



Commission to Promote
Sustainable Child Welfare

Commission de promotion de la viabilité
des services de bien-être de l'enfance

Aboriginal Child Welfare in Ontario

A Discussion Paper

July 2011

The Commission to Promote Sustainable Child Welfare was created by the Minister of Children and Youth Services to develop and implement solutions to ensure the sustainability of child welfare. The Commission reports to the Minister and will complete its work in the fall of 2012. Further information is available from the Commission's website: www.sustainingchildwelfare.ca

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EXECUTIVE SUMMARY

History

Aboriginal children, families, and communities in Ontario and across Canada live in the long shadow of history.

Starting in the 1870s under a Canadian government policy known as “aggressive assimilation”, approximately 150,000 aboriginal, Inuit, and Métis children across the country were placed in residential schools, often at great distances from their families and communities. The failure of that program is well-recognized today.

Beginning in the late 1950s, as the residential schools were being phased out, large numbers of Aboriginal children were removed from their homes and placed for adoption in non-Aboriginal families. Commonly referred to as the “Sixties Scoop”, this practice was discontinued in the mid-1980s, although its impact is still felt today. In Ontario, attention had shifted to modifying Child Welfare legislation and practices to recognize the distinct interests of Aboriginal children. Under the Child and Family Services Act (CFSA), Aboriginal CASs were designated in areas of Ontario with large Aboriginal populations and various other provisions were introduced.

Arguably, the impact of history has been devastating to many Aboriginal communities.

The combination of colonization, residential schools, the Sixties Scoop, and other factors have undermined Aboriginal cultures, eroded parenting capacity, and challenged economic self-sufficiency. Many Aboriginal people live in communities that experience high levels of poverty, alcohol and substance abuse, suicides, incarceration rates, unemployment rates, and other social problems. Aboriginal children are disproportionately represented in the child welfare system and in the youth justice system. Suicide rates for Aboriginal children and youth surpass those of non-Aboriginals by approximately five times. Aboriginal youth are 9 times more likely to be pregnant before age 18, far less likely to complete high school, far more likely to live in poverty, and far more likely to suffer from emotional disorders and addictions.

In fall 2009, the Commission to Promote Sustainable Child Welfare set out a number of principles that would guide its work over its three year mandate. Among these principles was the commitment to *Respect diversity – including, in particular the unique considerations relating to Aboriginal child welfare*. In June 2010, the Commission released its First Report which set out the strategy through which it would promote the sustainability of child welfare throughout the province. A key pillar in this strategy was to *Advance Aboriginal approaches to child welfare*.

Since beginning its work in fall 2009, the Commission has listened to the voices of Aboriginal people across the province to understand their history, to build an appreciation of the unique challenges facing their children and youth, and to hear about approaches that will make a positive difference. We have been impressed by clarity and conviction among Aboriginal people that there is a need to move beyond the mistakes of the past and build a very different kind of child welfare system to meet the needs of today’s Aboriginal communities. This paper tells the story of what the Commission has learned to date and sets out our thinking about what the path

forward could look like. This paper is not the Commission's final work on Aboriginal child welfare. Rather, it is the distillation of our findings to date and our emerging conclusions. It is being released as a basis for feedback and further dialogue. After receiving feedback, the Commission will formalize recommendations to the Minister of Children and Youth Services and will identify priority areas for further work.

Aboriginal People in Ontario

To suggest that there is one group of people in Ontario defined as "Aboriginal" misrepresents the diversity of nations, cultures and languages in the province. There are 134 First Nations as well as Métis and Inuit populations in Ontario.

The 2006 census reported that roughly 2% of Ontario's population or approximately 240,000 people identified themselves as Aboriginal. 65% identified themselves as status Indians and 30% identified themselves as Métis. Approximately 40% of the Aboriginal population live in northern Ontario, with the largest share in the northwest. Across southern Ontario, the Aboriginal community is highly urban, with considerable numbers of people living in the cities of Ottawa, Greater Toronto, Hamilton, Windsor, and London. More than 75% of First Nations people living off-reserve live in urban areas.

Children and youth make up a very large proportion of Ontario's Aboriginal population. According to the 2006 census, children and youth make up 36% of the total Aboriginal population in the province. Between the 2001 and 2006 census periods, the Aboriginal child and youth (0-19) population increased by 20% while the non-Aboriginal child and youth population increased by less than 1%.

The Current Landscape of Aboriginal Child Welfare in Ontario

Currently, the policy context for child welfare services for Ontario's Aboriginal children is set out through the *Child and Family Services Act* – the same Act that applies to all other Ontario children. Within this context, child welfare services to Aboriginal children are delivered through several different arrangements. Aboriginal families can be served through one of the six designated Aboriginal CASs, through one of the forty-seven mainstream CASs, or through inter-agency service agreements between CASs.

The legacy of residential schools, the Sixties Scoop and the part played by CASs in removing children from their communities all contribute to a certain degree of mistrust and resentment within many First Nations communities towards child welfare service providers. These dynamics and others often make it challenging for CASs to recruit and maintain qualified staff and make it difficult for child welfare workers to build strong helping relationships with families who need support.

Providing child welfare services in remote communities is especially difficult for the Northern designated Aboriginal CASs. Transportation is a major challenge in the North and accessing those isolated communities is time consuming and expensive. Staff recruitment and retention are also particularly challenging especially of qualified staff from their own communities. The

shortage of available housing makes it difficult for agencies to hire staff from outside the community and creates difficulties in finding suitable foster homes. The lack of other support services – both children’s services and other social programs – is common in small and remote Aboriginal communities. This impacts the performance and quality of CAS service and increases the burden on agencies operating in that environment.

Aboriginal cultures developed over thousands of years and revolve around strong communities and strong families. Traditional and customary child care practices and teachings remain very important within Aboriginal communities. These assets are central to fully realizing an approach to the welfare of aboriginal children and youth that is both culturally relevant and effective. However, many Aboriginal beliefs, practices and traditions are not adequately recognized in mainstream child welfare practices and policies as key components of raising a child and achieving positive outcomes for children.

In examining Aboriginal child welfare, the Commission applied a framework that it had used to evaluate the overall Ontario child welfare system. This framework and the accompanying insights are set out in the Commission’s working paper, *Jurisdictional Comparisons of Child Welfare System Design*. The framework examines five features of system design: governance structures, policies, configuration, funding approach, and accountability and performance measurement. The Commission’s conclusion is that Ontario’s child welfare system does not meet the test of a strong system for meeting the needs of Aboriginal children on any of these five system features.

Realizing a Child Welfare System that Works for Aboriginal Children and Youth

Aboriginal peoples and their leaders should be supported in defining how services to their children and communities will be delivered. At the same time, collaboration among all stakeholders in the system is necessary in order to bring about a sustainable and improved child welfare system. The issues and challenges faced by the sector, by both Aboriginal and mainstream CASs, require cooperation by many parties.

In this paper, the Commission identifies a number of areas that we believe will be useful to consider for further dialogue and action. They have been grouped into the four categories that are guiding the Commission’s overall strategy for sustainable child welfare, as set out in its First Report:

1. Reconfigure CAS structures and service delivery;
2. Propose changes to the funding approach for child welfare;
3. Develop a new approach to accountability and system management; and
4. Strengthen and improve service delivery.

Reconfigure CAS Structures and Service Delivery

Work on reconfiguration could include the following activities.

1. *Developing a strategy for the service and system configuration of Aboriginal child welfare.*

2. *Identifying and acting on short-term inter-agency priorities to support efficiency and enhance service delivery.*
3. *Making greater use of service agreements between mainstream CASs and designated Aboriginal CASs.*

Changing the Funding Approach for Aboriginal Child Welfare

A changed funding approach could entail the two efforts set out below.

4. *Undertaking a separate project to develop a distinct funding approach for designated Aboriginal CASs.*
5. *Ensuring that designated Aboriginal Bands and communities have the resources needed to maintain Band Representatives and other required services to represent the Band in matters involving child welfare services to children from their communities.*

Developing a New Approach to Accountability and System Management

Improving the Accountability and Performance Management of Aboriginal child welfare requires a number of processes.

6. *Reviewing child welfare regulations, policies, standards and directives to identify where exemptions and/or modifications can be utilized to promote more appropriate services to Aboriginal children and families within their own communities.*
7. *Aligning the expectations and demands that the provincial government and Aboriginal leaders each place upon Aboriginal agencies.*
8. *Clearly identifying a locus of responsibility for Aboriginal services including but not limited to child welfare within the Ministry of Children and Youth Services.*
9. *Establishing an approach to performance improvement for all CASs that service Aboriginal children that includes distinct outcomes and performance indicators and other components such as monitoring mechanisms and review processes.*

Strengthening and Improving Service Delivery

Based on its work to date the Commission has developed five potential priority areas regarding service delivery.

10. *Positioning customary care as the preferred option for out-of-home placement of Aboriginal children with temporary ward, agency ward, and crown ward status being used only on an exception basis.*
11. *Making greater use of protocol agreements between mainstream CASs and First Nations communities and their agencies*
12. *Recognizing traditional child care practices and other ceremonies and gatherings as integral components of Aboriginal child welfare.*

13. *Documentation by designated Aboriginal CASs of their child care and child welfare practices*

14. *Development, by Designated Aboriginal CASs, of an inter-agency forum to meet and exchange ideas and practices.*

* * *

Many issues that are manifested in child welfare relate to broader issues of, poverty, healthcare, economic development, education, cultural continuity and self-governance. While changes can be made to the child welfare system in isolation of these issues, systemic and sustainable improvement in Aboriginal child welfare requires changes that extend much more widely. Governments, both Aboriginal and non-Aboriginal, and other leaders need to continue and accelerate their efforts to address these critical issues. *The imperative of confronting issues in the broader context should not, however, be taken as a reason to justify inaction in addressing the need for change in Aboriginal child welfare.*

Creating a sustainable system that maximizes the benefits for Aboriginal children and youth without repeating the mistakes of the past will require a concerted effort by all stakeholders. Most importantly, it will require a respect for the inherent strengths of Aboriginal cultures and a commitment to support Aboriginal people in realizing their goals for their children and their communities.

1. INTRODUCTION

The Commission to Promote Sustainable Child Welfare released its First Report, *Towards Sustainable Child Welfare in Ontario* on June 30, 2010. A Companion Document, entitled *Unique Considerations for Aboriginal Children and Youth*, was published at the same time. The Companion Document highlighted the need to take a different view of Aboriginal child welfare in Ontario than mainstream child welfare. The document articulated the following vision for a system of Aboriginal child welfare in Ontario:

*A modernized child welfare system providing integrated child-focused services fully aligned with the broader network of children's services to improve outcomes for children and youth in which **Aboriginal children, whether on-reserve or off-reserve will have access to services that reflect their needs and are delivered in ways that respect their culture, heritage, and traditions.***

Building on this vision and the ideas contained in the First Report and the Companion Document, this paper looks at the challenges facing Aboriginal children, families, and communities and represents the Commission's commitment to developing an Aboriginal child welfare sector that reflects those unique considerations.

Recognizing the context of Aboriginal child welfare is crucial if sustainable and beneficial change is to be realized in the sector. The provision of child welfare services to Aboriginal children and families is significantly influenced by the socioeconomic and historical conditions experienced by Aboriginal communities. Many issues that are manifested in child welfare relate to broader issues of, poverty, healthcare, economic development, education, cultural continuity and self-governance. While changes can be made to the child welfare system in isolation of these issues, systemic and sustainable improvement in Aboriginal child welfare requires changes that extend much more widely.

The Aboriginal population is comprised of a diverse range of cultures and languages, and the agencies that serve them differ on significant dimensions. There is neither one way of defining Aboriginal peoples nor any single "Aboriginal" view on issues. Rather, the diversity of viewpoints reflects that of the people. While there is much common history, there are many fundamental differences.

Reflecting this diversity, the scope of the Commission's work includes on- and off-reserve First Nations children and their families, Métis children and their families, and Inuit children and families. For the purposes of this paper, however, the Commission has focused predominately on the issues and challenges surrounding on- and off-reserve First Nations children and families. While some of the ideas and discussion presented in this paper are relevant for Métis and Inuit people, we do not claim to have directly addressed the issues of child welfare for Métis and Inuit children and families.

Similarly, while considerable work has been done within Aboriginal communities, agencies, and various governments on the realities and issues of the urban Aboriginal population, further work on urban Aboriginal child welfare may be part of the Commission's future work.

The Commission will continue to listen to Aboriginal leaders and agencies as we focus our work and make recommendations within our mandate. At the same time, to keep our work informed by the broader perspective, we will continue to collaborate with mainstream CASs and others whose insights will add value.

1.1 Purpose of this Paper

The purpose of this paper is twofold. The first purpose is to present a picture of the unique landscape of child welfare services for Aboriginal children and families in Ontario. The second is to set the stage for finalizing the Commission’s recommendations to the Minister of Children and Youth Services while defining the work we will undertake on Aboriginal child welfare over the balance of our mandate. The paper proceeds in the following way:

- In the next section, key developments in the history and evolution of Aboriginal child welfare in Ontario are described in order to acknowledge the long reach of the past into the present and to understand how we arrived where we are today. While residential schools and the Sixties Scoop are frequently referenced as key historic events, the children and parents whose lives were touched by them are the parents, grandparents, and community leaders of today. In order to help build a common understanding and foundation for moving forward, our examination of child welfare to Aboriginal children and families must acknowledge and explore the policies and practices that shaped current child welfare services.
- In the third section, an overview of Aboriginal peoples in Ontario is provided, highlighting some of the distinguishing characteristics of Aboriginal peoples—their children, families, communities, cultures and political organizations—in order to ensure that they are at the centre of any examination of Aboriginal child welfare and that any steps forward are grounded in their diverse lives, views, and experiences.
- In the fourth section, we look at how child welfare services are delivered to Aboriginal children, families, and communities in Ontario today. This entails examining the various service delivery models through which agencies deliver services as well as the challenges of delivering services in the North and the tensions between Aboriginal child care practices and the Ontario child welfare system.
- The later sections examine components of the child welfare system through an “Aboriginal lens” in order to better understand how the current system affects Aboriginal peoples and where improvements in the system are necessary. The fifth section looks at the existing governance structures, policies, configuration, funding approach, and accountability and performance measurement mechanisms that underpin the existing child welfare system. Building on this, the sixth section looks toward the future by highlighting areas where the Commission believes short and long term change is both necessary and possible and relates these areas to the strategy that the Commission has adopted for its work.

2. HISTORY AND LEGISLATIVE CONTEXT

2.1 The Long Reach of History

Any examination of Aboriginal child welfare in Ontario must include attention to the influence of the past. Aboriginal child welfare today is very much a product of history, and Euro-Canadian policies and practices over the past 150 years continue to shape the child welfare landscape today.

2.2 Key Policies and Practices

The Residential School System

From the 1870s until the 1950s, the residential school system served as the main vehicle for state care and custody of Aboriginal children.¹ Under this system, the federal government and various church groups worked in partnership to remove “any vestige of Aboriginality through mandated Aboriginal attendance at residential schools.”² It has been clearly established that the assimilation policies which were the foundation of the residential school system had a devastating impact on Aboriginal children, ranging in age from 5 to 15 years, who were removed from their families and placed in schools that were often great distances from their communities.³

Aboriginal children were denied the opportunity to participate in cultural practices or speak their language and they were separated from their parental and community systems of care. It is well-documented that residential schools “introduced multi-generational dysfunction” with lasting and disrupting effects on “child care knowledge and practices.”⁴

The residential school experience has been described as a “failure where Aboriginal children were frequently inflicted with physical, mental, sexual and spiritual abuse, and many died from disease or malnutrition.”⁵ The resulting impacts of the residential school system continue to adversely affect Aboriginal communities and families today as they strive toward healing and renewal.

The Sixties Scoop

In the late 1940s, increased attention was given to the living conditions experienced in many Aboriginal communities across Canada. Advocacy groups, composed largely of social workers, lobbied the federal government arguing that Aboriginal communities were being unfairly deprived of the social services available to other Canadians. They argued that social services,

¹ Blackstock, Cindy and Nico Trocmé (2004). Community Based Child Welfare for Aboriginal Children: Supporting Resilience through Structural Change, 5.

² National Council of Welfare (2005), 83.

³ Blackstock, Clarke, Cullen, D’Hondt, & Formsma (2004).

⁴ Blackstock, Clarke, Cullen, D’Hondt, & Formsma (2004), 155.

⁵ The National Council of Welfare (2005), 83

including child protection, should be extended to Aboriginal communities through the expansion of provincial jurisdiction to reserves.⁶

In 1951, the *Indian Act* was revised. Among the revisions, the addition of Section 88 allowed for the application of provincial law over items not specifically covered in the Act, including child welfare, health, and education services. This gave provincial and territorial child welfare authorities the jurisdiction and legal authority to administer child welfare services in First Nations communities. The provincial laws, regulations, and standards that were designed in a non-Aboriginal context were applied to Aboriginal communities, and non-Aboriginal social workers, many with little experience or knowledge of Aboriginal cultures, began to work in Aboriginal communities. Aboriginal children were apprehended at rates dramatically higher than their non-Aboriginal Canadian counterparts.⁷

The influx of Aboriginal children into care, often referred to as the Sixties Scoop, resulted in a severing of ties between children and their parents, community, and culture. The Sixties Scoop has been described as:

an era in Canadian history between 1960 and the mid-1980s when the highest number of adoptions of Aboriginal children took place. During this time, Aboriginal children were sometimes literally scooped from their homes without knowledge or consent from families or communities. Sometimes buses were hired to remove large numbers of Aboriginal children at a time. Over 11,000 status Indian children, plus many other Aboriginal children, were placed for adoption by non-Aboriginal families, the result of which was a generation of Aboriginal children raised without cultural knowledge and with confused identities.⁸

While the intention of Section 88 was to assist Aboriginal families in caring for their children, the impact of removal of children from their communities more closely resembled that of the residential school system.

The 1965 Memorandum of Agreement Respecting Welfare Programs for Indians

The current funding arrangement between the provincial and federal governments for on-reserve Aboriginal child welfare services in Ontario was set out in the *Memorandum of Agreement Respecting Welfare for Indians*, often referred to as “The 65 Agreement.” Under the provisions of the Agreement, the federal government reimburses Ontario for approximately 93% of eligible expenditures. The reimbursement flows to Ontario’s general revenue and indirect costs are absorbed by the province for the administration of service.⁹

⁶ Bennett, Marlyn (2002). A Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada, 21.

⁷ The National Council of Welfare, (2005). “Aboriginal Children and Youth In-Care.” *First Nations, Métis and Inuit Children and Youth: Time to Act*, 83.

⁸ The National Council of Welfare (2005), “Aboriginal Children and Youth In-Care.” *First Nations, Métis and Inuit Children and Youth: Time to Act*, 84.

⁹ Bennett, Marlyn (no date). First Nations Fact Sheet: A General Profile on First Nations Child Welfare in Canada. <http://www.fncfcs.com/docs/FirstNationsFS1.pdf>

This funding arrangement is unique to Ontario. In other provinces and territories, Aboriginal child welfare is funded through Directive 20-1. Established in 1991 by the Department of Indian and Northern Development, Directive 20-1 provides federal funding to Aboriginal child welfare agencies that operate on-reserve. As in Ontario, these agencies are subject to provincial or territorial laws, but unlike Ontario, in other provinces the Aboriginal agencies receive funding directly from the federal government.¹⁰

2.3 The Emergence of the Aboriginal Voice in Child Welfare

In Ontario, the effects of the child welfare system on Aboriginal children, families, and communities received greater attention by the end of the 1970s. In 1979, the first joint project between First Nations communities and local CASs was undertaken with the hiring of the first Aboriginal child welfare prevention workers in two First Nations communities in the Fort Frances area.¹¹ At the same time, Aboriginal communities moved to retain their right to care for and protect their own children. In December 1981, the Chiefs of Ontario issued a resolution stating that:

*the child welfare agencies of Ontario and Manitoba shall not remove our children from our reserves and shall return to their Bands those of our children whom they have removed in the past; and that we the Indian Nations in Ontario shall create our own Indian Child Welfare laws, policies and programs, based on the protection of the family and the preservation of their Indian culture within the Indian family.*¹²

Creation of the CFSA and the Emergence of Designated Aboriginal CASs

Ontario's *Child and Family Services Act* (CFSA), passed in 1984, recognized that Aboriginal communities were entitled to provide their own child welfare services wherever possible. In addition to the paramount purpose of promoting "the best interests, protection and well being of children," the CFSA identified additional purposes of the Act. One of the additional purposes is:

*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.*¹³

The CFSA also outlined a procedure for the designation of Aboriginal child welfare agencies. As stated under Part X of the CFSA:

A band or native community may designate a body as an Indian or native child and family service authority... Where a band or native community has designated an Indian or native child and family service authority, the Minister,

¹⁰ Gough, Pamela et al., (2005). *Jurisdiction and Funding Models for Aboriginal Child and Family Service Agencies*.

¹¹ Koster, Andrew et al., (2000). *Aboriginal Child Welfare Review: Comprehensive Review*, 20.

¹² Dilico Anishinabek Family Care. *History* (2010). <http://www.dilico.com/main.asp?cid=651&id=32>

¹³ CFSA (2010) Section 1.2 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

(a) shall, at the band's or native community's request, enter into negotiations for the provision of services by the child and family service authority;

(b) may enter into agreements with the child and family service authority and, if the band or native community agrees, any other person, for the provision of services; and

(c) may designate the child and family service authority, with its consent and if it is an approved agency, as a society under subsection 15 (2) of Part I (Flexible Services). R.S.O. 1990, c. C.11, s. 211.¹⁴

Part X of the CFSA also provides for the use of customary care, a unique service option available to Aboriginal children whereby “care and supervision of an Indian or native child [is provided] by a person who is not the child’s parent, according to the custom of the child’s band or native community.”¹⁵

The recognition that Aboriginal communities should be entitled to provide their own child welfare services wherever possible, the creation of funding mechanisms to support such arrangements, and the provisions in the CFSA for establishing Aboriginal agencies led to the creation of Ontario’s first three designated Aboriginal CASs in 1987. Further designations between 1994 and 2006 brought the total number of designated Aboriginal CASs in Ontario to its current total of six.

2.4 Recent Developments

Throughout the 1990s and 2000s, many Aboriginal communities established child and family service agencies to provide prevention services and other assistance to families. In some cases, these organizations have begun working toward receiving designation as a child welfare provider for the communities or Bands they serve. Currently, there are seven Aboriginal child and family service agencies working toward CAS designation.

Many Aboriginal leaders (and non-Aboriginal child welfare leaders as well) advocate for a system in which all child welfare services to Aboriginal children and families are provided exclusively by Aboriginal service providers. Designation is seen by many Aboriginal leaders only as an interim step toward full responsibility for their children’s welfare under their own child welfare laws.¹⁶ In this regard, some of the PTOs in the province are engaged in drafting their own child welfare laws.

There is growing support within the broader child welfare sector for increased Aboriginal jurisdiction over child welfare services. Non-Aboriginal agencies recognize the limitations and difficulties they have in providing culturally appropriate and effective service to Aboriginal peoples. In order to promote cooperation between the Aboriginal and non-Aboriginal child welfare sectors, a Task Force was jointly established by the Association of Native Child and

¹⁴ CFSA (2010) section 211.2, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm. Also see Ministry of Community and Social Services, *Aboriginal Child Welfare Review: Comprehensive Report* (2000).

¹⁵ CFSA (2010) Section 208, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

¹⁶ Koster, Andrew et al. (2000). *Aboriginal Child Welfare Review: Comprehensive Review*, 29.

Family Services Agencies of Ontario (ANCFSAO) and The Ontario Association of Children's Aid Societies (OACAS) in 2006. The mandate of the Task Force was to:

*Guide and inform the process that will facilitate the eventual devolution of services from Mainstream CASs to Native Child Welfare Agencies. The Task Force has set a number of priorities including identifying issues that present as barriers to devolution and then to provide guidance, advice and recommendations to overcome the barriers.*¹⁷

Beginning in 2006, Mamow Sha-way-gi-kay-win, or the North-South Partnership for Children, brings together chiefs, elders, and youth from remote First Nations communities in Northwestern Ontario with voluntary organizations and individuals in Southern Ontario. The goal of the initiative is to "build a network of caring relationships that will create, support and strengthen short- and long-term solutions to the urgent conditions and challenges faced by children, youth and families in remote First Nations communities."¹⁸ Among others, objectives include knowledge sharing, agricultural improvement, and housing improvement.

In 2005, the Ontario government announced a New Approach to Aboriginal Affairs calling for "a constructive, co-operative relationship with the Aboriginal peoples of Ontario – a relationship that is sustained by mutual respect and that leads to improved opportunities and a better future for Aboriginal children and youth."¹⁹ In June 2007, the stand-alone Ministry of Aboriginal Affairs was created to replace the Ontario Secretariat of Aboriginal Affairs.

Ontario's November 2007 Throne Speech reaffirmed the government's commitment to build stronger relationships with Aboriginal peoples in the province. In the speech, the government underscored its commitment "to forge a stronger, more positive relationship with Ontario's First Nations" and to improve the quality of life and expand opportunities for all Aboriginal peoples. The government's stated objective is that improved relationships will lead to "education, training, looking to the future, creativity, respect and pride in Aboriginal arts, culture and heritage, and greater job opportunities for Aboriginal peoples."²⁰

Further legislative changes have been made to more fully recognize the unique needs and circumstances of Aboriginal children and their families. In 2006, amendments were made to the CFSA to address concerns of Aboriginal leadership, communities, and service providers. Key amendments included:

- Increased recognition of customary care as a permanency option for First Nations children who cannot remain with their family due to protection concerns;
- Requirement for case consultation with a child's Band where a society or agency proposes to exercise its powers in prescribed circumstances;

¹⁷ The Joint Task Force. *Aboriginal and Mainstream Child Welfare: Working Towards Devolution*, 5.

¹⁸ Mamow Sha-way-gi-kay-win (2009). *Partnership Goal and Objectives*
<http://www.northsouthpartnership.com/index.php?id=24>

¹⁹ *Ontario's New Approach to Aboriginal Affairs*, (2005).
<http://www.aboriginalaffairs.gov.on.ca/english/policy/newapproach/newapproach.pdf>

²⁰ 2007 Throne Speech, (2007). <http://www.maytree.com/ppti/2007/ThroneSpeech2007.pdf>

- New definition of “extended family” to include any member of the child’s Band or community;
- Expanded definition of “place of safety” to include a relative of the child, or a member of the child’s extended family or community where a society has conducted an assessment and concluded that the home is safe. In the case of an Aboriginal child, an Aboriginal child and family service authority can conduct the assessment;
- Service providers under the Act are required to consider a child’s cultural background; and
- Changes to administrative reviews of CASs’ decisions to provide for Band involvement.

Another important amendment to the CFSA was the addition of Section 226, which introduced the requirement to undertake a review every five years of the specific provisions of the Act that impose obligations on CASs providing services to Indian/native children. The purpose of the review is to review and assess compliance by CASs with these provisions.

The 2010 CFSA review was the first such review to assess the compliance with the Indian and Native provisions in the Act. The review found that compliance rates varied both within individual CASs and between CASs, suggesting uneven service delivery to Aboriginal children. Other highlights of the review included acknowledgement of the importance of customary care, identification of the essential role of ongoing training for both Aboriginal and non-Aboriginal CAS staff, and the limitations on the financial and human resource capacity of First Nations to represent their communities in child welfare cases.²¹

In April 2010, the Minister of Children and Youth Services established the position of an Aboriginal Advisor and appointed John Beaucage to the position. The purpose of the Advisor was to provide advice on Aboriginal child welfare issues for a period of one year. A key part of the Advisor’s mandate was to facilitate discussions between the Minister and Aboriginal leaders on Aboriginal child welfare issues and provide advice on Aboriginal child welfare policy matters. John Beaucage also worked collaboratively with the Commission to Promote Sustainable Child Welfare.

On April 18-19, 2011, the Minister of Children and Youth Services and the Aboriginal Advisor hosted *Together for a Better Tomorrow: A Summit on Aboriginal Child Welfare* at Fort William First Nation. The summit brought together Aboriginal child welfare practitioners and leaders from across the province to discuss some of the critical issues facing Aboriginal child welfare in Ontario.

²¹ Ministry of Children and Youth Services (2010). *Report on the 2010 Review of the Child and Family Services Act*.

3. A SNAPSHOT OF ABORIGINAL PEOPLES IN ONTARIO

3.1 Demographics

Ontario's Aboriginal population is comprised of diverse groups of people living in all parts of the province. There are 134 First Nations as well as Métis and Inuit populations in Ontario.

In the 2006 census, 242,495 people, 2% of Ontario's total population, identified themselves as Aboriginal. Of Ontario's Aboriginal population:

- 65% identified themselves as status Indians, 30% of whom live on-reserve;
- 30% identified themselves as Métis;
- 1% identified themselves as Inuit;
- 1% identified themselves as having multiple Aboriginal identities; and
- 3% were of unspecified Aboriginal identity.

The Urban Aboriginal Population

The Aboriginal population in Ontario is increasingly urbanized. According to the 2006 census, 62% of the Aboriginal population lived in an urban area while 20% lived on reserve and 18% lived in rural areas.²²

Approximately 40% of the Aboriginal population live in Northern Ontario, with the largest share in the Northwest. Across Southern Ontario, the Aboriginal community is highly urban, with considerable numbers of people living in the cities of Ottawa, Greater Toronto, Hamilton, Windsor, and London. More than 75% of First Nations peoples living off-reserve live in urban areas.²³

A Young, Growing, and Moving Population

Ontario's Aboriginal population is young, growing and mobile. According to the 2006 census, the total Aboriginal child and youth population (0-19) in Ontario was 36% of the total Aboriginal population in the province and 2.8% of the total Ontario child population. By contrast, the non-Aboriginal child and youth population was 26% of the total non-Aboriginal population.

Between the 2001 and 2006 census periods, the Aboriginal population within Ontario increased 28.7% and the First Nations population by 20.4%. Compared to non-Aboriginal peoples, this population grew 3.5 times faster. During the same period, the Aboriginal child and youth (0-19) population increased by 20% while the non-Aboriginal child and youth population increased by less than 1%.²⁴ While growth in the Aboriginal population numbers can be attributed partially to higher birth rates, it is also likely caused by more people choosing to identify themselves as Aboriginal.

²² Ontario Ministry of Finance (2006), *Census Highlights – Fact sheet 9*.

²³ The Ontario Trillium Foundation (no date), *Aboriginal Communities in Profile: Ontario* http://www.trilliumfoundation.org/aboriginal/pdfs/Aboriginal_Profile_Ontario.pdf. 18.

²⁴ Statistics Canada (2006), *Census*.

Another key difference between Aboriginal and non-Aboriginal peoples is their degree of movement. For example, Aboriginal peoples (not including on-reserve First Nations populations) are almost twice as likely to move in a given year as non-Aboriginal people. Further, about 30% of the Aboriginal population in large cities moves each year.²⁵ The high rates of mobility and migration within urban areas and the high rates of in- and out-migration (to and from cities, between reserves and cities), provides an indication of some of the implications for and impact on the delivery of child welfare services.

3.2 Aboriginal Communities and Provincial-Territorial Organizations

Most of Ontario’s 134 First Nations communities are members of Provincial-Territorial Organizations (PTOs). These organizations represent and advocate for the political, social, and economic interests of their member communities. Table 1 lists the PTOs, number of First Nations represented and the name of the designated Aboriginal CAS operating in that PTO’s territory.

Table 1: Provincial-Territorial Organizations in Ontario

PTO	Number of First Nations Represented	Aboriginal CAS within the PTO’s Territory
Nishnawbe-Aski Nation (NAN)	47	Tikinagan Child and Family Services; Payukotayno-James and Hudson Bay Family Services
Association of Iroquois and Allied Indians (AIAI)	8	None
Grand Council Treaty #3 (GCT #3)	24	Anishinaabe Abinoojii Child and Family Services; Weechi-it-te-win Family Services
Union of Ontario Indians (UOI)	39	Dilico Anishinabek Family Care
Independent	12	Not Applicable

Source: *Chiefs of Ontario (2010), First Nations Directory.* <http://chiefs-of-ontario.org>

3.3 The Métis Nation

The Métis are a distinct Aboriginal people with their own history and culture. They are an Aboriginal Nation made up of people who are of mixed Indian and European heritage.

²⁵ The National Council of Welfare (2005), “*Aboriginal Children and Youth In-Care.*” *First Nations, Métis and Inuit Children and Youth: Time to Act*, 17.

Their territory spans Ontario's waterways including the area surrounding the Great Lakes. Distinct Métis settlements were established due to the fur trade and were linked to one another in Ontario as regional communities because of the highly mobile lifestyle of the Métis, shared commercial interests, kinship relations, and common history.

According to the Métis Nation of Ontario website, "The Métis Way of Life Framework or WOLF is the Métis Nation of Ontario's (MNO) unique way of documenting Métis traditional knowledge acquired through time spent living on the land. It encompasses all aspects of the Métis way of life – biological, ecological, economic, social, cultural and spiritual."

Métis tradition is passed on orally through generations using songs and stories, as well as through behaviours and observation. The goal of WOLF is to document and preserve traditional Métis knowledge.

Ontario-Métis Nation Framework Agreement

In November 2008, after years of negotiation, the Métis Nation and the Ontario Government signed the historic Ontario-Métis Nation Framework Agreement (Framework Agreement). The Framework Agreement is a formal recognition by Ontario that the province is committed to facilitating the recognition of Métis rights in the province. No other province has provided such recognition of the Métis Nation.

The Framework Agreement sets out a clearly defined and results-driven process for the MNO and the Ontario Government to work together to improve the well-being of Métis children, families, and communities, while also working to protect and promote their culture and identity.

3.4 Socioeconomic Conditions

The social, economic, and service needs of many Aboriginal communities are very different from those of non-Aboriginal communities. Aboriginal peoples live in communities that often experience the following conditions:²⁶

- high levels of alcohol and substance abuse;
- high incidence of suicides and cluster suicides;
- family violence;
- high incarceration rates;
- low educational levels;
- high unemployment rates;
- higher child mortality and post-neonatal death rates;
- disability rates, chronic illnesses, and shorter life expectancy; and
- family and child poverty.

The unique circumstances and challenges that Aboriginal children and youth face are reflective of the social and economic conditions they are often raised in. In Canada, when compared to non-Aboriginals, Aboriginal children are more likely to become pregnant before age 18, to be

²⁶ Koster, Andrew et al., (2000). Aboriginal Child Welfare Review: Comprehensive Review, 27.

affected by Fetal Alcohol Spectrum Disorder, to suffer from an emotional disorder, to live in poverty, to live in lone parent female-led families and are less likely to complete high school.

The links between socioeconomic conditions and child welfare services have been documented.^{27,28} In communities that experience some of the problems identified above, the socioeconomic impacts on the delivery of child welfare services are very significant.²⁹ Child welfare services to Aboriginal communities must acknowledge the socioeconomic factors and that underpin the need for protection services. Ultimately, Aboriginal child welfare is interwoven with a unique and challenging set of social, economic, and geographic considerations:

The challenge of preventing the near- and long-term consequences of child abuse and neglect extends well beyond the CAS. The reality is that vulnerable children live in vulnerable families. Without more equal opportunities, and in the absence of more positive interventions and service availability for vulnerable families and children, demands on the child welfare system increase – bringing corresponding questions regarding its long-term sustainability.³⁰

²⁷ Leschied, A.W., Chiodo, M.A., Whitehead, P.C., & Hurley, D. (2003). *The Association of Poverty with Child Welfare Service and Child and Family Clinical Outcomes*. Community, Work & Family, Volume 9, Issue 1, February 2006, pages 29 – 46.

²⁸ Leschied, A.W., Whitehead, P.C., Hurley, D., & Chiodo, M.A. (2003). *Protecting Children is Everybody's Business: Investigating the Increasing Demand for Service at the Children's Aid Society of London and Middlesex*. United Way of London and Middlesex and the Children's Aid Society of London and Middlesex.

²⁹ Association of Native Child and Family Services (2010). *Response to MCYS-CFSA: Discussion Document*, 4.

³⁰ Commission to Promote Sustainable Child Welfare (2010). *Jurisdictional Comparisons of Child Welfare System Design: Working Paper No. 2*.

4. CURRENT LANDSCAPE OF ABORIGINAL CHILD WELFARE

There is no definitive source for the number of Aboriginal children in the care of Ontario CASs. However, based on OACAS survey results and the Ministry quarterly reports, there are an estimated 2,800 Aboriginal children in the care of Ontario CASs (point in time estimate).^{31,32} With an average of 18,212 children in care in 2009/10, over 15% of the children in care at any given time are Aboriginal.³³ This represents a significant overrepresentation given that Aboriginal children represent only 2.8% of Ontario's child population (0-19).

4.1 Designated Aboriginal CASs

There are currently six Aboriginal CASs designated to provide child welfare services in Ontario. All six agencies provided children and family services before being designated as CASs.

Tikinagan Child and Family Services

In 1984, leaders from the Nishnawbe-Aski Nation (NAN) signed an agreement with the Ministry of Community and Social Services to transfer services from the Kenora CAS to a new Aboriginal agency, Tikinagan, over a five year period. Half-way through this period, Tikinagan received its designation. Tikinagan serves all children, Aboriginal and non-Aboriginal, in a geographic jurisdiction that includes 30 First Nations and one town in the western portion of NAN. It is the largest designated Aboriginal CAS by both geography and budget size. Focused on community and customary practices, *Mamow Obiki-Ahwahsoowin*, meaning "everybody working together to raise our children," is at the heart of Tikinagan's service delivery model.

Tikinagan serves the following First Nations: Bearskin Lake, Cat Lake, Deer Lake, Eabametoong First Nation, Fort Severn, Kasabonika Lake, Keewaywin, Kingfisher, Kitchenuhmaykoosib Inninuwug, Koocheching, Marten Falls, McDowell Lake, Mishkeegogamang, Muskrat Dam Lake, Neskantaga, New Slate Falls, Nibinamik, North Caribou Lake, North Spirit Lake, Pikangikum, Poplar Hill, Sachigo Lake, Sandy Lake, Saugeen, Wapekeka, Wawakapewin, Webequie, and Wunnumin Lake.

Payukotayno: James and Hudson Bay Family Services

Designated in April 1987, Payukotayno serves all children, Aboriginal and non-Aboriginal, on and off-reserve, in the eastern portion of NAN along the Hudson and James Bay coast. This area includes five First Nations and the Town of Moosonee. Prior to Payukotayno's designation, services were provided to this area through three separate agencies. In the early 1980s, efforts were made to increase the effectiveness of service in the area through greater collaboration and service coordination. The result was a new multi-service child welfare agency, Payukotayno.³⁴

³¹ An OACAS membership survey found a point in time estimate (March 31, 2010) of 1,662 Aboriginal children in care. However, this figure does not capture three of the designated Aboriginal CASs. Augmenting these data with the MCYS 2009/10 Q4 average number of children in care figures for the three excluded agencies yields an estimate of 2,764 Aboriginal children in care.

³² OACAS (2010). *Children in Care and Permanency Fact Sheets: 2009-2010*.

³³ Ministry of Children and Youth Services (2010). *2009/10 Quarterly Reports*.

³⁴ Koster, Andrew et al., (2000). *Aboriginal Child Welfare Review: Comprehensive Review*, 36-7.

The five First Nations served by the agency are: Peawanuck, Kashechewan, Fort Albany, Moose Factory, and Attawapiskat.

Weechi-it-te-win Family Services

Weechi-it-te-win was designated in March 1987 to provide service to ten First Nations communities in the southern portion of the territory of Grand Council Treaty #3 (Fort Frances, Rainy River, Sioux Narrows and Atikokan areas). These areas were originally served by Rainy River CAS; however, due to concerns over maintaining their children, efforts were made to increase the community's role in service provision. As a result, it was here that the first Aboriginal child prevention workers were hired in 1979, and subsequently, Aboriginal workers were hired in all ten communities in this region. By 1982, with the goal of developing an "Indian Alternative" to children and family service, planning began for what became Weechi-it-te-win.³⁵

Weechi-it-te-win serves the following First Nations: Onigaming, Stanjikoming, Couchiching, Lac La Croix, Nigigoonsiminikaaning, Naicatchewenin, Big Grassy, Rainy River, Seine River, and Naongashiing.

Anishinaabe Abinoojii Child and Family Services

The most recent Aboriginal CAS to receive its designation was Anishinaabe Abinoojii Child and Family Services in July 2006. Anishinaabe Abinoojii serves on-reserve children in five First Nations in the Kenora area and members off-reserve in the District of Rainy River and the southwest part of the District of Kenora.³⁶

The five First Nations served are: Obashkaandagaang, Wabaseemoong, Asubschoseewagong Netum Nishnabek, Wauzhushk Onigum, and Naotkamegwanning.

Dilico Anishinabek Family Care

Receiving its designation in April 1995, Dilico Anishinabek Family Care (originally called Dilico Ojibway Child and Family Services) was established with a commitment to the well-being of Anishinabek children, families, and communities. Dilico serves on-reserve children of 13 First Nations and has shared jurisdiction with the District of Thunder Bay for off-reserve members of its community. In 1996, Dilico also received responsibility for administering children's mental health services.

The 13 First Nations served by Dilico are: Fort William, Red Rock (Lake Helen), Whitesand, Kiashke Zaaging Anishinaabek (Gull Bay), Long Lake #58, Animbiigoo Zaagi'igan Anishinaabek, Bingwi Neyaashi Anishinaabek (Sandpoint), Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay), Ginoogaming, Pays Plat, Pic Mobert, Pic River, and Michipicoten.

Native Child and Family Services of Toronto

The Native Child and Family Services of Toronto (NCFST) serves the urban Aboriginal population in the Toronto area. It is a major participant in the delivery of Aboriginal services in Toronto and

³⁵ Weechi-it-te-win Family Services (2010). *Weechi-it-te-win History*. <http://www.weechi.ca/history.php>

³⁶ Anishinaabe Abinoojii Child and Family Services website (2010). *Who We Serve*. <http://www.aafs.ca/reportn.htm>

works closely with the other Aboriginal and non-Aboriginal agencies in the area to provide services to First Nations, Metis, and Inuit children and adults. The agency began providing child and family services in 1988 and received designation as a child welfare agency in July 2004.³⁷ Unlike the other 5 Aboriginal agencies, NCFST was not designated as a result of Part X of the CFSA; rather, the agency was designated according to the same designation process as mainstream CASs.

Table 2: Designated Aboriginal CASs at a Glance: Expenditure and Service Data, 2009/10

	MCYS Funding (Millions)	FTEs	Investigations Completed	Number of Cases Served	Average Number of Children in Care	Total Number of Children In-Care Served
Tikinagan	\$ 39.65	278	926	1121	571	1,065
Dilico	\$ 24.55	190	805	538	503	767
Native Child	\$ 15.89	82	322	285	218	312
Anishinaabe Abinoojii	\$ 15.66	109	241	315	332	445
Payukotayno	\$ 10.91	43	285	174	111	162
Weechi-it-te-win	\$ 9.74	30	116	194	199	290
TOTAL	\$116.40	732	2,695	2,627	1,934	3,041

Source: 2009/10 Q4 MCYS Quarterly Reports

Table 2 displays select expenditure and service data of the six designated Aboriginal CASs. These data demonstrate some of the differences among the designated Aboriginal CASs. The range in allocation size is apparent. To provide some perspective, out of all 53 CASs in the province, Tikinagan is the 11th largest in terms of its 2009/10 allocation while Weechi-it-te-win is the 13th smallest.

Table 3: Days of Care by Designated Aboriginal CAS (in thousands)

	Society and OPR Days of Care	Society Operated Foster and Group Care	%	OPR Operated Foster and Group Care	%	% of Days Care in a Family Based Setting
Tikinagan	198	179	91%	19	9%	89%
Dilico	177	171	97%	6	3%	92%
Native Child	70	28	39%	42	61%	69%
Anishinaabe Abinoojii	119	108	91%	11	9%	87%
Payukotayno	40	19	48%	21	52%	63%
Weechi-it-te-win	71	65	91%	6	9%	87%
TOTAL	676	571	85%	106	15%	85%

Source: 2009/10 Q4 MCYS Quarterly Reports

³⁷Native Child and Family Services of Toronto (2010). *About Us*. <http://www.nativechild.org/about-us>

Table 3 displays the days of care provided by each agency. Society operated care is the predominant form of care in four of the agencies. Native Child and Family and Payukotayno, are the exceptions, both of which use Outside Paid Resources (OPRs) to provide 61% of their days of care. Family based care, as opposed to group care, is the predominant type of care provided by all of the designated Aboriginal CASs.

4.2 Aboriginal Agencies Seeking Designation

Across the province, there are numerous Aboriginal child and family service agencies delivering family services to different Aboriginal communities. These agencies make a significant contribution to their communities through the prevention, treatment and other services they provide. Seven of these child and family service agencies are currently working with MCYS toward being designated as CASs for the First Nations they serve.

Kunuwanimano Child and Family Services

Beginning in 1989, Kunuwanimano provides services to 11 First Nations communities in a catchment area that covers a broad region in Northeastern Ontario ranging from Hornepayne to Matachewan First Nation. Their head office is located on Wahgoshig and they have a main office located in Timmins.³⁸

Kina Gbezhgomi Child and Family Services

Incorporated in 1991, Kina Gbezhgomi serves seven First Nation communities on Manitoulin Island. In 2001, Kina Gbezhgomi became the first Ontario agency seeking designation to receive a residential and foster care license.³⁹

Nog-Da-Win-Da-Min Family and Community Services

Nog-Da-Win-Da-Min was incorporated in August 1990 to provide services to seven communities on the north shore of Lake Huron. These First Nations are Garden River, Batchewana, Serpent River, Thessalon, Mississauga, Sagamok, and Whitefish Lake.⁴⁰

Mnaasged Child and Family Services

With its head office in Southwold, and six additional offsite locations, Mnaasged serves 7 First Nations in the southwestern portion of the province.⁴¹

Six Nations of the Grand River Child and Family Services

Located in Ohsweken, the agency provides child and family services to the Six Nations of the Grand River, the most populous reserve in Canada. The six First Nations are the Mohawk, Oneida, Cayuga, Seneca, Onondaga, and Tuscarora.⁴²

³⁸ Kunuwanimano website (2010). *Communities*. <http://www.kunuwanimano.com/communities.htm>

³⁹ Kina Gbezhgomi website (2010). *History*. <http://www.kgcs.org/history.asp>

⁴⁰ Nog-Da-Win-Da-Min website (2010). *Who We Are*. <http://www.nog.ca/aboutus.aspx?view=2>

⁴¹ Mnaasged website (2010). *Mnaasged Staff*. <http://mnaasged.com/mcfsStaff.html>

⁴² Six Nations Council: Social Services Department (2010). <http://www.sixnations.ca/SocServDept.htm>

Akwesasne Child and Family Services

Established in 1971, Akwesasne Child and Family Services provides a range of services to the Mohawks of Akwesasne in the Cornwall area.⁴³

Dnaagdawenmag Binnoojiiyag Child & Family Services

Dnaagdawenmag Binnoojiiyag serves 7 First Nations in Central Ontario. Each community has identified a prevention worker and these seven, in combination, cover their territory.

In response to concerns identified by Aboriginal communities and in the 2010 CFSA review, MCYS has recently revised the guidelines for designation to make the process and expectations more transparent and consistent.

4.3 Arrangements for Delivering Child Welfare Services to Aboriginal Children and Families

Child welfare services to Aboriginal children are delivered through several different arrangements. They can be served through one of the six designated Aboriginal CASs, through mainstream CASs or through, inter-agency service agreements between CASs.

Service Involving Mainstream CASs

Currently, most of Ontario's Aboriginal population resides in areas not served by a designated Aboriginal CAS and where there are both aboriginal and non-aboriginal CAS's, families may choose which agency they will receive service.⁴⁴ Many Aboriginal children are therefore served by a mainstream CAS.

There are several different arrangements used by mainstream CASs to deliver child welfare services to Aboriginal children:

- Mainstream service – some mainstream agencies provide child welfare service to Aboriginal children through their conventional service delivery mechanisms.
- Special units on-reserve – one mainstream agency (Brant) has established a branch office on the reserve in order to provide service to the community and training to First Nations members so that they can deliver child welfare service.
- Special unit off-reserve – other mainstream agencies with large Aboriginal populations within their catchment area have established special units within their agencies that provide service to Aboriginal communities.
- Service agreements with other agencies – in some cases, mainstream CASs have service agreements with designated Aboriginal CASs or Aboriginal child and family service agencies to provide services to Aboriginal children that come into their care.

⁴³ Mohawk Council of Akwesasne: Social Development and Health (2010), *Akwesasne Child and Family Services*. <http://www.cnwl.igs.net/~hmi/ACFS.html>

⁴⁴ Bay Consulting Group (2010). Profile of the Child Welfare System in Ontario.

The CFSA sets out requirements for CASs providing services to Aboriginal children. The CFSA recognizes that all services to Aboriginal children and families should be provided in a manner that “recognizes their culture, heritage and traditions and the concept of the extended family.”

In particular, the CFSA requires that agencies providing services to Aboriginal children regularly consult with the child’s Band or community about that child’s care.⁴⁵

The Commission’s impression is that many mainstream agencies give too little attention to these requirements. The 2010 CFSA review supports this observation, having found highly variable rates of compliance with the Aboriginal provisions in the Act.

There are a range of possible explanations for this variability and lack of compliance:

- CASs with larger Aboriginal populations have more experience dealing with Aboriginal children and therefore may more fully understand what is expected/required.
- A narrow, compliance interpretation of the provisions in the CFSA. When agencies commit to the spirit and intent of the law, rather than merely complying with the “letter of the law,” there is a greater likelihood that a child will receive more culturally appropriate services.⁴⁶
- It is harder for CASs to engage with a Band when the Band lacks the dedicated capacity provided by Band Representatives or other resources (although that does not excuse the CAS from fulfilling its obligations).

As regards the last point above, Band representatives can be crucial and while the specifics of their role may vary from community to community, where there are Band Representatives or equivalent resources, they tend to fulfill the following functions: serving as the main liaison between a Band and CAS, providing cultural training and advice to CASs, monitoring Temporary Care Agreements and Voluntary Service Agreements with CASs, securing access to legal resources, attending and participating in court proceedings, ensuring that the cultural needs of a child are being addressed by the CAS, and participating in the development of a child’s plan of care. Some are also involved in recruiting customary care homes.

In the past, some First Nations were funded on a claims basis by the federal government to hire a Band Representative. However, in 2003, that funding was discontinued. Consequently, Bands had to make other arrangements. In some cases, resources for prevention services have been diverted to serve this purpose. In other communities there is no Band Representative and no effective liaison.⁴⁷

Service Involving Designated Aboriginal CASs

Aboriginal CASs are bound to respect the cultures of the communities they serve. Consequently, variability in approaches to service across designated Aboriginal CASs reflects the differences in those First Nations communities. For example, Anishinaabe Abinoojii Child and Family Services and Weechi-it-te-win Family Services serve communities that are, generally speaking, highly

⁴⁵ CFSA (2010) Section 213, 213.1. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

⁴⁶ Ministry of Children and Youth Services (2010). *Report on the 2010 Review of the Child and Family Services Act*.

⁴⁷ Ministry of Children and Youth Services (2010). *Report on the 2010 Review of the Child and Family Services Act*.

traditional in their observance of practices and ceremonies such as Traditional Naming Ceremonies, Sweat Lodges, and so on. The traditions of the communities served by Payukotayno-James and Hudson Bay Family Services and Tikinagan Child and Family Services are spiritual in another way: they are very traditional in relation to their attachment to the land. Dilico Anishinabek Family Care must respect the range of practices of the people they serve both on and off-reserve and Native Child and Family Services of Toronto is sometimes described as “pan-Indian.”

Customary Care

As stated in the CFSA, customary care is a service option where care of an Aboriginal child is provided “according to the custom of the child’s band or native community.”⁴⁸ Customary care is a care arrangement grounded in the customs and practices of each First Nation. Its inclusion in the CFSA gives statutory recognition to child care practices that have been in place for hundreds of years.

Because customary care entails the day-to-day caring for children in a way that is rooted in local tradition rather than in the Euro-Canadian world view, it is much more than another care option or tool available to CASs for placing Aboriginal children. It is one of the central elements of service to First Nations children and families. Customary care may be one of the most promising avenues available for curtailing the use of mainstream placement options for First Nations children, in favour of more culturally appropriate arrangements.

Customary care is often misrepresented as the Aboriginal equivalent of kinship care. Customary care allows for a much broader array of possible options for a child. It may also be an important component of a permanency plan for a child that makes it unnecessary to seek Court Orders, including Crown Wardship or Adoption Orders. Customary care also often goes beyond finding and supporting a substitute family to incorporate traditional ceremonies, the role of the larger community in care-giving and Aboriginal teachings by elders.

Tikinagan Child and Family Services, for example, has a well developed Aboriginal child welfare model, *Mamow Obiki-ahwahsoowin*, meaning “everyone working together to raise our children.” A key aspect of the model is that it strives to involve parents, extended family, relevant community workers, Elders, and First Nations leaders in the provision of child welfare services. *Mamow Obiki-ahwahsoowin* includes several models of care depending on the situation. *Anihnih-shib* is a supervision agreement that sets out the terms and conditions to guide a family when there are protection concerns that can be dealt with while keeping the child in his or her family. *Migizi*, a pure customary care agreement, is a voluntary arrangement on a long or short term basis whereby the child is placed with another family member or Band member. If a *Migizi* agreement is not possible, the band may make a *Mi hii kun* declaration removing the child from the home and the agency may provide the service. *Nih-kuh* is another aspect of *Mamow Obiki-ahwahsoowin* and involves an agreement between a child over 12 years of age and his or her customary care family.⁴⁹ Tikinagan’s approach to customary care is just one

⁴⁸ CFSA (2010) Section 208, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

⁴⁹ Tikinagan Child and Family Services (undated). *Mamow Obiki-ahwahsoowin Care: A Native Model for Child Welfare Services In Remote First Nation Communities*.

possible approach, but it highlights the complexity and diversity of the options that can fall under customary care.

While all CASs may enter into customary care arrangements, very few are used by non-Aboriginal CASs. There are indications that customary care is not fully understood by mainstream agencies. As a result, they have expressed a preference for a clearer definition of customary care and greater clarity over the tools and practices related to its implementation.⁵⁰ However, it is widely felt by Aboriginal child welfare leaders that increased or excessive formalization of customary care could undermine the very intent of caring for children “according to the custom of the child’s band or native community”, because the practices of First Nations vary from community to community.

Due to differences in defining and reporting customary care, it is difficult to get accurate data on its use. According to the 2009/10 quarterly reports, the percentage of days of care that were reported as customary care ranged from 3% to 81% of all days of care in the designated Aboriginal CASs. As mentioned, the differences in the data likely reflect differences in reporting as well as differences in the actual use of customary care arrangements.

4.4 Service in Remote Communities

Providing child welfare services in remote Northern communities poses a number of significant challenges for the Northern designated Aboriginal CASs.

Transportation is a major challenge in the North. Accessing remote and isolated communities is time consuming and expensive. For example, Payukotayno does not have year round road access to the five First Nations it serves. Ice roads provide access in the winter months, requiring lengthy travel times, while flights are the only option during the rest of the year. And given the large number of fly-in communities served by Tikinagan, the agency is required to make up to 80 flights in a day.

Staff recruitment and retention are also particularly challenging in the North especially of qualified staff from their own communities. The legacy of the Sixties Scoop and the association of CASs with the removal of children from the community have caused some First Nations community members to resent or resist CAS workers. This stigma can create a difficult or even hostile work environment which further exacerbates the stress often felt by front-line protection workers. In some cases, CAS employees face difficult situations when members of their own family are involved with the CAS.

Access to suitable housing is also a serious challenge in the North. The shortage of available housing makes it difficult for agencies to hire staff from outside the community and it also creates difficulties in finding suitable foster homes. Housing shortages create living environments where a large number of people share one home.

⁵⁰ Ministry of Children and Youth Services (2010). *Report on the 2010 Review of the Child and Family Services Act*.

Limited access to court is a key deficit in parts of the North as well. For example, some of the areas served by Payukotayno have access to courts only once a month while other areas have sittings once every 3 months and one community has court only twice a year. Without permanent courts, circuit courts, which often face compressed schedules and heavy dockets, provide family court services. In areas of Ontario without a Family Court, the Ontario Court of Justice hears family law disputes under most Ontario legislation. Custody, access, child and spousal support, adoption, and child protection applications are all issued under the authority of the Ontario Court of Justice.

The lack of other services – both children’s services and other social programs – is common in small and remote Aboriginal communities. This impacts the performance and quality of CAS service and increases the burden on agencies operating in that environment. Promoting positive outcomes for children, families and communities, requires a full range of services related to the health, social, and economic conditions of the community: child welfare services alone are not nearly enough.

Geographic and socio-demographic characteristics of First Nations communities are reflected in the service and financial data of the designated Aboriginal CASs. A comparison of socio-demographic, caseload, and expenditures data between designated Aboriginal and non-Aboriginal CASs shows many distinct differences between the two groups. While there are significant differences between Aboriginal agencies themselves, as a group, Aboriginal CASs:⁵¹

- Serve significantly larger and less inhabited geographic areas with lower child and youth populations (with the exception of Native Child in Toronto);
- Have significantly larger case volumes per thousand;
- Serve more of their children and youth in-care versus in their own homes; and
- Have smaller total expenditures but significantly higher expenditures per capita and higher expenditures per case.

Table 4 highlights some of the geographic, demographic, and caseload differences between the designated Aboriginal CASs and mainstream CASs.

⁵¹ Bay Consulting Group (2010). Profile of the Child Welfare System in Ontario.

Table 4: Differences between designated Aboriginal and Non-Aboriginal CASs

Factor	Average for All Aboriginal CASs (6)	Average for All Non-Aboriginal CASs (47)	Ratio of All Aboriginal to All Non-Aboriginal Agencies
Geographic Area Served (sq km)	133,650	20,641	6.5 times greater
Total Population Density in 2009 (population per sq km)	4.7	212.4	45 times lower
Child & Youth Population in Service Area in 2009	5,655	69,640	12.3 times lower
Completed Investigations per Thousand Child & Youth Population in 2009/10	90	36	2.5 times greater
Community Links per Thousand Child & Youth Population in 2009/10	13	8	1.6 times greater
Cases Transferred to Ongoing Protection	26	9	2.9 times greater
Children In-Home Cases Served per Thousand Child & Youth Population in 2009/10	84	21	4 times greater
Children In-Care Served per Thousand Child & Youth Population in 2009/10	108	12	9 times greater
Ratio of In-Home Cases Served to Children Served In-Care in 2009/10	0.8	1.8	55% lower
Total Expenditures per Capita Child & Youth Population in 2009/10	\$4,489	\$644	7 times greater
Total Expenditures per Total In-Home Cases and In-care Children Served in 2009/10	\$24,576	\$20,308	1.2 times greater

Source: Bay Consulting (2010), *Profile of the Child Welfare System in Ontario*

4.5 Tensions between Ontario Child Welfare and Aboriginal Child Care Practices

Traditional and customary child care practices and cultural assets are integral to the welfare of aboriginal children and youth.

Although there is great diversity among Aboriginal belief and value systems, there are a number of common elements. Aboriginal belief systems embody a holistic world view and see the interests of the child, family, community, and surrounding environment as interconnected. Personal identification with one's community is a core feature of Aboriginal belief systems, and this is reflected in the way children are cared for and taught. Great emphasis is placed on the extended family and community in the upbringing of a child, and "elders and members of the extended kin network have a responsibility to nurture and guide children according to the

traditional teachings, anchoring the child's identity and helping him or her make sense of the world."⁵²

Many Aboriginal beliefs, practices, cultures, and needs are not adequately recognized in mainstream child welfare practices and policies. For example, in Aboriginal belief systems the interests of the child, family, community, and surrounding environment are interconnected. Removing a child from his/her home to another environment separates him/her from family, kinship network, community, and culture. Without an opportunity to build these relationships, which are central to an interconnected world view, the child risks losing the ability to relate and understand the world from an Aboriginal perspective.

Aboriginal communities often perceive child welfare as paternalistic, top-down, and intrusive. Rather than a social service, current-day child welfare is often perceived as a continuation of colonial policies and an extension of the Sixties Scoop.⁵³ The mainstream child welfare system is viewed as having an excessively narrow focus on protection while prevention programs are seen to be more in line with the goal of keeping children in their communities, keeping children out of care, and more consistent with traditional practices.

Strong community connections are important for all CASs in all communities across Ontario. Mainstream CASs often capitalize on the strength of the community through volunteerism, community engagement, and private and public philanthropy. Due to the importance of community and cultural practices in the rearing of a child in an Aboriginal community, it is even more important to leverage community and cultural strengths on behalf of Aboriginal children and families.

Child welfare policies and practices are often at odds with traditional Aboriginal practices. Tradition and culture are key components of raising an Aboriginal child. Healing circles, naming ceremonies, smudging ceremonies, and other cultural gatherings can play an important role in the rearing of a healthy child and can lead to positive outcomes for children. As reported in a review of First Nations child welfare in New Brunswick:

*Child welfare policies and practices are most effective when they are not merely culturally sensitive or adapted but developed and based on the child's own culture and provided, as much as possible, in the child's ancestral or mother tongue.*⁵⁴

With this in mind, the concept of cultural safety in child welfare warrants attention. Going beyond recognition and acceptance of different cultures and cultural practices, cultural safety focuses on the relationship between service providers and clients (children and families), including recognition of power imbalances, discrimination, and disempowering practices. By allowing the client to define what is culturally safe, a cultural safety approach allows the client's

⁵² Mandell, Deena et al, (2006). "From Child Welfare to Child, Family, and Community Welfare: The Agenda of Canada's Aboriginal Peoples." *Towards Positive Systems of Child and Family Welfare*, 213.

⁵³ Bennett, Marlyn (2002). A Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada.

⁵⁴ Office of the Ombudsman and Child and Youth Advocate (2010). *Hand in Hand: A Review of First Nations Child Welfare in New Brunswick*, 16.

cultural values and practices to play a large role in determining what the child welfare services he or she receives should look like.⁵⁵

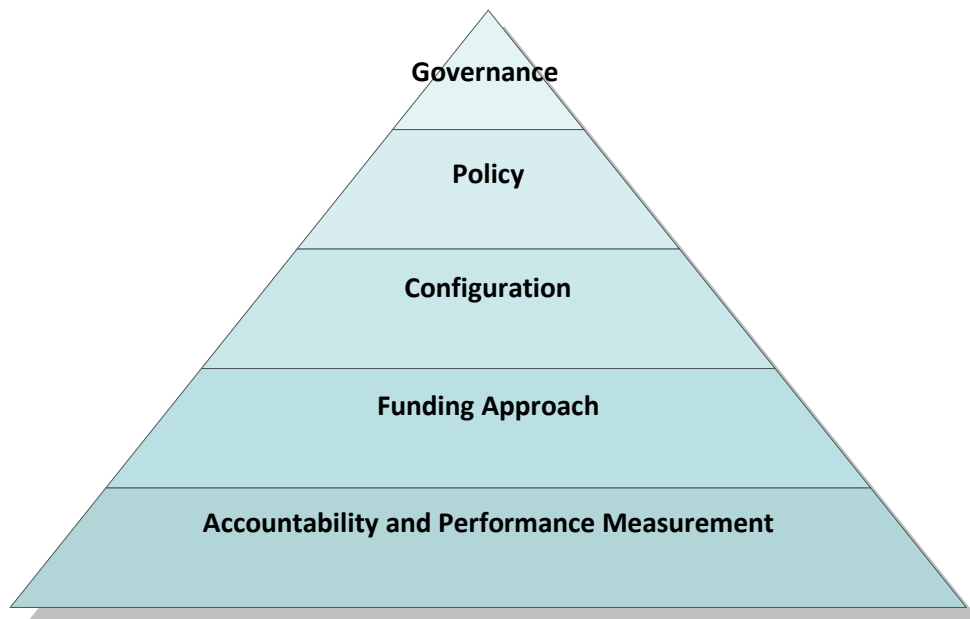
There is evidence that demonstrates the beneficial impacts of maintaining strong cultural identities and traditions in First Nations communities. For example, one study of the 196 First Nations in British Columbia found that youth suicide rates declined in communities that were more successful at sustaining their history and cultural practices. Communities that pursued self-governance, devoted facilities and time to cultural events, and asserted control over education, health, and child and family services experienced lower rates of youth suicide than communities that did not measure as highly on these factors.⁵⁶

⁵⁵ National Aboriginal Health Organization (2006). *Fact Sheet: Cultural Safety*.
<http://www.naho.ca/english/documents/Culturalsafetyfactsheet.pdf>

⁵⁶ Lalonde, Christopher E. (2006). "Identity Formation and Cultural Resilience in Aboriginal Communities." *Promoting Resilience in Child Welfare*, 66.

5. ABORIGINAL CHILD WELFARE WITHIN THE CAS SYSTEM

The Commission's working paper, *Jurisdictional Comparisons of Child Welfare System Design*, outlined a framework (depicted below) for analyzing the effectiveness of existing governance structures, policies, configuration, funding approach, and accountability and performance measurement mechanisms of the current child welfare system. In this section, we apply this framework to analyze the same features of the Aboriginal sub-system and their effectiveness in meeting the needs of Aboriginal children, youth and communities within the existing child welfare system.



5.1 Governance

The issue of governance is central to the discussion of the challenges associated with Aboriginal child welfare. Governance relationships operate at several different levels: the relationship between Aboriginal agencies and their Aboriginal authorities (Chiefs and Councils, as well as PTOs), the relationship between Aboriginal agencies and provincial authorities (MCYS and its Regional Offices), and the internal governance (Board and Management) structures of the agencies themselves. The issue of self-determination is also a very important consideration regarding governance in Aboriginal child welfare.

Governance and Accountability Relationships

Like mainstream CASs, the designated Aboriginal CASs are independent non-profit incorporated bodies that are governed by a board of directors. As with the mainstream agencies, the Commission believes that independent, locally based agencies are best suited to leverage community strengths and deliver child welfare services. The designated Aboriginal CASs are fully funded to perform a mandated service, and like mainstream CASs, they receive designation

from the Minister and therefore have the same formal accountability relationship with MCYS as mainstream CASs.

Underpinning governance of the Aboriginal child welfare sector is the broader issue of Aboriginal self-governance and the question of where authority ultimately lies for Aboriginal child welfare laws and policy. Currently, under the CFSA and the 65 Agreement, the Government of Ontario is responsible for legislating and funding child welfare services to Aboriginal peoples in the province. It is the impression of many Aboriginal leaders that Ontario and mainstream child welfare organizations treat accountability to Aboriginal governments (e.g. Band Councils) as subordinate to the authority of the Ontario government. This represents a fundamental tension between Ontario and many Aboriginal leaders who consider the authority of the CFSA to be subordinate to the authority of First Nations themselves on the grounds that Aboriginal peoples have never relinquished their right to care for their own children.

Where Aboriginal agencies have been designated by the Minister to provide child welfare services, they must operate within the legal framework established by the provincial government. They attempt to accommodate both Aboriginal expectations and CFSA requirements in order to deliver “culturally appropriate services.” However, under Ontario law, the authority to create child welfare legislation and determine policy rests with the province. Consequently, many Aboriginal stakeholders feel that a Euro-Canadian system is being imposed on them in violation of their right to self-determination.

Unlike mainstream CASs, designated Aboriginal CASs have formal accountability to governments beyond MCYS. For designated Aboriginal CASs, the current accountability relationships to both Councils and Chiefs (often several of them) and to the provincial government, yields different and sometimes competing expectations and obligations. The challenge facing the Aboriginal child welfare sector is to meet all of these expectations and obligations so that there is accountability to both Aboriginal governments and the provincial government.

Federal-Provincial Dynamics

The relationship between the federal and provincial government over the provision of child welfare to Aboriginal peoples in Ontario also contributes to some confusion over ultimate jurisdiction. Commenting on health and social services, including child welfare, it has been stated that:

The shared [federal/provincial] responsibility has not been a collaborative effort based on meeting the needs of the client but, rather, has resulted in a jurisdictional ambiguity leading to inequitable access to required services – and, frequently, gaps in or barrier to service.⁵⁷

For child welfare in Ontario the jurisdictional ambiguity stems from the 1951 revisions to the *Indian Act*. As set out in the 1867 *Constitution Act*, the federal government has a fiduciary responsibility for Aboriginal peoples and the lands reserved for them. Although the federal government maintains this legal authority, in practice, the revisions to the *Indian Act* effectively

⁵⁷ Postl, Brian et al., (2010). “Aboriginal Child Health and the Social Determinants: Why Are These Children So Disadvantaged?” *Child Health in Canada*. Healthcare Quarterly, Vol. 14, 44.

gave the provincial governments authority over child welfare, health, and other social services.⁵⁸ Rather than working towards effective service provision and poverty reduction, the federal government devolved some of its responsibilities to Aboriginal peoples to the provincial governments.⁵⁹

5.2 Policy

Although Part X of the CFSA addresses Aboriginal child welfare specifically, the majority of the CFSA's provisions and regulations were not explicitly designed with Aboriginal peoples in mind. As policy directions, procedures, and practices were developed to implement the legislation the primary focus was not on the needs of Aboriginal communities and consequently, recognizing those needs within the regulatory framework has been challenging.

The relevance and impact of legislative and policy changes on Aboriginal communities, related to Child Welfare Reform in the late 1990s and Transformation over the past 5 years, have been mixed. The mixed impacts for Aboriginal peoples by these two policy changes are illustrated by the following two examples:

- Legislative changes in the late 1990s that broadened the definition of a “child in need of protection” to include neglect disproportionately affected Aboriginal communities. Due to the high incidence of poverty, poor housing, serious health concerns, and other social issues in Aboriginal communities and families, the broadening of the various circumstances that constitute neglect has led to greater intrusion into Aboriginal families. There has been an increase in the opening of child protection cases and more children are being brought into the care of CASs.
- Some aspects of recent policy directions by MCYS have been positive for Aboriginal child welfare. The requirement that Bands be consulted by CASs and the increased recognition of customary care have helped to formalize a more culturally sensitive approach to child welfare. Other developments have not been positive. For example, requirements for training and approving foster homes have been more precisely specified with the introduction of SAFE and PRIDE. Aboriginal child welfare leaders report that some of the requirements are neither culturally appropriate nor realistic in Aboriginal communities. They have concluded that this is one reason that the majority of Aboriginal children who come into care are of necessity placed in non-Aboriginal homes outside their communities.

Section 214 (1) 6 of the CFSA states that the Lieutenant Governor in Council may exempt designated agencies “from any provision of [the] Act or the regulations for a specified period or periods.”⁶⁰ Additionally, Section 214 (5) (a) gives the Minister the authority to exempt one or more societies from the prescribed standards of services and procedures and practices.

⁵⁸ Gough, Pamela et al., (2005). *Jurisdiction and Funding Models for Aboriginal Child and Family Service Agencies*.

⁵⁹ Bennett, Marlyn (2002). A Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada, 21.

⁶⁰ CFSA (2010) Section 214. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

Based on the premise that “one size does not fit all” and consistent with making requirements more appropriate for Aboriginal children and families, exemptions should be made to exclude Aboriginal agencies from certain policy requirements that are unhelpful or culturally inappropriate. The process of identifying appropriate areas to use exemptions or modifications must be linked to strong and effective accountability mechanisms.

5.3 Configuration

As discussed earlier, Aboriginal children and families are served through a variety of arrangements including mainstream CASs, designated Aboriginal CASs, and other Aboriginal child and family service agencies.

Ensuring that Aboriginal communities have access to the types of services they need requires an examination of the way agencies, services, and programs are configured. There is a need for a clear vision for the overall configuration of Aboriginal child welfare as a sector, while recognizing the short term opportunities that exist to realize efficiencies, meet organizational goals, and prepare the way for a long term vision for the sector.

This section identifies some potential configuration options; however, the Commission fully acknowledges that any decisions around reconfiguration of Aboriginal child welfare should be made after the full engagement of Aboriginal stakeholders and MCYS to jointly identify, evaluate, and agree upon the course of action to take. It is also important to note that no single service configuration option needs to be adopted exclusively. The goal is not to have a single, replicated model across all Aboriginal communities; rather, different regions and agencies will likely be better suited to different models.

System Configuration Options for Mainstream CASs Serving Aboriginal Children

Ideally, all Aboriginal children should be served by Aboriginal service providers. As Aboriginal communities and agencies work towards this goal, the short term reality is that many Aboriginal children continue to be served by mainstream CASs. Moreover, some Aboriginal families live great distances from Aboriginal communities. And some Aboriginal communities have very small populations. Consequently, it is necessary to examine ways to improve service delivery by mainstream CASs to Aboriginal children as well as to determine the optimal configuration and organization of designated Aboriginal child welfare CASs.

Mainstream CASs serving Aboriginal children and families, with the support of local Aboriginal organizations or Aboriginal community members, could examine the extent to which they could more fully deliver services jointly or collaboratively with other (Aboriginal) agencies. Such arrangements could enhance service quality and appropriateness while extending the CASs own capabilities and skill sets. Some examples include joint foster parent recruitment and emergency after-hours coverage.

Additionally, opportunities exist for Aboriginal agencies to provide mainstream CASs with training and support to help them better serve Aboriginal children. Joint staff training, cultural awareness training, capacity building in regards to the use of customary care are all examples of learning opportunities for mainstream CASs.

More extensive use of service agreements could also be encouraged to increase the number of Aboriginal children served by Aboriginal agencies. Consideration could be given to province-wide efforts to promote best practices in the use of service agreements, protocols, and other mechanisms that promote shared efforts between mainstream CASs and Aboriginal service providers. In its visits and consultations, the Commission has observed and heard from Aboriginal communities of many positive practices that exist today in some CASs that could be used more fully.

System Configuration Options for Designated Aboriginal CASs

The organization of service delivery varies among the designated Aboriginal CASs. For example, Tikinagan is a highly decentralized agency with three or more staff members in each of the communities it serves. Payukotayno, by contrast, is a highly centralized multi-service agency with services for remote communities along the length of the James Bay Coast provided mainly from a base at Moosonee and Moose Factory. Some of the agencies offer a range of services that extend well beyond child welfare/child protection, while others are relatively narrower in the scope of services they provide. These different arrangements are a reflection of differences in the territories served, resourcing and capacity considerations, the communities' preferences, and various other factors.

There are a number of important factors to consider in relation to reconfiguration:

- It must be recognized that determining the configuration of agencies and the types of services they provide is interconnected with matters of governance and accountability. The reconfiguration of designated Aboriginal CASs creates new accountability relationships.
- As observed in the Commission's First Report, "all child welfare organizations should have the scale required to ensure economy, quality and consistency, [and] in some cases, economies of scale can create efficiencies which in turn free up valuable resources for services to children and families."
- The Commission also noted that "issues of remoteness and culture may outweigh economy of scale considerations in some communities."⁶¹
- The needs and service capacities in each community must be key factors in decisions about service configuration. Mental health services, addiction prevention and treatment services, Aboriginal Health and Wellness centres, the Aboriginal Healing and Wellness Strategy (including Aboriginal Healthy Babies, Healthy Children), Friendship Centres, the Ontario Native Women's Association, income support services, and other services are all important parts of the array of services and programs that are interrelated with child welfare. It is important that where possible, designated Aboriginal CASs form linkages with these services to ensure that their clients have access to the supports and programs they need. In many cases, the availability, or lack thereof, of these services

⁶¹ Commission to Promote Sustainable Child Welfare (2010). *Towards Sustainable Child Welfare in Ontario: First Report*.

will play a major role in determining the range of services that needs to be offered by the designated Aboriginal CASs.

- Most Aboriginal child and family services agencies provide important prevention functions in their communities. Although not inevitable, the Commission has heard concern that the designation of child and family service agencies as CASs can cause those agencies to shift heavily toward a protection role at the expense of their focus on prevention, mental health, and other services.

These considerations need to be carefully taken into account in any reconfiguration, including any decisions to designate new Aboriginal CASs.

There are various options that can be considered for the configuration of Aboriginal child welfare. Some options for consideration are:

1. Vertical configuration - Services can be configured in a hierarchy. Front line and prevention services could be locally delivered within Aboriginal communities. More complex or specialized service requirements would be referred to a more centralized agency.
2. Horizontal configuration - Aboriginal child welfare agencies could continue to be multi-service agencies capable of offering a wide range of services. The reach of multi-service agencies could be extended further, as far as the integration of all health and social services to Aboriginal communities.
3. Networked configuration – designated Aboriginal CASs, mainstream CASs, and Aboriginal child and family services agencies could form integrated networks through which resources, expertise, and specialized services could be shared. Networks could also facilitate the formation of service agreements between mainstream and Aboriginal agencies.
4. Child Welfare Authorities - Aboriginal child welfare Authorities could be established along geographic or PTO boundaries. Under such a model, each Aboriginal Authority could have responsibility for certain financial, administrative, coordination, and service delivery aspects of the system and could decide which service providers would provide child welfare services in its territory. There would be a single Authority working with the provincial government on behalf of all the CASs and child and family service agencies in each Authority's territory, thereby streamlining the relationship between agencies and MCYS. The Aboriginal Authorities and MCYS could work to align accountability mechanisms and to ensure that Aboriginal agencies deliver effective service.
5. Shared services - Aboriginal agencies located in or near larger urban areas may be able to improve access to more specialized services and achieve efficiencies by engaging in shared service arrangements with other CASs, with mental health services or others, and/or through sharing purchasing, training and other back office/support functions. Continued efforts to identify back office functions that could be shared across

organizations (Aboriginal and non-Aboriginal; social service organizations and others) could provide some opportunities to pool resources and skills across communities and agencies in order to cope with the issues of size and scale.

5.4 Funding Approach

A key aspect of the Commission's work that was identified in its First Report is the need to change the basis on which child welfare funds are allocated. The need for a different approach to funding is as relevant for Aboriginal child welfare as it is for mainstream child welfare. In fact, the implications of the limitations of the current funding approach are even greater for Aboriginal CASs. Their capacity to deal with growing demand and associated costs is limited by the isolation and extreme socioeconomic circumstances of many Aboriginal communities combined with the absence or scarcity of other services in those communities. And owing to the small size of most of the Aboriginal agencies, it can be more difficult to cope with even small fluctuations in service demands or unanticipated case-related costs.

In recent years, the rate of funding increases for Aboriginal CASs has been greater than funding increases to mainstream agencies. Nevertheless, the cost pressures on Aboriginal agencies have been intense and have resulted in significant mitigation funding as well as a higher upward adjustment to the funding formula (for all aboriginal agencies for 2010/11).

The Commission has done extensive work to develop an approach to allocating Child Welfare funding in a way that would be more equitable, would provide greater resiliency to children's aid societies in responding to the needs of the children and families in their communities and would be based on local social and economic factors across the province. The Commission submitted its advice to the Minister in February, 2011.

The proposed formula includes factors that are highly predictive of the need for child welfare services by non-Aboriginal CASs. However, during its development we determined that it did not adequately capture the unique circumstances and differing cost structures of the designated Aboriginal CASs and the characteristics of the populations they serve. When Aboriginal CASs were included in the proposed model, the formula was found to be a poor predictor for Aboriginal CASs and produced distortions in the results for mainstream CASs. Consequently, the Commission proposed an adjustment to the formula to recognize services to Aboriginal children and families that are provided by mainstream societies but has recommended that the Ministry develop a separate approach for funding designated Aboriginal CASs.

There are a number of possible approaches that could be considered for funding designated Aboriginal agencies, such as:

1. Population-based funding - Funding is calculated on a per-capita basis within designated service catchment areas. Although straight per-capita funding can be used, population-based approaches often weight the population on socio-demographic and community factors and costs and/or need for service.

2. Agency-based funding – Funding is transferred through block grants to agencies to cover the costs that they incur. Often historical costs and/or activity levels are used to determine funding levels with many possible variations on this approach, ranging from a baseline plus annual cost of living increases to full grants for demand-driven expenditures.
3. Fee for service – Fees are paid to independent agencies for the range of specified services provided to individuals.

One specific approach that could be used as a reference point is the model used in Alberta, which takes into account child population size, poverty rates, and land mass in determining the proportionate share of funding allocated to each agency.

Whatever options are considered, the funding role of the federal government, accountability, the range of services to be included and the requirements of the 65 Agreement need to be fully considered.

5.5 Accountability and Performance Measurement

For both mainstream and designated Aboriginal CASs, effective systems of accountability and performance measurement are needed to ensure that agencies provide effective services with public funds.

The current accountability and measurement framework is excessively centred on compliance with case management and protection standards. While compliance mechanisms can be effective in ensuring regulations are followed and at monitoring some service delivery processes within an agency, compliance measures tell us relatively little about the outcomes for children and families, of CAS services.

In our conversations with Aboriginal agencies, leaders, and communities, we heard that the current system of accountability and the related mechanisms:

- Reinforce a Euro-Canadian model of child welfare that is designed to meet the objectives of non-Aboriginal government;
- Fail to recognize the realities of Aboriginal governance and authority structures, especially the accountability relationship between Aboriginal agencies and the First Nations they serve;
- Disregard the inherent right claimed by Aboriginal people to care for their own children;
- Place excessive administrative requirements on agencies; and
- Impose inappropriate and unreasonable standards and policies on Aboriginal agencies.

In partnership with MCYS and the sector, the Commission is developing an Accountability Framework. The intention of an Accountability Framework is to provide a more effective approach to accountability by creating more clarity and focus on what matters towards a culture and systems that support performance improvement.

The shape of the Accountability Framework will most likely encompass the following five areas:

1. Purpose and guiding principles – the purpose of the framework is to provide overall coherence to the range of reporting and review functions while clarifying roles and accountability mechanisms used.
2. Roles and responsibilities – brings clarity over who is responsible for which aspects of the system.
3. Key dimensions of child welfare – describes the specific activities that the different actors in the system are responsible for.
4. Accountability mechanisms – analyzes the tools and mechanisms available for assessing performance (e.g. Performance indicators (PIs) and targets, regulations, audits, reviews, etc.).
5. Sustaining improvement and delivering results – analyzes ways to ensure that improvement is continuous,

A key aspect of the Accountability Framework being developed is its focus on outcomes measurement. The Commission has been working with MCYS and the sector to identify appropriate outcomes and corresponding performance indicators (PIs) to assess progress towards those outcomes. Aboriginal specific performance indicators, and perhaps even some Aboriginal specific outcomes, need to be identified and may not be the same as performance indicators and outcomes for other agencies and communities.

Since there are different levels of accountability, different levels of performance indicators are required. Supervisors, Executive Directors, Boards of Directors, Band Councils and MCYS each have responsibility over different actors and aspects of the child welfare system and different performance indicators are needed to reflect these roles. The development of an outcomes based measurement system is an opportunity to promote the consistency between the expectations and obligations placed on designated Aboriginal CASs by MCYS and their own Band Councils and/or PTO's.

As with all the other aspects of Aboriginal child welfare, Aboriginal leaders and experts from their communities will be instrumental in shaping the Accountability Framework for Aboriginal child welfare, including the identification of outcomes and indicators.

Accountability for Mainstream CASs Serving Aboriginal Children

Given that a large number of Aboriginal children are served by mainstream CASs, ensuring that these agencies deliver appropriate and effective services is a very important responsibility of

Boards and MCYS. As the 2010 CFSA review found, there is inconsistency in compliance with the Aboriginal requirements set out in Part X of the CFSA. To reduce this variability one could build ongoing oversight into the regular performance monitoring processes to ensure that mainstream CASs are complying with the Aboriginal provisions in the CFSA. Other measures may also be required to go beyond compliance to build cultural sensitivity and respect for the role of the aboriginal community in caring for its own children.

6. ADVANCING ABORIGINAL APPROACHES TO CHILD WELFARE

This paper began by providing a history of Aboriginal child welfare in Ontario and then offered a description of Ontario's Aboriginal population, the current child welfare system and finally, a commentary on several system design features in an effort to explore the workings and challenges of Aboriginal child welfare within Ontario's child welfare system. This description and analysis sets the stage for the Commission's future focus on Aboriginal child welfare. The following section identifies areas that the Commission believes warrant further attention and action.

Aboriginal peoples and their leaders should lead in defining how services to their children and communities will be delivered. At the same time, collaboration among all stakeholders in the system is necessary in order to bring about a sustainable and improved child welfare system. The issues and challenges faced by the sector, by both Aboriginal and mainstream CASs, require cooperation by many parties.

As the Commission has travelled the province, we have seen many examples of collaborative and innovative relationships between CASs and between CASs and Aboriginal communities. Within many Aboriginal communities, there is a sense of hopefulness for the future and a revitalization of the Aboriginal voice. At the same time, there are many challenges. We have already described some of the tensions between the mainstream child welfare sector and the Aboriginal child welfare sector.

There is no single Aboriginal view on many of the issues in child welfare. While this is an understandable reflection of the diversity of Aboriginal peoples in the province, it does at times create tensions within the Aboriginal child welfare sector and among the different Aboriginal organizations (such as Friendship Centres). For example, there are varying opinions on the approach and pace for reaching independence. And there are conflicts surrounding which organizations should serve the growing urban Aboriginal population. The Commission has also observed and heard acknowledgement by many Aboriginal leaders that political tensions internal to the Aboriginal community sometimes present barriers to constructive forward movement on matters relating to Aboriginal child welfare. These tensions need to be recognized by Aboriginal leaders and organizations and they must not allow them to interfere with their efforts to take a common stand on matters where they are in agreement. Nor should internal differences among Aboriginal communities and leaders be taken by anyone as a reason for not working towards improvements and change.

Advancing Aboriginal approaches to child welfare entails stepping past the boundaries of child welfare. Many of the issues identified in this paper extend well beyond child welfare into issues of self-determination, economic development, poverty alleviation, education, healthcare, and cultural continuity. Sustainable and meaningful improvements in Aboriginal child welfare require changes to the broader political and socioeconomic conditions that are experienced by many Aboriginal communities in Ontario.

A key element of the Commission's strategy to promote Child welfare is to advance Aboriginal approaches to child welfare as it proceeds to:

- Reconfigure CAS structures and service delivery;
- Propose changes to the funding approach for child welfare;
- Develop a new approach to accountability and system management; and
- Strengthen and improve service delivery.

In the remainder of this section, the areas that the Commission has identified as requiring further consideration and dialogue are presented under these four headings. The Commission will finalize its conclusions and recommendations after having the benefit of feedback on this paper from the Aboriginal community and broader child welfare community and others.

6.1 Reconfiguring Aboriginal Child Welfare Structures and Service Delivery

Work on reconfiguration could include the following activities.

1. *Developing a strategy for the service and system configuration of Aboriginal child welfare.*

Some of the long-term issues regarding system design that need to be addressed include:

- The number and location of designated Aboriginal CASs;
- The range of services offered by designated Aboriginal CASs;
- Best practices for providing services in remote communities;
- The degree of integration with mainstream CASs; and
- Collaboration between designated Aboriginal CASs and other community agencies.

Further work and discussion is required among all stakeholders to address the challenges of service and system configuration for Aboriginal child welfare. Although it must be stressed that different service configuration options will be appropriate for different agencies, developing an overall strategic direction will help to address some of the service delivery, scale, governance, and accountability issues facing the sector.

2. *Identifying and acting on short-term inter-agency priorities to support efficiency and enhance service delivery.*

While the longer term system design issues are investigated, there are short-term steps that can be accomplished in the meantime to enhance efficiency and service delivery:

- Shared service opportunities, such as back-office work, joint training, foster parent recruitment and training, and emergency after hours coverage can be investigated among designated Aboriginal agencies and between Aboriginal agencies and mainstream CASs.
- In terms of service delivery, implementation of best practices and greater idea sharing among designated Aboriginal agencies should be strongly promoted.

3. *Making greater use of service agreements between mainstream CASs and designated Aboriginal CASs.*

More extensive use of service agreements between mainstream and Aboriginal agencies is one way to work to reduce the number of Aboriginal children served by Mainstream CASs rather than Aboriginal agencies.

6.2 Changing the Funding Approach for Aboriginal Child Welfare

A changed funding approach could entail the two efforts set out below.

4. *Undertaking a separate project to develop a distinct funding approach for designated Aboriginal CASs.*

Work needs to be undertaken to develop an appropriate funding approach for the designated Aboriginal CASs.

5. *Ensuring that designated Aboriginal Bands and communities have the resources needed to maintain Band Representatives and other required services to represent the Band in matters involving child welfare services to children from their communities.*

First Nations require a range of services to actively engage in child welfare cases involving their children. Securing representation in court, participating in court proceedings, providing children and families access to information, liaising with CASs, and other services are all necessary. Historically, the Band Representative has taken on many of these roles. Currently, no funding is provided for a Band Representative or the other services required.

Funding of Band Representatives would allow Bands to better meet their responsibilities. However, given the range of services required, other services may be necessary so that First Nations have the capacity to engage fully in child welfare cases.

6.3 Developing a New Approach to Accountability and System Management

Improving the Accountability and Performance Management of Aboriginal child welfare requires a number of processes.

6. *Reviewing child welfare regulations, policies, standards and directives to identify where exemptions and/or modifications can be utilized to promote more appropriate services to Aboriginal children and families within their own communities.*

Recognizing the breadth and scope of such a review, the Commission believes that this process should begin with a focus on exemptions and modifications relating to in-care services. This will make the task more manageable while focusing on one of the most critical issues in Aboriginal child welfare: identifying the legislative/policy barriers that lead to Aboriginal children being taken out of their home communities.

7. *Aligning the expectations and demands that the provincial government and Aboriginal leaders each place upon Aboriginal agencies.*

The responsibility of designated Aboriginal CASs to both Aboriginal leaders and provincial governments yields competing expectations and obligations for some agencies. These expectations and obligations need to be aligned to streamline the accountability requirements placed upon agencies, avoid duplication of similar reporting requirements, and to prevent agencies from facing contradictory demands. Aboriginal agencies, Band Councils, MCYS Corporate Branches and Regional Offices are instrumental for moving this process forward.

8. *Clearly identifying a locus of responsibility for Aboriginal services including but not limited to child welfare within the Ministry of Children and Youth Services.*

Institutionalizing such an entity within the Ministry would be helpful to ensuring that policy considerations in the future reflect the needs and realities of Aboriginal children, families, and communities. This office or unit should not be restricted to Aboriginal child welfare alone, but should encompass all matters that MCYS is responsible for that affect Aboriginal children.

9. *Establishing an approach to performance improvement for all CASs that service Aboriginal children that includes distinct outcomes and performance indicators and other components such as monitoring mechanisms and review processes.*

Creating effective accountability relationships requires the establishment of measurable criteria against which performance can be assessed. Shifting from measuring case-based compliance against standards to a performance measurement system is a difficult transition; however, the change would provide more relevant indicators that reflect desired outcomes for the children, families, and communities served and would reduce administrative burden.

Aboriginal leaders and MCYS need to identify separate indicators, and possibly separate outcomes, that are appropriate for the designated Aboriginal CASs and the communities they serve as part of a performance measurement based accountability framework.

6.4 Strengthening and Improving Service Delivery

In the coming year the Commission will be identifying the priorities for its work on Service Delivery. As we do so we will be looking to the designated Aboriginal CASs and other Aboriginal leaders for input and guidance. However, based on its work to date the Commission has developed five potential areas for priority attention in relation to improved service delivery.

10. *Positioning customary care as the preferred option for out-of-home placement of Aboriginal children with temporary ward, agency ward, and crown ward status being used only on an exception basis.*

Customary care is a placement model rooted in the traditions of each First Nation. The designated Aboriginal CASs are actively implementing their own unique customary care models in an effort to provide appropriate service. These efforts should continue. Efforts should also be made to assist mainstream agencies in developing their understanding and use of customary care arrangements. The expanded use of customary care could obviate the need for both Society Wardship and (particularly) Crown Wardship for First Nations children. Custom adoption is also an alternative to court-ordered adoptions, currently used in a number of agencies/communities.

11. *Making greater use of protocol agreements between mainstream CASs and First Nations communities and their agencies.*

There are increasing numbers of protocol arrangements between mainstream agencies and First Nations communities that have resulted in fewer children coming into the care of CASs, better training of mainstream CAS staff, heightened cultural awareness and less intrusive approaches by CASs.

12. *Recognizing traditional child care practices and other ceremonies and gatherings as integral components of Aboriginal child welfare.*

The delivery of Aboriginal child welfare services needs to reflect the unique needs and challenges of Aboriginal children, families, and communities. Agencies operating in Aboriginal communities need the latitude to develop and deliver services that are rooted in the child and community's cultural beliefs and practices. Traditional child care practices, as well as other ceremonies and gatherings such as healing circles, smudging ceremonies, and naming ceremonies are important for the rearing of a healthy child and must be recognized as necessary components of Aboriginal child welfare.

13. *Documentation by designated Aboriginal CASs of their child care and child welfare practices.*

Recording and documenting, through various mediums, Aboriginal practices regarding child care and child welfare will help demonstrate the service delivery possibilities that exist. This is important for developing alternative service delivery models that are better suited for Aboriginal communities. Documented practices can be shared among Aboriginal agencies and with mainstream CASs to create awareness about Aboriginal approaches.

14. *Development, by designated Aboriginal CASs, of an inter-agency forum to meet and exchange ideas and practices.*

The Commission has observed that there has not been a forum in which all designated Aboriginal CASs participate to exchange information and views and to strengthen service delivery of child welfare services.

We believe that discussions on a regular basis among all designated Aboriginal agencies will help address key issues and challenges while also facilitating closer working relationships among the agencies.

6.5 Addressing the Broader Governance and Socioeconomic Issues

As stated throughout this paper, child welfare and the conditions in Aboriginal communities that drive child welfare demand include broader political, economic, and historical conditions. Investment to address some of the socioeconomic determinants of child welfare demand is necessary. In this regard, the Commission believes that efforts need to continue at the provincial, federal, and Aboriginal government level to address these longstanding and fundamental issues. Moving beyond child welfare, such an initiative should tackle the economic and governance issues that are vital for improving outcomes for Aboriginal peoples, including child welfare related outcomes.

7. CONCLUSION

By tracing the history of child welfare services for Aboriginal children in Ontario and examining how the child welfare system affects Aboriginal peoples, this paper demonstrates the differences in child welfare related needs between Aboriginal and non-Aboriginal children and communities and highlights potential future directions for improving the system.

As it is currently constructed, Ontario's child welfare system does not meet the test of a strong system for meeting the needs of Aboriginal children. In the province's Aboriginal child welfare sector, there is a need to make changes to all five of the system features discussed in Section 5.

Aboriginal child welfare and the challenges faced within the sector are interconnected to many broader issues such as self-determination, economic development, education, and culture. Governments, both Aboriginal and non-Aboriginal, and other leaders need to continue and accelerate their efforts to address these critical issues. Creating a sustainable system that maximizes the benefits for Aboriginal children without repeating the mistakes of the past will require a concerted effort by all stakeholders.

Aboriginal children, families and communities in Ontario deserve the opportunity to reach their full potential. Aboriginal leaders are actively pursuing several avenues to promote healing and renewal, preserve and strengthen adherence to traditions and fight against conditions that undermine the well-being of their people.

The Commission has been privileged to hear hundreds of Aboriginal voices describe the proud and sometimes tragic history of First Nations, Métis and Inuit people in this province. We have learned that history is current. We have come to understand that today's approach to child welfare, based on a Euro-Canadian world view, relies on enforcing the requirements of a non-Aboriginal government as did the Residential School Program and the "60s Scoop".

We have also heard about the efforts of the government and mainstream agencies to make services more sensitive, respectful and culturally appropriate. But we have also heard government, mainstream agencies, and Aboriginal leaders acknowledge that the results of these efforts are simply not good enough.

A prerequisite to meaningful change is understanding – understanding in the sense of knowing the facts, and understanding in the sense of empathy and appreciation. We have seen that the facts about Aboriginal child welfare and their implications are not well known by the public, by mainstream child welfare and even by Aboriginal agencies and leaders. To help address this deficiency and to identify features of the system that require change, the Commission has produced this paper.

One elder described Aboriginal leaders as warriors who are walking determinedly into a powerful wind that is battering against them and trying to force them and their people to the ground. That wind is carrying grains of sand composed of the legacy of historical wrongs, disrespect and indifference. The Commission does not presume to walk for Aboriginal people in Ontario – they are doing so themselves, facing the wind with their heads up. But we are

searching for the steps that we can take to help reduce the force of that wind, increase understanding and encourage support for Aboriginal people so that they can give their children what they need and deserve.

Please consider what we have written in this paper. Please comment on the activities that we set out in the final section of the paper and the priority that should be attached to each of them, and please advise us on what recommendations we should make. Please share your views on the work that the Commission should undertake to arrive at:

A modernized child welfare system providing integrated child-focused services fully aligned with the broader network of children's services to improve outcomes for children and youth in which Aboriginal children, whether on-reserve or off-reserve will have access to services that reflect their needs and are delivered in ways that respect their culture, heritage, and traditions.

We ask you to respond to us in writing by September 16, 2011 so that we can incorporate your feedback into our thinking as we finalize our recommendations and determine the Commission's plan for the subsequent year.