

WHAT ARE THE GOVERNMENT'S CURRENT POLICIES AND PROGRAMS IN FIRST NATIONS CHILD WELFARE?

Canadian Human Rights Tribunal on First Nations Child Welfare

The First Nations Child and Family Service program

The primary objective of the First Nations Child and Family Service (FNCFS) program, described in the federal government's department of Aboriginal Affairs and Northern Development Canada's (AANDC) National Social Program Manual in 2007, was to: *"support culturally appropriate child and family services for Indian children and families resident on reserve or [ordinarily resident on] reserve, in the best interest of the child, in accordance with the legislation and standards of the reverence province."*¹ The Canadian Human Rights Commission (Commission) states that, since then, the language in the manual was changed to reflect the provision of child welfare services to First Nations on-reserve *"in accordance with the legislation and standards of the province or territory of residence and in a manner that is reasonably comparable to those available to other provincial residents in similar circumstances within Program Authorities"*.² The idea of reasonable comparability is not further defined in the manual.

AANDC's responsibilities for its social development programs, including the FNCFS program, as set out in the National Social Program Manual, are to:

- Provide funding to eligible recipients as authorized by approved policy and program authorities.
- Lead the development of policy and provide policy clarification to eligible funding recipients.
- Provide oversight to ensure programs operate according to authorities and Canada's financial management requirements, by ensuring reporting and accountability requirements are met.
- Further articulate regional processes and procedures necessary to implement the national manual.

AANDC conducts compliance reviews to ensure that services and expenses comply with agreements.

How does the federal government currently fund the FNCFS program?

AANDC funding for FNCFS agencies varies across jurisdictions and agencies within a jurisdiction may work under different funding models. In addition to agreements with FNCFS agencies, AANDC has agreements with the governments of Ontario, British Columbia and Alberta around provision of on-

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In 2007, the First Nations Child and Family Caring Society and the Assembly of First Nations filed a complaint against the federal government of Canada, alleging that child welfare services provided to First Nations children and families on-reserve were flawed, inequitable and discriminatory. They ask that the Tribunal find that First Nations children are being discriminated against and order appropriate remedies. The government countered this, stating that its services cannot be compared to those provided by the provinces/territories and that they do not offer a service in accordance with the Canadian Human Rights Act. Accordingly, the government asks that the case be dismissed. The Tribunal began hearing evidence in 2013 and a ruling is expected in mid-2015.

reserve child welfare services. The two primary AANDC funding models are described below and the findings from evaluations of these models are also summarized.

Directive 20-1

In 1991, AANDC set out its policy on the delivery of the FNCFS program. Agencies in all jurisdictions, except Ontario, were funded under this model until 2007. British Columbia, New Brunswick, Newfoundland and Labrador and the Yukon Territory remain under Directive 20-1 today. Under Directive 20-1, FNCFS funding comes through 2 streams:

- **Operations funding** covers administrative costs. It is primarily based on the number of children on-reserve in the previous year. The maximum amount available is unchanged since 1991.
- **Maintenance funding** covers costs associated with supporting children in out of home care. Reimbursements are based on actual expenditures.

Reports on Directive 20-1

Independent reports, as well as reports jointly commissioned by AANDC and its partners, have concluded that Directive 20-1 is flawed and inequitable.³ Major findings that were highlighted by the Canadian Human Rights Commission (Commission) include the following:

- Overall funding is insufficient, particularly for small agencies.
- Funding does not respond to variations in agencies' operating costs, such as differences in community needs.
- There are no funds allocated for prevention, family support and culturally appropriate services.
- The funding structure creates an incentive for removing children from their homes, as there is no possibility of providing prevention and support services.
- The funds allocated do not vary based on the breadth and depth of services provided. Funding is not aligned with the services that agencies must provide under provincial legislation.
- In 2004, per capita funding for children in care was 22% lower than what was offered by selected provinces, despite the higher levels of need on reserve.
- Jurisdictional disputes and inconsistencies between regions pose additional challenges. This impacts the availability, timing and level of services available and may even lead to children being placed in care outside of their communities in order to access medical services.

AANDC's internal evaluations, audits and reviews confirm they are aware of the administrative and operational difficulties caused by inadequate, Directive 20-1, funding. AANDC acknowledged that Directive 20-1 does not provide sufficient funding for culturally-based services and that services are inferior to those offered by the provinces/territories. AANDC has also acknowledged that these weaknesses likely contribute to the large number of First Nations children in care.

Enhanced Prevention Focused Approach

In part to address the critical evaluations of Directive 20-1, AANDC developed the Enhanced Prevention Focused Approach (EPFA). EPFA was launched in 2007 in Alberta, and several other provinces were brought on in subsequent years. Saskatchewan, Nova Scotia, Quebec, PEI and Manitoba now all receive EPFA funding.

EPFA introduced funding for prevention and family support services and also increased flexibility in the funding formula. At the same time, it shifted funding for maintenance of children in care from reimbursement of actual expenses to allocation of an annual budget based on the previous years' expenses. Agencies are required to submit 5-year business plans and budgets, that are subject to review by AANDC.

Reports on EPFA

Independent reports state that AANDC's FNCFS program and on-reserve funding formulas remain inequitable in comparison with the province/territorial funding and services.⁴ Specific challenges with the EPFA that have been highlighted by the Commission include:

- EPFA does not address the needs of First Nations because it assumes that a fixed percentage of children and families require services.
- First Nations children and families do not always receive child welfare services in line with provincial legislation and with services provided to families living off-reserve.
- Lack of definition for key terms and concepts, including the lack of definition of "*reasonable comparability*" with other services. Services should have a comparable level of funding with provincial agencies. The lack of definition of "*culturally appropriate services*" is also an ongoing problem.
- Concern over the re-allocation of funding from other social services to continue the FNCFS program.

AANDC's internal evaluations, audits and reviews conclude that the EPFA funding mechanism does not enable FNCFS agencies to keep up to provincial changes without negatively impacting their ability to provide quality programming. The Commission states that the FNCFS program and funding formulas are not comparable to the services and funding the government provides the provinces.⁵

To view the final submissions to the Canadian Human Rights Tribunal on First Nations Child Welfare in full, please visit: <http://www.fncaringsociety.com/final-arguments>.

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¹ Summarized from the Canadian Human Rights Commission Factum, including quote from #74 page 25.

² Summarized from the Canadian Human Rights Commission Factum, including quote from #75 page 25.

³ Summarized from the Canadian Human Rights Commission Factum. Reports referenced include A National Policy Review (2000) and The Wen:De Reports (2004-2005).

⁴ Summarized from the Canadian Human Rights Commission Factum. Reports referenced include The Auditor General's Report (2008); The Public Accounts Committee Report (2009); The Auditor General's Follow-up Status Report (2011); and the Public Accounts Committee's Follow-up Report (2012).

⁵ Information Sheet summarized from the Canadian Human Rights Commission Factum.