extended to any Indian Band in the Province unless that Band has been consulted...and has signified its concurrence”. This clause is especially relevant given Ontario’s child welfare reform agenda, in that it is a reminder that First Nations *must* be consulted and give explicit concurrence during all stages of development and implementation of the reforms.

⁴ Canada. (1964). Memorandum of Agreement Respecting Welfare Programs for Indians.

⁵ Figures vary dependent upon services provided, and other variables.

⁶ Figure quoted from Kenn Richard, Executive Director of Native Child and Family Services of Toronto.

Child and Family Services Act, (R.S.O. 1990)

The Ministry began to work with the Ontario Indian Social Services Council (OISSC)⁷ in the spring of 1983 to draft Native provisions of new child welfare legislation that would replace the Child Welfare Act of 1960. The new *Child and Family Services Act* came into effect in 1984, and the Native provisions that MCSS had developed with the OISSC were comprised in the Statement of Principals, Part X, and throughout various other sections of the Act.

One of the most significant elements of the new *Child and Family Services Act* was contained in its statement of principals. For the first time in provincial child welfare legislation, Ontario unequivocally recognized First Nations authority to care for our own children and families. It also recognized that that culturally competent and appropriate services were not optional when working with Native children and families, they were *imperative*. Specifically, the Aboriginal provision in the Act's statement of principals stated that the purpose of the Act was:

To recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family. 1999, c. 2, s. 1.

Part X of the Child and Family Services Act.

Children's Aid Societies in Ontario are designated and governed by the provincial *Child and Family Services Act, R.S.O. 1990*. Section 211(1) of the CFSA declares that Native bands have the authority to designate an authority as a Child and Family Service authority. Upon designation of an authority, the CFSA outlines that the Provincial Minister *shall* enter into negotiations with the authority for provision of services, and *may* enter into negotiations with the authority in order to designate society status, "*if it is an approved agency*". There is one primary difference between Native Child and Family Service authorities with *agency* status, and those with *society* status. Agency status authorizes the Child and Family Service agency to provide all services provided under the legislation, such as family support services, counselling, advocacy, and referrals, and services such as education workshops (for example, parenting programs), *with the exception of child welfare protection services*. What this means is that the communities served by a Native Child and Family Service organization with agency status must still receive their protection services (such as abuse investigations and apprehensions) from the corresponding Children's Aid Society. With society status, the agency is mandated to provide the full range of services, including protection services. When a Native

⁷ The OISSC is comprised of the Social Services Directors from each of Ontario's Aboriginal Political Organizations, referred to as "Provincial Territorial Organizations" (PTOs), and is a formal structure put in place to unite the PTOs in their efforts to collectively strategize, coordinate, and lobby for improvements to social conditions, social services, and social policy affecting Ontario's First Nations.

agency is granted society status, they displace the local mainstream CAS in their jurisdiction.⁸

Sections 208 of the CFSA defines “customary care” as “the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community”. Section 212 of the Act states that “where a band or native community declares that an Indian or native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child”. These sections clearly recognize the authority of mandated and pre-mandated agencies (as well as First Nations *without* Native Child & Family Service agencies) to declare child care arrangements as customary care arrangements, and upon declaration direct the agency or society servicing that community to provide a subsidy to the family caring for the child. These sections of the Act clearly illustrate that the provincial government recognizes the authority of First Nations to care for our children.

Part X of the CFSA also specifies that Native bands will be consulted on matters relating to the involvement of their members with child welfare services—in particular services related to apprehension, temporary care, status reviews, adoption, and “any other matter that is prescribed”. This means that the Children’s Aid Society, be it a Native or non-Native society, must consult with the band on child welfare matters (especially protection services) involving any of their band members. In terms of funding for services outlined in Part X, the federal government remains responsible as per the terms of the 1965 Welfare Agreement.

Other Native Provisions in the CFSA:

One of the responses from the provincial government demonstrated in the 1984 amendments to the *Child and Family Services Act* was to include provisions in recognition of the fact that First Nations have a collective interest in Aboriginal children, and possess the right to represent their respective community’s in child welfare matters (OISSC & ANCFSAO Terms of Reference: Band Representative Program Review, May 28, 2001). Further to Part X of the Act, there are twenty-four (24) additional Native provisions in the CFSA. Some of these provisions address having Aboriginal community representatives on the Boards of Directors of CASs who serve those communities. Others provisions speak to placement preferences for foster care (first preference is with extended family, then with a member of the child’s band or community or another Indian or native family), and there are provisions addressing plans for adoption of Aboriginal children (orders regarding the ‘best interest of the child’ must recognize the uniqueness and importance of the child’s Aboriginal culture, and take those variable into consideration for purposes of adoption). There are a number of provisions that speak to the importance of recognizing the uniqueness of native culture, heritage and traditions, and preserving

⁸ Geographical boundaries are established through negotiations with the Ministry of Community and Social Services when negotiating full mandate as a society.

the child's cultural identity when providing child welfare services to Aboriginal children and families.

Throughout the CFSA, reference is made to the authority of First Nations to appoint a member of the community as a Band Representative. Ten (10) of the additional Native provisions in the CFSA pertain to Band Representatives, their rights in child welfare proceedings, their roles and functions. The Act states that Band Representatives must be notified as party to an application in child welfare proceedings, must receive copies of all assessment reports, and are entitled to apply for access, or apply to vary or terminate an access order. Further, the CFSA states that Band Representatives must be served notice when another party is applying to vary or terminate an access order, must be served notice when another party applies for a status review, must be provided a copy of assessment reports for secure treatment programs, and must be provided with 30 days written notice when there is the intent to place a child for adoption. Finally, the CFSA legislates that Band Representatives are entitled to apply for status reviews, to appeal a court order to a superior level of court, and to apply for an extension, variation, or termination of a restraining order.

INAC Policy Directive 20-1:

In 1986 the federal government placed a moratorium on the signing of new agreements for Native agencies pending a review of policy (Armitage, 1993, p.154). The federal government's policy review resulted in the release of a document entitled *Indian Child and Family Services Management Regime: Discussion Paper* (Department of Indian and Northern Affairs, 1989); the Management Regime resulted in INAC Policy Directive 20-1. Throughout Canada, *with the exception of Ontario*, PD 20-1 essentially established limits on the types of Aboriginal child welfare agreements that could be considered. In order to be considered, a minimum of a thousand children must be covered (meaning the community must have a child population of at least one thousand), and it remained that provincial legislation and standards must be followed.

INAC immediately began implementation of PD 20-1 across Canada, with the exception of the province of Ontario. There, INAC faced a conflict with applying the Directive as it violated the terms of the 1965 Welfare Agreement, and conflicted with the powers of the provincial Minister (delegated by way of Section 88 of the *Indian Act*) outlined in Section X of the *Child and Family Services Act*. The 1965 Agreement had not established limitations or cost ceilings for provincial services extended to Native peoples, so long as they were of a 'comparative' level to those provided to non-Natives. PD 20-1 would, in effect, 'cap' services to First Nations, and would inevitably lead to unequal levels of service provision in Ontario (Miller, 1999).

Officially, it remains today that Indian Affairs' Policy Directive 20-1 does not apply in Ontario, because Child and Family Services for First Nations in this province continue to be funded through the 1965 Indian Welfare Agreement. However, there

has been pressure from mainstream governments to apply the Directive in Ontario⁹; First Nations in Ontario must keep aware of the implications of the application of PD 20-1 on our agencies and services. This issue will be further discussed in a later section of this paper.

iii. Co-existence with Mainstream Children's Aid Societies

Pre-mandated Native Child and Family Services agencies in Ontario, at the current time, are in a position such that they co-exist with mainstream Children's Aid Societies. The pre-mandated agencies provide a range of prevention services for children and families in their respective communities, while a number of mainstream CASs provide protective services. Oftentimes, the pre-mandated agencies are working with more than one mainstream CAS, as the Aboriginal agencies' communities may be spread across different geographical boundary jurisdictions of the mainstream system. To illustrate, the following outlines the number of mainstream CASs that serving the communities of each of our pre-mandated agencies.

Kunuwanimano Child and Family Services provides services to eleven First Nation communities in the Timmins area, from Hornepayne, Missanabie Cree, to Matachewan. The five mainstream Children's Aid Societies that serve Kunuwanimano Child and Family Services' communities are: Child and Family Services of Timmins and District, Children's Aid Society of Algoma, Children's Aid Society of the District of Sudbury and Manitoulin, Timiskaming Child and Family Services, and Jeanne Sauve Family Services (Kapuskasung). For the most part, the Kunuwanimano Child and Family Services has experienced supportive relationships with the mainstream CASs serving its communities. The mainstream CASs recognize that Kunuwanimano Child and Family Services has the expertise in the area of Aboriginal child welfare. This has been especially evident with recent developments in providing Aboriginal foster care services for Kunuwanimano communities. The mainstream CASs approached Kunuwanimano and offered their support for the agency to "take over" that portion of child welfare services for Aboriginal children and families, in their recognition that the Aboriginal agency could offer higher quality services to our own people, thereby improving not only the number of Aboriginal foster homes available, but also the quality of those homes by offering more culturally appropriate supports for foster children and families.

Six Nations of the Grand River Child and Family Services offers prevention services to families and children on reserve who are members of Six Nations of the Grand River. The Oshweken branch of the Brant Children's Aid Society provides protection services in their community. For the most part, Six Nations Child and Family Services has developed a good working relationship with Brant CAS.

⁹ For example, in January 1995 Nog-Da-Win-Da-Min Native Child and Family Services received a letter from Indian Affairs stating that PD 20-1 was "official" policy in Ontario (Ontario Indian Social Services Council, 1995), although it was not applied even after the letter had been received.

Kina Gbezhgomi provides prevention, support, and direct intervention services to the First Nation communities of M'Chigeeng, Sheguindah, Sheshegwaning, Sucker Creek, Whitefish River, Wikwemikong, and Zhiibaahaasing. The agency was recently granted their foster care license, and as such will now coordinate foster care services for their members. The Children's Aid Society of the District of Sudbury and Manitoulin provides protection services to their communities. Some of the communities served by Kina Gbezhgomi Child and Family Services have had serious difficulties with services provided by Sudbury-Manitoulin CAS, and the relationship with this mainstream CAS has at times been strained.

Native Child and Family Services of Toronto offers prevention, support, and direct intervention services to First Nations children and families in the greater Toronto area. The agency is unique in that it is Ontario's only full service off-reserve child welfare related initiative under the direct control and management of the Native community. With a diversity of programs and related funders, it has developed a culturally based service approach and is poised to become Canada's first off-reserve authority under the *Child and Family Services Act*. All Aboriginal children and families from across of Canada who are living in Toronto may access the range of prevention services offered by this agency. The populations served by Native Child and Family Services of Toronto receive their protective child welfare services from the Toronto Children's Aid Society, Catholic Children's Aid Society of Toronto, and Jewish Child and Family Service of Toronto¹⁰.

Native Child and Family Services of Toronto has found common ground with the mainstream CASs in their area, especially Toronto CAS with whom they work quite closely, as they share the desire to ensure quality child welfare services for the children and families they serve. The Aboriginal agency and the mainstream agencies also want to ensure *coordination* and *communication* among service providers, so that no child or family in need 'slips through the cracks', or is overlooked or unattended to in terms of getting the services they need.

Nog-Da-Win-Da-Min offers prevention services to seven First Nation communities along the north shore of Lake Huron/Georgian Bay. These seven communities, namely Whitefish Lake, Serpent River, Sagamok Anishinawbek, Mississauga #8, Thessalon First Nation, Garden River, and Batchewana receive their protective child welfare services from Sudbury/Manitoulin CAS, and Algoma CAS. This agency has experienced somewhat more of a 'from a distance' relationship with the mainstream agencies serving its communities, and is working on developing increased communication, and stronger more formal partnerships in order to ensure coordinated, appropriate, and more effective services.

Overall, the five pre-mandated agencies work with ten (10) mandated mainstream agencies. Three of the pre-mandates, namely Kunuwanimano Child and Family

¹⁰ Jewish Child and Family Service of Toronto have not provided services to Aboriginal children and families in Toronto, with the exception of providing adoption services for a limited number of non-Native adoptions of Aboriginal children.

Services, Kina Gbezhgomi Child and Family Services, and Nog-Da-Win-Da-Min Family and Community Services all have at least one of their communities provided service by Sudbury-Manitoulin CAS, and thus all three have working arrangements with this CAS. Until such time that the Aboriginal agencies receive their full mandate, and even thereafter, it is essential that the mainstream and Aboriginal agencies ensure strong working relationships, with effective communication and coordination of services. To keep our children and families safe, supported, and protected, Native and non-Native agencies alike must work with all involved to ensure the populations we serve are effectively and appropriately served.

iv. Demographics

A report released by Indian Affairs Research and Analysis Directorate in 1997 demonstrated that the First Nations in Canada have been experiencing very high rates of population growth, and have a much higher youth cohort¹¹ than the “general” population. It predicted that the *rates* of population growth would decline somewhat over the next few years, however the population will still see significant growth. The study estimated the population would increase by about 83,600 individuals by the year 2000, and predicted an increase of 135,900 individuals in the 2001-2010 period. For the whole of Canada, the study forecasts that the largest population growth in the on-reserve registered population will occur in the province of Ontario (INAC Research & Analysis Directorate, 1997, p.44).

One of the sections in the INAC report commented on First Nation child welfare statistics. Firstly, the study acknowledged the difficulties in finding accurate Native child welfare statistics, such as Bill C-31 effects, and other variables that can cause under-representation of the true numbers of children in care. Even given the under-representation of the true number of children in care, the INAC study noted that the Native children-in-care statistics were much higher than that of the ‘general’ population, and predicted that with the increase in the First Nation population, the numbers of Native children in care would continue to grow. The study also noted that *expenditures* for child welfare on reserves would increase even more rapidly than the number of children in care.

Given that the First Nation population has a much larger youth cohort than the general “mainstream” population in Ontario, it follows that without adequate and *appropriate* child welfare services, the higher youth population will result in much higher numbers of Native children in care. These elevated in-care numbers will lead to higher *long-term costs* for child welfare in Ontario. On the other hand, appropriate and culturally congruent child welfare services may seem costly in the short term, and may initially seem to result in high numbers of children in care, however, culturally appropriate services are *undeniably* more effective for serving Native children and families. Thus, although these services may initially appear costly, they will undoubtedly lead to *long term reductions* in the numbers of children in care, and

¹¹ Child and Youth cohorts consist of those aged 0-14 years and 15-24 years respectively (INAC Research & Analysis Directorate, 1997).

to decreased costs for child welfare services overall.

First Nation populations in Ontario, as well as for the rest of Canada, have also been demonstrating a trend toward urbanization. In other words, there exists increasing migration from on reserve to off-reserve residency. For example, it is estimated that approximately twenty percent (20%) of Ontario's Aboriginal child population live in the greater Toronto area.¹² Policy makers should take notice that just because a Native child or family lives off-reserve, or even outside of Ontario, it does not mean that they have surrendered their Aboriginal rights at their reserve boundaries. This fact was recently demonstrated with the outcome of *Corbiere v. Canada*.¹³ Thus, along with on-reserve Native Child and Family Services agencies, development of agencies off-reserve should also be facilitated in order to provide culturally appropriate child welfare services to our urban populations.

Aboriginal children will become increasingly represented in the child welfare system, given the demographic trends (as well as other variables such as socio-economic status). This phenomenon and other demographic considerations will have implications for Native child and family services in Ontario as well as other provinces, and should be further explored in discussions with the Ministry of Community and Social Services.

v. Academic and professional research

Over the years, there have been a number of research projects that have explored the issues relating to Native child welfare. Overwhelmingly, the findings of these research studies have supported First Nation control of child welfare services, programs, and policies.

In 1978, a study was commissioned by Indian Affairs to examine the adequacy of social services being delivered to First Nations in Ontario through the 1965 Indian Welfare Agreement, including child welfare services. Their report, entitled ***A Starving Man Doesn't Argue*** concluded that Native children were apprehended more often than non-Native children, and were also kept in care longer than non-Native children. The report also noted that under the provisions of the 1965 Welfare Agreement and the Child Welfare Act of 1960, Band Councils had no power or authority, and therefore no means to influence the services provided to their members. As an approach to rectify some of the inequities, the report advocated "increased community involvement in the planning, control, and delivery of child welfare services" (Technical Assistance and Planning Associates, 1979).

In follow up to "A Starving Man", TAP & Associates released in 1980 a report entitled ***Community Care: Toward Indian Control of Indian Social Services***. The report identified that the foremost way to rectify the troublesome issues was the transfer of control over social services from mainstream governments to First Nations. It explained that more cohesive Native communities and a corresponding reduction in

¹² Figure quoted by Kenn Richard, Executive Director of Native Child and Family Services of Toronto.

¹³ *Corbiere v. Canada*, [1999] 2 S.C.R.

the need for services would result from programs and services that were “Indian-determined, Indian-specific, community-based, and band-controlled” (Technical Assistance and Planning Associates, 1980, pp.i-iii).

In one of the most inclusive studies to date, Patrick Johnston undertook a research study on behalf of the Canadian Council on Social Development, who released his report in 1983. The report, entitled ***Native Children and the Child Welfare System***, concluded that Native children were apprehended at a rate of 4 ½ times higher than that of non-Native children and were kept in care for longer periods of time. The report also concluded that federal-provincial jurisdictional disputes were the major contributing factor to “a vast disparity in the quality and quantity of child welfare services available to status Indians” (Johnston, 1984, p.66). The report offered a number of ways to resolve the jurisdictional issues, including recognition that First Nations would require at least financial supports from federal and provincial governments to successfully take on full control of child welfare services. The report stated one “*inviolable principle*” that *must* be adhered to in order to improve Native child welfare conditions in Canada—it stated that:

Native people must become more directly involved in and responsible for the design, development and delivery of child welfare services provided to Native families. Only then will the decisions made about Native children be consistent with Native values, customs, traditions and community standards (Johnston, 1984, p.93).

The long-awaited ***Report of the Royal Commission on Aboriginal Peoples*** was released in 1996. This comprehensive report was comprised of five volumes, with a number of additional research studies, covering topics such as child welfare, social assistance, and suicide. Some of the child welfare issues explored in the RCAP report include the intergenerational effects of past inappropriate child welfare practices, the effects of inappropriate funding, the need for community healing, insufficient urban services, foster home/adoption issues, and difficulties arising from external control of services. To correct for some of these issues, the Commission made a number of recommendations. Specifically, recommendations 3.2.1, 3.2.2 and 3.2.3 of the report read:

3.2.1

the government of Canada acknowledge a fiduciary responsibility to support Aboriginal nations and their communities in restoring Aboriginal families to a state of health and wholeness.

3.2.2

Aboriginal, provincial, territorial, and federal governments promptly acknowledge that child welfare is a core area of self-government in which Aboriginal nations can undertake self-starting initiatives.

3.2.3

Aboriginal, provincial, territorial and federal governments promptly reach agreements on the authority of Aboriginal nations and their communities for child

welfare, and its relation to provincial, territorial and federal laws respecting child welfare (Canada, 1996, p.51).

In 1997-98, the Ministry of Community and Social Services undertook a review of the 5 Aboriginal Children's Aid Societies in Ontario. The ***Aboriginal Child Welfare Review*** (often referred to as the "Koster Report") recommendations included, but were not limited to, the need for additional child welfare and family support services in many Aboriginal communities and holistic services based on community-defined models of practice. The report also recommended that the Ministry of Community and Social Services "articulate the rights inherent under Part X and XI of the CFSA to Aboriginal child welfare agencies, boards, Chiefs, and communities in order to ensure that they receive services provided in an appropriate manner".

Significantly, the province has used the *Aboriginal Child Welfare Review* as the basis for placing a ***moratorium on designation of any further Aboriginal Children's Aid Societies***, and continues to use "completion" of this report as a pretext to maintain the moratorium. This is despite the fact that many Aboriginal agencies are providing comprehensive and competent services, and are prepared to move forward and take on full mandate. The moratorium remains in place despite the fact that the *Aboriginal Child Welfare Review* recommended that the Ministry of Community and Social Services "move forward on approving new designations". The province, however, continues to stall and does not implement the recommendations of its *own* commissioned study, with the excuse that "*final*" version of the report has yet to be released! In the meantime, rather than helping support the development of strong and culturally competent Aboriginal services, the province is confining our Native children and families to systems that can not ensure their safety in a culturally appropriate environment.

Recently, the Assembly of First Nations, in partnership with First Nations, First Nations Child Family Services Agencies, and INAC jointly carried out a review of INAC's national policies with respect to First Nation Child and Family Services during the time period of March 1st, 1999 - June 30th, 2000. The intent of the ***National Policy Review*** was to identify possible improvements to current policy (PD 20-1) regarding the development and operation of Aboriginal CFS agencies that provide necessary, culturally sensitive and statutory child and family services.

The review resulted in seventeen (17) recommendations for the Minister of Indian Affairs on changes needed to the current INAC policy governing the First Nation Child and Family Services program. A proposed Action Plan for the implementation of the recommendations also resulted and was part of the report to the Minister and AFN National Chief. Recommendation #17 calls for "an immediate tripartite review (Canada, Ontario and Ontario First Nations)... in Ontario due to the implications of the 1965 Indian Welfare Agreement, current changes to the funding formula and the Ontario Child Welfare Reform".

Although INAC's PD 20-1 does not officially apply in Ontario at this time, there have been attempts in the past by mainstream government to implement PD 20-1 in this

province. For example, in January 1995 Nog-Da-Win-Da-Min Native Child and Family Services received a letter from Indian Affairs stating that PD 20-1 “was now official policy in Ontario” (Ontario Indian Social Services Council, 1995). Also occurring in January 1995, another Native child and family service agency in its development stages received notice that INAC’s PD 20-1 was official policy. The agency was informed that based on the PD 20-1 formula, their developmental phase had been over-funded and no additional funds for development would be received in 1995/96—it was forced to close the same year due to lack of funding (Ontario Indian Social Services Council, 1995).

To summarize, PD 20-1’s direct or indirect application has the effect of strengthening the Ontario Provincial government’s refusal to support the development of Aboriginal pre-mandated agencies toward full mandated status. We must keep informed of any developments in national policy, including PD 20-1, in the event that it may be applied with new federal-provincial-First Nation arrangements. As of today, the National Policy Review has called for a tripartite review in Ontario, and recognizes that a new national framework is needed that includes fundamental principles of supporting Aboriginal child welfare agencies and is sensitive to provincial/territorial variances.

There is also a growing body of **case law** or precedent in Canadian legal systems that supports Aboriginal child welfare authority, and thus the move toward greater Aboriginal control of Native services. For example, in *Casimel v. I.C.B.C.*,¹⁴ recognized Aboriginal customary law in adoption for benefits under the provincial insurance legislation. A 1999 Supreme Court decision, *H. (D.) v. M. (H.)*,¹⁵ upheld an earlier court ruling and recognized the importance of a child’s Aboriginal culture in child welfare decisions and proceedings. The trend in case law has been moving more and more toward support for Aboriginal custom law, and Aboriginal rights to culturally competent services.

It is of critical significance to note that Ontario is the only province in Canada that has placed a moratorium on further development of Aboriginal child welfare in the province. Other provinces, such as Manitoba and Alberta are giving practical recognition to the years of research and proven ability of Aboriginal service providers, and enthusiastically moving forward with turning over Native services to Aboriginal groups. The government of Ontario is behaving contrary to the overall trend, academic and professional research, including their own as well as other governments’ commissioned studies, and the growing body of case law by restricting the growth of Native services. If Aboriginal control of services has repeatedly been proven to be the most effective way to meet the needs of Aboriginal communities, and the most appropriate method to ameliorate the challenges of Native child welfare, the question must be asked: why has the province chosen to take this stance?

¹⁴ *Casimel v. ICBC* [1994] 2 C.N.L.R. 22 (B.C.C.A.)

¹⁵ *H.(D.) v. M.(H.)* [1999] 1 S.C.R.

Section C: Issues & Concerns

The Native Child and Family Service agencies in Ontario have been facing numerous challenges in terms of the Ontario government's Child Welfare Reform Initiative, as well as having a number of general concerns relating to provision of culturally competent child welfare services. The paper entitled *Child Welfare Reform Initiatives: Issues and Recommendations* (2000), spoke to the concerns of the mandated agencies. This section of this paper focuses on the concerns of the five pre-mandated agencies, namely Six Nations of the Grand River, Kina Gbezhgomi Child and Family Services, Kunuwanimano Child and Family Services, Native Child and Family Services of Toronto, and Nog-Da-Win-Da-Min Family and Community Services.

i. Moratorium:

As outlined in a previous section of this paper, to become a “fully mandated” Child and Family Services agency, authorized to provide protection as well as prevention services, an agency must be designated by the Minister of Community and Social Services through subsection 15 (2) of Part I of the *Child and Family Services Act*. At present, the pre-mandated agencies are facing a significant barrier to the development and delivery of culturally competent child welfare services by way of a moratorium—provincial officials have stated that the Ministry of Community and Social Services will not negotiate any new agency designations at this time. As noted earlier, this is contrary to the Ministry's own *Aboriginal Child Welfare Review*, as well as being in direct opposition with the Part X of the province's *Child and Family Services Act*.

The moratorium on new designations is having numerous impacts on First Nations in the province. In particular, it has a number of implications for the Aboriginal pre-mandated agencies. The most obvious impact of the moratorium is that the pre-mandated agencies are effectively being prevented from developing, which is contrary to the province's own legislation. Part X of Ontario's *Child and Family Services Act* outlines that a Native community may designate a body as a child and family service authority, and upon this designation and the request of the Native community, the Minister of Community and Social Services shall enter into negotiations with the child and family service authority for full provision of child welfare services. As well, the 1965 Indian Welfare Agreement, the bilateral agreement between the province of Ontario and Canada was intended to support First Nations to develop our own child welfare standards, policies, and programs. In addition to these pieces of legislation, the federal government's *Inherent Right policy* (1995) states that the Government views the scope of Aboriginal jurisdiction or authority as extending to matters internal to the group, integral to Aboriginal culture, including social services such as child welfare. The federal government position follows from the recommendations of the Royal Commission report (cited in an earlier section of this paper). Clearly, the moratorium on development of Native Child and Family Service agencies is in direct contrast with these federal and

provincial statutes, agreements, and research recommendations.

The gravest impact of the moratorium, however, is not its disservice to legislation or to First Nations aspirations to regain control and jurisdiction—the moratorium on development of Aboriginal agencies is putting First Nation children in serious danger. Because of overlaps and duplications of services, and lack of clear differentiation of which agency is authorized to provide which service, there is a general lack of clarity with respect to roles of the agencies involved. For example, a mainstream Children’s Aid Society may assume the pre-mandated agency is providing one of the required services to a family, while the pre-mandated agency may assume it is the CAS who is providing the service. Oftentimes, the mandated agencies agree that the Aboriginal agency would be better equipped to deliver the culturally appropriate service, and may assume the Aboriginal agency will accept that responsibility. In these cases, the pre-mandated agency may desire the responsibility for the service, but not have the authority through the legislation to provide it. Regardless of the specifics of each instance, it has been well documented in inquests that this lack of clarity can seriously endanger children and families.

Well-developed protocols among the agencies may help alleviate the lack of clarity around responsibility, authority, and service provision, however there are no enforcement mechanisms for these protocols even once they are put in place. However helpful they may be, protocols are not legally binding, so adherence to them is left to the initiative and good faith of the service providers. Unfortunately, on a number of occasions, whether intentional or not, this initiative has been found to be lacking.

Another impact the agencies face in terms of the moratorium is the eroding trust of the First Nations they serve. With the moratorium in place, the government of Ontario has effectively prevented the agencies from meeting community needs. The agencies are unable to deliver the services the communities request, and are likewise unable to provide services as directed by community leadership. In these instances, the community members and leadership may not understand why the agency is unable to provide the services, and as a result may withdraw their support for the agency. This has, in fact, been the case on a number of occasions, and has not contributed to an environment where the agencies can work effectively to keep their children safe.

The moratorium has also perpetuated an arrangement that is not cost effective. The Ministry of Community and Social Services is funding an Aboriginal agency to do what is essentially child welfare work, while at the same time funding a Children’s Aid Society to do the much the same, with only a limited extent of additional services. Given that the CAS cannot provide as culturally competent and appropriate services, and thereby not be as effective as an Aboriginal agency could, the current arrangement is just not effective in any way, including economically.

Finally, by continuing to enforce the moratorium, Ontario is contributing to First Nations' eroding confidence in the mainstream government in terms of its ability to deal effectively with Aboriginal people. Our Native agencies and communities do not observe the government negotiating services in good faith, but rather see Ontario acting to prevent any further development of the Aboriginal agencies. It is certainly time for the provincial government to give practical recognition to their research and policy statements, and act on their good faith by supporting the agencies to build their capacity and become fully mandated societies.

With the moratorium in place, it remains that Aboriginal children continue to be lost to the mainstream child welfare system at an increasing and alarming rate. For example, in the areas served by Kuuwanimano Child and Family Services, which is Nishinawbe-Aski Nation territory, the Chiefs have noted alarming losses of children from their territory to southern areas of the province, outside the province, and even outside of Canada by the child welfare system.¹⁶ Children are being lost to their communities and culture despite recognition in the provincial government's own legislation recognizing the absolute necessity for cultural continuity in services. The current arrangement is contrary to all evidence demonstrating the route to effective and appropriate services, it is not cost effective, it is contributing to eroding trust in First Nations, and eroding trust in the provincial government's ability to work effectively and in good faith with First Nations.

Integral to this issue, it is important to remind the Ministry of Community and Social Services that First Nations leadership have repeatedly directed mainstream governments to respect their authority in the field of child welfare, and to work with First Nations to reach our common goals. We share with provincial and federal governments the goal of providing quality services to children and families, and would like to work in partnership with MCSS to see that our agencies are developed to best address our child and family service needs. The All Ontario Chiefs in Assembly have directed, through Resolution #00/17, that the moratorium on designation of new Native Child and Family Service agencies be lifted. The Association of Native Child and Family Service Agencies of Ontario, on behalf of our pre-mandated membership, is certain that lifting the moratorium would be an important demonstration of good faith on the part of MCSS. Lifting the moratorium would demonstrate, in concrete and practical terms, the province's commitment to working with First Nations to protect our children.

¹⁶ For further information on the phenomenon of northern First Nation children being moved from their homes to non-Native communities in the south, this paper refers the reader to Philips, M. (2001, May 28). Child-welfare law blamed for whisking natives south. [The Globe and Mail](#).

Recommendations:

1.1

that the moratorium on designation of new Native Child and Family Service agencies be lifted based on the information presented above;

1.2

that the Ministry of Community and Social Services release their final version of the Aboriginal Child Welfare Review, so they may no longer use the delay of release of the report as an pretext to prevent further designations of Aboriginal agencies;

1.3

that a transitional period be identified where the Ministry of Community and Social Services will provide clear guidelines on the process of becoming mandated, and transitional funding for the pre-mandated agencies to adequately develop into fully mandated agencies.

ii. Aboriginal Units in Mainstream CASs

At the same time that Native agencies are being prevented from further development, a number of the mainstream Children's Aid Societies have opened *Aboriginal units* within their agencies. At the least, this seems an imprudent attempt at improving services for Aboriginal children and families, given there have been previous experiments with opening such units (including Algoma CAS, Toronto Catholic CAS, and Sudbury-Manitoulin CAS), all of which have failed.

One of the difficulties with Aboriginal Units is that the mainstream Children's Aid Societies have assumed that hiring Native staff for the units will improve the level of cultural acceptance and culturally appropriate services. However, they have failed to realize that in this type of arrangement, the Native staff are still restricted to working within the same Anglo-European orientation to service. Within the confines of the mainstream system, the paradigm remains the same regardless of the cultural heritage of the workers. In the example of the Sudbury-Manitoulin Aboriginal Unit, Native workers were recruited and left the Aboriginal agency (Kina Gbezhgomi Child and Family Services) with hopes of being able to provide more advanced services to their people by working for an agency with its full protection mandate. At the mainstream agency, as they were soon frustrated with trying to function within an environment that stifled their cultural approach to working with their people, and decided they could not continue to work in an environment that compromise their ways, their beliefs, and their principals. They returned to Kina Gbezhgomi within a very short time period.

The workers from Kina Gbezhgomi Child and Family Services decided to leave the mainstream agency to return to an environment where they could practice their cultural ways. In the case of Toronto Catholic Children's Aid Society's first attempt at a Native Unit, the agency fired the two Native workers that had been recruited because of the different approach to problems when working with children and families. The Native workers at Toronto Catholic CAS attempted to work in culturally appropriate ways, and this did not fit with the non-Native paradigm of the agency. This agency has made further attempts at Native Units since the first failed attempt, and none have been successful. In the words of Kenn Richard, Executive Director of Toronto Native Child and Family Services:

“[Toronto Catholic Children's Aid Society] have recruited staff from [Toronto Native Child and Family Services], but neither has stayed beyond a few months. In our experience here the CAS may hire Native staff, but it is business as usual with regard to the approach to services. Native staff soon figure this out and either leave, get co-opted, or get fired.”

Yet another problem with the formation of Aboriginal Units is the fact that mainstream agencies have approached the formation of the units with the mistaken belief that the Native populations they serve would be more accepting of Aboriginal workers, as opposed to non-Native workers. This, however, has also not been the case. The fact is that the Aboriginal workers have been even more resented by the communities, given that they are confined to the mainstream system and thereby restricted to providing services that are not congruent with community values, traditions, and culture. The Aboriginal workers are expected by the communities to behave in ways consistent with cultural norms and systems, and if they do not do so, the communities feel deceived and dishonoured and react accordingly.

Given that *Aboriginal Units* have been ineffective, and the overwhelming research that supports *Aboriginal agencies*, the Ontario Association of Children's Aid Societies has communicated to the Association of Native Child and Family Services Agencies in Ontario that they support the further development of Aboriginal agencies rather than mainstream Aboriginal Units. However, their statements of support for the Aboriginal agencies have not been made formal, and therefore hold little weight for pre-mandated agency negotiations with the province.

At the minimum, it is counter-productive to quality child welfare that Native agencies are being prevented from developing, whereas the ineffective and inappropriate Aboriginal units in mainstream agencies are being allowed. In addition to being counter-productive, this method of addressing Native child welfare goes against decades of research recommendations, does not recognize the spirit and intent of Part X of the *Child and Family Services Act*, is not supportive of the gains First Nations have made in delivering our own services, does not resolve the issue of cross-cultural practice, and does not give recognition to First Nations socio-political mandate. It is *clearly* not the way to meet the needs of First Nation children and families.

Recommendations:

2.1

that the Ontario Association of Children’s Aid Societies (OACAS) make a public statement in support of the development of Aboriginal agencies rather than Aboriginal Units in mainstream agencies;

2.2

that the Ministry of Community and Social Services (MCSS) send directives to their regional offices to the effect that they are not to support the development of Aboriginal Units in mainstream agencies.

iii. Relationships with ministry representatives:

As has been outlined previously, the pre-mandated agencies work with a number of mainstream Children’s Aid Societies. They also, therefore, work with a number of regional offices of the Ministry of Community and Social Services. These regional offices are semi-autonomous, which can lead to disparities, conflicts and disputes, and complicate general issues of authority. For example, the regional office of MCSS in Sudbury has supported the development of the Aboriginal Unit in Sudbury-Manitoulin CAS, whereas the regional office in Toronto takes a different position, and would not be likely to support such units. Instead, the Toronto regional office has been more supportive of the development of the Aboriginal agency.¹⁷

To ameliorate the disparities and conflicts, there are other models that could be put in place to negotiate designation of new agencies once the moratorium is lifted, and to assist with problem resolution across the regions when difficulties arise. The pre-mandated Child and Family Services agencies in Ontario recommend that an Aboriginal Specialist position be put in place at the Ministry of Community and Social Services as a central contact for regional issues that may arise, including operations and finance, interpersonal challenges, agency development and designation, and all other areas that may require problem resolution. The agencies also recommend that the regional offices report to the Aboriginal specialist all decisions made in regards to operations, finance, and other elements of agency development and operations, so the Aboriginal Specialist can be used as a means to ensure consistency across the regions.

The Aboriginal Specialist should be experienced and familiar with Aboriginal communities, realities, authority systems, and cultures, and be well versed in the development of Aboriginal child welfare in Ontario. To ensure the Specialist is appropriate for the position, the pre-mandated agencies recommend that the Association of Native Child & Family Service Agencies of Ontario be an active

¹⁷ Information provided by A. McGregor, Executive Director of Kina Gbezhgomi Child and Family Services, and K. Richard, Executive Director of Native Child and Family Services of Toronto.

participant in the selection committee for the hiring of this person. A well-chosen Aboriginal Specialist in place at the Ministry of Community and Social Services would help facilitate and allow pre-mandated Aboriginal Child and Family Services Agencies to develop into fully mandated Child and Family Service authorities by helping to eliminate regional disparities and complications.

Recommendations:

3.1

that the Ministry of Community and Social Services hire an Aboriginal Specialist to:

- (i) perform a consultative function and make recommendations to regional offices;**
- (ii) liaise with the Association of Native Child and Family Services Agencies of Ontario;**
- (iii) advise the pre-mandated Aboriginal Child and Family Services Agencies on the process of becoming fully mandated, and**
- (iv) to help ensure consistency across regional offices of the Ministry of Community and Social Services**

3.2

that the Ministry of Community and Social Services include the Association of Native Child and Family Services Agencies of Ontario on the selection committee for the hiring of the Aboriginal Specialist.

iv. Relationships with 'mainstream' CASs:

Children's Aid Societies in Ontario are mandated to ensure the best interests, protection and well-being of children. According to the *Child and Family Services Act*, services to First Nation children and families should be "provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family" (R.S.O. 1990, c. C.11, s.1.). As a measure to work toward providing culturally appropriate services to First Nations not served by mandated Native agencies, it is imperative that mainstream CASs work in a collaborative way with the pre-mandated Native child and family services agencies. This kind of working relationship has not been, and is not now, always the case.

Many First Nations have developed protocol agreements with the Children's Aid Societies that serve their communities. In some instances, these protocol arrangements have been helpful in ensuring that First Nation families and children receive more culturally appropriate services, by helping to ensure greater involvement by the First Nation agencies and community. However, it has often been the case that protocol agreements are filed and "set aside on the shelf"—they have not been put into actual practice, and have had no "teeth" when it came to the delivery of services on reserve. This is to some extent understandable, as the CASs

are bound by provincial legislation, and at this point cannot justifiably depart from the CFSA based on protocol agreements that have no status in law. For this as well as other reasons, the pre-mandated agencies do not believe that protocol arrangements are the best way to ensure appropriate child welfare services for our communities. However, until alternate arrangements have been put in place, we recommend that MCSS work with the ANCFSAO to explore ways that protocol agreements may be more effective. Protocol agreements must be respected by the mainstream agencies, to improve working relationships, and to demonstrate respect and acknowledgement of First Nation community leadership.

In terms of working relationships, the pre-mandated agency staff have often been called upon by the mainstream workers to fill a 'case aid' function on child welfare cases. The mainstream agencies have utilized the workers from the pre-mandated Native agencies to deliver court documents, serve papers, deliver diapers, and perform a host of other child welfare case aid functions. The pre-mandated agencies face a number of concerns resulting from this practice. First, it raises issues of management and control, in that it is presumptive for the mainstream agencies to assume they have the authority to direct the pre-mandated agency staff. As illustrated in an earlier section, pre-mandated staff function in a multi-authority environment, in that they are accountable to the agency management, and the agency in turn is accountable to their board as well as First Nation community leadership and tribal authority. Mainstream Children's Aid Societies must recognize that they are not authorized to act as management for the pre-mandated agency staff.

In some instances, the services the mainstream workers have requested the pre-mandated agency staff perform have been inappropriate, especially given the pre-mandated staff do not have the authority in terms of provincial law to carry out protection services. When working together with the mainstream agency, the pre-mandated agency staff should be supported in their own roles, and not be seen as simply 'clerks' for the mandated Children's Aid Society. It is often difficult for the pre-mandated agency staff to refuse to perform some of the inappropriate functions, however, because of their desire to deliver the full range of culturally appropriate child welfare services to their children and families. Pre-mandated agency staff, and sometimes the mainstream agency staff as well, are aware that Aboriginal agency staff are better prepared to provide culturally competent services, and this can contribute to 'pushing the boundaries' on what services may or may not be defined as protection service. This practice may result in liability issues for both the mainstream CAS and the Aboriginal pre-mandated agencies, and must be addressed.

When the mainstream Children's Aid Societies are working with and/or utilizing the pre-mandated agency staff, due to a lack of protocols, the practice has contributed to a lack of clarity regarding which agency is responsible for which services. As was explored earlier in this paper, the pre-mandated agencies stress the importance of protocol agreements as a means to ensure that children and families receive the services they require. The current state of affairs is putting our children at grave

risk, because in the absence of clear protocols, including service delivery protocols and case management protocols, it isn't clear who is providing which services to children, and who is responsible in which areas for ensuring their safety. In this state of affairs, children are "slipping through the cracks" and are at the risk of serious danger.

Recommendations:

4.1

that a province-wide protocol template be developed by the Association of Native Child and Family Services Agencies in Ontario, sanctioned by the Ontario Association of Children's Aid Societies, and the Ministry of Community and Social Services.

v. Funding:

The pre-mandated agencies are delivering a broad range of prevention, support, and direct intervention services for their First Nation children, families, and communities. These services are funded by way of the Ministry of Community and Social Services, Children's Services, and other funding sources. The Ministry of Community and Social Services base funding has never increased—it has been frozen at its current level with only minor pay equity adjustments. As this funding is minimal, the agencies would not have been able to remain operational without exploring all other potential funding sources. Without securing short-term project funding and grants from other sources, the agencies would have been forced to close the doors on the programs that have been helping to rebuild strong First Nations families and communities, and helping to ensure the safety of their children.

On a positive note, the diversified funding base has contributed to increased flexibility. However, short-term project and program funding is also far less reliable for sustainability. There is no formula for funding, and no consistency over time. Each year, funding must be re-negotiated, and there is no sense of security for sustained funding. Even with the diversified funding sources, it remains that the overall funding level for the pre-mandated agencies is insufficient. Under-funding contributes significantly to the challenges the agencies face, as it restricts them in the range of services they are able to provide. In other words, lack of funding presents a barrier for the agencies by restricting their ability to provide the essential services for keeping the children they serve safe and protected. The agencies require *core annualized funding* to meet their service demands—to enable them to provide high-quality, culturally congruent programs and services that will keep children and families safe.

The pre-mandated agencies are in various stages of development, and are working toward full authority for child welfare prevention and protection services. To reach their full potential, the agencies require *adequate development funding* in terms of capacity building, strategic planning, negotiations, and access to capital. As has been explored in earlier sections of this paper, the Aboriginal agencies are the most

suited to deliver the full range of prevention and protection services, and can best ensure the safety of their own First Nation children, families, and communities. To facilitate the delivery of the full range of culturally appropriate, quality services, sufficient funding is required for all areas of agency development.

Recommendations:

5.1

that the Ministry of Community and Social Services provide sufficient funding for transition resource needs;

5.2

that the Ministry of Community and Social Services provide annual core funding to meet agency service demands.

vi. Capacity Building:

The Ministry of Community and Social Services' *Aboriginal Child Welfare Review* report cited numerous recommendations in terms of the importance of training as integral to the ability to provide high-quality child welfare services to children and families. Given that training is imperative to providing adequate and effective levels of service, the report recommended that the Ministry of Community and Social Services "help ensure that the training for child protection workers and supervisors encompass all of the child protection competencies outlined in the provincial training program". Without access to training and capacity building for Aboriginal agencies' boards, management, and staff, the safety of children is put at risk. Neither the Aboriginal agencies, nor the mainstream agencies want to see children put at risk, and the Ministry of Community and Social Services has stated their commitment to keeping children safe, so it follows that access to training the pre-mandated agencies should be mandatory.

Presently, the pre-mandated agencies have serious concerns regarding staff being able to access the Ministry of Community and Social Services' training modules. The pre-mandated agencies have been advised that their staff may access the training for a fee, and only if there are spaces available in sessions that have not already been filled by staff of mandated Children's Aid Societies. Some agencies cannot meet the fee requirements, and in other instances travel is a significant challenge to attending the training sessions. As well, the pre-mandated agency staff have faced closed doors because the training sessions were full. As the pre-mandated agencies remain committed to providing quality services to our First Nation children and families, it is imperative that the staff be able to access training seminars and materials afforded to others working in the field.

Related to this concern, the pre-mandated agencies have concerns regarding equal access to information that would facilitate their capacity building. As the pre-mandated agencies do not have provincial mandate, they do not receive the same

level of flow of information from MCSS, especially in terms of updates on the child welfare reform initiatives. As well, the pre-mandated agencies are not members of the Ontario Association of Children's Aid Societies (OACAS), and therefore do not receive the OACAS newsletters, and related information. The pre-mandated agencies require access to all pertinent information that would assist their capacity building, at a level equivalent to that afforded the mandated Children's Aid Societies.

Thus, the pre-mandated agencies recommend that the Ministry of Community and Social Services provide mandatory training for pre-mandated agency staff and Board members at a level equivalent to that offered to mandated agency staff and Board members. To reach this goal, the pre-mandated agencies recommend that the Ministry run concurrent training in Native communities until all the pre-mandated agency staff have been trained. This training should continue to run at regular intervals, so that new staff could also receive the training as they come on-board the agencies.

The pre-mandated agencies further recommend that the Ministry of Community and Social Services support the agencies' capacity building by providing sufficient funding so that the agencies can access required information, training, and capacity building materials.

Recommendations:

6.1

that the Ministry of Community and Social Services provide concurrent training in Native communities for pre-mandated agency staff and Board members at a level equivalent to that offered to Children's Aid Society staff and Board members.

6.2

that the Ministry of Community and Social Services provide funding to the pre-mandated agencies to facilitate their access to information, training, and capacity building.

vii. Retaining staff:

Mainstream Children's Aid Societies, with their full provincial mandate, are able to offer higher salaries and more comprehensive benefit packages than the pre-mandated Native Child and Family Service agencies. As well, with their protection mandate, they offer the opportunity for greater authority in practice. These can be very tempting attributes—they can be especially tempting to those working in the multi-challenging environment of Native child welfare. Increasingly, the pre-mandated Native Child and Family Services agencies are losing their trained and knowledgeable staff to mainstream agencies, simply because the Native agencies cannot compete when it comes to salary levels, benefits, authority levels, and working environments.

Also, at the same time that Native agencies are being prevented from further development (and thus being prevented from being able to offer the salaries and benefits of a designated agency), a number of the mainstream Children's Aid Societies have opened *Aboriginal units* within their agencies. Those mainstream agencies have been actively recruiting Native workers to staff those units, a factor which has compounded upon the loss of staff faced by the pre-mandated Native agencies.

The pre-mandated Native Child and Family Service agencies often face harsh and highly stressful working environments. Burnout levels are high--it is enough of a challenge to retain our experienced workers given the unique stresses they face in their day-to-day work. The additional challenges our agencies face in terms of retaining staff, caused by lower benefit and pay-scales, the moratorium on agency development, and active recruiting by mainstream agencies, are unreasonable and unjust. The pre-mandated agencies want to work with the provincial government to alleviate the challenges we face in retaining our experienced and culturally competent staff. We would like to work in partnership with the Ministry of Community and Social Services to find ways to support our staff in delivering competent and culturally appropriate child welfare services to our First Nations children and families, within our First Nation agencies. This would include funding to provide adequate remuneration to agency staff and management, by bringing the pay scales up to a level comparable to the mandated Children's Aid Societies.

Recommendations:

7.1

that the Ministry of Community and Social Services provide sufficient funding for adequate pay scales for agency staff and management.

7.2

that the Ministry of Community and Social Services work with the Association of Native Child & Family Service Agencies of Ontario to ensure all required supports for pre-mandated agency staff are put in place to facilitate the delivery of competent and culturally appropriate child welfare services within our Aboriginal agencies.

Section D: Concluding Remarks

The Association of Native Child and Family Services of Ontario considers the development of competent, culturally appropriate child welfare programs and services to be a high priority. The Association of Native Child and Family Services Agencies in Ontario and the mainstream Children's Aid Societies share the concern of ensuring the safety and protection of our next generations, and understand that high-quality, appropriate services will support their safety. Ontario's Ministry of Community and Social Services has also repeatedly voiced their commitment to ensuring the safety of all children in the province.

This paper has examined a number of the barriers faced by the pre-mandated Aboriginal Child and Family Services Agencies to the maintenance and further development of culturally competent and appropriate services, and has offered recommendations on how we may work with governments and other service providers to address these barriers. The pre-mandated agencies believe that the Ministry of Community and Social Services, by following these recommendations, can help facilitate the development and delivery of high-quality, culturally competent child welfare services to the First Nations we serve.

Summary of Recommendations

Recommendations:

1.1

that the moratorium on designation of new Native Child and Family Service agencies be lifted based on the information presented above;

1.2

that the Ministry of Community and Social Services release their final version of the Aboriginal Child Welfare Review, so they may no longer use the delay of release of the report as an pretext to prevent further designations of Aboriginal agencies;

1.3

that a transitional period be identified where the Ministry of Community and Social Services will provide clear guidelines on the process of becoming mandated, and transitional funding for the pre-mandated agencies to adequately develop into fully mandated agencies.

2.1

that the Ontario Association of Children's Aid Societies (OACAS) make a public statement in support of the development of Aboriginal agencies rather than Aboriginal Units in mainstream agencies;

2.2

that the Ministry of Community and Social Services (MCSS) send directives to their regional offices to the effect that they are not to support the development of Aboriginal Units in mainstream agencies.

3.1

that the Ministry of Community and Social Services hire an Aboriginal Specialist to:

- (v) perform a consultative function and make recommendations to regional offices;
- (vi) liaise with the Association of Native Child and Family Services Agencies of Ontario;
- (vii) advise the pre-mandated Aboriginal Child and Family Services Agencies on the process of becoming fully mandated, and

(viii) to help ensure consistency across regional offices of the Ministry of Community and Social Services;

3.2

that the Ministry of Community and Social Services include the Association of Native Child and Family Services Agencies of Ontario on the selection committee for the hiring of the Aboriginal Specialist.

4.1

that a province-wide protocol template be developed by the Association of Native Child and Family Services Agencies in Ontario, sanctioned by the Ontario Association of Children's Aid Societies, and the Ministry of Community and Social Services.

5.1

that the Ministry of Community and Social Services provide sufficient funding for transition resource needs;

5.2

that the Ministry of Community and Social Services provide annual core funding to meet agency service demands.

6.1

that the Ministry of Community and Social Services provide concurrent training in Native communities for pre-mandated agency staff and Board members at a level equivalent to that offered to Children's Aid Society staff and Board members;

6.2

that the Ministry of Community and Social Services provide funding to the pre-mandated agencies to facilitate their access to information, training, and capacity building.

7.1

that the Ministry of Community and Social Services provide sufficient funding for adequate pay scales for agency staff and management;

7.2

that the Ministry of Community and Social Services work with the Association of Native Child & Family Service Agencies of Ontario to ensure all required supports for pre-mandated agency staff are put in place to facilitate the delivery of competent and culturally appropriate child welfare services within our Aboriginal agencies.

References

- Association of Native Child and Family Services Agencies of Ontario. (2000). Child Welfare Reform Initiatives: Issues and Recommendations [Unpublished paper]. Thunder Bay: ANCFSAO.
- Armitage, A. (1993). Family and child welfare in First Nation communities. In B. Wharf (Ed.), Rethinking Child Welfare in Canada (pp.131-171). Toronto: McClelland & Stewart Inc.
- Canada. (1964). Memorandum of Agreement Respecting Welfare Programs for Indians.
- Canada. (1982). Constitution Act.
- Canada. (1985). Indian Act.
- Canada. (1995). Federal Policy Guide: Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. Ottawa: Indian and Northern Affairs Canada.
- Canada. (1996). Minister of Supply and Services Canada. Report of the Royal Commission on Aboriginal Peoples. Ottawa: Canada Communication Group Publishing.
- Casimel v. ICBC* [1994] 2 C.N.L.R. 22 (B.C.C.A.)
- Corbiere v. Canada*, [1999] 2 S.C.R.
- Department of Indian and Northern Affairs. (1989). Indian Child and Family Services Management Regime: Discussion Paper. Ottawa.
- H.(D.) v. M.(H.)* [1999] 1 S.C.R.
- Indian and Northern Affairs Canada. (1997). Implications of First Nations Demography. Ottawa: Research and Analysis Directorate.
- Johnston, P. (1983). Native Children and the Child Welfare System. Toronto: Canadian Council on Social Development in association with James Lorimer & Co.
- Miller, L. (1999). First Nations Child Welfare Policy in Ontario: From Colonialism to New Partnerships? Unpublished M.S.W. research project, McMaster University, Hamilton.
- OISSC & ANCFSAO. (May 2001). "Terms of Reference: Band Representative Program Review" [unpublished paper]. Toronto: OISSC & ANCFSAO.
- Ontario. (1999). "Aboriginal Child Welfare Review" [unpublished paper--not officially released]. Toronto: Ministry of Community and Social Services.
- Ontario Indian Social Services Council (1995). "A chronology: First Nations child welfare in Ontario" [unpublished paper]. Toronto: OISSC

Philps, M. (2001, May 28). Child-welfare law blamed for whisking natives south. The Globe and Mail.

Technical Assistance and Planning Associates. (1979). A Starving Man Doesn't Argue: A Review of Community Social Services to Indians in Ontario. Toronto: TAP Associates Ltd.

Technical Assistance and Planning Associates. (1980). Community Care: Toward Indian Control of Indian Social Services. (Report prepared in conjunction with the Tripartite Task Group on Social Services). Toronto: TAP Associates Ltd.