

# **The 1965 Agreement: Comparison & Review**

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Report prepared for Chiefs of Ontario

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# SUMMARY

In 1965, Ontario and Canada signed the *Memorandum of Agreement Respecting Welfare Services for Indians*, usually known as the Indian Welfare Agreement or 1965 Agreement.<sup>1</sup> Today, the 1965 Agreement provides federal cost-sharing to Ontario for the provision of four programs to First Nations: social assistance (Ontario Works), child and family services, child care, and homemaking.

This report was prepared for the Chiefs of Ontario to review the 1965 Agreement and the four programs it covers. Because the 1965 Agreement affects funding on reserve, the report concentrates on reserve communities. The focus of the review is on two comparative questions: How does the 1965 Agreement affect equity between First Nations in Ontario and mainstream Ontario, and how does it affect the position of First Nations in Ontario compared to First Nations in other provinces?

There are no easy answers to these questions. This report presents the information that was available, and makes suggestions for further research.

## What prior reviews of the 1965 Agreement exist?

There have been previous reviews of the 1965 Agreement. There was one major tripartite review:

- In 1978 Indian Affairs established a Social Services Review Committee with the participation of Canada, Ontario and First Nations.<sup>2</sup> Indian Affairs hired TAP Associates Ltd. to conduct a review of the 1965 Agreement according to a pre-determined research plan. After much dispute, the Committee conducted a modified review with First Nations' participation. Research methods included key informant interviews, survey interviews and community meetings.

The tripartite review produced *A Starving Man Doesn't Argue* (1979),<sup>3</sup> which outlined problems and issues with existing services. A second report, *Community Care: Toward Indian Control of Social Services* (1980),<sup>4</sup> outlined a step-by-step transition to First Nations self-government in social services in Ontario, which was not implemented.

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1 Ontario and Canada, *Memorandum of Agreement Respecting Welfare Services for Indians*, 1965 [1965 Agreement].

2 Canada was represented by the Department of Northern and Indian Affairs, Ontario was represented by the Ministry of Community and Social Services, and First Nations had representatives on the Committee from the Union of Ontario Indians, the Association of Iroquois and Allied Indians, Grand Council Treaty #3, and Grand Council Treaty #9 (now NAN), as well as from ONWAA, the Ontario Native Women's Association, and the Southern Ontario Indian Homemakers' Association: *A Starving Man Doesn't Argue*, *infra* note 3 at (i).

3 TAP Associates, *A Starving Man Doesn't Argue: A Review of Community Social Services to Indians in Ontario (A Report Prepared for the Tripartite Social Services Review Committee by Technical Assistance and Planning Associates Limited)* Toronto: TAP Associates Ltd, July 1979 [*A Starving Man Doesn't Argue*].

4 Tripartite Task Group on Social Services, *Community Care: Toward Indian Control of Indian Social Services (Ontario Social Services Review, Phase II)* (Toronto: TAP Associates Ltd., December 1980) [*Community Care*].

Two summaries produced by Indian Affairs were available to this author:

- 1987, Carl R. Latham, Income Maintenance consultant at Indian Affairs (Ottawa) (33 pgs).<sup>5</sup>
- 2007, Strategic Direction and Policy Directorate, Indian Affairs (Ontario Region), including a summary of provincial and federal expenditures for 2004-05 (7 pgs).<sup>6</sup>

In reviewing its social programs, Ontario has sometimes produced special chapters or sub-reports that discuss the 1965 Agreement. These include:

- 1988, *Transitions* report on social assistance, led by George Thomson. Chapter 9, “Native Communities” recognized the unique concerns of First Nations within social assistance and the importance of self-government.<sup>7</sup>
- 1991-92, review of social assistance led by Allan Moscovitch. The review produced two general reports, *Back on Track* (1991) and *Time for Action* (1992). The process also created a First Nations' Project Team, chaired by Marie Tincombe-Shaw and Audrey Hill, which wrote two reports specifically on First Nations: *Short-term Social Assistance Reforms for First Nations Communities* (1991) and *First Nations' Project Team Report* (1992).<sup>8</sup>
- 1998-2000, review of child welfare. As part of this review Ontario wrote a report called *Aboriginal Child Welfare: Comprehensive Final Report* (2000).<sup>9</sup>

COO has two slide presentations on the 1965 Agreement (*A History of the 1965 Agreement*, 2006 and 2007),<sup>10</sup> and obtained a December 2007 legal opinion on the Agreement.

## What do earlier reviews say about the 1965 Agreement?

Prior reviews contain many common themes that remain true today. Several well-known **disadvantages** of the 1965 Agreement include:

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- 5 Carl R. Latham, *The Canada-Ontario Welfare Services Agreement of 1965* (Ottawa: Income Maintenance, Social Development Branch, Indian Services, DIAND: July 1987).
  - 6 Canada, Indian and Northern Affairs Canada, Ontario Region, Strategic Direction and Policy Directorate, *1965 Agreement Overview: “Memorandum of Agreement Respecting Welfare Programs for Indians”* (Toronto: INAC, Nov. 2007) [INAC, *1965 Agreement Overview* (2007)].
  - 7 Ontario, Social Assistance Review Committee, *Transitions (Report of the Social Assistance Review Committee, Prepared for the Ontario Ministry of Community and Social Services)* (Toronto: Queen's Printer for Ontario, 1988) [*Transitions*].
  - 8 Ontario, First Nations' Project Team, *First Nations' Project Team Report: Principal Report on New Social Assistance Legislation for First Nations in Ontario* (Toronto: Queen's Printer for Ontario, May 1992) [*First Nations Project Team Report*].
  - 9 Koster, Morrisette & Roulette, *Aboriginal Child Welfare Review: Comprehensive Report* (Toronto: Ontario Ministry of Community and Social Services, May 2000).
  - 10 Author unknown, *A History of First Nations Social Services Arrangements within MCSS and its Predecessors* (April 2006), obtained from Chiefs of Ontario [*A History* (2006)]; Author unknown, *A History of First Nations Social Services Arrangements within MCSS and its Predecessors* (In possession of Chiefs of Ontario, 26 June 2007), obtained from Chiefs of Ontario [*A History* (2007)].

- *No recognition of First Nations's rights*

First Nations are not parties to the 1965 Agreement. The only parties are Ontario and Canada. Although s.2(2) of the Agreement requires First Nations' consent for new programs, the rest of the agreement operates without First Nations' official consent. The Agreement fails to recognize First Nations' rights to self-determination and self-government in social program subject areas. Because First Nations are not parties, Ontario and Canada do not necessarily involve First Nations when they administer the agreement, make decisions on programs & funding, or share information.

- *First Nations still have unequal, inadequate access to social programs*

The Agreement fosters inequality in two ways. First, the programs in the Agreement are defined with limiting schedules, and in practice funding has often been unilaterally capped or cut by Canada and/or Ontario. The result is that First Nations often have less program funding than municipalities, and people within First Nation communities do not have access to the same program quality or availability within the four covered programs (social assistance, child & family services, child care, homemaking).

Second, virtually no programs have been added to the agreement. The only substantive addition was when Ontario Works replaced General Welfare Assistance; following the *Mushkegowuk Council* case,<sup>11</sup> the Employment Assistance component of OW is considered a new program under the Agreement. Beyond this, no social programs have been added since 1965 – almost 45 years. On occasion, Ontario has decided to extend some programs to First Nations without federal cost sharing. Sometimes federal programs fill in where provincial programs would otherwise apply. But many programs and services remain unavailable in First Nations communities in comparable terms to those available in mainstream Ontario.

- *Problems with high level of provincial program control*

The 1965 Agreement funds the extension of provincial programs to First Nations. First Nations have had to deal with provincial laws, policies, and bureaucracies which rarely recognize and account for the unique cultures, needs and circumstances in First Nation communities. In the long term, the entrenchment of provincial programs and jurisdiction may be serving as an obstacle in the movement towards First Nations jurisdiction and governance. In the short term, First Nations people are subjected to programs that are at best ill-fitting and at worst, such as with child welfare in the sixties scoop, highly destructive.

Earlier reviews also highlighted several **advantages** of the 1965 Agreement that are still relevant today. These include:

- *Open-ended federal funding*

Federal cost-sharing in the Agreement – as laid out in the formula, if not in practice – is open-ended. The province funds the service, and INAC reimburses the eligible percentage. There is not supposed to be a cap or limit to federal funding for any program or in total.

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11 *Mushkegowuk Council v. Ontario*, [2000] O.J. No. 641, [2000] 2 C.N.L.R. 79 (Ontario Court of Appeal).

In some program areas, INAC has in fact set funding caps. But in other provinces, it may be easier for INAC to limit funding; the 1965 Agreement makes this more difficult in Ontario. The Canada Assistance Plan (CAP, 1966) used a similar open-ended funding formula for the mainstream. Since the federal government terminated CAP in 1995, the 1965 Agreement is now a rare – maybe even unique – open-ended federal cost-sharing agreement.

- *Provincial involvement has some benefits*

The higher level of provincial involvement in programs for First Nation communities has some benefits. Because they face mainstream political pressures, provincial programs are often of higher quality than INAC's programs for First Nations. Provincial ministries provide expertise, program development, infrastructure etc. that is not available within INAC. First Nations in Ontario benefit from some provincial funding under the 1965 Agreement, including around 4-8% of direct program costs plus indirect costs at the ministry level.

- *First Nations have some involvement*

In practice, program administration of the four 1965 Agreement programs has been devolved to most First Nations communities. 110 First Nations deliver Ontario Works under the Agreement, 110 First Nations deliver Homemaking, half of First Nations have Child Care, and half of First Nations are served by a mandated Child and Family Services agency. Being a delegated agent is much more limited than full self-government, but at least gives First Nations some local control and some voice within the provincial system.

In addition, s. 2(2) of the 1965 Agreement gives First Nations the right to consent or refuse any new program (see *Mushkegowuk Council* case, Ontario Court of Appeal).<sup>12</sup>

- *Principle of equal access*

The preamble to the 1965 Agreement states that “needs in Indian Communities should be met according to standards applicable in other communities” and that “Canada and Ontario... desire to make available to the Indians in the Province the full range of provincial welfare programs”. These principles of full, comparable access are important commitments.

## **What did this review find?**

Taking a historical view, and an updated internal look at the four programs covered by the 1965 Agreement, this review adds the following 7 tentative findings:

1. At first, the 1965 Agreement facilitated an earlier expansion of social programs to First Nations in Ontario compared to other provinces, and in some cases earlier devolution of social program administration to First Nations.
2. Over time, practices changed in other provinces and the 1965 Agreement became less of a stand-alone exception.

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<sup>12</sup> *Mushkegowuk Council, ibid.*

3. As other provinces 'caught up', especially since the 90s, the gap narrowed between Ontario and elsewhere in terms of social program expansion and First Nations administration.
4. The financial benefit of the 1965 Agreement is diminishing due to funding caps and other inequitable restrictions. These have mostly been imposed by INAC, largely since the mid 90s, in spite of the open-ended cost-sharing structure of the Agreement.
5. The 1965 Agreement supports a narrow set of “welfare services”. It may promote First Nations' access to residual programs, but not necessarily to bigger universal programs like health and education.
6. However, despite all of the above, the 1965 Agreement *may* still be producing a small relative advantage for First Nations in Ontario compared to some other provinces. This is difficult to measure.
7. More research would be required to compare the overall equity of social programs for Ontario First Nations to (i) the programs available in mainstream Ontario or (ii) programs for First Nations outside Ontario.

These points are outlined in greater detail below, followed by recommended further research.

**1. At first, the 1965 Agreement facilitated an earlier expansion of social programs to First Nations in Ontario compared to other provinces, and in some cases earlier devolution of social program administration to First Nations.**

- a) **First Nations in Ontario were the first to begin administering social assistance.** First Nation administration of this program grew rapidly in the 60s and 70s. In other provinces devolution began later.<sup>13</sup>
- b) **First Nations in Ontario had far more child care centres on reserve by the early 90s than other provinces.** In 1978 First Nations in Ontario had 26 licensed child care centres on reserve,<sup>14</sup> growing to 45 centres by 1994. In 1994, Quebec First Nations had 11 child care centres, BC had 5, and other provinces had 1 or 0.<sup>15</sup>
- c) **Ontario was the first province to extend child welfare on reserve, beginning in 1956.** However this had a negative impact on First Nations, because for many years provincial Children's Aid Societies delivered only emergency protection services on reserve, and no

<sup>13</sup> See the Social Assistance and Background sections of this report for further details.

<sup>14</sup> *A Starving Man Doesn't Argue*, supra note 3 at 110.

<sup>15</sup> Clare Wasteneys, *Aboriginal Child Care in Ontario and Quebec*, submitted to the Royal Commission on Aboriginal Peoples, July 1994 [Wasteneys]; Judith A. Colbert, *Child Care Literature Search and Recommendations*, submitted to the Royal Commission on Aboriginal Peoples in November 1994, published September 1996 [Colbert]; Elizabeth Lightford, *Child Care in the North*, submitted to the Royal Commission on Aboriginal Peoples, April 1994 [Lightford]; Conrad Saulis, *Regional Overview of Aboriginal Child Care in Atlantic Canada*, submitted to the Royal Commission on Aboriginal Peoples, 1995 [Saulis].

prevention.<sup>16</sup> They had little understanding of First Nations communities. The result was the “60s scoop”, which removed vast numbers of First Nations children from their homes from the 60s until the early 80s, and sent them to white foster and adoptive homes.<sup>17</sup>

First Nation delivery of child welfare is an exception. Judging from the slow pace with which First Nations child and family services agencies have gained provincial authorization in Ontario compared to elsewhere, it does *not* appear that the 1965 Agreement facilitated First Nation administration of child welfare services in Ontario.

## 2. Over time, practices changed in other provinces and the 1965 Agreement became less of a stand-alone exception.

- a) **The 1965 Agreement was originally a unique arrangement;** other provinces did not sign anything similar in the 60s. For some time, other provinces had less formal arrangements with INAC, and less interaction with First Nations.
- b) **Over time, some other provinces developed agreements with INAC that provide for cost-sharing for some provincial social programs.** These were not examined in detail in this report, but include Alberta's 1991 Arrangement for the Funding and Administration of Social Services (including at minimum child care,<sup>18</sup> child and family services,<sup>19</sup> and social assistance<sup>20</sup>); the Yukon territory's agreement in which INAC pays for certain services for registered Indians and the Yukon pays for other people (and everyone in that territory is considered resident on reserve for INAC's purposes);<sup>21</sup> New Brunswick's agreement that includes child care;<sup>22</sup> a 1996 British Columbia agreement on child and family services;<sup>23</sup> and possibly others.
- c) **Some provincial governments outside Ontario developed closer relationships with First Nations, including involvement in social programs on reserve (with or without federal cost sharing).** For example, 8 out of 13 provinces and territories (including Ontario) provide some funding to child care centres on reserve or in self-government

16 A description of child welfare in Ontario in the late 70s is provided in *A Starving Man Doesn't Argue*, *supra* note 3.

17 For an account of the scoop as it continued in the early 80s, see for instance Patrick Johnson, *Native Children in the Child Welfare System* (Ottawa: Canadian Council on Social Development, 1983) [Johnson].

18 See Martha Friendly, Jane Beach, Carolyn Ferns, Michelle Turiano, *Early Childhood Education and Care in Canada 2006* (Toronto: Childcare Resource and Research Centre, June 2007) [*ECEC in Canada 2006*].

19 See Canada, Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons, May 2008* (Ottawa: Office of the Auditor General of Canada, May 2008), Chapter 4, “First Nations Child and Family Services Program – Indian and Northern Affairs Canada” [Auditor General of Canada, FNCFS 2008] at 4.28.

20 Canada, Indian and Northern Affairs Canada, *Income Assistance Program – National Manual* (Ottawa: INAC, 2004, last updated January 2007) [INAC, *Income Assistance – National Manual*] at 3.5.4 – 3.5.5.

21 See INAC, *Income Assistance – National Manual*, *ibid.* at 3.5.6.

22 See Martha Friendly et al., *Early Childhood Education and Care in Canada 2008* (Toronto: Childcare Resource and Research Centre, upcoming 2009) [*ECEC in Canada 2008*], at Aboriginal ECEC section, advance copy of certain sections obtained by the author from Martha Friendly.

23 Auditor General of Canada, FNCFS 2008, *supra* note 19 at Exhibit 4.4.

regions, and 9 out of 13 provinces and territories (including Ontario) regulate child care in these Aboriginal communities either on a mandatory basis or on request.<sup>24</sup> Some provinces, including BC and Nova Scotia, developed self-government agreements with First Nations for primary/secondary education. In response to its 1999 Aboriginal Justice Inquiry, Manitoba developed a child and family services system that includes Northern and Southern First Nations authorities and a Métis authority, and these operate both on and off reserve. These are only a few examples.

### **3. As other provinces 'caught up', especially since the 90s, the gap narrowed between Ontario and elsewhere in terms of service expansion and First Nations administration.**

- a) **Today, the position of Ontario First Nations in social assistance may not be much different than in other provinces.** Over time, First Nations in other provinces took on administration of social assistance through INAC's Income Assistance program, and by now local delivery rates are high everywhere.<sup>25</sup> Benefit rates and other program components are tied to provincial programs in all provinces. Using provincial standards in social assistance has been INAC's policy since 1964.<sup>26</sup>
- b) **Ontario First Nations no longer have more child care centres than elsewhere, and seem to have proportionally less.** After the introduction of Head Start and FNICCI (First Nations and Inuit Child Care Initiative) in the mid 90s, child care expanded rapidly in First Nations communities outside Ontario. Meanwhile, the number of child care facilities in Ontario First Nations communities has grown little since the mid 90s.<sup>27</sup> Given the large number of First Nations communities in Ontario and large population size, Ontario is lagging behind.
- c) **It is not clear whether or not First Nations child and family services agencies in Ontario are financially any better off than those outside Ontario.** Research on Directive 20-1 has shown that First Nations child and family services agencies are drastically underfunded.<sup>28</sup> However, this research tends to exclude Ontario. Unfortunately, there is little research on the adequacy and equitability of funding for

<sup>24</sup> *ECEC in Canada 2008*, *ibid.* at Table 11, "Child care centres on reserve and in self-government regions – 2008".

<sup>25</sup> INAC reports that in 2005-06, 536 First Nations (95% of 567 eligible bands) delivered Income Assistance themselves: Canada, Indian and Northern Affairs Canada, Audit and Evaluation Sector, *Evaluation of the Income Assistance Program*, project completed in 2006-2007, CIDM #1174769v11 (Ottawa: INAC, Dec. 2007) [INAC, *Evaluation of the Income Assistance Program*] at 4.

<sup>26</sup> Hugh Shewell, *'Enough to Keep Them Alive': Indian Welfare in Canada, 1873 – 1965* (Toronto: University of Toronto Press, 2004).

<sup>27</sup> See *ECEC in Canada 2008*, *supra* note 22 at Aboriginal ECEC, and see also the Child Care section of this report.

<sup>28</sup> See e.g. Rose-Alma J. McDonald & Peter Ladd, *First Nations Child and Family Services: Joint National Policy Review: Final Report June 2000* (Canada: Assembly of First Nations and Department of Indian Affairs and Northern Development, 2000) [*Joint National Policy Review*, 2000]; Cindy Blackstock et al., *Wen:de – We Are Coming to the Light of Day* (Ottawa: First Nations Child and Family Caring Society of Canada, 2005) [*Wen:de*].

First Nations agencies in Ontario.

- d) **In addition, there are fewer First Nations CFS agencies in Ontario than in some other provinces.** Ontario has the highest population of First Nations, the second highest number of reserve communities, and a large geographic size. As of 2001, the number of First Nations children in care was growing faster in Ontario than in any other province.<sup>29</sup> Less than 1 in 4 Aboriginal crown ward children are living in an Aboriginal home.<sup>30</sup>

Considering all this, the fact that there are only 5 fully-mandated First Nations agencies on reserve and 1 urban agency in Ontario is deeply concerning. Many First Nation agencies have existed in Ontario for years without receiving a full mandate. Only half of Ontario's First Nations communities are served by a mandated First Nations agency.<sup>31</sup> In contrast, in BC there are 27 First Nations agencies at five levels of delegation, including 9 with full delegation (serving 65 reserves and 3 urban/off-reserve communities).<sup>32</sup>

**4. The financial benefit of the 1965 Agreement is diminishing due to funding caps and other inequitable restrictions. These have mostly been imposed by INAC, since the 1990s, in spite of the open-ended cost-sharing structure of the Agreement.**

- a) **Social Assistance:** Administrative costs for First Nations social services administrators are determined by capped amounts set by INAC. Funding does not equitably sustain the delivery of the Ontario Works program, and does not cover the additional programs and services provided by the social services administrators. The funding does not account for higher costs in the north, and the lack of social program infrastructure (governmental or non-profit) on reserve. The financial assistance and employment assistance components of Ontario Works have further funding issues that relate to both INAC and MCSS policy.
- b) **Child and Family Services:** First Nations CFS agencies in Ontario are funded directly by Ontario. However the Ministry (MCYS) funding model locks in the historical funding advantages of mainstream agencies; fails to provide First Nations agencies with resources to ensure equal capital facilities compared with mainstream agencies; takes no account of remoteness and higher northern costs; and fails to account for the lack of surrounding support services in most First Nations communities. Meanwhile, more needs to be known about federal funding to Ontario; the 1965 Agreement's outdated definition of services and lack of ongoing capital funding may be limiting factors.

29 Brad McKenzie, *Block Funding Child Maintenance in First Nations Child and Family Services: A Policy Review* (unpublished, prepared for Montreal: Kahnawake Shaktotia'takenhas Community Services, 2002) [McKenzie].

30 Ontario, Ministry of Children and Youth Services, Quality Assurance and Accountability Branch, *Child Welfare Review: Ontario's Crown Wards, Including Adoption Probation: Summary Report 2007* (Toronto: MCYS, 2007). [MCYS, *Ontario's Crown Wards*] at 12-13.

31 See the Child and Family Services section of this report.

32 British Columbia, Ministry of Children and Family Development, *CFCS Information List, Delegated Aboriginal Child and Family Service Agencies Status, September 2008* (online).

- c) **Homemaking:** There is no funding for the administration of this program. Program funding levels are capped by INAC and create inequities among First Nations communities and (likely) between First Nations and the mainstream.
- d) **Child Care / Early Learning:** Child care operations funding for First Nations in Ontario has not increased since 2006, despite increases in total provincial funding.<sup>33</sup> Furthermore, capital funding has rarely been available except for a brief period in the early 70s and a period in the early 90s.<sup>34</sup> The result is that many First Nation communities, especially in the north, do not have child care facilities. Access – in terms of the number of centres or spaces – has not increased for several years, despite a growing child population in First Nations communities and an urgent need for quality child care to serve a variety of purposes.

**5. The 1965 Agreement supports a narrow set of “welfare services”. It may promote First Nations' access to residual programs, but not necessarily to universal programs like health and education.**

- a) The idea of “welfare services”, both in the now-defunct Canada Assistance Plan (CAP) and in the 1965 Agreement, is narrow and stigmatizing. In the 60s, these services were thought of as residual programs for individual people in special need.
- b) In contrast, programs like health and education have been set up in Ontario, and across Canada, as universal programs. In general, they have wider access, no stigma, and higher quality. Sometimes people change the way they think about a program over time (e.g. child care vs early learning, homemaking vs home-based health care, social assistance vs community development, child protection vs focus on prevention).
- c) The outdated set of programs defined in the 1965 Agreement is now arbitrary and restrictive. It might be limiting First Nations' access to Ontario's higher quality universal programs in health and education.

**6. However, despite all of the above, the 1965 Agreement *may* still be producing a small relative advantage for First Nations in Ontario compared to some other provinces. This is difficult to measure.**

- a) Further research, as suggested below, may shed more light as to whether funding and access in Ontario remain slightly better than for First Nations in other provinces, despite Ontario's funding and access restrictions. It is not clear.

<sup>33</sup> Ontario, Ministry of Children and Youth Services, *Results-Based Plan Briefing Book*, various years (2006-07, 2007-07, 2008-09) [MCYS *Results-Based Plan*]; *ECEC in Canada 2008*, *supra* note 22 at Table 2.7.

<sup>34</sup> See the Child Care section of this report.

b) Possible remaining benefits of the 1965 Agreement may include:

- INAC funding in Ontario *might* be slightly higher than for other provinces, as INAC's spending in Ontario is more pre-defined by the 1965 Agreement and less flexible.
- Programs under the 1965 Agreement have the advantage of some provincial program funding (5-8% of direct costs), some access to provincial infrastructure & Ministry resources (indirect costs), and ongoing provincial program development.
- The relationship between the government of Ontario and First Nations in the province may have been furthered by the 1965 Agreement, which *might* have contributed to Ontario's extension of some other services to First Nations outside the 1965 Agreement (e.g. the Aboriginal Healing and Wellness Strategy, Homes for the Elderly, the Community Support (home care) program, ODSP, etc.). It is not known whether Ontario extends more non-cost-shared services than other provinces.

**7. More research would be required to compare the overall equity of social programs for Ontario First Nations to (i) the programs in other parts of Ontario or (ii) programs for First Nations outside Ontario.**

- a) To be most effective, this type of review should take a broad view of “social programs”, including all programs relating to health, education and training, children and families, income support and other social services. It should look beyond what is covered by the 1965 Agreement, to include programs from all sources, both cost-shared and others.

## What further research is recommended?

The following suggestions present all research ideas and opportunities. Resources, time, and priorities will likely require choices or modifications within these options.

### *Existing Research*

Social Assistance: Prof. Shewell	Prof. Hugh Shewell, York University, published a book on social assistance programs for First Nations up to 1965. <sup>35</sup> Prof. Shewell plans to research and write a second volume covering the period from 1965 to the present. COO could consider developing a relationship with him, perhaps to mutually share information on social assistance in Ontario vs elsewhere. <sup>36</sup> However, note that Prof. Shewell is at a very early stage in this research and does not expect to publish his second book for another 2 years or more.
Social	PhD student Anita Vaillancourt and Prof. Ernie Lightman, at the University of Toronto

<sup>35</sup> Shewell, *Enough to Keep Them Alive*, *supra* note 8.

<sup>36</sup> Contact: Hugh Shewell, [shewellh@yorku.ca](mailto:shewellh@yorku.ca).

Assistance:  
OW north Faculty of Social Work, are doing research on the delivery of social assistance in northern Ontario.<sup>37</sup> They interviewed workers and managers in the municipal (non-First Nations) social services agencies in the north, and plan to publish their findings. Their focus is on how OW fails to account for the realities of northern communities.

Ms. Vaillancourt and Prof. Lightman might continue a second phase of this research, which has yet to be defined. If interested, COO could consider contacting them to discuss the possibility of including First Nation delivery agents and/or attention to First Nation issues in their second phase.

Child &  
Family:  
CIS and  
OIS 2008 The Canadian Incidence Study on child maltreatment, and the Ontario Incidence Study (completed simultaneously), collects data every 5 years. The 1998 and 2003 versions included some information on Aboriginal peoples, but only a few Aboriginal agencies participated. These studies are available online, through the Centre of Excellence on Child Welfare. The project director is Prof. Barbara Fallon, University of Toronto.<sup>38</sup>

The 2008 version of the study involves 26 Aboriginal agencies, coordinated by researcher Vandna Sinha, and will produce more Aboriginal-related information. Data collection is ongoing, followed by analysis. Results will not be available until fall 2010.

Child &  
Family:  
HRSDC  
statistics Human Resources and Skills Development Canada (HRSDC) compiles various social program data from among the provinces and territories. Their statistics on foster care (2001-2004) and child and family services (2001-2004) are available on the internet.

HRSDC official Shelley Holroyd stated that the 2004-2008 versions will hopefully be available in fall 2009. The 2001-2004 versions contain provincial totals but do not contain separate data for First Nations or Aboriginal peoples.<sup>39</sup>

Child Care:  
ECEC  
2008,  
Martha  
Friendly The Childcare Resource and Research Unit compiles information on child care in Canada in a document called *Early Childhood Education and Care (ECEC) in Canada*. The latest version, 2006, includes some information on Aboriginal child care.

The 2008 version will include more information on Aboriginal child care. Some information from this document is included in this report, and the full publication will be available within a few months (summer/fall 2009). COO might also consider contacting CRRU director Martha Friendly for more detailed background information or to discuss mutual research interests.<sup>40</sup>

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37 Contact: Anita Vaillancourt, [anita.vaillancourt@utoronto.ca](mailto:anita.vaillancourt@utoronto.ca).

38 Contact: Barbara Fallon, [barbara.fallon@utoronto.ca](mailto:barbara.fallon@utoronto.ca).

39 Contact: Shelley Holroyd, [shelley.holroyd@hrsd-rhdsc.gc.ca](mailto:shelley.holroyd@hrsd-rhdsc.gc.ca).

40 Contact: Martha Friendly, [mfriendly@childcarecanada.org](mailto:mfriendly@childcarecanada.org).

***Additional Research Ideas***

Other  
provinces

1. Further information on INAC's cost-sharing agreements with other provinces.

Alberta's 1991 agreement, the Arrangement for the Funding and Administration of Social Services, was reviewed by DeGros Marsh Consulting in a tripartite process. This report is not public, but a representative of DeGros stated that perhaps it might be obtained from the Alberta government (Children's Services) and/or the governments of Treaty 6, 7 or 8. New Brunswick, British Columbia and Yukon also have various cost-sharing agreements with INAC. There may be additional agreements in other provinces.

Social  
assistance,  
especially  
admin.  
funding

2. Social assistance: funding for costs of administration.

Information is available on funding levels for First Nations social assistance in Ontario. For a better comparison, more detail could be obtained (especially on administration costs) on municipal funding levels in the rest of Ontario and on INAC's funding to First Nations in the Income Assistance program outside Ontario. The Social Assistance section of this report includes some information on these two questions from INAC's 2007 evaluation of its Income Assistance program, but it is not very detailed.

Sources may include: ONWAA, BC's First Nations Social Development Society, MCSS, INAC (HQ or other regional offices), and Prof. Hugh Shewell.

Human  
rights  
complaint  
on child  
welfare

3. Child welfare human rights complaint as a source of information.

One source from this process is the Access to Information request already completed by Cindy Blackstock; she has 5000 pages of information from INAC for 2007 and 2004.<sup>41</sup> Ms. Blackstock stated that Chiefs of Ontario has a copy of the 2007 information and would be able to access the 2004 information if desired. A review of these documents might produce relevant details on INAC's child and family services program in Ontario.

Another source from this process might be disclosure. There might be an opportunity to request the disclosure of various documents from INAC during the complaint litigation. For instance, this might be a way to obtain more detail on the precise kinds of child welfare expenses invoiced to INAC by Ontario and paid (or not paid) by INAC to Ontario. This would need to be coordinated with Ms. Blackstock and the AFN.

Child  
welfare  
funding  
under the  
65

4. More research on child welfare funding in Ontario

Much is still unknown about how Ontario's child welfare funding model affects First Nations agencies, what resources are available to mainstream CASs that are not available to First Nations agencies (e.g. capital costs), and what kinds of expenses are deemed eligible by INAC under the 1965 Agreement.

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41 Interview with Cindy Blackstock, First Nations Child and Family Caring Society of Canada (FNCFCSC of Canada).

More detailed information could be compared to INAC's funding model outside Ontario, which has already been well studied. It could also allow for a better comparison between mainstream and First Nations agencies within Ontario. In developing recommendations for a better funding system, this research should consider the analysis and recommendations in the *Wen:de* reports.<sup>42</sup>

Research should account for: operational funding for both protection and prevention services; capital cost resources; salaries and staffing; policy, research, development and advocacy functions (including the role of associations like the ANCFSAO); information management; travel costs; and insurance. It should also account for other provincial, municipal and non-profit services, supports and infrastructure and whether these are available in First Nations communities, as well as other community factors such as remoteness, different levels of need for services, and population size.

Prof. John Loxley (University of Manitoba) led this type of research with Cindy Blackstock in *Wen:de*. Information from MCYS would be required, and expertise may be required on Ontario's complex child welfare funding model, which changed in 1998/99 and again in 2005/06.

Child and  
family  
services  
agencies

## 5. Research on CFS Agency development and developing a jurisdictional plan

Only half of Ontario's First Nation communities have a mandated First Nations CFS agency; other provinces have many more First Nations agencies than Ontario.<sup>43</sup> First Nations children are 1/5 of all crown wards in Ontario; only a third of them are served by Aboriginal agencies, less than a quarter are living in an Aboriginal home, and only 8% are in their home community.<sup>44</sup> The number of First Nations children in care is growing faster in Ontario than in any other province.<sup>45</sup>

Ontario First Nations could take a pro-active approach, and develop a province-wide plan for greater agency development and jurisdictional control in child welfare. Given the growing and disproportionate number of First Nations children in the Ontario child welfare system, and the impact on children and families, this issue needs to be a higher priority for Ontario, Canada and First Nations in the province.

Developing such a plan would require high level involvement from COO, MCYS and INAC, as well as consultation among First Nations. Information might also be obtained from the ANCFSAO, Cindy Blackstock and the Caring Society, the CIS 2008 First Nations Advisory Committee (currently developing a more detailed description of First Nations agencies), and provincial First Nations CFS associations in other provinces.

<sup>42</sup> See *Wen:de*, *supra* note 28.

<sup>43</sup> See the Child and Family Services section of this report.

<sup>44</sup> MCYS, *Ontario's Crown Wards*, *supra* note 30.

<sup>45</sup> McKenzie, *supra* note 29.

Child care  
funding

## 6. Child care funding comparison

Detailed information is available on First Nations child care funding in Ontario, due to the 2003 Ontario Regional Head Start Regional Advisory Committee report.<sup>46</sup> More detail on child care funding in Ontario's municipalities, and for First Nations outside Ontario, would be needed to make better comparisons.

The multiplicity of funders in child care, and the inability to trace where some funds go, makes this challenging. Some information is available from Martha Friendly, Childcare Resource and Research Unit (Toronto). Perhaps Head Start committees in other regions have further information available on their region.

Home-  
making

## 7. Homemaking funding comparison

To do a proper comparison of Homemaking on/off reserve in Ontario, further information is needed on funding levels, hours of service, staff salaries, client needs, community population size and unmet needs. The best sources are likely the Ministry of Health and Long-Term Care, and ONWAA. Expertise on Ontario's health care system in municipalities would be required, especially regarding continuing care and CCACs.

Expanded research might look at continuing care health programs on/off reserve in Ontario more broadly (i.e. including not just Homemaking but also Community Support, nursing services, other professional services and home-care, etc.). This would require an examination of programs from INAC, Health Canada, the Ministry of Health and Long-Term Care, the Aboriginal Healing and Wellness Strategy, and others.

Overall  
social  
program  
mapping

## 8. Social programs beyond the 1965 Agreement

This report did not examine social programs outside of the 1965 Agreement. To get a full picture of Ontario First Nations' equitable access to social programs, it would be best to look at *all* social programs, from all sources.

Other federal social programs available to First Nations in Ontario include:

- INAC: primary/secondary education, family violence prevention, etc.
- Health Canada: health transfer, other health services, NIHB, Head Start, etc.
- HRSDC: Aboriginal Human Resources Development Strategy, etc

Ontario provides some additional social programs to First Nations communities, e.g.:

- MCSS: Ontario Disability Support Program
- Ministry of Health: Community Support, Homes for the Elderly, OHIP, etc.
- Aboriginal Healing and Wellness Strategy

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<sup>46</sup> Ontario First Nations Head Start Regional Advisory Committee, *Ontario First Nations – Early Childhood Development – Community Mapping and Environmental Scan* (April 2003) [Ontario Head Start (2003)].

The research approach might be similar to the “community mapping and environmental scan” exercise done by the Ontario Region Head Start Regional Advisory Committee for child care. Ideally, 2-3 other provinces should also be studied for comparison. This would likely require partnerships with First Nations organizations in other regions.

# THE 1965 AGREEMENT: THE FINE PRINT

## Cost-Sharing Formula

In the 1965 Agreement, Ontario pays for programs up front and invoices Canada. The cost-sharing formula that sets out the federal share is complicated. There are several things to note:

### The Federal Ratio is linked to Financial Assistance (currently Ontario Works benefits)

- Funding for all programs is indexed to financial assistance within the social assistance program. A ratio is developed using the cost of delivering financial assistance (explained further below). This ratio is then applied to determine the federal share of *all* programs. In 2004-05, the ratio was 93.2528%.<sup>47</sup> It has historically been around 93-95%.
- The formula is based on two elements, provincial per capita costs of financial assistance and per capita costs for First Nations specifically. Canada is responsible for 50% of mainstream per capita costs (the same formula as CAP), and 100% of the “extraordinary costs”, i.e. the extent to which per capita costs for First Nations exceed the provincial average.
- One implication of the formula is that it will change depending on the per capita costs of financial assistance for First Nations. If, one day, fewer First Nations people rely on Ontario Works, or something else decreases the per capita cost of Ontario Works financial assistance for First Nations, the federal share under the 1965 Agreement will decrease. The decrease would apply to *all* programs, not just Ontario Works. If the per capita cost of Ontario Works financial assistance was the same for First Nations as for other people in Ontario, the federal share would only be 50% (i.e. the “extraordinary costs” would be 0).

### Municipal/Provincial Cost Sharing

- Sometimes, in designing a program, Ontario sets a percentage of the cost that municipalities must contribute themselves. The provincial/municipal ratio has often been 80/20, or 50/50, or Ontario pays 100%. Deciding whether to set a municipal share, and how much it should be, is within provincial legislation and is entirely up to Ontario.
- If Ontario sets a percentage that municipalities must contribute, First Nations are responsible for this share. Since First Nations do not have a tax base like municipalities, their municipal share is paid by INAC. INAC pays 100% of this amount directly to the First Nation through their CFA or multi-year funding agreement.
- The municipal share can easily be used by INAC as a cap.

For example, say the municipal share of a program is 20%. If INAC decides they will only pay \$1,000 for their 20% share, this leads Ontario to conclude that its

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<sup>47</sup> INAC, *1965 Agreement Overview* (2007), *supra* note 6.

80% share is limited to \$4,000, capping the entire program at \$5,000. Even though Ontario's share will be mostly reimbursed through the open-ended 1965 Agreement formula (say, \$3,760 if the ratio is 94%), it is effectively capped.

- Greater municipal shares mean that INAC pays a higher proportion of total costs.

In the above example, INAC's total contribution is \$1,000 (municipal share) + \$3,760 (cost-share for 94% of provincial share) = \$4,760. This is 95.2% of the total program cost (\$5,000), even though the cost-sharing ratio according to the 1965 Agreement was 94%.

### Methods of Payment

- Where INAC makes direct payments to First Nations (i.e. municipal shares), these are paid as part of the First Nation's overall financial arrangement with INAC. Currently this will either be a Comprehensive Funding Arrangement (1-yr) or a Canada/First Nations Funding Agreement (up to 5 years).
- INAC pays Ontario according to the following method: Ontario provides INAC a cash flow forecast for the coming fiscal year. Once approved, INAC pays Ontario a one-month cash advance, followed by monthly installments. Each payment has a 10% holdback, which is paid out (with any adjustments) after the annual provincial audit.<sup>48</sup>

### Total Cap?

Some INAC manuals refer to a \$240 million cap on “services to First Nations in Ontario”.<sup>49</sup> This type of cap is not written into the 1965 Agreement.

In 2004-05, INAC spent \$200 million on the four programs under the 1965 Agreement in Ontario – Ontario Works, child and family services, child care, and homemaking. This included \$169.6 million reimbursed to Ontario, plus \$30.4 million for municipal shares directly to First Nations.<sup>50</sup>

### Capital Costs

Federal funding for capital costs has not been part of the 1965 Agreement since 1975. The Agreement had a 5-year cost-sharing provision for capital costs, and it was extended once.

### Current Costs

The following charts present some sources on recent total expenditures under the 1965 Agreement.

48 INAC, *Income Assistance – National Manual*, *supra* note 7, at 3.5.3.

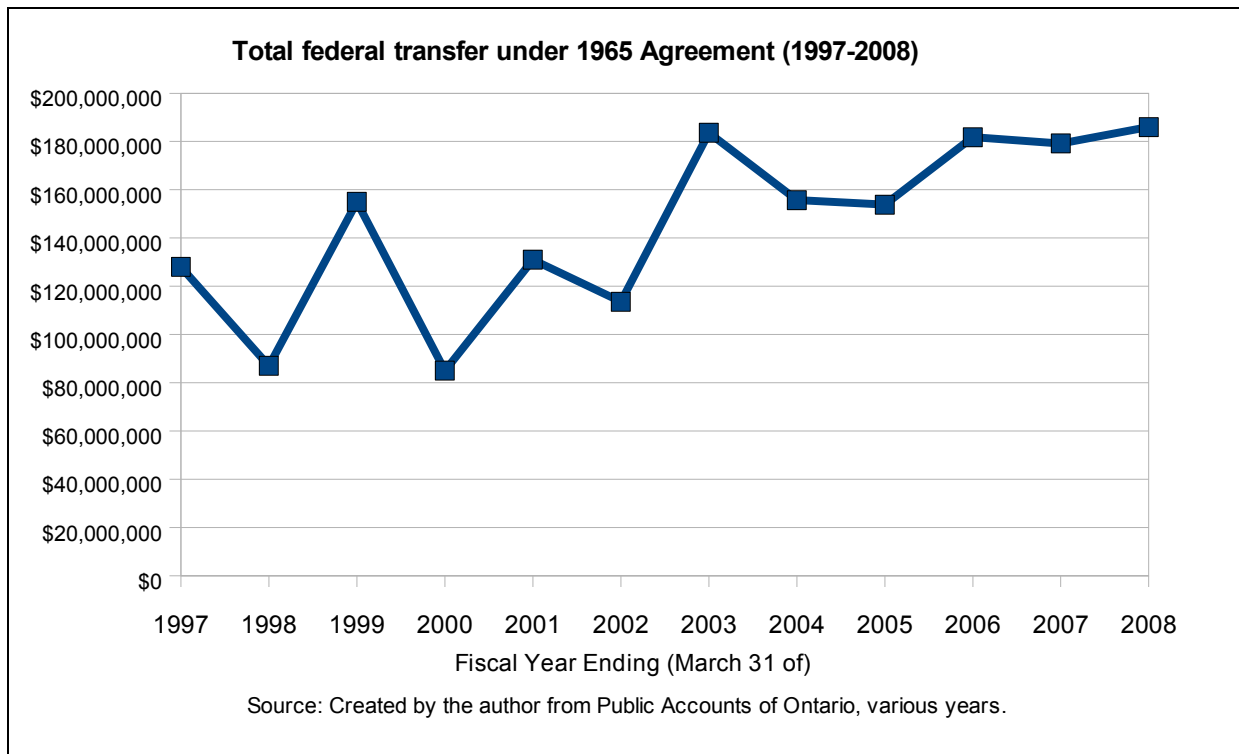
49 Canada, Indian and Northern Affairs Canada, *First Nations Child and Family Services – National Manual* (Ottawa: INAC, May 2005) [INAC, *FNCFS – National Manual*] at 5.5.2; and INAC, *Income Assistance – National Manual*, *ibid.*, at 3.5.3.

50 See the funding summary from INAC's 2007 overview of the 1965 Agreement, reproduced below.

As shown by Ontario's Public Accounts, the total federal transfer for the 1965 Agreement in 2008 was roughly the same as the transfer in 2003.

<b>Total 1965 Agreement transfer, as indicated in the Public Accounts of Ontario</b>			
Fiscal Year	Transfer to Ontario under 1965 Agreement	Fiscal Year	Transfer to Ontario under 1965 Agreement
1996-97	\$128,000,000	2002-03	\$183,608,435
1997-98	\$87,000,000	2003-04	\$155,702,843
1998-99	\$155,000,000	2004-05	\$153,802,765
1999-00	\$85,000,000	2005-06	\$181,776,842
2000-01	\$131,000,000	2006-07	\$179,169,101
2001-02	\$113,569,394	2007-08	\$185,985,534

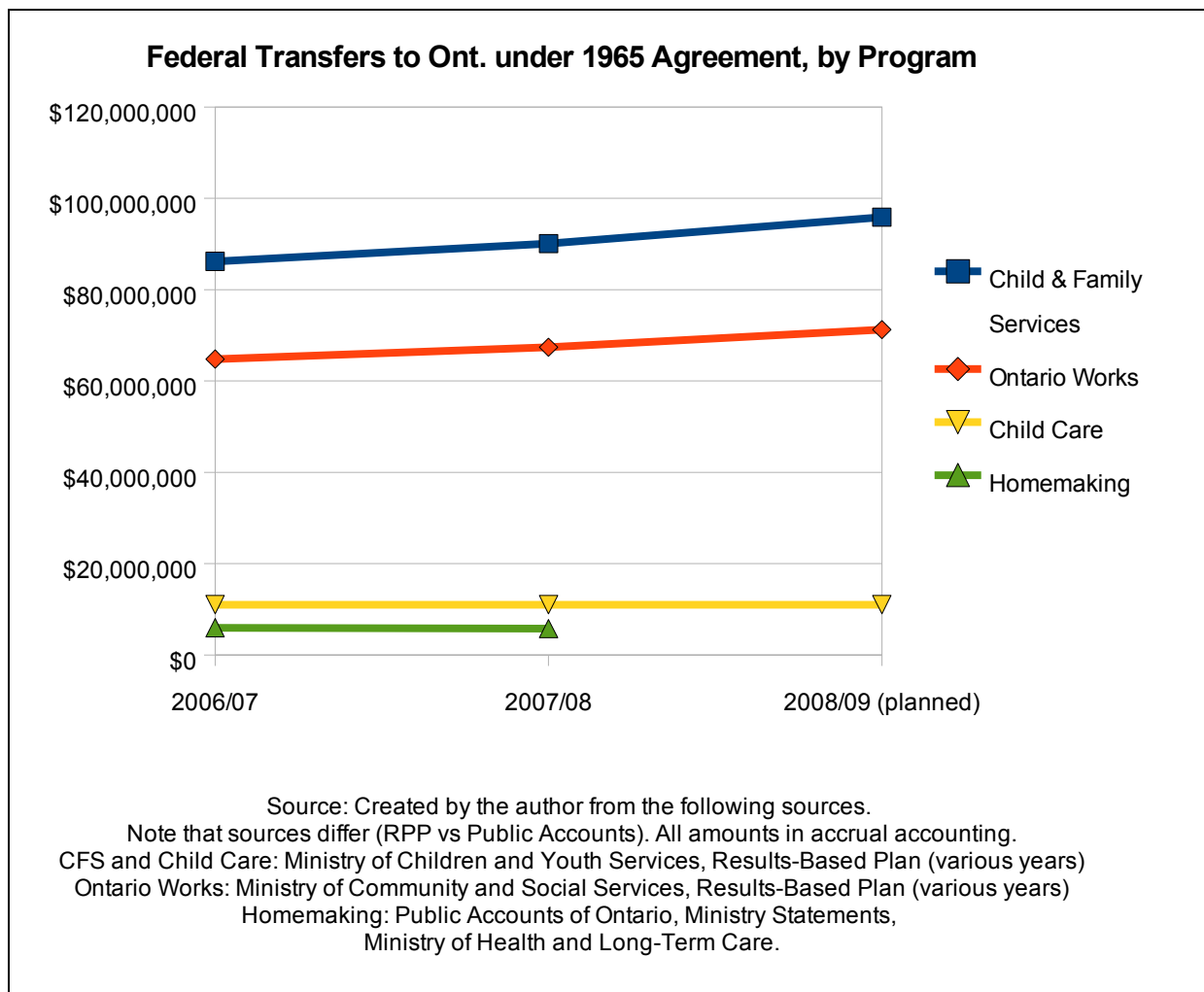
Source: Created by the author with information from Public Accounts of Ontario, various years. Some numbers rounded (if rounded in original).



The federal transfer for child and family services is the largest, followed by social assistance (Ontario Works). Child care and homemaking receive much smaller transfers.

<b>Federal Transfers to Ontario under 1965 Agreement, by Program</b>			
	2006/07	2007/08	2008/09 (planned)
Child & Family Services	\$86,191,000	\$90,075,000	\$95,860,000
Ontario Works	\$64,794,000	\$67,383,000	\$71,240,000
Child Care	\$11,000,000	\$11,000,000	\$11,000,000
Homemaking	\$5,942,176	\$5,760,000	Not available

Source: Created by the author from the Public Accounts of Ontario (various years) and from the Ministry of Children and Youth Services, Results-Based Plan Briefing Book (various years). All amounts in accrual accounting. Some amounts rounded (if rounded in original).



The following 2004-05 funding summary is reproduced from INAC, *1965 Agreement Overview*.<sup>51</sup>

<b>Annex: Program Funding on the Four Cost-Shared Programs in the 1965 Agreement (2004-05*)</b>			
<b>Program</b>	<b>Total Program Funding</b>	<b>Total Provincial Expenditures Eligible for INAC Cost-Sharing</b>	<b>INAC Funding Directly to First Nations</b>
Ontario Works Financial & Employment Assistance – First Nations	\$81,354,000	\$61,286,843	\$20,067,300
Ontario Works – First 12 months off reserve	\$6,995,000	\$6,994,704	-
Ontario Works Cost of Administration	\$8,068,000	\$3,720,999	\$4,346,900
Child Welfare Society Operations and Care Costs	\$74,287,000	\$74,286,546	-
Child and Family Support (Prevention) Services	**\$20,594,000	\$16,778,657	-
Homemakers Services	9,699,000	\$6,900,861	\$2,798,300
Daycare	\$15,077,000	\$11,880,206	\$3,196,300
<b>Total</b>	<b>\$216,074,000</b>	<b>\$181,848,818</b>	<b>\$30,409,000</b>
<b>Federal Cost Share % (2004-05)</b>		<b>93.2528%</b>	
<b>INAC Reimbursement to Province</b>		<b>\$169,579,115</b>	
<b>INAC Funding Directly to First Nations</b>			<b>\$30,409,000</b>
<b>Total Cost to INAC</b>			<b>\$200,000,000</b>

\* 2004-05 selected as most recent year with closed/audited provincial claim. INAC funding to First Nations are rounded budget allocation amounts drawn from Regional Operations Control System and multi-year agreement tracking including multi-year notional core growth for cost-shared programs.

\*\* includes an additional appx. \$3.8 million in CFS Prevention programs not claimed by province due to lack of methodology to determine on-reserve Indian status of prevention program participants. Amount is included because these programs are funded through First Nation Child and Family Services Agencies, individual First Nations and Children's Aid Societies.

51 INAC, *1965 Agreement Overview* (2007), *supra* note 6.

## Programs Covered

The following chart shows how the 4 current programs are presently organized:

<b>1965 Agreement, Program Organization, As of May 2009</b>				
	Ontario Ministry	Ontario Program Name	INAC Funding Program Name	Ontario Legislation
Social Assistance	Ministry of Community and Social Services	Social Assistance: Ontario Works	Income Assistance	<i>Ontario Works Act</i>
Child & Family Services	Ministry of Children & Youth Services	Children and Youth at Risk: Child Protection Services	First Nations Child and Family Services	<i>Child and Family Services Act</i>
Child Care	Ministry of Children and Youth Services	Early Learning & Child Development (“Best Start”): Child Care	Child/Day Care Program – Ontario	<i>Day Nurseries Act</i>
Homemaking	Ministry of Health and Long-Term Care	Homemaking	Assisted Living	<i>Homemaking and Nurses Services Act</i>

Source: Created by the author.

The 1965 Agreement and its Schedules list the specific statutes that will be covered, describes the types of services that will be covered for each statute, and defines the categories “financial assistance” and “services”. This makes the 1965 Agreement very restrictive and very much frozen in the past. Unsurprisingly, the Agreement uses very outdated concepts and terminology.

The 1965 Agreement has barely been updated at all. Only one statute has ever been added: the *Ontario Works Act*, added in 1998. Ontario Works is mostly a mere replacement for General Welfare Assistance, and adds employment assistance as a new program. Other than this, no programs have been added. The *Ontario Works Act* is also the only statute with a current citation in the Agreement.

Earlier amendments served to update the names and citations of the statutes in the Schedules, and remove statutes that no longer existed. This type of updating has not been done since 1981. INAC maintains that this is of no consequence;<sup>52</sup> however informally, some INAC officials are claiming that it means those programs are legally de-listed.<sup>53</sup> This could affect child & family services, child care and homemaking. It may be worth obtaining a legal opinion on this issue, and/or consider urging Canada and Ontario to update the Agreement if desired.

Seven statutes named in the Agreement still exist, but have new names or citations. The *Child Welfare Act* was replaced by the *Child and Family Services Act* in 1984. Six other statutes still exist by name but their citation in the Agreement is outdated (*Day Nurseries Act*; *Homemakers and*

<sup>52</sup> Auditor General of Canada, FNCFS 2008, *supra* note 19 at 4.28.

<sup>53</sup> See the Child Care section of this report.

*Nurses Services Act; Charitable Institutions Act; Elderly Persons' Housing Aid Act; Elderly Persons' Centres Act; Homes for the Aged and Rest Homes Act).*

Nine statutes named in the Agreement no longer exist at all. Two of these were removed from the Agreement by amendment (*Mothers' Allowance Act*, deleted in 1971; *Old Age Assistance Act*, deleted in 1972). Seven statutes are still technically in the Agreement although they are no longer in force in Ontario (*Blind Persons' Allowance Act; Disabled Persons' Allowance Act; General Welfare Assistance Act; Rehabilitation Services Act; Children's Residential Services Act*, previously *Children's Boarding Homes Act; Children's Institutions Act; Homes for Retarded Children Act*).

## **Residency & Registered Status**

An additional restriction in the 1965 Agreement is the definition of eligible recipients. To be eligible for federal funding under the cost-sharing formula, program recipients must be: (1) registered Indians, and (2) resident on reserve, on Crown land, or off reserve less than 12 months.

The programs administered by First Nations do not necessarily use these restrictions. For instance, a First Nation's social services administrator serves everyone on reserve, whether they have registered status or not.<sup>54</sup> A First Nations CFS agency might have a catchment area that extends off reserve, and might serve children from certain communities regardless of their registered status.<sup>55</sup>

However – to this author's knowledge – INAC's funding to Ontario continues to use the residency and registered status requirements. Other program recipients would be funded only by Ontario and would not be eligible for federal funding under the 1965 Agreement.

Ontario can receive federal funding for eligible recipients whether or not the delivery agent is a First Nation or First Nation-authorized agency. For instance, in 2004-05, Ontario had \$61 million in eligible Ontario Works expenditures from First Nations delivery agents *plus* another \$7 million from off reserve delivery agents such as municipalities (see INAC's 2004-05 breakdown above). Mainstream CASs also track this data for reimbursement; it is not known whether child care or homemaking programs off reserve also track recipients' registered status and residency.

## **Ontario's *Indian Welfare Services Act***

Ontario has a very short statute called the *Indian Welfare Services Act*.<sup>56</sup> It applies to registered Indians and people entitled to be registered (s. 1). It does not directly name the 1965 Agreement, but it refers to some of the programs covered in the Agreement and other programs.

Section 2 gives statutory protection to the entitlement of every Indian to equal access in the Ontario Disability Support Program and its predecessor, Family Benefits. Since these programs are not

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54 Interview with Michael Nadeau, Ontario Native Welfare Administrators Association (ONWAA).

55 Interview with Betty Kennedy, Association of Native Child and Family Services Agencies of Ontario (ANCFSAO).

56 *Indian Welfare Services Act*, R.S.O. 1990, c. I-4.

included in the 1965 Agreement, this ensures First Nations have access to the full spectrum of social assistance in Ontario, on the same basis as other people in the province.

Section 3 provides that Minister of Community and Social Services (MCSS), with Cabinet approval, may make agreements with Canada or federal agencies regarding compensation for the following services to Indians:

- assistance under Ontario Works or its predecessor General Welfare Assistance;
- Children's Aid Societies' extension of facilities and services;
- rehabilitation services;
- accommodation and care in a home for the aged (on a day to be proclaimed, this will specify “a home approved under Part VIII approved under the *Long-Term Care Homes Act, 2007*”);
- and “such other services as will promote the well-being of Indians”.

Section 3 does not guarantee any services or codify the 1965 Agreement. It merely permits MCSS to enter into cost-sharing agreements.

# HISTORICAL BACKGROUND

## Before World War II – Limited Services

### *Mainstream: Few Social Programs*

Canada Many social programs in Canada date from the post-World War II era. Before then, social programs were generally provided by churches, charities or sometimes local municipalities. Some provinces provided a few limited programs, such as limited financial assistance or health care for specific categories of poor people. In the 1930s and 40s, the federal government introduced Unemployment Insurance (now EI) during the Great Depression and agreed to reimburse provinces for a portion of the cost of pensions for elderly poor people.<sup>57</sup>

### *First Nations in Ontario: Sparse Federal Services*

Ontario Before the 1951 amendments to the *Indian Act*, provinces had little involvement with First Nations, especially on reserves. Few social services were available to any Canadians, and the support available to First Nations was very limited.

Poverty &  
Income  
Assistance

In the early 20<sup>th</sup> century, many First Nations people in Ontario lived by hunting, trapping, fishing, and guiding, and in the south, sometimes by farming or other occupations.<sup>58</sup> The economy in the north was heavily involved in the fur trade after contact, however the decline of the fur trade in the late 19<sup>th</sup> and early 20<sup>th</sup> century brought poverty and hardship. Game became scarce,<sup>59</sup> communities lost land to white settlement and industry,<sup>60</sup> legal restrictions made it more difficult for First Nations to move around and harvest from the land,<sup>61</sup> and fur prices fell.<sup>62</sup> One study found that the total income of First Nations in northern Ontario fell 38% from 1925 to 1935.<sup>63</sup>

In the 19<sup>th</sup> century and earlier, the Hudson's Bay Company sometimes gave people “credit advances” to carry them over until trapping season and to maintain loyalty.<sup>64</sup> This was replaced by the provision of “relief” from Indian Affairs. Relief was only made available in the most extreme emergency situations, and even in the early years it

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57 John E. Osborne (Special Advisory on Policy, Department of National Health and Welfare), *The Evolution of the Canada Assistance Plan* (1985, online).

58 *A History* (2006), *supra* note 10.

59 Shewell, *supra* note 26 at 45.

60 Shewell, *ibid.* at 66-67

61 Shewell, *ibid.* at 45.

62 Shewell, *ibid.* at 124.

63 Shewell, *ibid.* at 124-126 discussing the study of Arthur Ray.

64 Shewell, *ibid.* at 32-36, 67.

was usually provided to specific individuals rather than to communities as a whole.<sup>65</sup>

In the late 19<sup>th</sup> and early 20<sup>th</sup> century, relief was provided by distributing food, delivered through the Indian Agent or sometimes by HBC or missionaries.<sup>66</sup> In Ontario, Canada used bands' trust accounts to pay for relief.<sup>67</sup> Bands who had little in their account received less or no relief.<sup>68</sup> Usually relief was temporary one-time support, however on rare occasions a person received “pension” relief.<sup>69</sup>

Over time, Indian Affairs developed more standardized (and strict) eligibility criteria and relief amounts,<sup>70</sup> and in the late 1930s started paying money instead of food.<sup>71</sup> The overall First Nation population in Canada declined in the 19<sup>th</sup> century, but after the World War I it began to increase. Population pressures contributed to poverty on reserve, and more people began migrating to cities and towns.<sup>72</sup>

In the mid 30s, during the Great Depression, relief expenditures for First Nations in Canada were about half the amount per capita as relief for Canadians overall.<sup>73</sup> In that year, an estimated 20% of Canadians were on relief, and a third of First Nations. Expenditures per person on relief were about 3 times higher for Canadians generally than for First Nations.<sup>74</sup>

Health	Very little western health care was available on reserve before World War II. Influenza killed thousands of First Nations people at the end of World War I. Tuberculosis and other diseases took a heavy toll, especially in the residential schools. <sup>75</sup> Indian Affairs created a medical services branch in 1927, and occasionally funded access to care for people in serious need. <sup>76</sup>
Children & Families	Originally, traditional extended family and community care systems cared for children, including in situations where a parent could not. Starting in the late 19 <sup>th</sup> century, residential schools took many children away from their families. Children in the schools were often subjected to cultural, spiritual, emotional, physical and sexual

65 Shewell, *ibid.* at 54 and Ch. 3 generally.

66 Shewell, *ibid.* at 52, 67. Shewell notes that Indian Agents were used more regularly in Ontario than elsewhere.

67 Shewell, *ibid.* at 8-9, 52.

68 Shewell, *ibid.* at 57, 67.

69 Shewell, *ibid.* at 66.

70 Shewell, *ibid.* at Ch. 4.

71 Shewell, *ibid.* at 116.

72 *A History* (2006), *supra* note 10.

73 Shewell, *supra* note 8 at Table 4.1 at 114-115. For instance, in 1936 the Department of Indian Affairs spent \$6.35 per capita on relief while the overall Canadian per capita relief expenditure was \$12.34.

74 Shewell, *ibid.* Table 4.3 at 123.

75 Shewell, *ibid.* at 109-114. Dr. P.H. Bryce, a medical inspector, wrote a famous pamphlet in 1922 on the high rates of death and disease in residential schools, criticizing the government's lack of response: P.H. Bryce, *The Story of A National Crime* (Ottawa: James Hope, 1922).

76 Shewell, *ibid.* at 109, 113.

abuse. Sometimes Indian Agents would place children in the schools to address perceived problems in the family, a practice that continued with the participation of Children's Aid Societies through the 1950s and 60s.<sup>77</sup>

## The 50s and 60s – A Foundational Period

### *Mainstream: Creation of CAP & Medicare*

- Pearson years      The package of social programs in Canada expanded significantly in the 1960s, especially in the years in which Lester B. Pearson was Prime Minister (1963-1968), supported in a minority government by the NDP led by Tommy Douglas. The 1965 Agreement dates from this period, and in many ways it parallels a mainstream agreement that covers similar social services: the Canada Assistance Plan.
- Canada Assistance Plan (CAP)      The Canada Assistance Plan (CAP) was a cost-sharing system agreed to by the federal government and provincial governments in 1966. The agreements were codified in a federal statute, the *Canada Assistance Plan*.<sup>78</sup> Under CAP, the federal government reimbursed provinces for 50% of their costs for “assistance” meaning income assistance, and “welfare services”, defined as “services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance”.<sup>79</sup>
- Medicare      The *Medical Care Act* passed in Parliament in the same year as CAP, introducing universal medical insurance for hospital and physician services. Like CAP, this was originally implemented with 50% cost-sharing agreements between Canada and the provinces.<sup>80</sup> Funding for health care changed in 1977 with the introduction of the Established Programs Financing (EPF) program. The EPF included transfers for both health and post-secondary education, as well as the equalization formula.<sup>81</sup>

77 See e.g. Marlyn Bennett, Cindy Blackstock & Richard De La Ronde, *A Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada* (2<sup>nd</sup> ed.) (Ottawa & Toronto: First Nations Child and Family Caring Society of Canada, and Centre of Excellence for Child Welfare, 2005) [Bennett et al.].

78 The last version of the statute was: *Canada Assistance Plan*, R.S.C. 1985, C-1.

79 In s. 2 of the *Canada Assistance Plan* “welfare services” are further defined, “without limiting the generality” of the definition repeated in the main text above, as including:

“(a) rehabilitation services, (b) casework, counselling, assessment and referral services, (c) adoption services, (d) homemaker, day-care and similar services, (e) community development services, (f) consulting, research and evaluation services with respect to welfare programs, and (g) administrative, secretarial and clerical services, including staff training, relating to the provision of any of the foregoing services or to the provision of assistance,

but does not include any service relating wholly or mainly to education, correction or any other matter prescribed by regulation or, except for the purposes of the definition “assistance”, any service provided by way of assistance”.

80 *Medical Care Act*, 1966. See also Odette Madore, *Established Programs Financing for Health Care*, Background Paper BP-264E (Ottawa: Canada, Parliamentary Research Branch, Economics Division August 1991).

81 The EPF was part of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, S.C. 1976-77, c. 10.

***First Nations in Ontario: The Creation of the 1965 Indian Welfare Agreement***

Ontario's 1953 Report, & follow-up In the early 50s, some Ontarians became concerned about First Nations' standard of living and equality of opportunity. On the recommendation of MPP Harry C. Nixon, an MPP from Brantford, and William Goodfellow, the Minister of Public Welfare, Ontario's legislature struck a Select Committee on Indian civil rights.

The Select Committee, headed Minister Goodfellow, released *The Report on Civil Liberties and Rights of Indians* (1953).<sup>82</sup> The report's recommendations focused on “the integration of the Indian with the rest of the community”, with “full equality”.<sup>83</sup>

Following the report, Ontario passed the *Indian Social Services Act* in 1955 and began entering into agreements with Ottawa for financial support. These were predecessors to the 1965 Agreement.<sup>84</sup> Ontario extended the Homes for the Aged program and certain forms of income assistance to First Nations: Mother's Allowance, Disabled/Blind Persons' Allowance, and Old Age Assistance.<sup>85</sup> Following the passage of the *Child Welfare Act* of 1954, Ontario became the first province to begin extending the operation of Children's Aid Societies onto reserves in 1956.<sup>86</sup>

Indian Advisory Committee Following the civil liberties report and the *Indian Social Services Act*, Ontario's Department of Public Welfare struck an Indian Advisory Committee, which continued for fifteen years. The Advisory Committee was led by Chief Elliott Moses (Six Nations) and visited most of the First Nations in Ontario. It met frequently with Louis Cecile, Minister of Public Welfare, and with Deputy Minister James Band.<sup>87</sup>

GWA and First Nation delivery in Ontario In 1958, Ontario replaced its unemployment relief program with the *General Welfare Assistance Act*. In 1959 Ontario amended this legislation to allow both municipalities and Indian Bands to deliver GWA. This took effect on April 1, 1960, making Ontario the first province to allow First Nations to administer one of its social programs.<sup>88</sup>

As Ontario's Department of Public Welfare slowly began to extend services in child care, homemakers, nursing and child welfare to First Nations using local municipalities, First Nations advocated for the ability to deliver these programs themselves as was already possible with GWA.<sup>89</sup>

Canada's policy Canada's policy at that time was that First Nations should receive social programs from

<sup>82</sup> A History (2006), *supra* note 10.

<sup>83</sup> A History (2006), *ibid*.

<sup>84</sup> Shewell, *supra* note 26 at 268; A History (2006), *ibid*.

<sup>85</sup> A History (2006), *ibid*.

<sup>86</sup> Shewell, *supra* note 26 at 262; A History (2006), *ibid*.

<sup>87</sup> A History (2006), *ibid*.

<sup>88</sup> Interview with Hugh Shewell, York University.

<sup>89</sup> A History (2006), *supra* note 10.

the provinces. A 1959 Memorandum to Cabinet from Indian Affairs stated that “differentiation between the treatment and benefits provided for Indians and those available to other citizens is undesirable. ... Indians cannot achieve full citizenship if, because of their status, they are denied access to services available to all other citizens”.

The Memorandum took the position that federal financial support was unnecessary off reserve, but that on reserve Indian Affairs “has assumed responsibility for essential welfare services in the past. Extension of provincial services to these areas, therefore, entails financial agreements with the provinces in regard to the cost of benefits and the costs of administration.”<sup>90</sup> It requested authorization from Cabinet to negotiate cost-sharing agreements with provinces, in the nature of the 1965 Agreement. The Memorandum was approved in March 1960, and by this time negotiations had already begun between Canada and Ontario.<sup>91</sup>

Federal cost-sharing for provincial services to First Nations was likely seen by Canada as a transitional step towards full integration of First Nations into the mainstream. This would be in line with the type of assimilation policy expressed in the 1969 White Paper, and officials in Indian Affairs' welfare department expressed this view in the early 60s.<sup>92</sup>

This policy intention is also in line with the funding formula that ended up in the 1965 Agreement. The federal funding share depends on the degree to which First Nations' assistance costs are different from the mainstream. The more First Nations' costs approximate the mainstream, the more the federal share would reduce until it would equal the 50% that would be provided to provinces anyway under CAP.<sup>93</sup>

Concluding  
the 1965  
Agreement

Pearson's government came into power in 1963. In July 1964, Treasury Board approved Indian Affairs to fund income assistance on par with provincial levels and procedures.<sup>94</sup> This changed how First Nations would receive income assistance in all provinces, and set the stage for cost-sharing with Ontario.<sup>95</sup>

Federal-provincial conferences in November 1963 and October 1964 worked towards CAP. At the same time, the federal government offered the provinces cost-sharing for Indians on reserves, an offer taken up by Ontario but not others.<sup>96</sup> In 1965, Ontario's Minister of Public Welfare (Louis Cecile), Canada's Minister of Northern Affairs and

90 Shewell, *supra* note 26 at 271-272.

91 Shewell, *ibid.* at 272-273.

92 For instance, on 2 May 1961 Col. H.M. Jones, Superintendent of Welfare Services, Indian Affairs Branch, told a Parliamentary joint committee on Indian Affairs the following: “I think the extension of provincial services and jurisdiction must eventually come. I do not believe that Indians can be treated as people apart indefinitely. There must come a time when they are accepted fully into the larger community... The process must be developed by stages and there is one field...where I believe it might come first. I would suggest that this is in the field of welfare.” See Shewell, *ibid.* at 281.

93 See the section of this report on The Fine Print for further details on the funding formula.

94 Treasury Board Minute No. 627879, 16 July 1964; see Shewell, *ibid.* at 316-317.

95 Shewell, *ibid.* at 312.

96 Shewell, *ibid.* at 319.

National Resources (Arthur Laing), and Canada's Minister of National Health and Welfare (Allan MacEachen), signed the *Memorandum of Agreement Respective Welfare Services for Indians*,<sup>97</sup> often called the Indian Welfare Agreement or 1965 Agreement.

Other provinces

Canada hoped that the other provinces would follow suit and extend their services to reserves subject to cost-sharing agreements like the 1965 Agreement. This did not happen, and it is not entirely clear why Ontario was the only exception. The following are suggestions for why Ontario went on its own path:

- Ontario made greater use of municipalities in the delivery of services, while in the 1960s other provinces were moving to more centralized systems.<sup>98</sup> Ontario's municipal delivery model could be more easily adapted to band delivery.
- Other provinces were poorer than Ontario, and may not have been willing to absorb any portion of the cost of services to First Nations.<sup>99</sup>
- Other provincial governments may have been more firmly committed to the position that reserves and Indians are a federal responsibility.<sup>100</sup> A parallel reason may be that First Nations in some regions were more resistant to provincial involvement as a point of principle, even for “voluntary” services like social assistance.<sup>101</sup> In contrast, Ontario at that time was focused on inclusion.

In any case, the fact is that in the 60s only Ontario agreed to take on the provision of social services to First Nations and be reimbursed by Canada. In other provinces, First Nations usually deal directly with Indian Affairs for social services, and are not funded by the province. However, provinces outside Ontario have become more active with First Nations over time; see the Summary of this report for more detail.

First Nations' role

First Nations are not parties to the 1965 Indian Welfare Agreement. Canada and Ontario did not involve First Nations in the federal-provincial conferences that led to the Agreement. At that time, First Nations did not have a strong voice in mainstream politics, and were not organized into national or provincial organizations. First Nations' political organization increased substantially following the 1969 White Paper and in subsequent decades with the rising movement for self-determination. The 1965 Agreement stands as a relic from an earlier time.

### ***Comparing CAP and the 1965 Agreement***

The Canada Assistance Plan and the 1965 Agreement have a lot in common. They were concluded very close in time, in the mid-60s, under the same federal government. The scope of programs in CAP is quite similar to the 1965 Agreement. Generally speaking, both agreements include things like income assistance, child and family services, and a

97 1965 Agreement, *supra* note 1.

98 Shewell, *supra* note 26 at 270.

99 Shewell, *ibid.* at 270, 282, 319.

100 Shewell, *ibid.* at 319.

101 For one example, see e.g. Shewell, *ibid.* at 320.

few other programs. Both agreements used the term “welfare” to define these types of programs, and there is some similarity to what we might call “social services” today.

Part II of CAP Part II of CAP, “Indian Welfare”, sets out a cost-sharing system for services to First Nations that looks very much like the 1965 Agreement. Canada's intent was to subsume the 1965 Agreement with Ontario under this section, and to conclude agreements with other provinces united by this Part II framework. However, since other provinces did not take up Canada's cost-sharing offer, Part II of CAP was never used.<sup>102</sup>

Both CAP and the 65 aimed at “welfare” programs Both agreements do not include health care and education, which are universal programs in Canada. This is important, because in contrast to universal programs, which are for everyone, “welfare” programs were thought of as remedial or residual, i.e. for people who are in some sort of special need.

There are problems with remedial or residual programs: they can be stigmatizing for people using the service, they often have narrow eligibility which means more people are left without access to the service, and they often have lower funding and quality than universal programs because there is less political pressure around them.

The concept of remedial or residual programs may be particularly ill-suited to First Nations communities, where healing and wellness may be thought of as something for everyone, where cultural values may stress interconnection and prevention, and where overall levels of need are usually very high. One concern with the 1965 Agreement is that it promotes First Nations' access to a more outdated package of residual programs but limits access to the wider set of universal programs like health and education.

The 65 is more restrictive than CAP in program eligibility However there is a difference in the scope of programs defined in CAP and the 1965 Agreement. CAP defines “assistance” and “welfare services” in general terms. While CAP was being used, one of its problems was that many provinces found these definitions too narrow and restrictive. There were many disputes between the provinces and Canada about what was eligible – in fact just recently the Federal Court dismissed a claim by Quebec against Canada for \$400 million in payments under CAP.<sup>103</sup>

The 1965 Agreement is even *more* narrow. Not only does it define “financial assistance” (Sched. B & E) and “services” (Sched. C & E), it also lists specific statutes (Sched. A), and it even adds further limiting descriptions for each statute named.

CAP and the 65 pay expenses, they are not block grants Both CAP and the 1965 Agreement work by reimbursing eligible expenditures. Ontario has to keep track of expenses, submit an invoice to Canada, and Canada makes a transfer for the amount it deems eligible. In contrast, most inter-governmental transfers today use some kind of block grant or other methods that allow more flexibility for the recipient (Ontario) and provide more predictability for the payer (Canada).

<sup>102</sup> See *A History* (2006), *supra* note 10; *Canada Assistance Plan*, *supra* note 78 at Part II.

<sup>103</sup> *Quebec (Procureur Général) v. Canada*, 2008 CF 713 (CanLII).

The benefit of the CAP/1965 cost-sharing method is that it is open-ended and not capped; no matter how much Ontario spends on a program under these agreements, Canada is supposed to provide reimbursement according to the formula. The disadvantage, however, is that the scheme gets stuck in the narrow program eligibility criteria that was set out a long time ago, leading to disputes about what is eligible and making program changes difficult.

By now CAP is gone, but the 1965 Agreement still uses this older type of funding system, which is now atypical in Canadian inter-governmental funding arrangements.

## **First Nations' Services in Ontario, 1965 – Present (Overview)**

### *Ontario Ministry Changes*

MCSS and other Ministries From 1966 to 1972 Ontario administered First Nations's social services through its Department of Social and Family Services. In 1972 this changed to the Ministry of Community and Social Services (MCSS).

Today, MCSS is responsible for income assistance under the 1965 Agreement, i.e. Ontario Works. MCSS is also delivers certain programs to First Nations that are not part of the 1965 Agreement, including the Ontario Disability Support Program (ODSP) and the Aboriginal Healing and Wellness Strategy (MCSS is the lead ministry).

Meanwhile, other programs under the 1965 Agreement have moved out of MCSS. Since 2004, child protection and childcare have come under the Ministry of Children and Youth Services (MCYS). Homemaking now comes under the Ministry of Health and Long-Term Care (MOHLTC). MYCS, MOHLTC and other ministries may also be involved in programs and services for First Nations which are not part of the 1965 Agreement, including the Aboriginal Healing and Wellness Strategy and others.

### *Federal Cuts and Changes in the 90s*

End of CAP Mounting government debts and the recession of the early 90s brought in a period of austerity. At that time, that the federal government contributed to health and post-secondary education through EPF payments, and to social services through CAP. Canada started to restrict EPF payments in the late 80s, then from 1990 to 1995 put a “cap on CAP” and froze EPF payments.<sup>104</sup> BC challenged the “cap on CAP” in court, supported by Ontario and other provinces. The provinces lost at the Supreme Court.<sup>105</sup>

In 1995 the federal government eliminated CAP and the EPF, and replaced them with a

<sup>104</sup> Madore, *supra* note 80.

<sup>105</sup> *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525 (Supreme Court of Canada).

new transfer system, the Canada Health and Social Transfer (CHST). The CHST took effect in April 1996. The new transfer payments include both the transfer of a portion of taxes from federal to provincial revenue, and cash grants from the federal government to the provinces.<sup>106</sup> Since March 2004, the CHST has been split up into two transfers: the CHT is for health, and the CST is for post-secondary education, early learning, income assistance, child and family services and other social programs.<sup>107</sup>

INAC cap At the same time as these cutbacks in the mainstream, in 1995 the federal government placed a 2%/year cap on the growth of INAC's core expenditures. Core programs include the social programs in the 1965 Agreement, i.e. income assistance, child and family services, etc., as well as other programs such as education, housing, capital, infrastructure, regulatory services and First Nations government support.<sup>108</sup> The 2% cap cannot keep up with inflation and population growth, let alone program improvements. Fourteen years later, it remains in effect.

As described in more detail in the program sections below, starting in the 90s INAC took a more aggressive approach in capping, cutting or otherwise limiting funding for programs under the 1965 Agreement.

Program sections Historical developments for each program are described in the program sections, below.

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106 Only the cash grants can be deducted for non-compliance with federal standards.

107 The CHT, CST, equalization payments, and transfers to territories are all part of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

108 INAC Cost Drivers Study, excerpted in Assembly of First Nations, *From Poverty to Prosperity: Opportunities to Invest in First Nations – Pre-Budget Submission to the House of Commons Standing Committee on Finance, September 2007* (Ottawa: AFN, 2007) at the Appendix.

# SOCIAL ASSISTANCE

## Current Delivery and Funding of Ontario Works

### *Program Basics*

What is Ontario Works? Ontario Works (OW) provides income assistance to people with demonstrated financial need, as determined based on a provincial means test (Financial Assistance). Ontario Works also includes an Employment Assistance program, which involves activities geared towards finding employment.

Ontario Works is mandated by the Ministry of Community and Social Services (MCSS). MCSS authorizes “delivery agents” to administer the program at the local level; these agents are either municipalities/districts or First Nations.<sup>109</sup>

Unlike municipalities, First Nations have the right to choose whether to opt in to the Employment Assistance program pursuant to s.2(2) of the 1965 Agreement and the *Mushkegowuk Council* appeal decision (see below). Of the 110 First Nations delivering OW, 34 deliver both Financial Assistance and Employment Assistance (including 19 communities served by three group delivery agencies, and another 15 single-site communities), and 76 First Nations (all single-site) deliver Financial Assistance only.<sup>110</sup>

Over 80% of First Nations deliver OW Ontario Works is available in all First Nations communities. Presently 110 First Nations in Ontario (over 80%) act as delivery agents for Ontario Works in their community.<sup>111</sup> In addition, Akwesasne uses Ontario as the province of reference for social assistance and delivers Ontario Works within their territory,<sup>112</sup> and Kitchenuhmaykoosib Inninuwug receives OW from a third party contracted by INAC.<sup>113</sup>

People in the remaining First Nations in the province receive the program either through a District Social Services Administration Board in rural/remote areas or through a local Consolidated Municipal Services Mechanism in urban areas.

Variation in program size The scale of the Ontario Works program delivered by each First Nation varies enormously. Some First Nations have caseloads of only 5 people; the largest caseload is over 600. In some communities only a small percentage of people receive social assistance, while in others up to 80% of community members rely on the program.<sup>114</sup>

109 *Ontario Works Act, 1997*, S.O. 1997, c.25, Sched. A at s. 38 [*Ontario Works Act*].

110 Ontario Native Welfare Administrators Association (ONWAA), *Program Briefing Note*, 20 February 2009 [ONWAA, *Program Briefing Note*]; Interview with Michael Nadeau, ONWAA.

111 *Designation of Geographic Areas and Delivery Agents*, O. Reg. 136/98 (regulation pursuant to the *Ontario Works Act*, *supra* note 109).

112 Interview with Michael Nadeau, ONWAA; Interview with Phil Digby, INAC Ontario Region.

113 Interview with Phil Digby, INAC Ontario Region.

114 Interview with Michael Nadeau, ONWAA.

Single Site vs. Cluster Model Most First Nations deliver as a “single site”, i.e. to a single reserve community. INAC and MCSS have created a pilot project called the “cluster model” that provides more funds for administration in group delivery than is provided to communities who deliver as a single site (see below for funding details).

Presently there are 3 group delivery agencies serving 19 First Nations: Stepping Stones Support Services Program delivers to 5 First Nations in the London area,<sup>115</sup> Niigaaniin delivers to the 7 First Nations in the North Shore Tribal Council (Mamaweswin)<sup>116</sup>, and Min-O-Qwe-Ke-Ga-Bwe'in Social Services Initiative delivers to 7 First Nations within the Kenora Chiefs Advisory.<sup>117</sup> The group delivery agencies do “full” Ontario Works delivery including both Financial Assistance and Employment Assistance.<sup>118</sup>

No additional group delivery is being permitted by INAC until after the pilot project and its program review are completed (around 2010). MCSS has communicated that it would be willing to fund additional group delivery if First Nations are able to secure the required administration funding share from INAC.<sup>119</sup> The application of the pilot results for group delivery to fly-in communities is questionable, as no fly-in communities are part of the pilot project.<sup>120</sup>

Funding structure The Ontario Works program is cost shared between the province and municipalities. As per the *Ontario Works Act*, the municipal share is 20% of financial assistance and employment assistance and 50% of administration costs. More detail on funding follows below. For the 110 First Nations who deliver the program through the 1965 Agreement, INAC pays the municipal share to the First Nation, and the First Nation receives the provincial share from MCSS. INAC then reimburses Ontario for most of its expenditures pursuant to the cost-sharing formula in the 1965 Agreement.<sup>121</sup>

Ontario's MCSS funding to municipal delivery agents may also be reimbursed through the 1965 Agreement for recipients resident on reserve (i.e. where the First Nation does not administer the program themselves) or for registered Indians resident off reserve for less than one year if the agent is able to identify and document this situation. Akwesasne is funded 100% directly from INAC according to a bilateral arrangement.<sup>122</sup>

115 The five First Nations are: Aamjiwnaang, Munsee-Delaware Nation, Moravian of the Thames, Chippewas of Kettle and Stony Point, and Chippewas of the Thames. See O.Reg. 136/98.

116 The seven First Nations are: Batchewana, Garden River, Thessalon, Mississauga, Serpent River, Sagamok Anishnawbek, and Atikimikesheng. See O.Reg. 136/98, and [www.mamaweswen.ca/niigaaniin](http://www.mamaweswen.ca/niigaaniin).

117 The seven First Nations are: Eagle Lake, Shoal Lake #40, Naotkamegwanning, Iskatewizaaagegan #39, Ochiichagwe'babigo'ining, Obashkaandagaang, and Asubpeeschosesewagong Netum Anishnabek. See O.Reg. 136/98 and [www.kenorachiefs.ca/socialservices.htm](http://www.kenorachiefs.ca/socialservices.htm).

118 ONWAA, *Program Briefing Note*, *supra* note 110.

119 Interview with Michael Nadeau, ONWAA.

120 Interview with Michael Nadeau, ONWAA.

121 See INAC, *Income Assistance – National Manual*, *supra* note 20 at 4.5.3 for more detail.

122 Interview with Michael Nadeau, ONWAA.

### ***Program Components & Funding***

Funding for OW has three components, each with their own comparability issues: the Financial Assistance benefits (income to recipients), the Employment Assistance programs (originally called “workfare”), and the administration costs for both.

Admin  
costs

The **administration costs** of both Financial Assistance and Employment Assistance are cost shared 50/50 between Ontario and the municipalities/INAC. In administration costs municipalities have a distinct advantage over First Nations. With their own tax base, municipalities can negotiate their own budget with Ontario. First Nations do not negotiate their own budget; their costs are effectively set by INAC. In 2006 INAC began using a capped formula, which appears to contradict the open-ended funding requirements of the 1965 Agreement.

INAC currently sets their share so that First Nations delivering both Financial Assistance and Employment Assistance with a full-time single site receive \$1,400 per case to cover all administration costs, cost-shared 50/50 between INAC and MCSS. Funding for the 76 First Nations delivering only Financial Assistance is set at \$900 per case, cost shared 50/50 between INAC and MCSS.

Meanwhile, the provincial benchmark is \$980-\$1,820/case (\$700 provincial 50% share, +/- 30%).<sup>123</sup> The actual administration spending per case for small municipalities, without aggregation, is much higher: on average \$2,088 per case, ranging from \$1,576 to \$2,772 (likely 2005-06 figures or earlier).<sup>124</sup>

These figures indicate a significant disparity. Moreover, municipalities can draw on programs, services, staff and other infrastructure outside the direct Ontario Works program. The administration funding for First Nations is seriously inadequate.

The communities participating in the group delivery pilot project receive \$2,200/case (50/50 INAC and MCSS), which is 57% more than is received by First Nations doing full delivery as a single site. The group delivery funding is in line with Ontario's benchmark rate for aggregate municipal delivery agents serving remote populations.<sup>125</sup> However, this does not necessarily account for realistic funding in First Nations communities. As indicated, INAC is not permitting other First Nations to begin group delivery at this time.<sup>126</sup>

Administration funding for OW should establish a reasonable program minimum funding benchmark per delivery agent, **plus** a reasonable cost per case that is negotiated to fit the needs of each community. The administration funding should also reflect

123 ONWAA, *Program Briefing Note, supra* note 110.

124 INAC, *Evaluation of the Income Assistance Program, supra* note 25 at 19. The year is not indicated, but the most recent year for other information cited in this document is 2005/06.

125 INAC, *Evaluation of the Income Assistance Program, ibid.*

126 ONWAA, *Program Briefing Note, supra* note 110.

realistic costs for northern communities, such as higher staff travel costs.

Finally, administration funding for First Nations' social services administrators needs to cover the *other* programs they are responsible for in addition to Ontario Works. First Nation administrators are also responsible for:

- Homemaking program (mandated through the Ontario Ministry of Health and Long-Term Care, and part of the 1965 Agreement)
- Non-Social Assistance Funeral and Burials (an INAC program)
- National Child Benefit Reinvestment program (funded by INAC using its cost savings from Ontario's 2008 introduction of the Ontario Child Benefit. This used to be funded through the claw-back of the National Child Benefit supplement prior to 2008.)

There is currently **no** funding to First Nations for the administration of these programs, which means First Nations social services administrators must stretch the (already inadequate) OW administration funding to cover their work on these programs.

Financial Assistance

For **Financial Assistance** benefits, Ontario pays 80% and municipalities/INAC pay 20%. Ontario then applies the 1965 cost-sharing formula to its 80% share, such that most of its costs are reimbursed from INAC. The Financial Assistance amounts are set by Ontario according to specific rates and schedules. First Nations delivery agents are compensated for actual expenditures in the same way as municipalities.

This apparent sameness nevertheless raises many ongoing issues. To begin with, benefit rates are extremely low. The National Council on Welfare measures income assistance rates in Canada's provinces and territories. In 2007, Ontario's rates were only 40-75% of Statistics Canada's after-tax Low-Income Cut-Off, depending on the recipient's household composition (note that the Low-Income Cut-Off is sometimes used as a "poverty line", but there is no official poverty line in Ontario).<sup>127</sup> With higher numbers of people relying on social assistance, First Nations are disproportionately affected by rates set at poverty levels. However, rates in most other provinces were comparably low, so Ontario is not doing much better or worse than elsewhere.<sup>128</sup>

OW rates in Ontario do not sufficiently account for the higher cost of living in the north. One study found the cost of food in some of Ontario's remote First Nation communities was 86% higher than average Canadian prices.<sup>129</sup> While OW does provide a Northern Allowance, it is not consistent with actual prices. The Northern Allowance only increases the basic amount by approximately 35%, which is insufficient.

127 National Council of Welfare, *Welfare Incomes 2006 and 2007*, Vol. 128 (Ottawa: NCW, Winter 2008), at Table 2.2-b [NCW, *Welfare Incomes*].

128 NCW, *Welfare Incomes*, *ibid.*

129 Ontario Association of Food Banks, *A Gathering Storm: The Price of Food, Gasoline and Energy and Changing Economic Conditions in Ontario*, June 2008.

Additional benefits such as the \$40 pregnancy benefit, or the Special Diet benefit for various health conditions, are the same across the province and not adjusted at all for northern prices, even though they are primarily intended to cover food.

Employ-  
ment  
Assistance

**Employment Assistance** programs can include job searching, supports for job searching, addiction services, basic education, skills training, the LEAP program for young mothers which includes parenting skills and high school completion, work placements, community volunteer placements and 'other'. Employment Assistance is delivered by 34 of the 110 First Nations administering Ontario Works. First Nations who are served by municipalities would also receive Employment Assistance. Where the program applies, each recipient is obliged to participate in some activity, according to their own Participation Agreement.

Employment Assistance has more flexibility now than in its original 1998 formulation as “workfare”. The First Nation and social service administrator, like other delivery agents, have some local control to decide what kinds of programs to offer in their community and to set the content of the Participation Agreements with each recipient.<sup>130</sup>

Like Financial Assistance, funding for Employment Assistance programs is cost-shared 80/20 between Ontario and municipalities/INAC. The program's funding is largely determined by Ontario. MCSS originally set a total provincial allocation (1998) and then apportioned it out to delivery agents according to the size of their caseloads at the time.<sup>131</sup> Total funding for the Employment Assistance programs is about \$240 million.<sup>132</sup>

First Nations receive comparable amounts to municipalities.<sup>133</sup> However, this superficial equality in fact disadvantages northern communities, where the cost of participating in a program or placement may be higher due to travel costs, the need for protective clothing, the purchase of training supplies, etc. Moreover, remote communities lack social infrastructure (governmental and non-governmental) that can be relied on to provide and complement programs in municipalities.<sup>134</sup>

Employment Assistance funding should include additional resources for remote and isolated communities to offset these factors. ONWAA notes that Ontario has indicated they may be willing to look into this barrier.<sup>135</sup>

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130 Interview with Michael Nadeau, ONWAA.

131 Interview with Michael Nadeau, ONWAA.

132 Interview with Michael Nadeau, ONWAA.

133 Interview with Michael Nadeau, ONWAA.

134 Interview with Michael Nadeau, ONWAA.

135 Interview with Michael Nadeau, ONWAA.

## Context & Development

### *Poverty and Economic Development*

Community context Social assistance is extremely important for many First Nations families who rely on it to provide their shelter, food, clothing and meet other basic needs. First Nations communities experience disproportionate poverty and unemployment. In many communities opportunities for employment are scarce. First Nation poverty is affected by a wide variety of other factors, including: loss of land and loss of control over natural resources within traditional territories; the need for self-government to direct development in ways that make sense for the community; declining income from traditional economies; the legacy of residential schools and associated social trauma; and challenges within education systems.

Social assistance does little to address any of these root issues. Very little funding from INAC has gone to community development. In the mid-60s, Ontario concluded an Indian Development Agreement with INAC to parallel the 1965 Agreement. However INAC cancelled its Community Development program in 1970, and Ontario refused to continue the program alone.<sup>136</sup> In the 70s, Ontario funded a few small development initiatives in First Nations communities through its Dept. of Culture and Recreation.<sup>137</sup>

As discussed below, today INAC spends only 1.7% of its national Income Assistance funding on employment and training activities (2005-06).<sup>138</sup> It is not known if this percentage is higher in Ontario due to the OW Employment Assistance program.

### *Social Assistance Before the 1965 Agreement*

Provincial role started before 1965 Social assistance is the biggest and oldest social program operated by First Nations pursuant to the 1965 Agreement. Ontario was the first province to begin devolving the delivery of social assistance to bands, starting even before the 1965 Agreement.

As indicated in the Background section of this report, in the 1950s and early 60s Ontario and Canada entered into smaller agreements that were predecessors to the 1965 Agreement. In 1959, Ontario amended its *General Welfare Assistance Act* to allow bands to be treated like municipalities for the purpose of administering income assistance on reserve.<sup>139</sup> Before INAC received Treasury Board authority for social assistance in 1964, First Nations in Ontario were paying for the GWA program entirely out of their own band funds.<sup>140</sup>

Before the 1965 Agreement, some First Nations people were entirely excluded from

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136 *A History* (2006), *supra* note 10; Shewell, *supra* note 26 at 308-322.

137 *A History* (2006), *ibid.*

140 Shewell, *ibid.* at 278, 308, 316.

139 Shewell, *supra* note 26 at 268.

138 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 15.

services. Non-registered Indians living on reserve, and registered Indians living off reserve, were ineligible for social assistance from both the federal and provincial governments.<sup>141</sup> Unwed mothers on reserve were ineligible for assistance until 1962.<sup>142</sup>

### ***Expansion of First Nations Delivery***

First Nation delivery grew rapidly First Nations started becoming delivery agents under the *General Welfare Assistance Act* (now replaced by Ontario Works) in 1960, and by the time of the 1965 Agreement 20 First Nations were already participating.<sup>143</sup> In 1978, 73 First Nations were delivery agents,<sup>144</sup> and today 110 First Nations (out of 133) are Ontario Works delivery agents.<sup>145</sup>

The Ontario Native Welfare Administrators Association (ONWAA) was founded in the 70s by Kathleen Taylor, a social services administrator at Curve Lake. ONWAA focused on training administrators and advancing their concerns. It began holding workshops, seminars and an annual convention. At first ONWAA was linked with its municipal counterpart, OMSSA, but it became fully independent in 1980.<sup>146</sup>

In 1984, the Anigawncigig Institute was founded by Kathleen Taylor, Marlene Brant Castellano, Charles Pascal and Ontario to advance the training of First Nations social services administrators.<sup>147</sup> Other training and degree-earning initiatives for First Nations social services administrators have developed over the years.<sup>148</sup>

### ***Reviews and Reports***

1978-80: tripartite review In 1978 Indian Affairs established a Social Services Review Committee with the participation of Canada, Ontario and First Nations. This review process produced two reports, *A Starving Man Doesn't Argue* (1979) and *Community Care: Toward Indian Control of Social Services* (1980).

First Nations individuals and communities surveyed in the review emphasized structural issues such as work, housing, education and autonomy more often and in higher priority than the social assistance program itself.<sup>149</sup> People in the communities did report that benefit levels were inadequate, did not cover the cost of living especially in the north, and should be increased as a short-term measure.<sup>150</sup>

The tripartite Committee found that, in 1977-78, funding related to General Welfare

141 Shewell, *ibid.* at 268-270.

142 *A History* (2006), *supra* note 10.

143 *A Starving Man Doesn't Argue*, *supra* note 3 at 73.

144 *A Starving Man Doesn't Argue*, *ibid.* at 78.

145 See above.

146 *A History* (2006), *supra* note 10.

147 *A History* (2006), *ibid.*

148 Interview with Michael Nadeau, ONWAA.

149 *A Starving Man Doesn't Argue*, *supra* note 3 at 22, 35-36, 42-43, 55-56.

150 *A Starving Man Doesn't Argue*, *ibid.* at 26, 29, 40, 57.

Assistance (now replaced by OW) represented half of Ontario's claim to Canada under the 1965 Agreement (\$4.51 million out of \$9.64 million).<sup>151</sup> Including both GWA and Family Benefits (now replaced by ODSP), social assistance was at that time 71% of the total social program funding from all sources to First Nations people in Ontario who met the registered status and residency requirements of the 1965 Agreement.<sup>152</sup>

The review found that the “exceptional costs” per capita of providing social assistance to Indians on reserve according to the formula under the agreement were 9-10 times higher than for the non-Indian population, and that this ratio had seen little change.<sup>153</sup> The difference was driven in large part by the higher level of reliance on social assistance in comparison with the mainstream population.

Social assistance was said to be available to people in all First Nations in Ontario. The Family Benefits program was administered by MCSS district offices, as ODSP is today. At that time, of 95 bands recorded,<sup>154</sup> 73 bands administered GWA through the 1965 Agreement (over 80%), 1 band administered the program with direct Indian Affairs funding, 5 bands received the program through their local Municipal Welfare Board, 1 band received the program through an MCSS district office, and 15 bands received GWA from Indian Affairs district offices.<sup>155</sup>

As is the case today, there was a large variation in 1977-78 in the proportion of a community relying on social assistance. In some First Nations the rate of social assistance recipient-years per reserve population was as low as 3%, while in others it was over 60%.<sup>156</sup> At that time, 38% of First Nation welfare administrators reported having no training, and another 38% reported one week of training or less.<sup>157</sup> Welfare administrators were already called on to do a variety of complex tasks, many outside of the GWA program.<sup>158</sup>

1988: Ontario review, *Transitions*  
 In the late 80s Ontario convened a Social Assistance Review Committee, led by George Thomson, to report on social assistance. In conducting their review, the SAR Committee consulted with Chiefs of Ontario. COO conducted an internal review at the community level. The Committee also met with ONWAA and the Ontario Indian Social Services Council. Committee member Wally McKay was a former Ontario Regional Chief. Chapter 9 of the final report, *Transitions* (1988), is on “Native Communities”.

151 The total amount transferred from Canada to Ontario under the 1965 Agreement in 1977-78 was \$9.18 million: *A Starving Man Doesn't Argue*, *ibid.* at Table 16 at page 67, and at page 76.

152 TAP Associates investigated funding from both Ontario and Canada, both subject to the 1965 Agreement and not. They came up with a total of \$21 million spent on social programs for Indians in Ontario in 1977-78, of which \$10.38 million was for General Welfare Assistance and \$4.6 million for Family Benefits. See *A Starving Man Doesn't Argue*, *ibid.* at 63 and 79-72.

153 *A Starving Man Doesn't Argue*, *ibid.*

154 Information might not have been available for all First Nations.

155 *A Starving Man Doesn't Argue*, *ibid.* at 78-79.

156 *A Starving Man Doesn't Argue*, *ibid.* at 79-80.

157 *A Starving Man Doesn't Argue*, *ibid.* at 89.

158 *A Starving Man Doesn't Argue*, *ibid.* at 86-92.

This chapter recognized the unique rights of First Nations, and approached the topic from the view that “morally and politically, Native peoples deserve to be considered separately from the general review of social assistance”.<sup>159</sup>

Thomson's Committee found that in Native communities, the only way to achieve the “transition from dependency and exclusion to autonomy and integration” for individuals on social assistance would be “to vest control of social assistance programs within the communities themselves”.<sup>160</sup> It found that the cycle of dependency is rooted in colonization and requires the recognition and implementation of self-government.<sup>161</sup>

At that time, 101 of 126 recognized bands were delivering GWA.<sup>162</sup> The report emphasized that First Nations have important cultural differences from the mainstream,<sup>163</sup> and face greater poverty.<sup>164</sup> It noted that many social assistance rules were ill-suited to Native communities. For instance, asset limitations failed to recognize necessities such as guns or snowmobiles, and seasonal hunters and trappers faced barriers to eligibility.<sup>165</sup> The report noted that First Nations people living off reserve remained vulnerable, invisible and stigmatized in the mainstream system.<sup>166</sup>

Thomson recommended that Native peoples be consulted and involved in all phases of social reform. In addition, he recommended 3 transitional steps: short-term reforms, Native-specific legislation, and then the transfer of legislative control to Aboriginal governments.<sup>167</sup> He considered the 1965 Agreement to be “an artifact of an earlier time” and anticipated that it would need to be revised.<sup>168</sup>

1991-92:  
Ontario  
review,  
First  
Nations'  
Project  
Team

In 1991-92, Ontario struck an Advisory Group on New Social Assistance Legislation, headed by Allan Moscovitch, to conduct another review of social assistance. The main advisory group produced two reports: *Back on Track* (1991) and *Time for Action* (1992). A First Nations' Project Team within the review process, chaired by Marie Tincombe-Shaw and Audrey Hill, produced two additional reports: *Short-term Social Assistance Reforms for First Nations Communities* (1991) and *First Nations' Project Team Report* (1992). The following comments focus on this last report.

Like *Transitions*, the First Nations' Project Team recognized the cultural and colonial inadequacies of the existing system, and recommended First Nations self-government in

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159 *Transitions*, *supra* note 7 at 434.

160 *Transitions*, *ibid.* at 435.

161 *Transitions*, *ibid.* at 442-444.

162 *Transitions*, *ibid.* at 439

163 *Transitions*, *ibid.* at 435-436.

164 *Transitions*, *ibid.* at 437-438.

165 *Transitions*, *ibid.* at 440.

166 *Transitions*, *ibid.* at 440-441.

167 *Transitions*, *ibid.* at 445. Short-term reform recommendations are discussed in detail on pages 446-452; new provincial legislation and tripartite negotiations are discussed further at 454-457.

168 *Transitions*, *ibid.* at 446, 452-453.

social services. It focused on the four principles for social services identified in the All Ontario Chiefs' Conference Res. 91/34: First Nation controlled, First Nation determined, First Nation specific and First Nation based.<sup>169</sup>

The Project Team examined mechanisms to implement this transition in more detail than previous reports. It concluded that the best next step would be for new provincial legislation to include a First Nations-specific enabling section containing a recognition clause. First Nations could either continue operating under the mainstream system, use the enabling section to operate under a modified version of the mainstream system, or use the recognition clause to make their own system.<sup>170</sup> Other elements of the new legislation could also recognize First Nations interests.<sup>171</sup> The Project Team hoped that the new legislation would require little disturbance to the 1965 Agreement.<sup>172</sup> In the result, these suggested legislative changes did not occur.

The Project Team noted that in 1989/90, the average social assistance reliance rate among First Nations was 32%, but the rate varied substantially: 6% of communities had rates under 10%, 27% of communities (with 41% of the population) had rates between 10-20%, half had rates between 20-50% and others had rates over 50%.<sup>173</sup>

The report also examines four funding models: the existing individual benefit system, modifications to that system, a “social assistance transfer” approach in which the First Nation would receive the sum total of benefits allocated to individuals and could use this to create jobs and otherwise support individuals in need, and a “transfer grant” approach in which the First Nation would receive a transfer to use as it decided (similar to federal-provincial transfers).<sup>174</sup>

1994: Auditor General's report on INAC In 1994 the Auditor General reported on INAC's social assistance program, which includes federal funding for social assistance to First Nations in all provinces, including Ontario.<sup>175</sup> Overall this report was largely concerned with rising rates of reliance on social assistance, and rising federal costs. It also found insufficient documentation from First Nations administrators.<sup>176</sup> The Auditor recommended more intensive federal intervention and supervision.<sup>177</sup>

169 *First Nations' Project Team Report*, *supra* note 8 at 12.

170 *First Nations' Project Team Report*, *ibid.* at (iv), 30.

171 *First Nations' Project Team Report*, *ibid.* at (iv)-(v)

172 *First Nations' Project Team Report*, *ibid.* at (vi).

173 *First Nations' Project Team Report*, *ibid.* at 8-9.

174 *First Nations' Project Team Report*, *ibid.* at 34-35.

175 Canada, Auditor General of Canada, *Report of the Auditor General of Canada, 1994* (Ottawa: Office of the Auditor General of Canada, 1994) at Chapter 23, “Indian and Northern Affairs Canada – Social Assistance” [Auditor General of Canada, SA 1994]. Note that this report uses somewhat confusing language. It indicates that “social assistance” includes both “social maintenance” activities (i.e. financial assistance) and “social support” activities including child and family services, adult care, family violence services and other social services (at paras. 23.8 to 23.10). However while the report continues to use the term “social assistance”, it focuses only on financial assistance and does not discuss child and family services etc. This confusing language makes it difficult to know what is included in the report's analysis of departmental funding.

176 Auditor General of Canada, SA 1994, *ibid.* at 23.54 to 23.71, 23.75 to 23.76.

The Auditor General found that 90% of bands administered social assistance,<sup>178</sup> and that INAC spent only 1-2% of its social services funding on employment and training.<sup>179</sup>

With respect to Ontario, the Auditor General found that INAC spent \$130 million for social assistance (year unspecified).<sup>180</sup> The report refers to an 1985 analysis of social assistance on reserves in Ontario, which found ambiguous responsibilities for the range, quality and cost of services under the 1965 Agreement.<sup>181</sup>

2007:  
INAC  
evaluation In 2006-07, INAC completed an audit and evaluation of its Income Assistance program, which includes INAC's funding for Ontario Works. Information from this evaluation is included in the comparative sections, below.

### ***Introduction of Ontario Works***

Late 90s In 1995-96, Ontario slashed income assistance benefit rates by 22%. These cuts demonstrate how inclusion in provincial programs under the 1965 Agreement leaves First Nations vulnerable to provincial policy changes beyond their control. Benefit rates have since been gradually increased by the McGuinty government, but they have *not* regained the levels of the early 90s.<sup>182</sup> This pattern is roughly similar in other provinces, and First Nations in other provinces are equally vulnerable to provincial rate changes.

In 1998 Premier Harris introduced Ontario Works. Canada and Ontario amended the 1965 Agreement to add the *Ontario Works Act*, despite First Nations' objections to the lack of consultation and lack of First Nation-specific adjustments.<sup>183</sup>

Mushkegowuk Council challenged the introduction of Ontario Works in court, arguing it interfered with federal authority over Indians under s. 91(24) of the constitution, that it breached First Nations' governance rights under the *Indian Act*, and that the province was obliged to consult with them before imposing the program. At the trial level, Pitt J. agreed with Mushkegowuk that OW was unenforceable without their consent. Justice Pitt made various findings, favourable to Mushkegowuk, about the duty to consult and the distribution of federal, provincial and Aboriginal powers of governance.<sup>184</sup>

However on appeal the case was resolved on narrower grounds. The Ontario Court of Appeal did not address constitutional or governance issues. The Court found that s.2(3) of the 1965 Agreement requires the consent of each First Nation before Ontario Works could be imposed, as employment assistance made it a new program. Any Band that did

177 Auditor General of Canada, SA 1994, *ibid.* at 23.38 to 23.53.

178 Auditor General of Canada, SA 1994, *ibid.* at 23.11.

179 Auditor General of Canada, SA 1994, *ibid.* at 23.4 to 23.30.

180 Auditor General of Canada, SA 1994, *ibid.* at 23.72. This expenditure is described as "social maintenance".

181 Auditor General of Canada, SA 1994, *ibid.* at 23.73.

182 For benefit rates over time in Ontario and other provinces, see NCW, *Welfare Incomes*, *supra* note 127 particularly at Tables 3.1, 3.2 and 3.3.

183 Interview with Michael Nadeau, ONWAA.

184 *Mushkegowuk Council v. Ontario*, [1999] 4 C.N.L.R. 76 (Ontario Superior Court).

not consent would not be a delivery agent, but the province could nevertheless deliver Ontario Works to those First Nations through municipalities.<sup>185</sup>

During *Mushkegowuk Council v. Ontario*, the implementation of the Employment Assistance component of OW on reserve was delayed (1998-2000). INAC's position at this time was that this component would be fully cost-shared under the 1965 Agreement. After the litigation ended, implementation of Employment Assistance was further delayed from 2001 to 2003 because INAC offered to negotiate bilateral agreements with First Nations in Ontario on social assistance, including an Employment Assistance component. These negotiations, which would effectively allow an opt-out to the 1965 Agreement, were abruptly terminated by INAC in 2003. INAC apparently did not receive funding authority to enter into such agreements.<sup>186</sup>

Employment Assistance began to be implemented with First Nations in 2003. Currently 34 First Nations (including 19 participating in the group delivery pilot) deliver the Employment Assistance program. The remaining 76 First Nations delivery agents have not consented to Employment Assistance, and deliver only Financial Assistance.<sup>187</sup> First Nations who are not delivery agents receive both Financial Assistance and Employment Assistance through municipalities or districts.

## Comparison: First Nations in Ontario vs Mainstream Ontario

From the information available, it is clear that First Nations are not receiving equitable funding for OW compared to municipalities. Many of these issues were discussed in the funding section above, and are summarized here. More information on funding levels off reserve would be helpful.

- **OW Administration:** INAC sets the First Nations' single-site delivery rate, for “full” delivery with both financial assistance and employment assistance, at \$1,400/case. INAC's own audit reports that the average administration cost per case for small municipalities in Ontario, without aggregation, is \$2,088 per case, ranging from \$1,576 to \$2,772.<sup>188</sup> INAC's rate for First Nations is lower than the lowest municipal rate they found. INAC's rate for First Nations with small “part-time” caseloads, or delivering only Financial Assistance, is lower.
- **Administration of Additional Programs:** First Nations receive no funding to administer other programs besides Ontario Works. First Nations social services administrators also deliver Homemaking, Non-Social Assistance Funerals and Burials, the National Child Benefit Reinvestment Program, and sometimes other programs. Municipalities can budget for these, however INAC provides no funding to First Nations to manage these programs.

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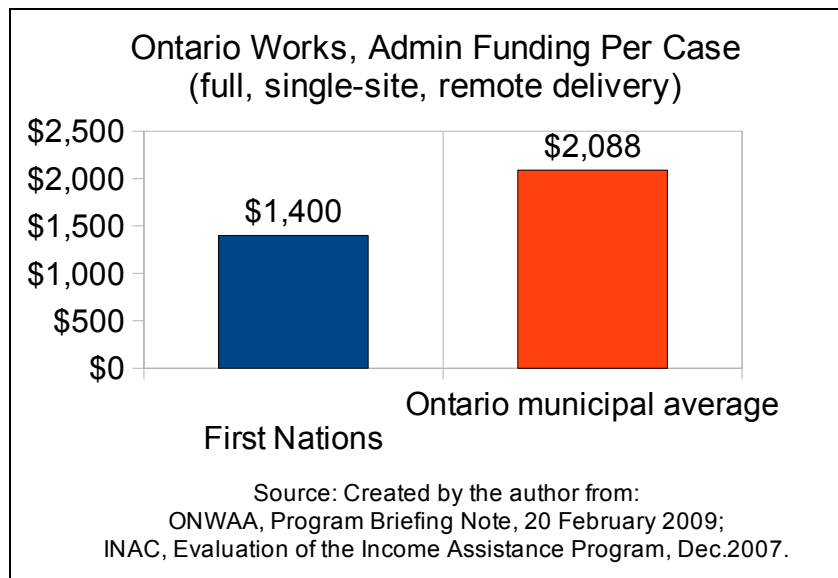
185 *Mushkegowuk Council v. Ontario*, Ontario Court of Appeal, *supra* note 11.

186 Interview with Michael Nadeau, ONWAA; Interview with Phil Digby, INAC Ontario Region.

187 ONWAA, *Program Briefing Note*, *supra* note 110.

188 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 19.

- **Accounting for First Nations Circumstances:** The Financial Assistance, Employment Assistance and Administration funding components all fail to sufficiently account for realistic costs in First Nations communities. Municipalities can draw on social and administrative infrastructure outside the OW program, including staff, buildings and other capital facilities, cars and travel accounts, and various other programs and services for recipients. These are usually not available in First Nations communities. Northern and remote First Nations communities also face additional costs which are not accounted for, including higher travel costs; higher costs for recipients to purchase food, training supplies or other goods; and an even higher scarcity of surrounding services.



## Comparison: Ontario vs Other Provinces

Comparing social assistance between provinces is difficult. Eligibility, benefit structures, and additional program features such as “active measures” (‘employment assistance’, in Ontario) are different in each jurisdiction. The cost of living, economic opportunities, unemployment rates, social conditions and other factors may differ between provinces and in different areas within them.

At face value, social assistance benefit rates in Ontario are neither substantially better nor worse than those in other provinces. The National Council of Welfare publishes data on social assistance rates in all provinces and territories. To take one example, in 2007 Ontario had the 4<sup>th</sup> highest benefit rate of the 10 provinces for a single parent with one child.<sup>189</sup>

There are **many similarities** between social assistance for First Nations in Ontario compared to First Nations in other provinces. First, INAC's Income Assistance program is the main ultimate funder in all provinces (there are some exceptions in the territories).<sup>190</sup> Income Assistance is INAC's

<sup>189</sup> NCW, *Welfare Incomes*, *supra* note 127 at Table 1.2.b.

<sup>190</sup> INAC, *Evaluation of the Income Assistance Program*, *supra* note 25. In the Northwest Territories and Nunavut,

largest single expenditure,<sup>191</sup> with an approximate budget of \$779 million, supporting 159,000 people (including 81,000 clients, plus their dependents) in 2008-09.<sup>192</sup> Nearly nine out of ten dollars of this total cost is for “basic services” (i.e. financial assistance).<sup>193</sup>

Second, in all provinces, a large majority of First Nations deliver their own social assistance. INAC reports that 536 First Nations (95% of 567 eligible bands) delivered its Income Assistance program in 2005-06.<sup>194</sup>

Third, benefit rates and other program components are tied to provincial programs in all provinces. Using provincial standards in social assistance has been INAC's policy since 1964.<sup>195</sup> In Ontario (since 1965) and Alberta (since 1991), consistency is automatic because First Nations receive social assistance through provincial ministries, subject to cost-sharing agreements. In other provinces, INAC reviews its regional manuals to ensure consistency with provincial standards.<sup>196</sup>

Fourth, the program as a whole is strained by the 2% growth cap on all of INAC's core programs. INAC admits that its funding for Income Assistance “has been unable to keep pace” with benefit rate increases and other recent improvements in provincial and territorial social assistance.<sup>197</sup> Since financial benefit rates are determined by set schedules, INAC's funding cap might have the effect of squeezing employment assistance programs, administration and special needs benefits most; in 2005-06 these composed 1.7%, 6% and 5% respectively of INAC's spending on Income Assistance, while basic needs (i.e. financial assistance benefits) accounted for 87%.<sup>198</sup>

Despite these similarities, there are some indications that First Nations in Ontario are in a marginally better position. **On-reserve social assistance rates are lower in Ontario** than in most other provinces (see first chart below). This report does not have information explaining why Ontario's rate is lower. In Ontario, 22.5% of people on reserve relied on social assistance in 2003, while in Manitoba this rate was 43.9% and in Atlantic provinces 64.2%. BC's rate is the same as Ontario. Since 1992, Ontario's rate has roughly stayed the same, while in other provinces for which data is available it has decreased. However Ontario's rate is still the lowest.

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social assistance is funded for everyone by the territorial government (which receives territorial federal transfers). In the Yukon, First Nations with self-government agreements are funded through their government's financial transfer agreements, and other registered status First Nations individuals in the territory are funded by INAC.

191 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 1.

192 Information provided to the author by Serge Ménard, INAC Social Policy and Programs Branch (Headquarters).

193 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 1.

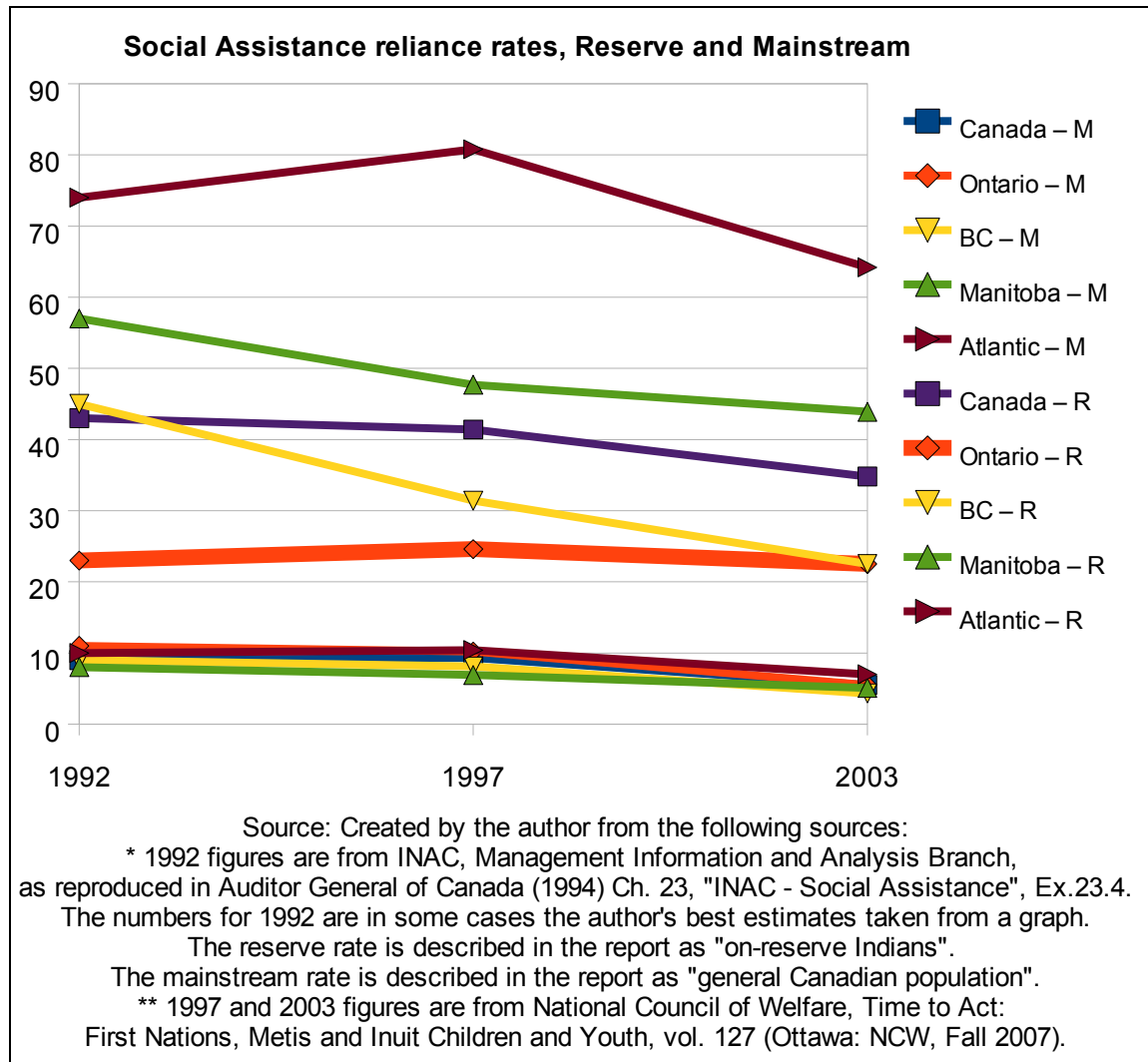
194 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 4.

195 Shewell, *supra* note 26.

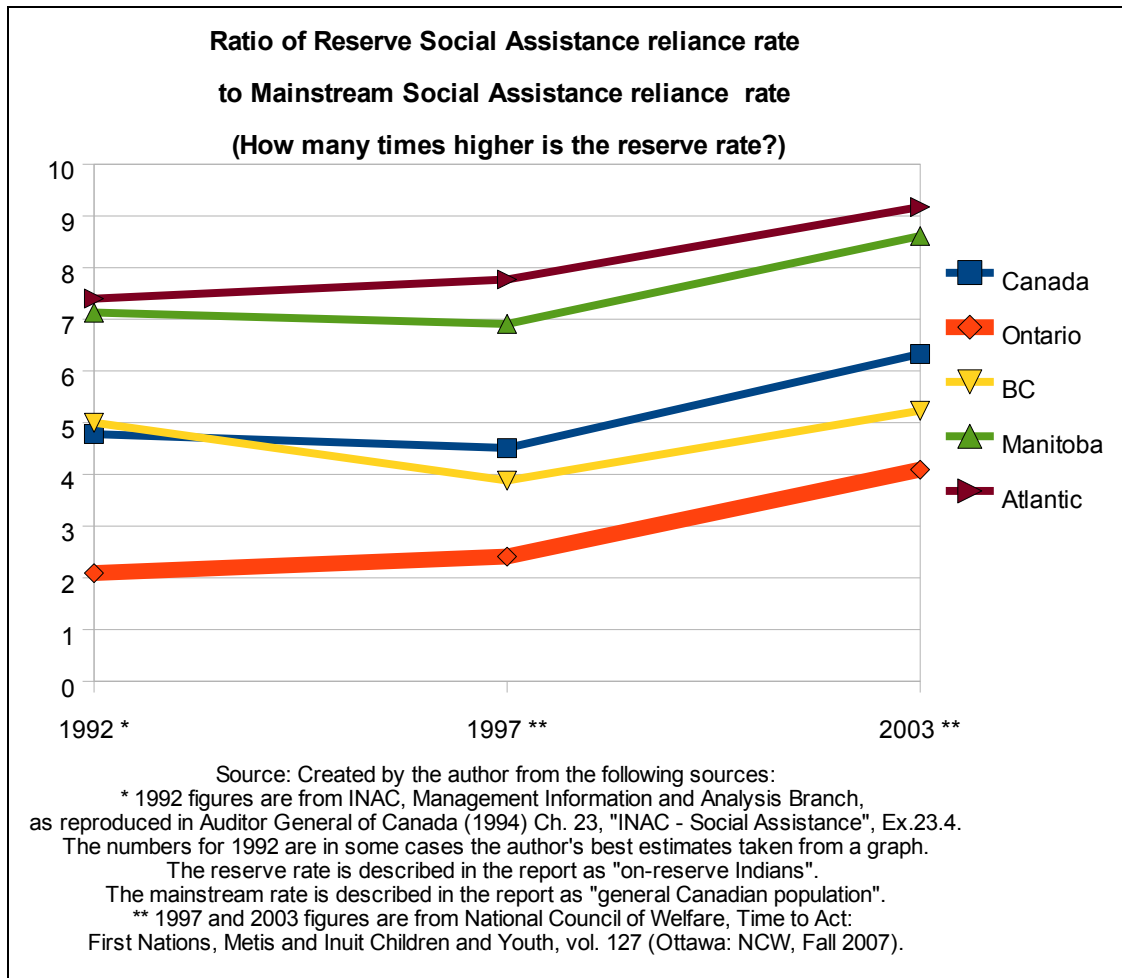
196 For instance, INAC's regional manuals are reviewed and compared with provincial manuals.

197 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 2.

198 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 15.



In addition to having the lowest rate of reliance on social assistance in absolute terms, **the on-reserve social assistance rate in Ontario is closer to the mainstream rate** than in other provinces (see chart below). In Ontario, the reserve rate is 4.1 times higher than the mainstream rate, while in BC it is 5.2 times higher, in Manitoba it is 8.6 times higher and in the Atlantic provinces it is 9.2 times higher. Again, this report does not have information available to explain why First Nations on reserve in Ontario have a smaller gap compared the mainstream in terms of reliance on social assistance.



**Ontario First Nations have some historical advantages.** The devolution of social administration started in Ontario first, due to Ontario's own decision to amend its *General Welfare Assistance Act* and due to the 1965 Agreement. This may mean that First Nations' administration of social assistance is more experienced and well developed in Ontario than elsewhere. For instance, the Ontario Native Welfare Administrators Association (ONWAA) has existed for three decades. Only Quebec and BC also have provincial associations involved in First Nations social assistance administration, and these formed in 2003 and 2004 respectively.<sup>199</sup> Social services staff training and qualifications might be lower outside Ontario, although this has not been confirmed.<sup>200</sup>

**Provinces using direct INAC funding and regional manuals may have less consistency with provincial standards,** or there may be a delay before provincial changes are updated for First Nations. Some components, like provincial appeal processes, do not have a fully comparable match

<sup>199</sup> See INAC, *Evaluation of the Income Assistance Program, ibid.*; Interview with Michael Nadeau, ONWAA. BC now has the First Nations Social Development Society, and in Quebec there is the First Nations of Quebec Social Development Office.

<sup>200</sup> Nationally, very low levels of training are reported by First Nations social services administrators delivering social assistance; it seems that training is higher in Ontario, but this has not been verified: INAC, *Evaluation of the Income Assistance Program, ibid.* at 18.

within INAC.<sup>201</sup> Shelter costs are not paid consistently according to provincial guidelines outside BC, Ontario, Quebec and Yukon, leaving a gap of \$62 million.<sup>202</sup>

**INAC's funding of employment assistance-type programs, i.e. “active measures”, may not be as strong outside Ontario.**<sup>203</sup> Active measures received attention during INAC's Income Security Reform initiative (1998-2003, \$15 million per year).<sup>204</sup> In 2003 INAC received policy authority to implement active measures but did not receive any additional funding to do so.<sup>205</sup> In practice, employment and training programs composed only 1.7% of INAC Income Assistance program expenditures in 2005-06.<sup>206</sup> In the opinion of Phil Digby from INAC Ontario Region, the inclusion of Ontario Works' Employment Assistance program in the 1965 Agreement gives some extra protection to INAC's funding for this program in Ontario.<sup>207</sup>

**Administration funding for First Nations in Ontario might be somewhat higher,** but this needs further confirmation. INAC's 2007 Income Assistance program evaluation found that “service delivery” (administration) expenditures were highest for Ontario on a cost-per-case basis. It did not indicate exact amounts for Ontario or other regions.<sup>208</sup>

More province-level information on administration funding, active measures/employment assistance funding, staff training and staff salaries, and other relevant factors would be required to develop a better comparison between social assistance programs for First Nations in Ontario and elsewhere.

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201 Interview with Phil Digby, INAC Ontario Region.

202 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 20.

203 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 51; Interview with Phil Digby, INAC Ontario Region.

204 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 2.

205 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 2.

206 INAC, *Evaluation of the Income Assistance Program*, *ibid.* at 15.

207 Interview with Phil Digby, INAC Ontario Region.

208 INAC, *Evaluation of the Income Assistance Program*, *supra* note 25 at 20.

# CHILD AND FAMILY SERVICES

## Current Delivery & Funding of Child & Family Services

### *Program Basics*

CFS in Ontario Child and family services (CFS), also called child welfare services, are services that aim to ensure the safety and wellbeing of children within the family environment. In each province and territory in Canada, provincially-authorized agencies investigate and respond to suspected child maltreatment (child protection). Some children receiving protection services are taken “into care” outside their home. Child and family services also includes preventative and supportive services to the child and their family.

Ontario's child and family services fall under the Ministry of Children and Youth Services (MCYS). Before 2004, they came under the Ministry of Community and Social Services.<sup>209</sup>

In Ontario, 53 child protection agencies are mandated under the *Child and Family Services Act*,<sup>210</sup> including 5 mandated First Nations agencies based in First Nation communities (Weechi-it-te-win, Tikinagan, Dilico, Payukotayno and Abinooji) and 1 mandated Aboriginal agency based in an urban centre (Native Child and Family Services of Toronto). The 47 other mandated agencies are referred to here as mainstream agencies or Children's Aid Societies (CASs); the mainstream CASs generally correlate to municipalities, however each agency is a non-profit corporation.

An additional 6-7 First Nations agencies are “pre-mandated” and provide various prevention and family support services. These include Kunuwanimano, Nog-da-win-damin, Mnaasged, Kina Gbezhgomi, Six Nations of the Grand River, Akwesasne, and recently Hiawatha.<sup>211</sup>

Lack of First Nations agencies Less than half of the First Nations communities in Ontario are served by a mandated First Nations agency. Another quarter are served by a pre-mandated agency.<sup>212</sup> In other words, 1 in every 2 First Nations communities in the province receives child welfare protection services from a mainstream CAS, and 1 in 4 are completely reliant on mainstream CAS agencies for all protection and prevention services.

209 The names of both Ministries have changed occasionally. MCYS was created as a new Ministry starting in 2004.

210 *Child and Family Services Act*, R.S.O. 1990, c. C-11.

211 Association of Native Child and Family Services Agencies of Ontario (ANCFSAO), *Information Package, January 2009* (Thunder Bay: ANCFSAO, 2009) [ANCFSAO, *Information Package*]; Interview with Betty Kennedy, ANCFSAO.

212 Agency data supplied by the following sources: MCYS, *Results-Based Plan, 2008-08*, *supra* note 33 (which notes that the 5 mandated northern First Nation agencies serve 63 communities); ANCFSAO, *Information Package, ibid.* (which notes the communities served by each member mandated and pre-mandated agency); Interview with Betty Kennedy, ANCFSAO; and some agency websites.

As of 2005, MCYS reported that 40% of the Aboriginal children in care in Ontario were being served by a mainstream CAS.<sup>213</sup> Less than a third of Aboriginal children who were crown wards in 2007 were served by an Aboriginal agency.<sup>214</sup>

Ontario has fewer First Nations child and family services agencies than several other provinces.<sup>215</sup> Considering the large size of the First Nations population in Ontario and the large number of communities, Ontario has disproportionately few mandated agencies.<sup>216</sup> Some of the First Nations agencies in Ontario have existed 10 or 20 years without being mandated by the province to provide full services.

Children in Care There is no reliable data on the number of First Nations children in care in Ontario. Data collection focuses on registered status First Nations children, recorded for financial purposes (i.e. for the 1965 Agreement). Figures appear to be under-reported.<sup>217</sup>

The number of children “in care” as of March 31 of each year is used in this report for comparative purposes. It is an administrative record collected by INAC and by all provinces, so it is useful for some purposes. However it should not be taken as an accurate picture of the number of First Nations children actually in care.

The Canadian Incidence Study (CIS) of Reported Child Abuse and Neglect, and its counterpart the Ontario Incidence Study (OIS), included only a few First Nations agencies in the 1998 and 2003 studies. The national CIS-2003 includes First Nation, Métis and Inuit reported maltreatment rates, but cannot be broken down by province. The OIS-2003 includes an analysis of children identified in the Ontario sample as Aboriginal, but cannot provide an overall Aboriginal (or First Nations) rate of children in care. The CIS and OIS studies of 2008 include more First Nations agencies and may provide better data; information will not be available until 2010.<sup>218</sup>

Aboriginal-specific sections of the *CFSA* In 1984, Ontario's new *Child and Family Services Act* introduced provisions specific to “Indian or native” children. These are mostly organized in Part X of the statute. The most recent changes to these provisions was in 2005.

The Act specifies that cultural identity must be recognized and honoured, and that “Indian and native people should be entitled to provide, wherever possible, their own

213 Association of Native Child and Family Services Agencies of Ontario, *First Nations Children: Fact Sheet* (Thunder Bay: ANCFSAO, 2006) [ANCFSAO, *Fact Sheet*].

214 MCYS, *Ontario's Crown Wards*, *supra* note 30 at 12-13.

215 Interview with Cindy Blackstock, FCNFCFS of Canada.

216 Interview with Cindy Blackstock, FNCFCFS of Canada.

217 Interview with Betty Kennedy, ANCFSAO.

218 Nico Trocmé et al., *Canadian Incidence Study of Reported Child Abuse and Neglect – 2003: Major Findings* (Ottawa: Minister of Public Works and Government Services Canada, 2005) [CIS-2003]; Barbara Fallon et al., *Ontario Incidence Study of Reported Child Abuse and Neglect, OIS-2003: Major Findings Report* (Toronto: Centre of Excellence for Child Welfare, 2005) [OIS-2003]; Interview with Barbara Fallon, CIS research director; Interview with Vandna Sinha, CIS First Nations research coordinator.

child and family services”.<sup>219</sup> All agencies must notify and consult with a child's First Nation (band) or other Native community at various stages of the child's involvement in the child welfare system.<sup>220</sup> A Band Representative may be a party to legal proceedings regarding children from their community; more information on Band Representatives is included below.<sup>221</sup> The Act allows for customary care placements, with subsidies.<sup>222</sup>

The *CFSA* also provides for the development of First Nations agencies. First Nations bands or other Native communities may designate a body as their child and family services authority, at which point MCYS must negotiate for the provision of services. The Minister may, but is not required to, enter into agreements with the agency for services and/or may mandate the agency to provide full services.<sup>223</sup>

### ***Federal Funding to Ontario***

Directive 20-1 and the 1965 Agreement INAC pays Ontario for the provision of some child and family services to First Nations, under its national First Nations Child and Family Services program (FNCFS). Across Canada, INAC will spend approximately \$523 million on this program in 2008-09, supporting 161,197 children including over 8,000 children in care. INAC reports that nationally 5.1% of children resident on reserve are in care versus 0.8% off reserve.<sup>224</sup>

INAC's FNCFS policy stated in Directive 20-1 and elaborated in its FNCFS National Program Manual. The application of Directive 20-1 in Ontario is uncertain. INAC has Treasury Board authority for Directive 20-1 and an additional authority for Ontario's 1965 Agreement.<sup>225</sup> INAC's FNCFS National Program Manual states that, in addition to Directive 20-1, “INAC is also authorized to reimburse a portion of the Government of Ontario's costs under Ontario's Child and Family Services Act, in accordance with the 1965 Indian Welfare Agreement. This authority *takes precedence* over INAC's FNCFS policy as outlined in the Directive and in this manual.”<sup>226</sup> (emphasis added)

However, it is possible that still INAC applies its national policy and Directive 20-1 to Ontario, except as otherwise provided by the 1965 Agreement. In the 90s, INAC informed some First Nations agencies that Directive 20-1 applies in Ontario.<sup>227</sup> A

219 *Child and Family Services Act*, *supra* note 210 at s. 1(2).

220 *Child and Family Services Act*, *ibid.* at s. 213 and elsewhere; Pamela Gough, *Ontario's Child Welfare System*, CECW Information Sheet #31E (Toronto: University of Toronto, Centre of Excellence in Child Welfare, 2005).

221 *Child and Family Services Act*, *ibid.* at s. 39.

222 *Child and Family Services Act*, *ibid.* at s. 212.

223 See *Child and Family Services Act*, *ibid.* at ss. 209-211; Deena Mandell et al., *Partnerships for Children and Families Project: Aboriginal Child Welfare* (Waterloo: Wilfred Laurier University, Faculty of Social Work, February 2003) [Mandell et al.].

224 Data reported to the author from Serge Ménard, INAC, Social Policy and Programs Branch, Headquarters.

225 INAC, *FNCFS – National Manual*, *supra* note 49 at 1.4.4; confirmed in Interview with Cindy Blackstock, FNCFS of Canada.

226 INAC, *FNCFS – National Manual*, *ibid.* at 1.4.4.

227 Lyn Miller, *First Nations Child Welfare Policy in Ontario: From Colonialism to “New Partnerships”?* (based on research by Larry Jourdain, Corinne Jourdain, et al., Association of Native Child and Family Services Agencies of Ontario, 1999), as summarized in Ontario Head Start (2003), *supra* note 46 in the Appendix.

human rights complaint against INAC is currently proceeding on the effects of Directive 20-1, led by the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada. The Chiefs of Ontario remain part of this complaint.<sup>228</sup>

Further research into the application of Directive 20-1 in Ontario (and effects of the 1965 Agreement for child and family services, as indicated below) is recommended.

Federal  
transfer:  
services  
covered

Child and family services are included under the 1965 Agreement. The 1965 Agreement lists the *Child Welfare Act* in its schedules, but has not been updated to specifically list the current *Child and Family Services Act*.<sup>229</sup> INAC has stated that this discrepancy is of no legal consequence.<sup>230</sup> However a legal opinion may be advised if there is any doubt.

It is unclear exactly what services – especially prevention and supportive services, if any – are eligible for reimbursement under the 1965 Agreement. Schedule A of the Agreement describes the services covered under the *Child Welfare Act* as “services to children, including the protection and care and neglected children, the protection of children born out of wedlock and adoption services”. This definition is over forty years old and is obviously outdated.

The failure to specify a modern array of protection and prevention/supportive services in the 1965 Agreement, in a manner that keeps in line with evolving provincial legislative standards and with realistic First Nation service needs, may be contributing to serious underfunding and under-availability of services.

It may be that the “protection and care” wording of the 1965 Agreement – or Canada's interpretation of the Agreement – favours maintenance funding for taking children into care over funding for prevention or for supportive services to children and families at risk. Research has shown that INAC's national funding policy on child and family services, Directive 20-1, suffers from this serious problem.<sup>231</sup>

Further analysis of the specific expenses for child and family services that INAC has deemed eligible/ineligible under the 1965 Agreement may shed more light on this question; such information might be sought from MCYS or INAC.

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228 Discussed in Interview with Cindy Blackstock, FNCFCFS of Canada.

229 The last citation the 1965 Agreement is the *Child Welfare Act*, S.O. 1978, c. 85, updated in a 1981 amendment.

230 Auditor-General of Canada, FNCFS 2008, *supra* note 19 at 4.28. The Auditor General commented: “[T]he child welfare sections of the 1965 Canada-Ontario Welfare Agreement have not been updated since 1981. INAC officials told us that this has no impact on its transferring funds to Ontario to pay for services to children living on reserves. There are, however, provisions in the 1965 Agreement to keep it up-to-date and these could be used to ensure that both the Agreement and the services that the federal government pay for are current.”

231 Canada, Indian and Northern Affairs Canada, Departmental Audit and Evaluation Branch, *Evaluation of the First Nations Child and Family Services Program*, completed 06-07 (Ottawa: INAC, March 2007) [INAC, *Evaluation of the FNCFS Program*]; *Joint National Policy Review*, *supra* note 28; *Wen:de*, *supra* note 28; Auditor General of Canada, FNCFS 2008, *ibid*.

Federal transfer: Registered status & Residency

First Nations child and family services agencies in Ontario deliver services to children and families who fall within a specified mandate and within a catchment area. For instance, an agency might deliver services to any child who is a member of a certain Treaty people, in that Treaty territory, whether the child has registered status or not, and no matter whether the child lives on or off reserve. The local mainstream CAS agency would deliver services to non-Aboriginal children within the same catchment area.<sup>232</sup>

In contrast, the 1965 Agreement only provides for federal funding to cover children with registered status and who are resident on reserve, on Crown land, or off reserve for less than one year.<sup>233</sup> INAC's national FNCFS funding program uses the same limitations.<sup>234</sup>

The residency and registered status requirements limit INAC's funding to Ontario, which *might* in turn contribute to the restriction of agency funding from MCYS and Ontario's reluctance to mandate more agencies. Further research is recommended.

Federal transfer: capital costs

Federal funding for capital costs has not been part of the 1965 Agreement since 1975 (the Agreement had a 5-year cost-sharing provision for capital costs, extended once).

Lack of federal support for capital costs may partly explain the serious inequalities in capital resources available to First Nations child and family services agencies in Ontario, especially the agencies on reserve. More research is recommended.

### ***Provincial Funding to Agencies***

MCYS funding model

First Nations agencies in Ontario are funded by MCYS according to the same funding model used for the mainstream CAS agencies in the province. This model is complex, and has changed over time. The current model essentially dates from Ontario's 1998-2000 child welfare review, as modified in Ontario's 2005 Transformation review.

Before 1998, municipalities funded 20% of child welfare services and Ontario paid 80%. At that time, agency funding was based on annual budget requests which relied mostly on historical funding patterns and had little connection to the volume or expense of actual services.<sup>235</sup> In 1998, Ontario assumed 100% of funding and moved to a block funding model with various service benchmarks. The model was modified in 2005.<sup>236</sup>

Funding is currently allocated in four blocks. Each block is composed of a series of factors and calculations, using around two dozen benchmarks in total, and relates to 2003/04 baseline levels of funding and service volume for each agency.

232 Interview with Betty Kennedy, ANCFSAO.

233 See 1965 Agreement, and discussion in The Fine Print section of this report.

234 See INAC, *FNCFS – National Manual*, *supra* note 49.

235 Ontario, Auditor General of Ontario, *Annual Report of the Office of the Auditor General of Ontario*, Ch. 3, “Ministry of Children and Youth Services”, at 3.01, “Child Welfare Services Program” (Toronto: Office of the Auditor General of Ontario, 2006) [Auditor General of Ontario, “Child Welfare Services”] at 37-38.

236 Auditor General of Ontario, “Child Welfare Services”, *ibid.* at 38.

Block 1 is agency core funding (approximately 90% of total funding), including service delivery and operational infrastructure and supports. Block 2 is a change management investment to implement the Transformation agenda and other new Ministry objectives. Block 3 provides funding for eligible service volume growth. Block 4 is for individual funds managed and determined by the Ministry, such as capital and technology.<sup>237</sup>

Provincial  
funding &  
First  
Nations  
agencies

The provincial funding model creates various problems for First Nations agencies. First, it is still heavily influenced by historical funding levels, due to the 2003/04 baseline.<sup>238</sup> This builds in any pre-existing funding inequalities between First Nations agencies and the more established mainstream CASs.

Second, First Nations agencies have seriously inequitable capital infrastructure resources compared to mainstream agencies. Many of the First Nations agencies on reserve are operating out of small sub-standard buildings or trailers, while mainstream agencies have larger, higher-quality facilities.<sup>239</sup> Adequate funding is not available to First Nations agencies to acquire capital infrastructure or provide building maintenance and repair.<sup>240</sup> This inequality is unacceptable; more research is recommended on its causes and continuing obstacles.

Third, realistic northern costs are not built into the funding model. This places northern First Nation agencies (i.e. all 5 mandated on-reserve First Nations agencies in Ontario) at a serious disadvantage. The costs of travel, goods and services, utilities and other expenses are much higher in the north. Given the same funding as other agencies, northern First Nation agencies are able to purchase fewer services for the children and families they serve. During the 2005 review process, Tikinagan and Payukotayno estimated northern costs required an additional \$25 million in funding.<sup>241</sup>

Finally, provincial funding fails to account for the lack of surrounding services available in First Nations communities, especially on northern reserves. Strong child and family services rely on a wide variety of preventative and supportive services in health, education, residential services, and many other programs. Mainstream CAS agencies can rely on these programs being available in their municipality, whether provided by governments, non-profit organizations, or otherwise. In First Nations communities, these services are usually sparse or not available at all.<sup>242</sup>

237 Ontario, Ministry of Children and Youth Services, Child Welfare Secretariate, *Child Welfare Transformation 2005: A Strategic Plan for a Flexible, Sustainable and Outcome Oriented Service Delivery Model* (Toronto: MCYS, June 2005) [MCYS, *Child Welfare Transformation*] at 18-19.

238 Ontario, Auditor General of Ontario, *Special Report for the Minister of Children and Youth Services: Follow-Up of 2006 Audits of the Child Welfare Services Program and Four Children's Aid Societies* (Toronto: Office of the Auditor General of Ontario, January 2008) [Auditor General of Ontario, *Follow-Up*]; Auditor General of Ontario, "Child Welfare Services", *supra* note 235.

239 Interview with Betty Kennedy, ANCFSAO; Interview with Cindy Blackstock, FNCFCs of Canada.

240 Interview with Betty Kennedy, ANCFSAO.

241 Interview with Betty Kennedy, ANCFSAO.

242 Interview with Betty Kennedy, ANCFSAO.

The Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) finds that the following critical services are usually unavailable in First Nations communities: mental health services (general and adult), children's mental health services, residential options, family services, community involvement services, addictions services, residential services for children with complex needs, family support services, and service coordination.<sup>243</sup>

## Context & Development

### *Prior to 1984 & Early Reports*

Residential Schools & Sixties Scoop This report does not describe the history of child and family services in detail, but provides the following brief notes for context.

First Nations' traditional systems of caring for and raising children within their extended family, community and people was seriously disrupted by the residential schools system. Children lost parents, and parents lost children. The next generation missed the opportunity to learn healthy parenting practices, and often emerged from the schools carrying the trauma of cultural, spiritual, emotional, sexual and physical abuse.<sup>244</sup>

In 1956, Ontario became the first province to authorize its child welfare agencies to operate on reserve.<sup>245</sup> Mainstream CASs had little cultural understanding of First Nations communities and provided few, if any, preventative or supportive services. They usually intervened by removing children from the home, placing them with white foster or adoptive families, often far away. This was the “sixties scoop”.

1978-79: *A Starving Man Doesn't Argue* In 1978-80, Canada, Ontario and First Nations engaged in a tripartite review of the 1965 Agreement. This process produced the report *A Starving Man Doesn't Argue* (1979), which described serious deficiencies in child welfare services.

At that time there were no First Nations agencies. The Kenora CAS served 29 reserves, and together with 5 other agencies accounted for 71% of child welfare costs under the

243 ANCFSAO, *Fact Sheet*, *supra* note 213. A 2001 report from ANCFSAO and Tikinagan Child and Family Services found that the following services were unavailable in Tikinagan's catchment area: psychological assessment, residential treatment, intensive child and family intervention, day treatment programs, mobile crisis response programs, professional children's mental health counselling, early intervention and prevention, suicide prevention and response programs, programs for autism, services for Attention Deficit Hyperactivity Disorder and Fetal Alcohol Syndrome, sexual abuse treatment programs, residential services for children and youth with serious developmental challenges, speech and language assessment and therapy, regular medical services and the specific programs of Special Services At Home, Healthy Babies/Healthy Children, and Better Beginnings/Better Futures. See: Tikinagan Child and Family Services and Association of Native Child and Family Services Agencies of Ontario, *Child Welfare Reform Initiatives: Issues and Recommendations (Final Draft)* (Ontario: ANCFSAO and TCFS, 2001), as cited in Mandell et al., *supra* note 223 at 36-37.

244 See *Wen:de*, *supra* note 28; Bennett et al., *supra* note 77; etc.

245 Shewell, *supra* note 26 at 262; *A History* (2006), *supra* note 10 .

1965 Agreement.<sup>246</sup> A total of 23 CASs provided services to First Nations children under the Agreement.<sup>247</sup>

The report found that most northern CAS agencies, and some southern ones, operated with what it called an “exclusion model”. In these agencies, First Nations were excluded from any participation, CAS workers were non-Aboriginal and spent minimal time with First Nations clients, initial client contact occurred at a point of crisis, and the main intervention was apprehension and placement in substitute care.<sup>248</sup>

A few agencies in the north and south employed some Aboriginal workers, made some placements in Aboriginal homes, kept some contact with bands, and met regularly with their clients. The report called this an “extension model”.<sup>249</sup> One southern agency was described as “integrated” in that the band appointed some agency board members, the agency operated a special office on the reserve, intervention usually began before a crisis, and placement was nearly always in First Nation homes.<sup>250</sup>

1983:  
Johnson's  
report

In 1983, Patrick Johnson published a report for the Canadian Council on Social Development called *Native Children and the Child Welfare System*. His book described the “sixties scoop” and sounded the alarm on the major over-representation of First Nations children in child welfare systems across the country.

Johnson examined all provinces and territories. At that time, he found that registered Indian children composed around 8% of all children in care in Ontario, but only 1.1% of the population of children 0-19 in the province.<sup>251</sup> He also noted that provincial averages masked the degree to which Aboriginal children made up a large proportion of children receiving services from northern CASs. A Kenora CAS official estimated that children “of Indian ancestry” made up 85% of the children in that agency's care.<sup>252</sup>

### ***1984 CFSA and Development of First Nations Agencies***

Early  
initiatives

In 1981, the Chiefs of Ontario made a resolution forbidding the province from removing any more children from their communities, and demanding the return of children previously taken. This resolution declared First Nations' right to govern child welfare themselves, using laws and services within their own cultures.<sup>253</sup>

The Native Child Welfare Prevention Workers program started in two communities in 1979 with provincial funding. It expanded throughout the province.<sup>254</sup>

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246 The other agencies were: Sudbury-Manitoulin (10 reserves), Kapuskasing (4 reserves), Thunder Bay (7 reserves), Brant (2 reserves) and London-Middlesex (3 reserves): *A Starving Man Doesn't Argue*, *supra* note 3 at 100.

247 *A Starving Man Doesn't Argue*, *ibid.* at 96.

248 *A Starving Man Doesn't Argue*, *ibid.* at 103.

249 *A Starving Man Doesn't Argue*, *ibid.* at 103.

250 *A Starving Man Doesn't Argue*, *ibid.* at 104.

251 Johnson, *supra* note 17 at 43.

252 Johnson, *supra* note 17 at 44.

253 Mandell et al., *supra* note 223 at 16-17.

1984 CFSA and first agencies In 1984 Ontario introduced the new *Child and Family Services Act*. Its provisions created the potential for First Nations agencies and provided some other protections; these are discussed above.

Many of the First Nations child and family services agencies in Ontario were incorporated in the 1980s. The first agencies to become fully mandated by the province to provide child protection were Payukotayno (James Bay/Hudson Bay), Tikinagan (NAN western region), and Weechi-it-te-win (Treaty #3 Rainy River area).<sup>255</sup>

Directive 20-1 and moratorium In 1990, INAC began the application of Directive 20-1, a comprehensive management regime and funding formula for First Nations child and family services. See above for questions regarding the application of Directive 20-1 in Ontario.

Only Dilico (Thunder Bay area) became mandated in the early 90s.<sup>256</sup> No other agency was mandated until Native Child and Family Services of Toronto in 2004, followed by Anishinaabe Abinooji (Kenora area) in 2006.

### ***Recent Review & Reports***

1998-2000 Ontario Review Ontario conducted a review of child welfare in 1998-2000, in response to several child deaths.<sup>257</sup> As part of this review, Ontario adopted 100% of funding and changed its funding model (see above). In addition, Ontario amended the *CFSA* to add neglect and emotional harm as grounds for finding a child in need of protection, and developed a standardized risk assessment tool that workers would be required to use (the Ontario Risk Assessment Model). During this review Ontario produced a report summarizing developments in Aboriginal child welfare in the province.<sup>258</sup>

First Nations agencies and the ANCFSAO advocated against many of these changes, particularly standardized risk assessment. They argued that large numbers of First Nations children would be found at risk according to these measures, but that no resources available to respond to the issues creating the risks. The result would be to remove more First Nations children against their best interests.<sup>259</sup>

This turned out to be correct. The number of children in care in Ontario, both mainstream and First Nations, rose from 1998 to 2005.<sup>260</sup> According to the OIS-2003, the rate of substantiated child maltreatment per 1000 children in Ontario's population rose from 9.82 in 1998 (using the former definitions of maltreatment and previous practices) to 24.44 in 2003 (using the new system) – an increase of 320%.<sup>261</sup>

254 Mandell et al, *ibid.* at 16-17.

255 ANCFSAO, *Information Package*, *supra* note 211 and derived from various sources compiled by the author.

256 Dilico Anishnabek Family Care, online: [www.dilico.com](http://www.dilico.com).

257 MCYS, *Child Welfare Transformation*, *supra* note 237 at 4.

258 Koster, Morrissette and Roulette, *supra* note 9.

259 ANCFSAO and TCFS (2001) as described in Mandell et al, *supra* note 223 at 36-37.

260 Auditor General of Ontario, "Child Welfare Services Program, *supra* note 235 at 36, 38.

261 OIS-2003, *supra* note 218 at 2-4.

The number of reported First Nations children eligible for INAC funding (registered and resident on reserve) in care increased from 733 in 1995/96 and 747 in 1997/98 (before the change) to 1,048 in 1999/00 and a high of 1,545 in 2003/04.<sup>262</sup> Despite the concurrent rise in non-Aboriginal children in care, federally-funded First Nations children also increased as a percentage of the total number of children in care in Ontario, from 6.63% in 1997/98 to 8.23% in 2002/03 (see chart in comparative section, below).<sup>263</sup> In other words, First Nations families were affected disproportionately.

2005  
Ontario  
review  
("Transformation")

In 2004 Ontario moved child and family services to the newly-created Ministry of Children and Youth Services. MCYS developed the Child Welfare Secretariat.

In 2005 Ontario wanted to address various concerns about child welfare: rising numbers of children in care, rising costs, and the negative experiences of many children in the system. The "Transformation Agenda" had seven goals: a differential response at intake; reduced reliance on the court system; greater focus on permanency planning; modified accountability procedures; an improved funding model; a single information system (i.e. computer software); and greater research capacity.<sup>264</sup>

The MCYS Transformation plan recognized that "Aboriginal children are vastly over-represented in the care of children's aid societies in Ontario. Although some improvements have been made, most are not placed in Aboriginal families and many are removed from their home communities."<sup>265</sup> MCYS pledged to develop guidelines on customary care in consultation with ANCFSAO and First Nation agencies.<sup>266</sup>

Bill 210 ultimately made various amendments to the *CFSA*. While an earlier draft of the bill was under consideration, Chiefs of Ontario presented to the Legislature's Standing Committee on Social Policy the position that some of the proposed changes, and the lack of other changes, would negatively affect First Nations.<sup>267</sup> COO was successful in getting some of their proposed modifications to Bill 210.<sup>268</sup> However, overall, Aboriginal issues were marginalized in the Transformation process.

262 Canada, Indian and Northern Affairs Canada, "Approximate number of on-reserve registered Indian children in care on March 31 based on reporting to INAC", showing years 1993/04 to 2007/08 for Ontario only, obtained from Chiefs of Ontario and ANCFSAO [INAC, on-reserve registered Indian children in care in Ontario].

263 Calculated by the author based on INAC, on-reserve registered Indian children in care in Ontario, *ibid.*; Canada, Human Resources and Skills Development Canada, *Social Security Statistics Canada and Provinces 1978-79 to 2002-03* (available at HRSDC, online) at Table 437, "Number of Children in Care of Provincial and Territorial Child Welfare Authorities, by Province and for Canada, as of March 31, 1997 to 2003"; Canada, Human Resources and Skills Development Canada, F/P/T Directors of Child Welfare Committee, *Child and Family Services Statistical Report, 2000-2001 to 2003-2004* (Ottawa: HRSDC, 2004).

264 MCYS, *Child Welfare Transformation*, *supra* note 237 at 7.

265 MCYS, *Child Welfare Transformation*, *ibid.* at 14.

266 MCYS, *Child Welfare Transformation*, *ibid.* at 14.

267 Chiefs of Ontario, *Submission to the Legislative Assembly of Ontario, Standing Committee on Social Policy, Regarding Bill 210, An Act to amend the Child and Family Services Act and make complementary changes to other Acts*, 13 December 2005.

268 Interview with Betty Kennedy, ANCFSAO.

INAC  
Audit &  
Eval, 2007

In 2006-2007, INAC performed an audit and evaluation of its First Nations Child and Family Services program in order to receive new Treasury Board authorities.<sup>269</sup>

INAC noted that while there were only 30 First Nations agencies in 1991, there were 105 agencies as of 2006. However, from 1996/97 to 2005/06, total program expenditures rose from \$193 million to \$417 million, and the number of INAC-funded children in care grew 67% from 5,340 to 8,917.<sup>270</sup> The number of children in care as a percentage of all children 0-18 resident on reserve increased from 3.7% to 5.8%.<sup>271</sup> INAC admitted that “the program's funding formula, Directive 20-1, has likely been a factor in increases in the number of children in care and Program expenditures because it has had the effect of steering agencies towards in-care options”.<sup>272</sup>

In this report, INAC repeated a finding of the *Wen:de* report (First Nations Child and Family Caring Society of Canada, 2005) that “one should expect the cost of providing services to Aboriginal children to be significantly higher, given that these cases involve a significantly higher rate of intervention at every point of contact”.<sup>273</sup>

2006-2008:  
Ontario  
Audits

In 2006, the Auditor General of Ontario evaluated the province's child and family services program, and Children's Aid Societies. These two audits were supplemented by a joint follow-up report in 2008. The focus of the audits was on value-for-money.

The audits found that costs, and the number of children in the system, had both increased dramatically since the 1998 reforms. Between 1999/00 and 2004/05, expenditures doubled, the number of children receiving protection services increased 32%, and the number of residential days in care increased 38%.<sup>274</sup> The auditors were concerned about the inflexibility of the Ontario Risk Assessment Model and its failure (at least before Transformation) to account for a family's strengths.<sup>275</sup>

The audit found the funding model “perpetuates previous funding inequities” between agencies by relying on each agency's 2003/04 expenditures as a baseline. Instead of relying on baselines and provincial average costs, the report recommended developing a model that relies on service volume and on “detailed assessments of what would be reasonable for each individual Society based on its circumstances”.<sup>276</sup> The report also urged the Ministry to assess regional differences in costs, such as for residential care.<sup>277</sup> These problems had not been addressed by the time of the 2008 follow-up.<sup>278</sup>

269 INAC, *Evaluation of the FNCFS Program*, *supra* note 231.

270 INAC, *Evaluation of the FNCFS Program*, *ibid.* at 1.

271 INAC, *Evaluation of the FNCFS Program*, *ibid.* at Table 2.

272 INAC, *Evaluation of the FNCFS Program*, *ibid.* at 1.

273 INAC, *Evaluation of the FNCFS Program*, *ibid.* at 13.

274 Auditor General of Ontario, “Child Welfare Services Program”, *supra* note 235 at 36.

275 Auditor General of Ontario, “Child Welfare Services Program”, *ibid.* at 42.

276 Auditor General of Ontario, “Child Welfare Services Program”, *ibid.* at 40.

277 Auditor General of Ontario, “Child Welfare Services Program”, *ibid.* at 46-47.

278 Auditor General of Ontario, *Follow-Up*, *supra* note 238.

In examining four mainstream CASs (Toronto, Peel, York and Thunder Bay) the auditors found a number of questionable expenses for staff vehicles, staff travel, etc.<sup>279</sup>

Auditor-General of Canada, 2008

In 2008, the Auditor General of Canada evaluated INAC's First Nations Child and Family Services program. The report is highly critical of INAC's funding model, funding levels, and overall accountability.

The Auditor General found that INAC had not analyzed on reserve services compared with those in the mainstream. INAC nevertheless admitted that “child welfare services in First Nation communities are not comparable with off-reserve services”.<sup>280</sup>

The report found that many First Nations communities lack other social and health services that support child and family services and are normally available in the mainstream. INAC had not accounted for this difference.<sup>281</sup> INAC could not show that its program sufficiently accounted for remoteness, communities with high proportions of families receiving services, or other circumstances.<sup>282</sup> INAC had no means to determine if services were culturally appropriate. Only BC had developed its own Aboriginal service standards.<sup>283</sup>

With respect to Ontario specifically, the Auditor General critiqued the fact that the 1965 Agreement had not been updated with respect to child and family services.<sup>284</sup>

The Auditor General made further findings with respect to INAC's funding formula for agencies, e.g. that it is inequitable, insufficient, and biased towards taking children into care. As discussed, the application of this formula in Ontario is not clear.<sup>285</sup>

In February-March 2009, the House of Commons Standing Committee on Public Accounts, chaired by MP Shawn Murphy, reviewed INAC's progress in response to the six recommendations in the Auditor General's report. The Committee found that INAC had “no evidence of an action plan currently in place” to implement the recommendations, and made seven further recommendations with various deadlines.<sup>286</sup>

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279 Auditor General of Ontario, “Child Welfare Services Program”, *supra* note 235.

280 Auditor General of Canada, FNCFS 2008, *supra* note 19 at 4.19.

281 Auditor General of Canada, FNCFS 2008, *ibid.* at 4.20.

282 Auditor General of Canada, FNCFS 2008, *ibid.* at 4.20 – 4.22.

283 Auditor General of Canada, FNCFS 2008, *ibid.* at 4.23.

284 Auditor General of Canada, FNCFS 2008, *ibid.* at 4.28.

285 Auditor General of Canada, FNCFS 2008, *ibid.*

286 Canada, House of Commons, Standing Committee on Public Accounts, Hon. Shawn Murphy (MP) Chair, *Chapter 4, First Nations Child and Family Services Program – Indian and Northern Affairs Canada of the May 2008 Report of the Auditor General* (Ottawa: House of Commons, 40<sup>th</sup> Parl. 2<sup>nd</sup> Sess, March 2009).

## Comparison: First Nations in Ontario vs Mainstream Ontario

As indicated in the Summary of this report, much more information needs to be known about how Ontario's funding model and INAC's funding under the 1965 Agreement affects First Nations child and family services in Ontario. The following provides a brief account of what is known so far.

First Nations agencies are funded by Ontario's Ministry of Children and Youth Services, according to the same funding model as other agencies in the province. As described above, this **superficial funding equality masks serious inequities** that require further exploration:

- **Baseline Agency Inequities:** Baseline funding locks in the pre-existing funding advantages of more established mainstream CASs.<sup>287</sup>
- **Capital:** Capital costs are outside of the main MCYS funding blocks, and have not been federally funded under the 1965 Agreement since 1975 – before any First Nations CFS agencies were created in Ontario. The capital resources of the on-reserve agencies are seriously inadequate, while mainstream CASs tend to have larger, properly maintained facilities.<sup>288</sup> This inequality is unacceptable, regardless of whether there is federal funding for capital costs or not.
- **Northern Costs:** Realistic northern costs are not built into the funding model. Funding is based on provincial averages and benchmarks, and does not account for regional variation.<sup>289</sup> The higher cost of services in northern and remote communities must be adequately accounted for in the model.
- **Surrounding Services:** Provincial funding fails to account for the lack of surrounding health and social services in most First Nations communities, especially northern and remote communities. Such services are absolutely essential to providing preventive, supportive, and rehabilitative services to children and families at risk. Mainstream CASs have the benefit of these programs in their communities, while the First Nations agencies on reserve do not.<sup>290</sup>

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287 Auditor General of Ontario, “Child Welfare Services Program”, *supra* note 235; Auditor General of Ontario, *Follow-Up*, *supra* note 238.

288 Interview with Betty Kennedy, ANCFSAO.

289 Auditor General of Ontario, “Child Welfare Services Program”, *supra* note 235 at 46-47; Interview with Betty Kennedy, ANCFSAO.

290 ANCFSAO, *Fact Sheet*, *supra* note 213; Auditor General of Canada, FNCFS 2008, *supra* note 19 at 4.20; Interview with Betty Kennedy, ANCFSAO; Mandell et al., *supra* note 223 at 36-37.

Since 2003, **INAC's funding** for child and family services under the 1965 Agreement has been around 7% of Ontario's total child welfare funding (see chart).

<b>Child and Family Services Funding: Ontario Total and INAC 1965 Agreement Transfer</b>			
	Total Ontario CFS funding *	INAC's funding for CFS in Ontario [1965 Agreement transfer] **	INAC's CFS funding as % of Total Ontario CFS funding
1998/99	\$858,200,000		
1999/00			
2000/01		\$59,800,000	
2001/02		\$63,700,000	
2002/03	\$965,431,533	\$72,900,000	7.55%
2003/04	\$1,089,232,296	\$75,700,000	6.95%
2004/05	\$1,183,581,265	\$84,600,000	7.15%
2005/06	\$1,249,934,345		
2006/07	\$1,322,514,338	\$86,191,000	6.52%
2007/08	\$1,364,655,181	\$90,075,000	6.60%
2008/09 (anticipated)	\$1,380,000,000	\$95,860,000	6.95%

Source: Created by the author from the sources indicated. All figures in accrual accounting. Some figures are rounded rounded in the original.

\* Ontario financial data: Public Accounts of Ontario (various years) and for 2008/09 from Ministry of Children and Youth Services, *Results-Based Plan*. Total funding for some years includes Transformation funding (2005/06: \$11,466,189; 2006/07: \$31,100,097; 2007/08: \$34,270,203).

\*\* INAC financial data: from Ministry of Children and Youth Services, *Results-Based Plan* (various years) and INAC, "INAC Contribution Under the 1965 Indian Welfare Services (IWS) Agreement" [showing CFS contribution 2000-01 to 2004-05, provided to Chiefs of Ontario].

We also know that **Aboriginal children are seriously over-represented** in the Ontario child welfare system. More information is needed on this subject; the following is known so far.

The 2003 Canadian Incidence Study on child maltreatment found that 20.72 out of 1000 non-Aboriginal children in Canada (excluding Quebec) had substantiated maltreatment within a child welfare system, while this rate was 30.24 per 1000 for First Nations children. The over-representation of First Nations children, at the national level, increased with each higher level of intervention (see chart).

<b>CIS-2003, Mesnmimk Wasatek: National Rates</b>		
	Non-Aboriginal (national, excluding Quebec)	First Nations (national, excluding Quebec)
Investigations	44.11 per 1000 children	58.34 per 1000 children
Substantiated maltreatment	20.72 per 1000 children	30.24 per 1000 children
Out of home placement	7% of substantiated investigations	16% of substantiated investigations
Informal kinship care	4% of substantiated investigations	13% of substantiated investigations
Source: Reproduced from: Nico Trocmé, Bruce MacLaurin, Barbara Fallon, Della Knoke, Lisa Pitman & Megan McCormack, <i>Mesnmimk Wasatek: Catching a Drop of Light – Understanding the Overrepresentation of First Nations Children in Canada's Child Welfare System: An Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-2003)</i> (Ottawa: First Nations Child and Family Caring Society of Canada, 2006).		

The 2003 Ontario Incidence Study on child maltreatment could not produce provincial First Nations or Aboriginal maltreatment rates. The lack of accurate census data on reserves due to incomplete inumeration, especially in Ontario, is another barrier to providing provincial First Nations population rates for child welfare interventions.<sup>291</sup> However, it did find that Aboriginal children in its study sample were more likely to have open files for ongoing services, more likely to have a court application, and more likely to be placed in care (see chart).

<b>OIS-2003, Table 6-5: Interventions for Investigated Children in Ontario, Aboriginal / Non-Aboriginal</b>		
	Non-Aboriginal sample	Aboriginal sample
Total child investigations	55,533	2,892
Case to stay open for ongoing services	36%	65%
Court:		
- Court application considered	5%	5%
- Court application made	6%	11%
Placements:		
- No placement	88%	75%
- Placement considered	3%	3%
- Informal kinship care	3%	11%
- Child welfare placement	6%	12%
Source: Reproduced from: Barbara Fallon et al., <i>Ontario Incidence Study of Reported Child Abuse and Neglect, OIS-2003: Major Findings Report</i> (Toronto: Centre of Excellence for Child Welfare, 2005) at Table 6-5.		

<sup>291</sup> Interview with Barbara Fallon, CIS research director; Canada, Statistics Canada, *Census 2006*, see especially the reports “Incompletely Enumerated Indian Reserves and Indian Settlements” and “Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census”. Almost half (10) of the 22 incompletely enumerated communities in the 2006 census were in Ontario.

The Ontario Incidence Study (OIS-2003) also found that the Aboriginal children in its sample were more likely to be neglected than non-Aboriginal children, and less likely to be physically abused.

<b>OIS-2003, Table 6-5: Aboriginal / Non-Aboriginal Maltreatment Profile in Ontario</b>		
Primary Category of Substantiated Maltreatment	Non-Aboriginal children in sample	Aboriginal children in sample
Neglect	26%	40%
Physical Abuse	25%	11%
Sexual Abuse	3%	4%
Emotional Maltreatment	15%	16%
Exposure to Domestic Violence	32%	29%
Total	100%	100%

Source: Reproduced from: Barbara Fallon et al., *Ontario Incidence Study of Reported Child Abuse and Neglect, OIS-2003: Major Findings Report* (Toronto: Centre of Excellence for Child Welfare, 2005) at Table 6-4.

Ontario's administrative data shows similar trends. Aboriginal children are seriously over-represented, at levels that increase with each higher level of intervention, and the need for protection is more often based on neglect.

INAC's data on the number of children in care in Ontario subject to federal funding (registered status, resident on reserve) shows increasing numbers, *and* an increase as a proportion of the provincial total (see chart). More recent data would be needed to fill in the chart below.

MCYS data on Ontario's crown wards from January 2007 shows that Aboriginal children composed 21% of the crown wards in the province, or 1 in 5.<sup>292</sup> Of this group, 63% had registered status.<sup>293</sup> The report does not indicate how many were resident on reserve.

A fact sheet from the Association of First Nations Child and Family Services Agencies of Ontario, based on 2006 data from MCYS, indicates that the number of Aboriginal children in care was estimated at 17%.<sup>294</sup> Among the Aboriginal children at intake, 37% were investigated for neglect, double the rate for non-Aboriginal children.<sup>295</sup>

292 MCYS, *Ontario's Crown Wards*, *supra* note 30 at 12-13.

293 MCYS, *Ontario's Crown Wards*, *ibid.* at 12.

294 ANCFSAO, *Fact Sheet*, *ibid.*

295 ANCFSAO, *Fact Sheet*, *ibid.*

<b>INAC-Funded Children in Care in Ontario, and Total Ontario Children in Care, 1993-2008</b>			
	Total Ontario children in care, 31 March *	INAC-funded Children in Care, Ontario, 31 March **	INAC-funded children as % of all Ontario children in care
1993/94		585	
1994/95			
1995/96		733	
1996/97	10,400		
1997/98	11,260	747	6.63%
1998/99	12,080		
1999/00	13,610	1,048	7.70%
2000/01	14,970		
2001/02	16,520		
2002/03	17,770	1,463	8.23%
2003/04	18,876	1,545	8.19%
2004/05		1,536	
2005/06		1,513	
2006/07		1,528	
2007/08		1,405	

Source: Created by the author from the sources indicated.

\* HRSDC, Social Security Statistics Canada and Provinces 1978-79 to 2002-03 (available at HRSDC, online) at Table 437, "Number of Children in Care of Provincial and Territorial Child Welfare Authorities, by Province and for Canada, as of March 31, 1997 to 2003"; Canada, Human Resources and Skills Development Canada, F/P/T Directors of Child Welfare Committee, Child and Family Services Statistical Report, 2000-2001 to 2003-2004 (Ottawa: HRSDC, 2004).

\*\* INAC, "Approximate number of on-reserve registered Indian children in care on March 31 based on reporting to INAC", showing years 1993/04 to 2007/08 for Ontario only, obtained from Chiefs of Ontario and ANCFSAO.

The 2007 MCYS data on crown wards also shows that **Aboriginal children in care in Ontario continue to be largely served by non-Aboriginal agencies, placed in non-Aboriginal homes, and taken away from their home communities.** These matters show no improvement since 2005 (see chart below). These figures speak to the serious need for more Aboriginal CFS agencies in Ontario, both on and off reserve, and the need for much greater attention to the situation of Aboriginal children in Ontario's child welfare system. With such statistics, it is clear that the needs and best interests of Aboriginal children in Ontario's child welfare system are not being met.

Only 35% of the Aboriginal crown wards were served by an Aboriginal agency.<sup>296</sup> In other words, two thirds were served by a mainstream CAS. The vast majority (92%) of Aboriginal crown ward children were placed outside their home community, 2/3 (67%) had no contact with their home

<sup>296</sup> MCYS, *Ontario's Crown Wards*, *ibid.* at 12.

community, and over 3/4 (78%) were placed in non-Aboriginal homes.<sup>297</sup>

Ontario's Aboriginal Crown Wards, 2007 (MCYS data)					
	2005	2006	2007	% change 06-07 (1 year)	% change 05-07 (2 years)
Aboriginal crown wards, as % of total Ontario crown wards reviewed			21%		
<i>Within the group of Aboriginal crown ward children:</i>					
% served by an Aboriginal agency		37%	35%	-5.4%	
% placed in an Aboriginal home		23%	22%	-4.5%	
% living in their home community	9%	10%	8%	-20.0%	-1.1%
% in contact with their home community	27%	25%	23%	-8.0%	-18.5%
% with registered status	na	64%	63%	-1.6%	
% "aware of their native heritage"	82%	82%	83%	+1.2%	+1.2%
% "involved in Aboriginal cultural practices"	76%	77%	78%	+1.3%	+2.6%
% with "spiritual needs being addressed"	74%	74%	74%	0%	0%
% with First Nation representation in court proceedings	58%	54%	58%	-7.4%	0%
% with First Nation representation in case planning	17%	26%	23%	-11.5%	+35.3%
If no First Nation representation in case planning, did the agency make efforts to involve the First Nation?	13%	9%	6%	-33.3%	-53.8%
Source: Created by the author from Ontario Ministry of Children and Youth Services, Quality Assurance and Accountability Branch, <i>Child Welfare Review: Ontario's Crown Wards, Including Adoption Probation: Summary Report 2007</i> (Toronto: MCYS, October 2008) at 12-13. Note that in the original report, figures indicated for "% change" are in some cases the percentage point difference, not (as here) the rate of increase or decrease.					

Finally, **First Nation children in Ontario are not receiving full representation of their interests as set out in provincial law.** The *Child and Family Services Act* provides for the participation of a Band Representative in processes involving a child from a given First Nation. Although this program is part of Ontario's child welfare system, INAC refused to fund it on an open-ended basis as part of the 1965 Agreement. For a time, INAC funded the program on a capped basis. In 2003, INAC terminated all funding for Band Representatives. Ontario has not provided its own funding for this program, even though it is written into Ontario's legislation.<sup>298</sup>

The result is that most children do not have the benefit of proper representation from their

<sup>297</sup> MCYS, *Ontario's Crown Wards*, *ibid.* at 13.

<sup>298</sup> Interview with Betty Kennedy, ANCFSAO.

community during their case planning and court proceedings. First Nations struggle to represent children from their communities using funds from other parts of their budget, volunteers, or as an additional duty for staff or Band Councillors. Representatives change often, and are frequently unavailable.<sup>299</sup> As indicated in the chart above, even where crown wardship is at stake, 42% of Aboriginal children did not have community representation in their court proceeding and three quarters did not have community representation in their case planning.

## Comparison: Ontario vs Other Provinces

The basic principles of child and family services in each province and territory are very similar: each has legislation allowing child and family services agencies to investigate maltreatment, seek a finding of protection for a child, offer services including the removal of children into alternative placements, and manage crown wardship and adoption.

However there can be **many differences that complicate efforts at comparison**. There may be differences in the categories of maltreatment, or in the service categories defining a child's status within the system. The size, structure, supervision and mandate of agencies may be different. Ontario's protection system only intervenes for children under age 16, while in some other provinces this extends to age 18 or 19. Some provinces and agencies offer more extensive prevention and supportive services within the child welfare system; other provinces may offer these outside the child welfare system or not at all. In Quebec, the child welfare system and youth criminal justice system are closely integrated. Methods of collecting data are not necessarily consistent.

Within First Nations child and family services, variation may be in fact be greater. Provinces and INAC have taken different historical paths in each place; these are not examined here in detail, but the chart below gives an indication of some differences.

In addition to the factors in the chart, First Nations agencies operate in highly variable circumstances. Some communities have high rates of maltreatment, and others have low rates. Some communities are remote and have virtually no surrounding services, others have easy access to services. A few communities are large and have their own agency, sometimes a group of small communities is served by one agency, and other First Nations communities are still served by mainstream non-Aboriginal agencies. First Nations agencies may use their own culturally-based practices or other local practices; the CIS-2008 research on First Nations agencies found that practice definitions – of a child being “in care”, of an investigation, of a family being at risk, etc. – varied enormously.<sup>300</sup> However, in nearly all cases, provincial child welfare law still applies.<sup>301</sup>

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299 Interview with Betty Kennedy, ANCFSAO.

300 Interview with Vandna Sinha, CIS First Nation research coordinator.

301 Pamela Gough, Nicholas Bala, Cindy Blackstock, *Jurisdiction and Funding Models for Aboriginal Child and Family Service Agencies* (Toronto: University of Toronto, Centre of Excellence for Child Welfare, 2005).

<b>Various differences between First Nations child and family services in Ontario and elsewhere</b>				
	Federal Funding	Prov-Fed Agrmt?	Children's Special Allowance	First Nations agencies
Ontario	To Ontario, under 1965 Agreement (Ontario funds all agencies)	Yes [1965]	INAC deducts from CFS funding <sup>2</sup>	5 Mandated agencies (serve ½ of First Nations) and 6-7 Pre-Mandated agencies
BC	Directive 20-1, & to BC under 1996 Agreement	Yes <sup>2</sup> [1996]	INAC deducts from CFS funding <sup>2</sup>	BC designates First Nations agencies at different levels; <sup>1</sup> 9 with full delegation, 27 in total.
Alberta	Directive 20-1 plus INAC's enhanced prevention model, & to Alberta under 1991 Agreement	Yes <sup>2</sup> [1991]	Not deducted <sup>2</sup>	Nearly all First Nations served by First Nation agencies. <sup>1</sup>
Saskatchewan	Directive 20-1 plus INAC's enhanced prevention model.			Nearly all First Nations served by First Nation agencies. <sup>1</sup>
Manitoba	Directive 20-1	No <sup>2</sup>	Not deducted <sup>2</sup>	4 authorities (north & south First Nations, Métis and mainstream) supervise agencies; families can choose. <sup>1</sup>
Quebec	Directive 20-1	No <sup>2</sup>	Not deducted <sup>2</sup>	Services provided by 12 Tribal Councils and 3 First Nations (no agencies). <sup>1</sup>
Nova Scotia	Directive 20-1, starting INAC's enhanced prevention model.			One First Nations agency serves all reserve communities in the province. <sup>1</sup>
New Brunswick	Directive 20-1			Nearly all First Nations served by First Nation agencies. <sup>1</sup>
PEI	Directive 20-1			Tribal Council buys services from PEI with INAC funds. <sup>1</sup>
Nfld & Lab.				None (all services from NL)
Yukon				None (all services from Yuk.). <sup>1</sup>
NWT				None (all services from NWT). <sup>1</sup>
Nunavut				None (all services from Nun.). <sup>1</sup>

Source: Created by the author from the sources indicated.

1: INAC, Departmental Audit and Evaluation Branch, *Evaluation of the First Nations Child and Family Services Program*, completed 06-07 (Ottawa: INAC, March 2007) at 3-4.

2: Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons, May 2008* (Ottawa: Office of the Auditor General of Canada, May 2008), Chapter 4, "First Nations Child and Family Services Program – Indian and Northern Affairs Canada" at 4.28; 4.49; 4.58-4.59.

Nonetheless, the following notes present material on First Nations child welfare in Ontario and other provinces. Please bear in mind the difficulties with comparison as indicated above, as well as the absence of available information.

Some authors have examined **INAC's data on the number of children in care subject to its funding, i.e. registered status, resident on reserve**. This data does not necessarily give accurate numbers of First Nations children actually in care, however it is at least collected by the same entity (INAC) in various regions according to similar criteria. It is probably best compared with INAC's population data on children with registered status, resident on reserve, however this data is also problematic. There may be regional differences in INAC's data that are unknown.

Using this type of data – subject to all of the above caveats – **Ontario has a lower rate** of registered on-reserve First Nation children in care than other provinces. To begin, Patrick Johnson collected data from the late 70s and early 80s (see chart).

<b>P. Johnson, 1983, Table 31: INAC Registered Children in Care as a Percentage of all INAC Registered Children, 1979/80 (note that residency on reserve is not indicated)</b>					
	All Registered Children 0-19	Registered Children in Care of Prov/Terr.	Registered Children in Care of Indian Affairs	Total Registered Children in Care	Children in Care as % of All INAC-Registered Children 0-19
NWT	3,936	71	0	71	1.8%
Ontario	30,595	658	0	658	2.2%
Atlantic	5,362	172	33	205	3.8%
Quebec	14,943	592	4	596	4.0%
Manitoba	26,178	650	484	1,134	4.3%
Saskatchewan	27,886	770	577	1,347	4.8%
BC	28,400	1,686	0	1,686	5.9%
Alberta	21,491	1,461	102	1,563	7.3%
Yukon	1,344	104	0	104	7.7%

Source: Reproduced from: Patrick Johnson, *Native Children and the Child Welfare System* (Ottawa: Canadian Council on Social Development, 1983) at Table 31, "Status Indian Children in Care in Canada as a Percentage of All Status Indian Children, 1979-80", using data from Indian Affairs.

Brad McKenzie collected INAC's data on children in care from 1995 to 2001. Adding in INAC's population list of children with registered status, resident on reserve, once again Ontario has a lower rate of children in care than other provinces (see chart).

**Based on McKenzie, 2002: INAC-funded Children in Care as a Percentage of all INAC Registered Children Resident on Reserve (0-19), 2001**

	Children 0-19, on-reserve, registered INAC list, 2001 *	Children in care (INAC-funded) March 31 2001 **	INAC-funded Children in Care as % of Children 0-19 on reserve and registered, 2001
Ontario	31,414	931	3.0%
Saskatchewan	27,730	1,070	3.9%
Quebec	17,672	737	4.2%
Manitoba	33,543	1,468	4.4%
British Columbia	21,704	1,032	4.8%
Atlantic	7,314	491	6.7%
Alberta	28,579	2,424	8.5%

Source: Created by the author from the sources indicated.

\* INAC, *Registered Indian Population by Sex and Residence, 2001*.

\*\* Brad McKenzie, *Block Funding Child Maintenance in First Nations Child and Family Services: A Policy Review* (unpublished paper prepared for Montreal: Kahnawake Shanotia'takenhas Community Services, 2002) at Table 7, "DIAND Year End Figures for Children in Care and Days Care: 1995-2001".

However, McKenzie's data also showed that from 1995 to 2001, **Ontario had the highest increase** in the number of INAC-funded children in care, of all regions measured. First Nations children in care in Ontario (INAC-funded) increased nearly 164% in this period.

**McKenzie, 2002: INAC-funded Children in Care, By INAC Region, 1995-2001**

	Children in Care 1995	Children in Care 2001	% Change, 1995-2001
Ontario	472	931	163.8 %
Saskatchewan	411	1070	160.3 %
Atlantic	273	491	130.0 %
Quebec	420	737	93.8 %
British Columbia	542	1032	90.4 %
Alberta	1587	2424	52.7 %
Manitoba	1318	1468	11.4 %
Yukon	101	106	5.0 %

Source: Reproduced from Brad McKenzie, *Block Funding Child Maintenance in First Nations Child and Family Services: A Policy Review* (unpublished paper prepared for Montreal: Kahnawake Shanotia'takenhas Community Services, 2002), at Table 7, "DIAND Year End Figures for Children in Care and Days Care: 1995-2001" (selected).

**On funding, little data was available** to facilitate comparison. No major research has compared First Nations child welfare funding in Ontario with First Nations funding in other provinces. The following chart finds that from 2002-2005, INAC spent slightly more on its First Nations Child and Family Services Program in Ontario (under the 1965 Agreement), relative to the number of INAC-funded children in care in Ontario. However Ontario's share of INAC child and family service spending is decreasing. More research is needed to properly compare funding levels.

<b>Ontario's Share of INAC Totals: Children in Care and FNCFS Program Funding</b>						
Fiscal Yr.	Ontario INAC-funded children in care, 31 March <sup>1</sup>	National INAC-funded children in care, 31 March <sup>2</sup>	Ontario children as % of national children	Ontario CFS funding from INAC, annual [1965 Agreement transfer] <sup>3</sup>	National INAC FNCFS funding, annual [program total] <sup>4</sup>	Ontario funding as % of national funding
1997/98	747	6,220	12.0%		\$209,219,700	
1998/99		7,220			\$238,981,700	
1999/00	1,048	7,762	13.5%		\$274,136,900	
2000/01				\$58,800,000	\$311,342,100	18.9%
2001/02		8,094		\$63,700,000	\$341,324,100	18.7%
2002/03	1,463	8,225	17.8%	\$72,900,000	\$336,343,000	21.7%
2003/04	1,545	8,846	17.5%	\$75,700,000	\$361,854,700	20.9%
2004/05	1,536	8,776	17.5%	\$84,600,000	\$385,028,200	22.0%
2005/06	1,513	8,917	17.0%		\$416,655,300	
2006/07	1,528	~8300		\$86,191,000	\$450,000,000	19.2%
2007/08	1,405			\$90,075,000		
2008/09				\$95,860,000	\$523,000,000	18.3%

Source: Created by the author from the sources indicated.

1: INAC, "Approximate number of on-reserve registered Indian children in care on March 31 based on reporting to INAC", showing years 1993/04 to 2007/08 for Ontario only, obtained from Chiefs of Ontario and ANCFSAO.

2: INAC, Departmental Audit and Evaluation Branch, *Evaluation of First Nations Child and Family Services Program*, completed 06-07 (Ottawa: INAC, March 2007); 2006/07 data from Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons, May 2008* (Ottawa: Office of the Auditor General of Canada, May 2008), Chapter 4, "First Nations Child and Family Services Program – Indian and Northern Affairs Canada".

3: INAC, "INAC Contribution Under the 1965 Indian Welfare Services (IWS) Agreement" [showing CFS contribution 2000-01 to 2004-05, provided to COO]; Ministry of Children and Youth Services, *Results-Based Plan* (various years).

4: INAC audit (cited under source 2); 2006/07 data (rounded) from Auditor General of Canada (cited under source 2); 2008/09 estimate provided from Serge Ménard, INAC Social Policy and Programs Branch (Headquarters).

In her 2008 report on INAC's First Nations Child and Family Services Program, the **Auditor General of Canada** focused her evaluation on Ontario, BC, Alberta, Manitoba and Quebec. She found that overall INAC's child welfare funding is inequitable, that INAC has no assurance services

are culturally appropriate or reasonable comparable, and that “many on-reserve children and families do not always have access to the child welfare services defined in relevant provincial legislation and available to those living off reserves”.<sup>302</sup> The Auditor General made no indication that Ontario is an exception to these findings.

There are many **issues for which comparative data was not available**.

As indicated earlier, First Nations children in care in Ontario are often served by mainstream non-Aboriginal agencies, outside their home communities, and placed in non-Aboriginal families. Data was not available to compare these statistics with other provinces.

As also discussed, Ontario appears to have a very low number of First Nations child and family services agencies compared with other provinces, taking into account its population and size. Data on all provinces was not available to explore this. However BC has 27 First Nations child and family services agencies at five levels of delegation. Nine are fully delegated to provide all services.<sup>303</sup>

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302 Auditor General of Canada, FNCFS 2008, *supra* note 19 at 4.92.

303 BC, Ministry of Children and Family Development, *CFCS Information List, Delegated Aboriginal Child and Family Service Agencies Status, September 2008*.

# CHILD CARE

## Current Delivery & Funding of Child Care

### *Program Basics*

Child care in Ontario: who does what? Child care in Ontario is mandated through the Ministry of Children and Youth Services (MCYS). It is not universally funded or universally available; most people in the province have to pay user fees for child care, or may qualify for a fee subsidy. There are shortages in regulated child care spaces in many parts of Ontario.

MCYS is responsible for licensing, and some funding, according to the *Day Nurseries Act*.<sup>304</sup> MCYS licences both home-based care and centre-based care, and conducts monitoring activities like inspections and investigations.<sup>305</sup>

First Nations can be designated as delivery agents under the Act to administer child care programs, in the same way as municipalities and, in unorganized territories, District Social Services Administration Boards.<sup>306</sup> As delivery agents, First Nations are responsible for managing child care through agreements with operators, who are either child care centres or private-homes.

Child care services operating in First Nations communities in Ontario are subject to regulation by the *Day Nurseries Act*, its regulations, and MCYS policies. These set out the maximum number of children that can be cared for without a licence,<sup>307</sup> and the requirements to obtain, maintain and renew a licence. Requirements cover subjects such as staff qualifications, staff to child ratios, facility specifications, and other standards.<sup>308</sup>

Kindergarten The present report focuses on licenced child care through MCYS, because it is part of the 1965 Agreement. In addition to the child care system, young children may receive care and early education in senior kindergarten and junior kindergarten. In the provincial system, kindergarten is funded and regulated by the Ontario Ministry of Education. Most 4-5 year olds in Ontario attend kindergarten, even though it is not required.<sup>309</sup> Most First Nations in Ontario have band-operated elementary schools, funded through INAC. A 2003 study found that 71 out of 134 First Nations in Ontario had kindergarten, with 936 children in K4 and 1,045 in K5.<sup>310</sup>

304 *Day Nurseries Act*, R.S.O. 1990, c. D.2.

305 Centre-based care is sometimes referred to as “day nurseries”, and private-home care is sometimes referred to as “family child care”.

306 *Day Nurseries Act*, *supra* note 304 at s. 2.2.

307 In Ontario, a person can care for up to 5 children under age 10, plus your own children, without a licence. A person cannot provide private-home child care at more than one location without a licence.

308 Most standards are set out in the General regulation, R.R.O. 1990, Reg. 262.

309 *ECEC in Canada 2006*, *supra* note 18 at 78.

310 Ontario Head Start (2003), *supra* note 46 at 22; the year for this data is not indicated. See also *ECEC in Canada 2008*, *supra* note 22 at Table 2.13.

Community Access Ontario had 4,175 child care centres in 2006, as well as 7,716 private-home providers and 144 private home agencies.<sup>311</sup> Together there were 256,748 licenced child care spaces in Ontario 2008.<sup>312</sup> In 2006, just under half of the spaces were subsidized.<sup>313</sup> In 2006 the total number of spaces would cover 12% of children aged 0-12 or 16.9% of children under 6 in the province.

There are 64 child care centres on reserve in Ontario as of March 2006, according to the Childcare Resource and Research Unit (Toronto).<sup>314</sup> This would equal one centre for less than half of all First Nations communities in the province.<sup>315</sup> The 64 centres had a licensed capacity of 2,890 spaces in March 2006. In addition there were 2 licensed private home agencies operating with 37 homes on reserve.<sup>316</sup>

The 2003 Ontario First Nations Head Start Regional Advisory Committee completed a comprehensive Community Mapping and Environmental Scan report on early child development programs (including child care) on reserve in Ontario. This report found licensed day care centres existed in 52 First Nations communities.<sup>317</sup> The scan found that 73 of the 82 First Nations without licensed day care were northern communities.

The same report found that 54 First Nations had a program affiliated with the First Nations and Inuit Child Care Initiative (FNICCI, see funding section below for more detail). This number largely overlaps with the number of licensed child care centres. Similarly, 71 of the 80 First Nations without FNICCI projects were in the north.

Ontario has some child care spaces and centres off reserve that are geared towards Aboriginal children and families. For instance, MCYS reports that Ontario has created 325 “culturally-appropriate spaces for Aboriginal children living off-reserve” since 2004.<sup>318</sup> Further research on off-reserve Aboriginal spaces/centres is recommended.

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311 *ECEC in Canada 2006*, *supra* note 18 at 82.

312 *ECEC in Canada 2008*, *supra* note 22 at Table 22 “Total regulated child care spaces by province/territory – 1992, 1995, 1998, 2001, 2004, 2006, 2007, 2008”.

313 *ECEC in Canada 2006*, *supra* note 18 at 82.

314 *ECEC in Canada 2008*, *supra* note 22 at Table 11, “Child care centres on reserve and in self-government regions – 2008”.

315 INAC recognizes 126 First Nations in Ontario as bands, and 133 First Nations are part of Chiefs of Ontario.

316 *ECEC in Canada 2006*, *supra* note 18 at 81.

317 Ontario Head Start (2003), *supra* note 46.

318 MCYS, *Results-Based Plan, 2008-09*, *supra* note 33.

Access for families As noted above, over 60% of First Nations do *not* have a child care centre, including a highly disproportionate number of northern communities.<sup>319</sup> This is a severe limit to access. Even where a child care centre exists, other program restrictions can further restrict access.

In the mainstream, municipalities are obliged to use an income test (previously a means test) for parents to determine their eligibility for fee subsidies.<sup>320</sup> First Nations have the advantage of receiving their funding share in the form of a grant, which they can use to make child care more like a universal program.<sup>321</sup> In practice, most First Nations do not charge user fees, or charge only very low user fees, and make the program available on a first-come first-served basis or by another method of their choice. This system is beneficial for child care access in First Nations communities. If the First Nation charges user fees, these are deducted before the 80/20 split is applied.<sup>322</sup>

There are troubling reports that INAC may be attempting to require First Nations child care centres to limit access to working parents.<sup>323</sup> This type of restriction is not prescribed by Ontario's laws or policies, and it is contrary to the important role of child care in First Nations communities which serves multiple purposes (see the context section, below). Limiting access to parents with jobs would be detrimental to First Nations families, and would place an additional restriction on access in First Nations communities that does not apply in mainstream Ontario.

### ***Funding***

Operating Costs Child care funding in Ontario has long been subject to an 80/20 provincial/municipal split.<sup>324</sup> Since 2000, this split now covers more types of funding that were previously paid 100% up front by the province. The 80/20 split now applies to: fee subsidies, wage subsidies, and resourcing for children with special needs. There are two kinds of fee subsidies, the “regular” subsidies and subsidies under Ontario Works.<sup>325</sup> Ontario does not require municipal/First Nations contributions for federal funding pursuant to the 2003 Multilateral Agreement<sup>326</sup> or the Best Start program from 2005/06 onward.<sup>327</sup>

First Nations enter into an agreement with the province that sets out funding and other obligations. INAC pays the First Nation the 20% municipal funding share, and MCYS pays the remaining 80% share. Ontario then invoices INAC for eligible expenses within

319 Ontario Head Start, *supra* note 46 and as discussed above.

320 See R.R.O. 1990, Reg. 262 at ss. 66.2 – 66.7.

321 Interview with Arliss Skye; Interview with Martha Friendly, Childcare Resource and Research Unit (CRRU).

322 Interview with Arliss Skye; Interview with Martha Friendly, CRRU.

323 Interview with Arliss Skye.

324 The same 80/20 split for child care programs is described in the 1979 report *A Starving Man Doesn't Argue*, *supra* note 3 at 112.

325 See *ECEC in Canada 2006*, *supra* note 18 at the chapter on Ontario.

326 This was a major federal/provincial agreement on Early Learning and Child Care. See the context & development section below for more detail.

327 *ECEC in Canada 2006*, *supra* note 18 at 86.

its 80% contribution that are eligible under the 1965 Agreement.

INAC has effectively capped child care funding to First Nations in Ontario. In the mid 90s, INAC used the benchmark for the provincial 80% share to set its total 100% funding, including both 80/20 shares. Ontario did not redress this inequity.<sup>328</sup>

Since approximately 2006, INAC has refused to contribute any new dollars for child care in Ontario, including in contributions to existing spaces, whether in their 20% share or under the 1965 Agreement for the 80% share. This freeze has been reciprocated by Ontario, as MCYS is apparently unwilling to advance further funds without federal contribution.<sup>329</sup> The cap and freeze appear to contradict the open-ended funding arrangement under the 1965 Agreement.

The funding freeze is evident in the numbers. MCYS reports \$11 million in funding for child care from INAC pursuant to the 1965 Agreement for the past 3 years, unchanged in 2006-07, 2007-08 and (planned) 2008-09.<sup>330</sup> Likewise, INAC reports spending a total of \$15.6 million on child care in Ontario (including the \$11 million in reimbursements to Ontario plus municipal shares to First Nations), unchanged for the same 3 years.<sup>331</sup>

Capital costs

There is very little support available for capital funding, which is essential for the start-up of a new child care centre and for ongoing maintenance. The 1965 Agreement officially funded capital costs only until the mid 70s.<sup>332</sup> It seems there was some funding for capital costs in the late 80s and early 1990s, supported by Ontario and possibly cost shared 80/20 with federal support, but then this was cut off.<sup>333</sup> Lack of capital funding is a major barrier to the expansion of child care to additional communities.

Disparities between First Nations

As indicated above, far more First Nations in the north do not have child care facilities. Of the 52 communities that *did* have licensed child care in 2003, the total cost-shared allocation (80/20 shares combined) was \$15.2 million, on average \$292,300 per community. However resources in some communities were far below this average; funding varied from a high of \$1.24 million to a low of \$15,000.<sup>334</sup>

Other funding sources

First Nations in Ontario may also turn to other sources to attempt to support child care and related early childhood development programs. Sometimes these programs are based in a licensed child care centre, but not necessarily.

HRSDC's First Nations and Inuit Child Care Initiative spent \$4.4 million on child care in 54 communities in Ontario in 2003, however Ontario First Nations received only 7%

328 Interview with Arliss Skye.

329 Interview with Arliss Skye.

330 MCYS, *Results-Based Plan*, *supra* note 33, various years (2006-07, 2007-08, 2008-09).

331 *ECEC in Canada 2008*, *supra* note 22 at Table 2.7.

332 See the 1965 Agreement at s. 4 which provides for federal reimbursement of 90% of capital costs for the first 5 years of the agreement. This was extended once (until 1975) in the amendment of 13 July 1972.

333 Interview with Arliss Skye.

334 Ontario Head Start (2003), *supra* note 46 at 21.

of national funding in this program in 2000.<sup>335</sup> This very low share is disproportionate to Ontario's large First Nations population and large number of communities.

Health Canada's Aboriginal Head Start On Reserve program (focusing on school readiness in First Nation communities) funded 15 projects in Ontario in 2001, with \$4.7 million in total funding. As with FNICCI, given that the program supported 168 projects nationally in 305 communities, the number of communities served in Ontario seems very low.<sup>336</sup>

The National Child Benefit Reinvestment Fund (under INAC) may also be used for child care, among other purposes, but it is difficult to track the various uses.<sup>337</sup>

Other sources of support may include: the MCYS Resource Centre and Ontario Early Years Centre programs (information, outreach and training), the MCYS Healthy Babies / Healthy Children program (health promotion for mothers and newborns), Health Canada's Brighter Futures and Building Healthy Communities programs (focusing on health promotion in First Nation communities), Ontario's Aboriginal Healing and Wellness Strategy, and some other programs.<sup>338</sup> Some First Nations may pursue private fundraising.

Funding for First Nations outside Ontario As in Ontario, funding in other provinces for child care in on-reserve communities is piecemeal. The First Nations and Inuit Child Care Initiative (FNICCI, under the mandate of HRSDC) and Aboriginal Head Start on Reserve (under the mandate of Health Canada) are primary funders.<sup>339</sup> These programs include Ontario, but they play a much larger role outside Ontario.<sup>340</sup>

Off reserve, Health Canada runs Aboriginal Head Start in Urban and Northern Communities.<sup>341</sup> Some provinces may fund Aboriginal-specific child care spaces on or off reserve, but little information was available on this question for this report.

Like Ontario, Alberta and New Brunswick have federal cost-sharing agreements for First Nations child care. INAC pays reimbursements to these three provinces.<sup>342</sup>

335 Ontario Head Start (2003), *ibid.* at 26.

336 Ontario Head Start (2003), *ibid.* at 14.

337 Ontario Head Start (2003), *ibid.* at 23-25.

338 See Ontario Head Start (2003), *ibid.* relating to Health Canada's Canada Prenatal Nutrition Program, Fetal Alcohol Syndrome/Effects Initiative, NNADAP, and Nobody's Perfect; INAC's Family Violence Prevention Program, etc.

339 *ECEC in Canada 2008*, *supra* note 22 at Table 2.2 and Table 2.3; Ontario Head Start (2003), *supra* note 46.

340 *ECEC in Canada 2008*, *ibid.* at Table 2.10 and Table 2.11.

341 *ECEC in Canada 2008*, *ibid.* at Table 2.8 and Table 2.9.

342 *ECEC in Canada 2008*, *ibid.* at Table 2.4, Table 2.5 and Table 2.12; Interview with Martha Friendly, CRRU.

## Context & Development

### *Importance and Multiple Purposes of Child Care for First Nations*

Vibrant child care is important in all communities, especially to promote early learning, to assist healthy early childhood development, and to facilitate the participation of parents and caregivers (especially women) in the labour force. There are additional reasons why child care is especially important for First Nations.

The First Nations population is growing more rapidly than the mainstream Canadian population. Higher numbers of young children need additional supports. In addition, First Nations parents are more likely to be young and to be single mothers. First Nations children are more likely to have a variety of risk factors for healthy development, including low birth weight, fetal alcohol spectrum disorder, and special needs. Infant mortality is higher for First Nations babies. Child care can act as a hub for cultural and linguistic transmission, which is crucial to remedy the loss of language and cultural practices in First Nations communities due to residential schools and colonization.<sup>343</sup>

First Nations adults have lower than average participation in the labour force, lower educational attainment, lower incomes, and higher than average reliance on social assistance. Changing these disparities requires special supports to allow mothers and other parents/caregivers to pursue training, attend school, or take jobs. Given the extent of trauma in First Nations communities, adults may also need the time to participate in healing activities including ceremonies, counselling and addictions treatment. Child care can also be part of preventative child and family services, to help provide parenting training, improve family dynamics, and provide other services that can help children grow up safely at home.<sup>344</sup>

In short, child care serves multiple purposes in First Nations communities and is extremely important.

### *History of Child Care in Canada/Ontario, First Nations & Mainstream*

Govt support viewed in past as a “welfare program”

Despite many efforts over the years, child care has yet to become a national universal program in Canada. Aside from Quebec, where the province has made universal access to child care a priority, funding for child care is minimal and uncoordinated. There are long waiting lists for regulated child care in many areas. Parents are often required to pay full fees for child care, and subsidies are usually limited to families determined to be “in need”. The fading concept of child care as a “welfare program” explains why it was part of CAP and the 1965 Agreement.

Origins of

Ontario first passed the *Day Nurseries Act* in 1946, making it Canada's first statute

343 The multiple purposes of child care in First Nations communities are discussed in: National Council of Welfare, *First Nations, Métis and Inuit Children and Youth: Time to Act* (Ottawa: NCW, Fall 2007); Margo Greenwood & Perry Shawana, *Whispered Gently Through Time: First Nations Quality Child Care: A National Study*, prepared for the Assembly of First Nations (Ottawa: HRSDC, 2000) and Colbert, *supra* note 15.

344 *Ibid.*

child care in Ontario regulating child care.<sup>345</sup> The introduction of the Canada Assistance Plan in 1966 started the program of fee subsidies for low-income families, which provinces could cost-share 50/50 with federal funding.<sup>346</sup> The fee subsidy system remains the basic framework for Ontario's support for child care today.

Originally child care was part of the Ministry of Community and Social Services (MCSS). It moved to the Ministry of Children and Youth Services (MCYS) when that ministry was created in 2004.<sup>347</sup>

Start of 1965 Agrmt. & 1978 tripartite review The 1965 Agreement included child care from the start. Like other programs in the 1965 Agreement, Ontario's use of municipalities in the *Day Nurseries Act* provided a means for the designation of First Nations on the same basis as municipalities. However, child care did not actually begin to be expanded on reserves in Ontario until around 1971.<sup>348</sup>

The 1978 review of the 1965 Agreement, which produced the report *A Starving Man Doesn't Argue*, found that 24 First Nations were administering child care on reserve, but 3/4 of First Nations still did not have child care.<sup>349</sup> As is true today, most of the First Nations with child care were in the south, and most of the First Nations without were in the north. At that time Treaty 9 (NAN) First Nations had only 25 child care spaces altogether, while Unaffiliated First nations had 4 times as many, AIAI First Nations had 8 times as many, UOI First Nations had 12 times as many, and Treaty 3 First Nations had 19 times as many.<sup>350</sup>

While provincial contributions were supposed to be 80%, in fact they represented only around 60% of First Nations' actual expenditures on child care operating costs.<sup>351</sup> Capital funding was a major limitation, as provincial expenditures for the construction of child care centres had already been refused reimbursement by Canada. Without federal support, Ontario became unwilling to support further capital costs.<sup>352</sup> In 1977-78, Ontario spent \$838,000 on child care for First Nations.<sup>353</sup>

1980s to mid 90s: reports and CCIF Provincial and federal reports in the 1980s and 90s recommended the expansion of child care and early learning programs, and urged a transition from a welfare model to a more universal model. However the actual growth of child care in this period was moderate.

The government of Ontario released *New Directions for Child Care* in 1987, and *Child*

345 *ECEC in Canada 2006*, *supra* note 18 at 87.

346 *ECEC in Canada 2006*, *ibid.* at 87.

347 Note that the names of both of these Ministries changed over the years. Before MCYS was created, MCSS was for a time called the Ministry of Community, Family and Children's Services. When MCYS was first created, it was originally called the Ministry of Children's Services. See *ECEC in Canada 2006*, *ibid.* at 89-90.

348 *A Starving Man Doesn't Argue*, *supra* note 3 at 109, 111.

349 *A Starving Man Doesn't Argue*, *ibid.* at 110.

350 *A Starving Man Doesn't Argue*, *ibid.* at 111.

351 *A Starving Man Doesn't Argue*, *ibid.* at 112.

352 *A Starving Man Doesn't Argue*, *ibid.* at 112.

353 *A Starving Man Doesn't Argue*, *ibid.* at 109.

*Care Reform in Ontario: Setting the Stage* in 1992. In the early 90s there was some consultation between MCSS and First Nations.<sup>354</sup> For a time, provincial policy required child care spaces in all new schools; however schools built in the Six Nations community (and perhaps in others as well) were refused funding under this program.<sup>355</sup>

Nationally there were further reports, including some that addressed the situation of First Nations. Canada's 1984 Task Force on Child Care led to a 1986 report by Katie Cook that recognized the need for child care in Aboriginal communities and emphasized its special role in preserving language and culture.<sup>356</sup> A 1989 report from the Assembly of First Nations, *National Inquiry into First Nations Child Care*, stressed the importance and potential of child care for First Nations.<sup>357</sup> The Native Council of Canada released *Circle of Care* (1990) on child care in off-reserve and non-status communities.<sup>358</sup> The Royal Commission on Aboriginal Peoples (1991-96) conducted research on child care in Aboriginal communities and emphasized its importance.

While funding for First Nations remained very limited, especially outside Ontario, the national Child Care Initiatives Fund (CCIF) provided important investments from 1988 to 1995. This federal fund was for one-time research, special projects and pilot initiatives in child care. Around 21% of the fund went to Aboriginal groups across the country, providing \$16.6 million for 98 projects. Some projects were in Ontario.<sup>359</sup>

At this time, due to the impact of the 1965 Agreement, Ontario First Nations had far more access to child care than First Nations in other provinces. Reports associated with RCAP found there were 50 Aboriginal child care centres in Ontario in 1994, including 45 on reserve and 5 off reserve. The next highest number was 11 centres among First Nations in Quebec, concentrated in the James Bay Northern Quebec Agreement area, and only a handful of centres existed in the other provinces combined.<sup>360</sup> Ontario was said to have “the largest Aboriginal child care structure in the country”.<sup>361</sup>

1995-2002: From 1995 to 2002, child care was not high on the mainstream national agenda or on Ontario's agenda. Ontario's provincial government made various funding cuts and restrictions to child care.<sup>362</sup> The federal government eliminated CAP and replaced it with the CHST (now CHT and CST), which reduced federal spending. These factors limited support for First Nations child care in Ontario.

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354 Wasteneys, *supra* note 15.

355 Interview with Arliss Skye. The school policy is also referred to in *ECEC in Canada 2006*, *supra* note 18 at 87.

356 Greenwood & Shawana, *supra* note 343 at 19.

357 Greenwood & Shawana, *ibid.* at 20.

358 Greenwood & Shawana, *ibid.* at 20.

359 Greenwood & Shawana, *ibid.* at 19-20.

360 Wasteneys, *supra* note 15; Colbert, *supra* note 15; Lightford, *supra* note 15; Saulis, *supra* note 15; and see comparison sections below for charts and more detail.

361 Wasteneys, *ibid.*

362 For a summary of these, see *ECEC in Canada 2006*, *supra* note 18 at 88-90.

However, an exception to this trend was that the federal government launched new support for First Nations child care, especially outside Ontario where there had previously been almost nothing available. The First Nations and Inuit Child Care Initiative (FNICCI) started in 1994-95,<sup>363</sup> and continues today under the mandate of HRSDC.<sup>364</sup> It funds child care centres on reserve, but provides only limited support to communities in Ontario.<sup>365</sup> Martha Friendly, a child care researcher, reports that she was informed by federal officials that Ontario receives little support under FNICCI because of the 1965 Agreement.<sup>366</sup>

FNICCI started with \$72 million for the first 3 years, and \$38 million in its fourth year.<sup>367</sup> In 2006-07 it spent \$57.1 million, supporting 8,538 child care spaces at 462 sites.<sup>368</sup>

The federal government also announced Aboriginal Head Start in Urban and Northern Communities in 1995, and Aboriginal Head Start On Reserve in 1997.<sup>369</sup> These are Health Canada programs. In 2006-07, the off-reserve Head Start had \$28.7 million in funding for 4500 children at 131 sites, and on-reserve Head Start had \$50.6 million for 9,173 children at 328 sites.<sup>370</sup> As indicated, Head Start includes Ontario but it seems that disproportionately few projects are funded in Ontario.<sup>371</sup>

FNICCI and Head Start led to a large increase in the number of child care centres and spaces outside Ontario.<sup>372</sup> The Comparison section of this report provides graphic illustrations of these changes. In addition, Quebec started a transition to a universal child care system in 1997.<sup>373</sup>

2003-2006: Multi-lateral initiatives From 2003 to 2006, federal leadership added substantial new funding to mainstream child care through agreements with provinces and territories. These measures planned out a transition to universal child care, but it was not completed.

In 2003 federal, provincial and territorial social services ministers signed the Multilateral Framework on Early Learning and Child Care (MLF on ELCC). Federal ELCC funding to Ontario under the MLF was \$9.7 million in 2003-04, and \$58.2

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363 Greenwood & Shawana, *supra* note 343 at 2.

364 See *ECEC in Canada 2008*, *supra* note 22 at Table 2.2. FNICCI is part of the Aboriginal Human Resources Development Strategy, and some information is available on the website of Human Resources and Skills Development Canada.

365 Ontario Head Start (2003), *supra* note 46 at 13-14.

366 Interview with Martha Friendly, CRRU.

367 Greenwood & Shawana, *supra* note 343 at 18.

368 *ECEC in Canada 2008*, *supra* note 22 at Table 2.3.

369 Greenwood & Shawana, *supra* note 343 at 2, 80.

370 *ECEC in Canada 2008*, *supra* note 22 at Table 2.9 to Table 2.11.

371 Ontario Head Start (2003), *supra* note 46 at 14.

372 Note that the numbers of centres and spaces cited by Greenwood & Shawana are not included in this report, as they appear inconsistent with the figures used in the CRRU reports. The method of counting may be different.

373 *ECEC in Canada 2006*, *supra* note 18 at xv.

million in 2004-05.<sup>374</sup>

In 2004 the federal government began bilateral negotiations with provinces to implement its plan to spend \$5 billion over 5 years to develop a national child care system.<sup>375</sup> However, this plan earmarked only \$100 million for First Nations child care on reserve – only 2% of the total.<sup>376</sup> Most of the federal funding would be transferred to provinces as part of the Canada Social Transfer (CST).

By the end of 2005, nine provinces signed bilateral agreements in principle (including Ontario), and Ontario, Quebec and Manitoba concluded 5-year funding agreements. Ontario's 5-year agreement contained \$1.9 billion in federal funding.<sup>377</sup>

2006 to present: reduced federal support

The ELCC agreements were terminated by the federal Conservative government after their election in January 2006. The funding under these agreements continued until the end of 2007. The agreements have been replaced by the Universal Child Care Benefit of \$100/month to all parents with children under 6, and \$250 million in federal spending for capital funding to create child care spaces under the Child Care Spaces Initiative.<sup>378</sup>

From 2006 to the start of 2008, federal funding for First Nations child care has been largely frozen. Federal funding for FNICCI stayed the same, federal funding to Head Start off-reserve decreased, and federal funding for the on-reserve Head Start increased by less than 1%.<sup>379</sup> INAC's total funding for First Nations child care in Ontario (including both 80/20 shares) stayed at \$15.6 million,<sup>380</sup> and within that INAC's transfer to Ontario for child care under the 1965 Agreement stayed at \$11 million.<sup>381</sup>

### **Outlook**

On the horizon?

Child care has fallen off the national agenda. However, it is likely to re-emerge as a priority should there be a change in federal government. First Nations in Ontario should be prepared for this and ready to advance their agenda. It would be important to avoid repeating what happened in 2004-2005 when, despite major funding advances for child care in the mainstream, First Nations were marginalized in the ELCC plans.

Furthermore, it is important for First Nations to be included in any expansion and improvements to child care and early learning in Ontario, regardless of federal involvement. Despite reduced federal ELCC funding, Ontario has continued to increase

374 *ECEC in Canada 2006, ibid.* at 90.

375 The national child care system promoted by the federal government in 2004-2006 was to be based on four principles: quality, universality, accessibility and developmental programming. These principles were to be built into the accountability requirements for provinces and territories.

376 See *ECEC in Canada 2006, supra* note 18 at xv, calculation by the author.

377 *ECEC in Canada 2006, ibid.* at 91.

378 *ECEC in Canada 2006, ibid.* at xvi.

379 See *ECEC in Canada 2008, supra* note 22 at Aboriginal ECEC section.

380 *ECEC in Canada 2008, ibid.* Table 2.7.

381 MCYS, *Results-Based Plan, supra* note 33 various years (2006-07, 2007-07, 2008-09).

child care funding and the number of child care spaces since 2006. First Nations in Ontario have not benefitted from these investments (see comparisons below for charts).

The province appointed Charles Pascal as an Early Learning Advisor to report on how to best extend full-day learning for four and five year olds. His report is expected soon (2009), and the McGuinty government promised \$200 million for this initiative in the first year and \$300 million the following year.<sup>382</sup> It would be important for First Nations to benefit from any opportunities relating to this process.

Technical  
listing in  
1965  
Agrmt.

A final concern is that the schedules of the 1965 Agreement have not been updated to reflect the current citation of the *Day Nurseries Act*.<sup>383</sup> There are reports that INAC officials are informally taking the position that the *Day Nurseries Act* is no longer covered by the 1965 Agreement for this reason.<sup>384</sup> This conflicts with INAC's public statements to the Auditor General of Canada regarding the parallel situation of the *Child and Family Services Act*.<sup>385</sup> If there is any doubt on this issue, obtaining a legal opinion might be advised.

## Comparison: First Nations in Ontario vs Mainstream Ontario

More information, especially on off-reserve child care, is needed to properly compare First Nations child care in Ontario with mainstream child care.

As of 2006, it appears that the **overall coverage**, measured by the number of regulated spaces for the child population ages 0-9 is **similar** on reserve and off reserve in Ontario (17.8% off reserve and 22.6% on reserve, see chart below). The fact is that child care is underfunded for everyone, and is often unavailable in the mainstream as well as in First Nations communities.

However this masks a wide variation in availability in different First Nations communities. In each community, either child care is available, or it is not – a province-wide coverage rate may have little relevance. Over 60% of First Nations communities do not have any licensed child care centres, so for them the coverage is 0%. **Northern communities are at a particular** disadvantage; 9 in 10 of the communities without child care in are the north.<sup>386</sup>

Moreover, as discussed above, there are many reasons why child care in First Nations communities should be an especially high priority. First Nation communities require full coverage in child care and early learning, whether or not mainstream coverage becomes universally available.

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382 Government of Ontario, “Premier's Announcement – November 27, 2007, McGuinty Government Moves Forward on Full-Day Learning for Four- and Five-Year-Olds: Dr. Charles Pascal Appointed as Special Advisor to Recommend Strategy, Report to Premier” (online: <[www.ontario.ca/en/initiatives/early\\_learning/stel01\\_202108](http://www.ontario.ca/en/initiatives/early_learning/stel01_202108)>).

383 The last version in the 1965 Agreement is *Day Nurseries Act*, R.S.O. 1978 c.72, “as amended”.

384 Interview with Arliss Skye.

385 Auditor-General of Canada, FNCFS 2008, *supra* note 19 at 4.28.

386 Ontario Head Start (2003), *supra* note 46, and as discussed above.

<b>Child Care Funding and Coverage in Ontario, First Nations &amp; Provincial total, 2006</b>							
	No. of regulated child care centres <sup>1</sup>	No. of regulated child care spaces <sup>2</sup>	Child population 0-9 years <sup>3</sup>	Coverage: spaces per children 0-9 <sup>4</sup>	Total funding <sup>5</sup>	Avg. Funding per space	Avg. Funding per capita (children 0-9)
First Nation reserves in Ontario	64	2,951	13,041	22.6%	\$15,600,000 (INAC, Day/Child Care-Ontario)	\$5,286	\$1,196
Ontario total	4,175	229,875	1,291,100	17.8%	\$543,100,000 (MCYS Child Care program)	\$2,323	\$413
Ontario off-reserve only	4,111	226,924	1,278,059	17.8%	Not clear	Not clear	Not clear

Source: Created by the author from the sources indicated.

1: Number of child care centres obtained from *ECEC in Canada 2006*.

2: Number of child care spaces obtained from *ECEC in Canada 2006*. This is the total number of spaces for all ages.

3: Ontario child population obtained from *ECEC in Canada 2006* at 75 (2005 rounded estimates, census). First Nations on reserve in Ontario child population obtained from INAC, *Registered Indians by Sex and Residence, 2006*. The Census 2006 on-reserve population has significant missing data from incompletely enumerated communities.

4: There may be age restrictions on spaces that are not accounted for here. This calculation is a global figure and does not represent actual availability of child care in any community. Some First Nations communities have no child care.

5. The funding indicated for First Nations on reserve is the amount of federal funding from INAC; this includes both the 20% municipal contribution and federal cost-sharing for the 80% provincial share. This figure was obtained from *ECEC in Canada 2008*, at Table 2.7 (advance copy obtained by the author from Martha Friendly). The funding amount indicated for Ontario is the allocation identified by the province. It may or may not include federal ECEC transfers. It likely includes provincial funding on reserves subject to the 1965 Agreement (80% share), but this is not indicated. This figure was obtained from *ECEC in Canada 2006* at Table 13.

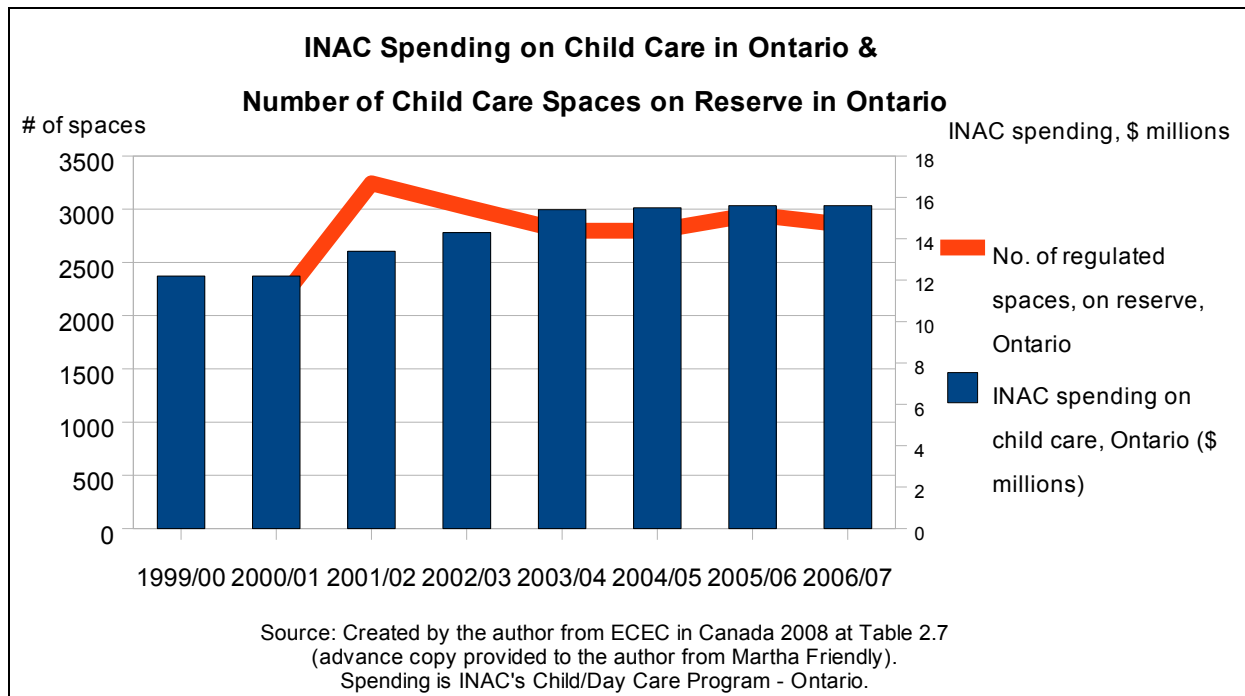
The figures in the chart above also indicate that **federal funding for child care on reserve is higher than the mainstream MCYS funding**, both per space and per capita. It is not clear what factors explain the difference; they may include historical program factors, geographic location and a higher cost of delivery on reserves, higher eligibility on reserve for provincial fee subsidies, higher rates of children with special needs, or other factors. Also it may be that the mainstream federal child care funds are not included in Ontario's MCYS funding – if so, the mainstream funding figures in the chart (total, per space, and per capita) are lower than they should be.<sup>387</sup> Additionally, recall that funding to First Nations child care centres varies enormously. While the average may be \$5,286 per space (2006), the Ontario Head Start study in 2003 found that some communities received over a million dollars, while others received only a few thousand dollars.<sup>388</sup>

<sup>387</sup> In *ECEC in Canada 2006*, *supra* note 18 the original charts (Table 13 and Table 14) have the following note: “Note that in 2005/06 many provinces/territories did not include federal ECEC transfer in their provincial allocation. Nor was it possible to systematically determine how and when those funds were spent. Consequently, this table represents the identified allocations.”

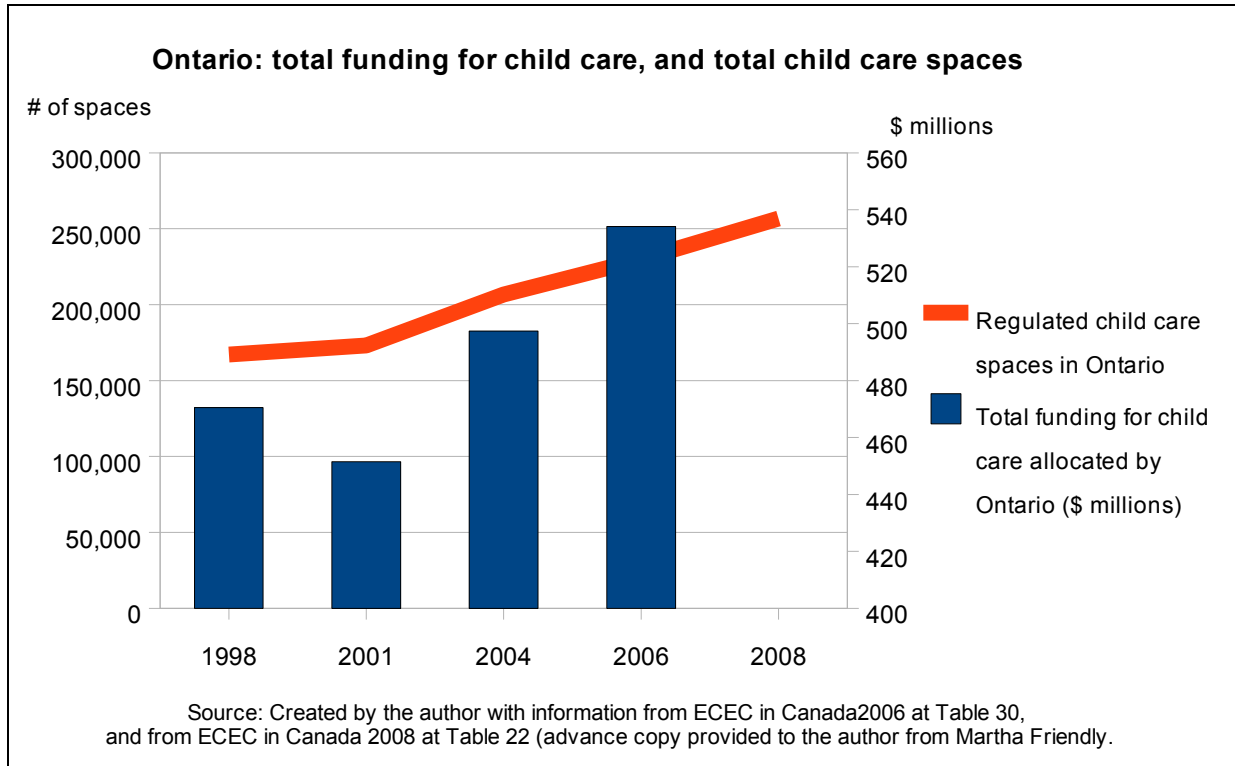
<sup>388</sup> Ontario Head Start (2003), *supra* note 46. The Committee found that in 2003 \$15.2 million was divided among 52 communities. The amount received by each First Nation varied from \$1.24 million to \$15,000.

To compare funding properly, more detailed information is needed. It may be that existing funding per space/child on reserve still leads to inequitable outcomes, given higher costs, higher needs etc. in First Nations communities.

Furthermore, we do know that **the number of centres, child care spaces and INAC funding for child care on reserve in Ontario has not increased since 2003/04**. The following chart looks at spaces and funding, in Ontario only.



Meanwhile, Ontario's overall funding for child care, and the total number of regulated spaces in the province, have continued to increase during the same time period (see chart below).



The implication of the two charts above is that, despite the 1965 Agreement, First Nations on reserve have not benefitted from program expansion in child care in Ontario in the past few years. This conclusion is consistent with reports that INAC is refusing to fund any new child care spaces in Ontario, and that Ontario has refused to expand spaces any further using its own funding.<sup>389</sup> These positions are in conflict with the 1965 Agreement and exclude First Nations from equal benefit in Ontario's child care program.

## Comparison: Ontario vs Other Provinces

It must be noted that child care systems are different in each province and territory, and **comparison is not straightforward**. Moreover, child care researcher Martha Friendly notes that data on child care is insufficient and increasingly difficult to obtain. While HRSDC used to collect various data on child care in Canada, it has significantly decreased this practice since 2006.<sup>390</sup>

Information on Aboriginal peoples is even more rare. Given the many different piecemeal sources of funds and lack of data on funding distribution, funding comparisons are very difficult. The inadequacy of census population data on reserve is an additional barrier to calculating an accurate 'coverage' rate for comparative purposes.

First Nations child care centres in Ontario receive both provincial funding and federal funding,

<sup>389</sup> Interview with Arliss Skye.

<sup>390</sup> Interview with Martha Friendly, CRRU.

subject to the 1965 Agreement. In all provinces and territories, child care centres on reserve and self-government regions receive some federal funding. Including Ontario, 8 out of 13 provinces and territories also provide some funding. Nova Scotia, PEI, New Brunswick, Manitoba and Saskatchewan do *not* provide funding for child care centres in First Nations communities.<sup>391</sup>

Outside Ontario, funding for First Nations child care has a higher proportion of federal funding from FNICCI (under HRSDC) and Head Start (under Health Canada). In Ontario, most federal funding is from INAC, under the 1965 Agreement.<sup>392</sup>

First Nations child care centres in Ontario, Quebec, BC and the three territories are regulated by the province. In addition, Newfoundland, New Brunswick, and Manitoba will regulate child care on request. In Alberta, First Nations are eligible for INAC funding pursuant to a 1991 cost-sharing agreement similar to the 1965 Agreement, but only if provincial licensing standards are met. PEI, Nova Scotia, Saskatchewan and Alberta do *not* regulate child care on reserve.

<b>Various differences between child care in First Nations communities in Ontario &amp; elsewhere</b>			
	Federal Funding	Provincial Funding?	Provincial Regulation
Ontario	Mostly INAC in 1965 Agrmt, a bit from Head Start, FNICCI	Yes (mostly 1965 Agrmt)	Yes
Alberta	INAC funding under a 1991 agrmt., plus Head Start, FNICCI	Yes (1991 cost-share agrmt.)	No, but must meet provincial standards to be eligible for federal cost-shared funding
BC	Mostly from Head Start (Health Canada) and FNICCI (HRSDC)	Yes	Yes
Quebec		Yes	Yes
Yukon		Yes	Yes
NWT		Yes	Yes
Nunavut		Yes	Yes
Newfoundland		Yes	On request
Manitoba		No	On request
New Brunswick		No	On request
Saskatchewan		No	No
Nova Scotia		No	No
PEI		No	No
Source: ECEC in Canada 2008, advance copy of Table 11, “Child care centres on reserve and in self-government regions – 2008”, provided to the author by Martha Friendly, plus additional information added by the author.			

391 *ECEC in Canada 2008*, *supra* note 22 at Table 11, “Child care centres on reserve and in self-government regions – 2008”.

392 See Ontario Head Start (2003), *supra* note 46.

Ontario has 64 child care centres in First Nations communities in 2008. Ontario has one of the highest populations of First Nations children on reserve,<sup>393</sup> and the second highest number of First Nations communities after BC. However **Ontario now has fewer child care centres in First Nations communities than British Columbia, Saskatchewan and the Northwest Territories.**

<b>Childcare Resource and Research Unit, 2009: Child Care Centres, on reserve and in self-government regions, 2008</b>			
Prov/Terr.	First Nations Child Care Centres	Prov/Terr.	First Nations Child Care Centres
BC	98	Alberta	35
Saskatchewan	76	Nova Scotia	13
NWT	67	Newfoundland & Lab.	8
Ontario	64	New Brunswick	7
Manitoba	62	Yukon	7
Nunavut	45	PEI	2
Quebec	43		

Source: Reproduced from Childcare Resource and Research Unit, *ECEC in Canada 2008*, Table 25, “Child care centres on-reserve and in self-government regions – 2001, 2004, 2006, 2008”.

The **1965 Agreement gave Ontario an early start in the development of child care** in First Nations communities. In 1978, 26 First Nations in Ontario had licensed child care.<sup>394</sup> By 1994 Ontario had 45 licensed centres on reserve (covering 40% of First Nations) and 5 off reserve.<sup>395</sup> In comparison, Quebec had 11 licensed on reserve child care centres at that time,<sup>396</sup> and BC had 5.<sup>397</sup> In her 1994 study for the Royal Commission on Aboriginal Peoples that focused on Aboriginal child care in Ontario and Quebec, Clare Wasteneys describes Ontario as having “the largest Aboriginal child care structure in the country”.<sup>398</sup>

Wasteneys' statement would no longer be true today. First Nations child care has grown significantly in other provinces since the introduction of FNICCI and Head Start in the mid 1990s, and Ontario's growth has flattened.

393 There are no reliable figures on the number of First Nations children, especially on reserve. Both the INAC list of registered Indians 2007 and the 2006 Census show that Ontario has the highest overall registered Indian population, highest overall First Nation population, and the third highest number of children on reserve.

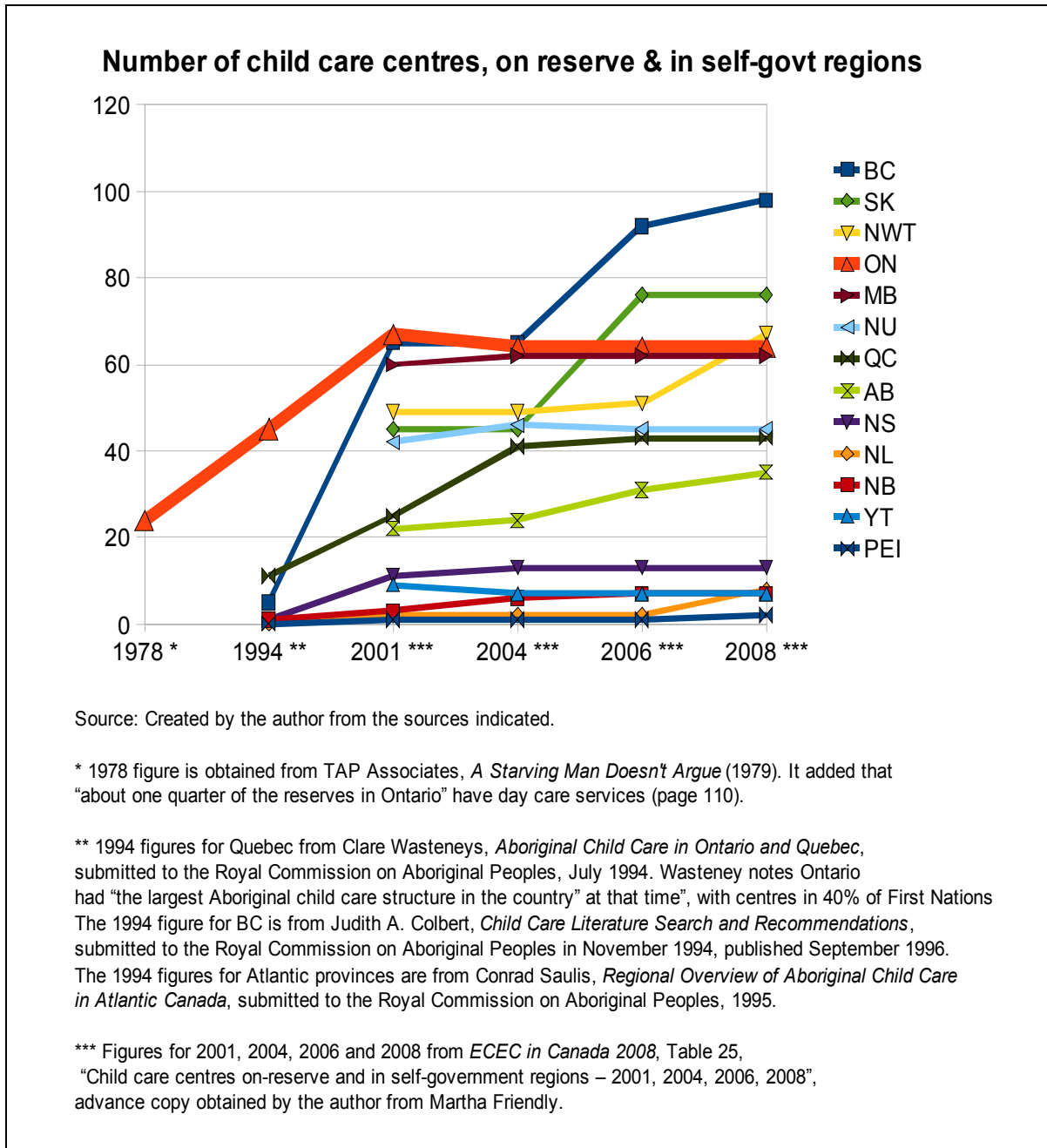
394 *A Starving Man Doesn't Argue*, *supra* note 3 at 110.

395 Wasteneys, *supra* note 15.

396 Wasteneys, *ibid.*

397 Colbert, *supra* note 15.

398 Wasteneys, *supra* note 15.



The number of child care centres in First Nations communities in Ontario (64) has been frozen since 2004, and actually decreased from 67 centres in 2001. In contrast, the number of centres in First Nations communities **increased from 2001 to 2008 in every province or territory except Ontario and the Yukon.**

<b>Change in Number of Child Care Centres, on reserve or in self-govt. regions, 2001 to 2008</b>		
	Number of Centres Added or Lost	% increase or decrease
British Columbia	33	+51%
Saskatchewan	31	+69%
Quebec	18	+72%
Northwest Territories	18	+37%
Alberta	13	+59%
Newfoundland	6	+300%
New Brunswick	4	+133%
Nunavut	3	+7%
Manitoba	2	+3%
Nova Scotia	2	+18%
PEI	1	(previously 0)
Yukon	-2	-22%
Ontario	-3	-5%

Source: Created by the author from ECEC in Canada 2008, Table 25, "Child care centres on-reserve and in self-government regions – 2001, 2004, 2006, 2008".

**When the number of child care centres on reserve is considered as a percentage of the number of First Nations communities in each province, Ontario is falling far behind.** This tends to show that more First Nation communities in Ontario lack access to child care than in most other provinces. Moreover, while not shown in this chart, communities without child care in Ontario are disproportionate concentrated in the north.<sup>399</sup>

<sup>399</sup> Ontario Head Start (2003), *supra* note 46.

<b>Number of Child Care Centres per INAC-recognized First Nations community</b>			
	Bands *	Child Care Centres **	% Coverage ***
NWT	26	67	258%
Quebec	39	43	110%
Saskatchewan	70	76	109%
Manitoba	63	62	98%
Atlantic provinces	33	30	91%
Alberta	44	53	80%
Ontario	126	64	51%
BC	198	98	50%
Yukon	16	7	44%

Source: Created by the author from the sources indicated.  
 \* Number of bands from INAC, *Registered Indian Population by Sex and Residence, 2007*. Some First Nations are not recognized by INAC, and these are not counted here.  
 \*\* Number of child care centres from: Childcare Resource and Research Unit, *ECEC in Canada 2008*, Table 25.  
 \*\*\* This is simply the number of centres expressed as a percentage of the number of bands. It does not necessarily represent the actual percentage of bands with child care centres.

Researcher Martha Friendly has visited child care centres on reserve in various provinces. Her anecdotal experience is that the **quality of care** varies a great deal, in relation to staff training, staff qualification, program activities, facility standards, and other issues. In her opinion, child care in First Nations communities in Ontario *might* be a bit above average compared to First Nations centres in other provinces. In her view, this may be due to the longer history of the program in Ontario and a higher level of provincial involvement in monitoring standards.<sup>400</sup> This would require further research to be confirmed.

There was not enough information available to compare **funding** in Ontario and other provinces.

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400 Interview with Martha Friendly, CRRU.

# HOMEMAKING

## Current Delivery & Funding of Homemaking

### *Program Basics*

Definition & First Nations Delivery  
 Homemaking is a service which provides housecleaning, laundry, meal preparation, shopping, child care and other similar services in a client's home.<sup>401</sup> Clients are usually elderly, ill, or have a disability or special needs. Homemaking is a program under the Ontario Ministry of Health and Long-Term Care.

The *Homemakers and Nurses Services Act* authorizes 110 First Nations to administer the Homemaking program.<sup>402</sup> These are the same 110 First Nations that administer Ontario Works. They must be approved by the Ministry of Health, and the First Nation's social services administrator is responsible for the Homemaking program.<sup>403</sup>

This report does not have information on the delivery of the Homemaking program in the remaining First Nation communities; it may be that these communities receive these services from their local municipalities and CCACs, but this needs to be confirmed.

From MCSS to Ministry of Health  
 Homemaking services are regulated under the *Homemakers and Nurses Services Act*, a statute under the mandate of the Ministry of Community and Social Services (MCSS) but that now assigns most powers and responsibilities to the Ministry of Health and Long-Term Care (Ministry of Health). Ontario also regulates homemaking services under the *Long-Term Care Act, 1994*, a statute under the mandate of the Ministry of Health.<sup>404</sup> In practice, the responsibility for Homemaking shifted from MCSS to the Ministry of Health in the 90s.

The *Homemakers and Nurses Services Act* is listed in the 1965 Agreement (although not with an updated citation), and First Nations are still designated under that Act for the administration of the Homemaking program. The *Long-Term Care Act* dates from 1994 and is not listed in the 1965 Agreement, but it also allows for agreements between First Nations and the Ministry of Health for the provision of Community Services (s.9 and s.10), which can include homemaking.

401 Homemaking is defined in the *Homemaking and Nurses Services Act*, R.S.O. 1990, c. H-10, in its General regulation R.R.O 1990, Reg. 634, and in the *Long-Term Care Act, 1994*, S.O. 1994, c. 26.

402 R.R.O 1990, Reg. 634, *ibid.*

403 See R.R.O 1990, Reg. 634, *ibid.*; Interview with Michael Nadeau, ONWAA.

404 See the *Homemaking and Nurses Services Act* and *Long-Term Care Act, 1994*, *supra* note 401. Note that while the *Homemakers and Nurses Services Act* dates from the 1960s and is specifically named in the 1965 Agreement (although the citation has not been updated to the current version), the *Long-Term Care Act* dates only to 1994 and is not named in the 1965 Agreement. This probably explains why First Nations continue to be designated for Homemaking services under the *Homemakers and Nurses Services Act* rather than the *Long-Term Care Act*, and also why the other Community Services under the *Long-Term Care Act* have not been cost shared by INAC.

Related in-home care services      The *Long-Term Care Act* includes four Community Services: Homemaking services, Community Support services, Personal Support services, and Professional services. Some of these services have been extended to First Nations with funding from Ontario, without cost-sharing from INAC. The Community Support program is one example.<sup>405</sup> In addition, Ontario has funded a few live-in homes for the elderly on reserve.<sup>406</sup>

Much more information on the funding and delivery of health care to First Nations (or at least in-home health care), from all provincial and federal sources, is needed to properly assess the Homemaking program in its proper context.

### ***Funding***

No admin funding      Before Ontario Works replaced General Welfare Assistance in 1998, both Homemaking and GWA were part of the Ministry of Community and Social Services (MCSS). When Homemaking was more connected to GWA, First Nations administering the Homemaking program received some funding from MCSS for its administration.<sup>407</sup>

In the late 90s, Ontario Works was introduced and provincial health care reforms took place that shifted to greater reliance on in-home care within the health system. At that time, Homemaking became part of the Ministry of Health and Long-Term Care.

The shift to the Ministry of Health has certain advantages for homemaking services as a whole. Homemaking is more likely to have stable funding and wider public access if it is seen as part of health care rather than as a “welfare” service. Home-based health services are still marginalized in terms of funding and access relative to hospital or physician care, but the move from MCSS to the Ministry of Health may be a step in the right direction.<sup>408</sup>

Unfortunately, the shift in ministries terminated any dedicated funding to First Nations for the administration costs of the Homemaking program.<sup>409</sup> First Nations social services administrators are expected to run the Homemaking program using administration funds from the Ontario Works program, which does not account for Homemaking. The lack of any administrative support for Homemaking is a serious gap.

Funding caps and disparities      An additional funding issue with the Homemaking program is that funding has been effectively capped by INAC. Funding for the program is shared 80/20 with municipalities, and as in other programs, INAC pays the 20% municipal share to First

405 Maria Ansoar, INAC Ontario Region, reported to Chiefs of Ontario that Ontario spends approximately \$11.5 million per year on the Community Support program for First Nations, and that this program is not cost-shared with INAC. This figure has not been confirmed with Ontario's Ministry of Health and Long-Term Care.

406 Interview with Phil Digby, INAC Ontario Region.

407 Interview with Michael Nadeau, ONWAA.

408 See e.g. Health Canada, *An Assessment of Continuing Care Requirements in First Nations and Inuit Communities: Review of Literature and National Health Data Sources* (Ottawa: Health Canada, 2008) [Health Canada, *Continuing Care*].

409 Interview with Michael Nadeau, ONWAA.

Nations.<sup>410</sup> Originally funding for the program was open-ended and based on actual expenditures, as set out in the 1965 Agreement. INAC then capped its contribution at actuals, which froze funding levels.<sup>411</sup> Capped funding in Homemaking for First Nations has restricted the availability of the program for community members.

First, the cap disconnects First Nations' funding from the number of hours of service actually needed or provided in the community; funding merely relates to the historical funding level, which is an arbitrary standard. With restricted budgets, First Nations homemakers are able to provide fewer hours of service.

Second, available hours of service are further limited since the Ministry of Health set minimum wage standards for homemakers rather than maximums.<sup>412</sup> Increasing wage standards is positive for the program, but First Nations have not received additional funding to account for increased wages.<sup>413</sup> Again, due to the cap, the effect is to limit the available hours of service in the community.

Third, the funding cap may be increasing disparities between Homemaking services on and off reserve in Ontario. Off reserve, Homemaking is delivered through Community Care Access Centres (CCACs). Funding data and other information on Homemaking off reserve was not available for this report, but would be required in order to assess inequities in this program.

Finally, the funding cap locked in disparities between different First Nations. Some communities, especially in southern areas, have higher Homemaking budgets; other communities, especially in the north, have much lower Homemaking budgets.<sup>414</sup> This disparity occurred because southern First Nations started administering Homemaking sooner and grew their programs earlier. Their early advantage (and northern communities' disadvantage) was locked in when funding was capped.

To assess these issues, further information on funding levels, client populations, service hours, and unmet community health needs would be required, both on a per First Nation community basis and on comparative data for municipalities.

## Context & Development

### *Homemaking Services in Canada*

Extended health services      Homemaking is an in-home health service. It is one small component of a large variety of out-of-hospital services that form part of what is called “continuing care”. A report on continuing care in First Nations and Inuit communities listed 41 continuing care

410 See R.R.O 1990, Reg. 634, *supra* note 401 at s. 4(5).

411 Interview with Michael Nadeau, ONWAA.

412 Interview with Michael Nadeau, ONWAA.

413 Interview with Michael Nadeau, ONWAA.

414 Interview with Michael Nadeau, ONWAA.

services, 25 of which are “community/home-based services”, one of which is homemaking.<sup>415</sup> These services are very important to health and wellbeing, however they have historically been marginalized within the health care system.

According to the *Canada Health Act*, services performed in a hospital or by a physician are automatically covered by provincial health insurance. All other services – including home-based care – are “extended health care services”. Provinces may choose to “list” (i.e. cover) these services in their health insurance plans, or they may not. The province may use federal support from the Canada Health Transfer or Canada Social Transfer to support these services.<sup>416</sup>

Therefore the history of home care has varied in each province, and the integration of home-based care and other continuing care services within provincial health care systems is inconsistent. More often than not, home-based care and other continuing care services are piecemeal and inadequately funded, leaving gaps in service.<sup>417</sup>

### ***Home-Based Health Care for First Nations in Canada***

Home-based health care in the First Nations context

Health care services in First Nations communities are generally fragmented and lacking in sufficient First Nations control. Various federal and provincial departments are involved, as well as First Nations health authorities.

Most health care services provided directly on reserve, including health clinics and other services, are provided through Health Canada's First Nations and Inuit Health Branch. The Health Transfer program has devolved some of these funds to First Nations in participating communities. INAC funds some health-related programs, particularly those that lean towards social services. Provincial health ministries fund hospitals and other services that First Nations can use, but these are nearly always located outside of First Nations communities.<sup>418</sup> Some provincial governments fund special health programs for First Nations; Ontario's Aboriginal Health and Wellness Strategy is an example of such a program, and it funds some services both on and off reserve. The AHWS involves several ministries, with MCSS as the lead.

Provincial health services like home-based care that are not core insured services under the *Canada Health Act*, i.e. not hospital or physician services, are not always extended to First Nations.<sup>419</sup> Across Canada, many continuing care service components are provided by provincial governments off reserve but not in First Nations communities.<sup>420</sup> Moreover, there is very little data available on this subject.<sup>421</sup>

415 Health Canada, *Continuing Care*, *supra* note 408 at Table 1, (vii).

416 Health Canada, *Continuing Care*, *ibid.* at (iii), 8.

417 Health Canada, *Continuing Care*, *ibid.* at (iii).

418 See Laural Lemchuk-Favel, *Financing a First Nations and Inuit Integrated Health System: A Discussion Document* (22 February 1999) at 5-6.

419 Health Canada, *Continuing Care*, *supra* note 408 at (v).

420 Health Canada, *Continuing Care*, *ibid.* at (xiii).

421 Health Canada, *Continuing Care*, *ibid.* at (xiii).

Strong, well-funded home-based care programs (including homemaking services) are important for First Nations because they allow people to be cared for within their communities as much as possible. A survey of Indigenous Elders and their children in the Great Lakes region of the U.S. found that a majority would prefer to receive care in their homes, with assistance from paid caregivers or family members.<sup>422</sup>

### ***Homemaking in Ontario***

Welfare to  
Health

Homemaking in Ontario started as a “welfare” program through MCSS. The *Homemakers and Nurses Services Act* anticipates that clients pay for this service unless they have demonstrated financial need, in which case the First Nation or municipality pays a subsidy and is reimbursed by the province according to provincial guidelines.<sup>423</sup>

When Homemaking moved to the Ministry of Health in the 90s, this coincided both with social assistance reforms (introducing Ontario Works) and health care reforms (associated with reduced reliance on hospitals and residential services, and a greater reliance on home-based care). In the mainstream, homemaking and other community services and home care services are now coordinated through Community Care Access Centres (CCACs).

### ***The Homemaking Program and the 1965 Agreement***

Transition  
to health &  
the 1965  
Agrmt.

One might imagine that Homemaking's transition to the health care system would be beneficial for First Nations by strengthening the program. In fact, this transition has caused problems that relate to the classic difficulties of the 1965 Agreement.

One problem is the complete absence of administrative funding. As noted above, administration costs used to be funded through MCSS, but were lost when the program shifted to the Ministry of Health. One reason may be that for First Nations, Homemaking is one of very few provincial health services delivered by First Nations on reserve. It might “get lost” within the very large Ministry of Health. Off reserve, Homemaking is usually delivered by Community Care Access Centres, which run a wide variety of continuing care services. As with other program changes under the 1965 Agreement, INAC likely absorbed any cost savings related to the loss of administrative costs with this transition.

Another problem is that INAC has imposed strict funding caps on the Homemaking program that do not correspond with community needs or with provincial funding levels off reserve. This has uncoupled the program from comparable mainstream standards and resulting in reduced services to community members.

Finally, the transition of Homemaking to the Ministry of Health illustrates how the

422 Chapleski, Soback and Fisher (2003) cited in Health Canada, *Continuing Care*, *ibid.* at 18.

423 See *Homemakers and Nurses Services Act*, *supra* note 401 at s. 10.

1965 Agreement is inflexible and frozen in the past. It has failed to provide for the extension of additional programs over time. Instead of expanding to include all home-based care services when Ontario's *Long-Term Care Act* was introduced in 1994, federal cost sharing remained restricted to Homemaking as defined under the *Homemaking and Nursing Services Act* which dates from the 1960s. The 1965 Agreement makes it difficult for programs such as Homemaking to evolve. As Ontario's home-based health care services expanded over time, new services were not added to the 1965 Agreement. The foreseeable result would be that health programs now available off reserve are not consistently available on reserve; this needs further confirmation.

A full analysis of inequities in home-based health care services on/off reserve in Ontario, or in other provinces, is beyond the scope of this report. Much more information is needed to assess this program in its proper context.

### **Comparison: First Nations in Ontario vs Mainstream Ontario**

There was not enough information available to compare Ontario's homemaking program on and off reserve. Please see the Summary of this report for recommendations for further research.

### **Comparison: Ontario vs Other Provinces**

There was not enough information available to compare homemaking or other home-based health services for First Nations in Ontario and other provinces. Please see the Summary of this report for recommendations for further research.

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The author sincerely thanks all of the following people for their contributions to this report. Your knowledge, time and patience were immensely valuable.

All mistakes and omissions are the author's alone.

Organization	Name
Chiefs of Ontario (COO)	Lillian Baibomcowai-Dell
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Ontario Association of Children's Aid Societies	Elena Davydova
Ministry of Children and Youth Services, Child Welfare Secretariat	various

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