

Six Nations of The Grand River Territory

Child Welfare Designation

Discussion Sessions Final Report

March 25, 2012

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Introduction

In late 2011, Six Nations of the Grand River Territory mandated a committee to facilitate a process of community discussion to assess the level of community interest in, support for, and readiness to pursue child protection designation under the Ontario Child and Family Services Act (CFSA).

This action is being taken following many years of criticism of the delivery of Child Protection by the Brant County Children's Aid Society (CAS) through its Native Services Branch (NSB) and the recent submission of a petition signed by 910 community members (unduplicated count) asking a) that the offices of the CAS Native Services Branch (NSB) be removed from the territory, and b) asking that the necessary steps be taken to establish a Six Nations' Child Protection Program.

The question posed in the resulting process of community consultation is:

"Should Six Nations initiate the process of designing and establishing our own community-based protection program and negotiating a protection designation with Ontario?"

Method of Facilitating Discussion

The task of facilitating community discussion of the question of establishing a community-based program to manage the process of protecting children (in place of the CAS) was put in the hands a committee consisting of community members, clan mothers, social services management and Councillors. The committee issued a request for proposals and eventually contracted with Tom Goff and Associates to facilitate the discussion process.

The first step in the process was to develop a discussion paper (see appendix 1) to provide information about the protection function, about current First Nation management of this function and about the process of negotiating a mandate from Ontario to manage the function. In addition, a power point presentation was developed to provide an overview of main discussion points at the beginning of each discussion session. The discussion paper was published on the Six Nations website and made available at each of the discussion sessions. The last page of the discussion paper posed the question set out above and provided space for people to submit comments (in writing or by email) as to why they support or do not support the assumption of responsibility for the protection of children by a community-based program.

A series of open, public meetings were scheduled over several weeks in different time periods (morning, afternoon and evening) so as to permit as many community members to attend as possible. In addition, time slots were made available at different times of the day and at different locations in order to permit as many Six Nations' Program staff to attend as possible. It was also made clear that the facilitators would make themselves available to any group that wanted to hold a private session at any location. Given that Six Nations has the option of developing a program that would deliver to member families resident off as well as on territory, discussion were scheduled for Niagara, Hamilton and Brantford to obtain input from

members living off territory. Finally, a two-hour radio call-in show was held in an attempt to reach persons not able to attend any of the discussions sessions.

The schedule of discussion session dates, times and locations was published on the website and in the local newspapers.

As of March 25, 2012, a total of 29 sessions have been held, including the two-hour radio phone-in. The management and staff of the CAS were invited to participate, bit other than a written submission requesting clarification on aspects of the discussion paper (see appendix 3 for questions raised and responses provided); no dates for such meetings have been set.

If additional funding is secured, a final open meeting will be held to discuss the findings set out below.

Participation

At first glance, attendance at these discussion sessions has been relatively low in comparison to the total population of the community:

Mt'g	Date	Location	Type	#
1.	21-Dec	SSGym	Community	50
2.	26-Jan	SSGym	Community	0
3.	27-Jan	SSGym	Community	0
4.	08-Feb	Stoneridge	Community	6
5.	10-Feb	SSGym	Community	3
6.	13-Feb	Welfare	SA staff	15
7.	14-Feb	Stoneridge	Staff	0
8.	15-Feb	Stoneridge	Staff	0
9.	15-Feb	Stoneridge	Staff	3
10.	16-Feb	Stoneridge	Staff	0
11.	16-Feb	Stoneridge	Staff	0
12.	16-Feb	SS Boardroom	Community	2
13.	17-Feb	Polytech	Staff	8
14.	17-Feb	SS Boardroom	Community	2
15.	21-Feb	Health Brdrm	Health Staff	8
16.	22-Feb	SS Boardroom	Community	1
17.	22-Feb	Stoneridge	Community	1
18.	23-Feb	Niagara	Off Reserve	19
19.	23-Feb	SS Boardroom	Community	1
20.	24-Feb	Gan	Gan Staff	22
21.	28-Feb	Brantford Housing	Staff	1
22.	29-Feb	Hamilton	Staff	0
23.	01-Mar	Radio	Community	??
24.	01-Mar	Gan	Gan Clients/Staff	10
25.	05-Mar	SS Brdrm	SCCFS Staff	10
26.	07-Mar	GREAT	GREAT Board	5
27.	15-Mar	Private Home	Community	8
28.	22-Mar	SN Police	Management/Staff	2
Total:				177

However, some observations:

1. Although many of the participants in the discussion sessions indicated that they had also signed the petition (910 unduplicated count), it was estimated that over 90 of the session participants had not signed the petition – indicating that approximately 1,000 community members have been publically engaged in the issue as to who delivers and how the protection responsibility is delivered.

2. The vast majority of participants were adult women (as might be expected) – most of them mothers and grandmothers – who have been directly or indirectly impacted by CAS operations.
3. The total population resident on territory is approximately 12,000. Of this number, approximately 40% are children and youth and, of the adults, approximately 51% are women – that is, about 3,700 of the total population are women.

Number publically involved	1,000
Total population on territory	12,000
Total Children/Youth	4,800
Total Adults	7,200
Female Adults	3,672
% Adult Women involved	27.2%

The bottom line, based on these considerations, is that the 1,000 persons that have been publically involved in the discussion of the issue of CAS child protection services constitute a full 27% of the women of the community have been engaged.

This is a very significant number of participants when you consider that Children's Aid Societies directly impact only about 5% of the families resident in the community.

It is even more significant when one considers that the participants told us that they knew of many people who are so fearful of the CAS that they would not attend public discussion sessions or sign the petition.

Discussion Session Input

Overall, there was basically no opposition presented in the discussion sessions to the position reflected in the petition – i.e. that Six Nations should take at least the initial necessary steps toward resumption of direct responsibility for the protection of children - in place of the Brant County CAS.

Concerns Expressed re: current CAS/NSB Protection Intervention

Community members, including the staff of existing community-based health and social service programs express very specific concerns about the manner in which the legal mandate to protect children is being carried out on Six Nations' Territory by the Brant CAS. These concerns range from issues arising in the character of direct interaction between CAS staff and families (both nuclear and extended) in which protection issues have been identified, to issues in the working relationships between Six Nations' Programs and the NSB) in respect to these protection cases. For example:

- the number of children placed in foster care outside the community (rather than in homes of extended family members) and the number of children being adopted out.
- cases in which the CAS has not actively looked for a family placement opportunity for a child, or has rejected the offer of a family placement on the

basis of something that happened in the past (interpreted as a refusal to accept that a person can change over time)

- lack of adequate financial support for those relatives or other community members who are accepted by the CAS to provide care to a child or children (compared to the financial support provided to licensed foster homes).
- cases in which the CAS has refused to involve extended family/clan members in discussion of what best to do about a situation in which a child protection issue is being investigated (citing confidentiality rules).
- cases in which CAS staff are said to have used threats to obtain client signatures (e.g. "sign or else you won't see your kids").
- the apparent focus of the CAS on the child and not on the child's family as is reflected in a failure to provide sufficient help to or advocacy for the family in overcoming whatever issues have led to the removal of their child or children.
- a lack of effort to identify and offer support services to address emerging family issues before they reach the protection intervention level.
- insufficient use of alternative dispute resolution (rather than the courts) by the CAS.
- a failure to ensure families and children are fully informed of their rights to review and appeal under the CFSA.
- a suspicion that, for the CAS, the number of protection case files opened is "all about the money".
- inadequate information sharing between the CAS and community-based programs involved with the same clients (a criticism also leveled by some participants at the relationships between the various Six Nations community-based programs – i.e. a parallel lack of internal cooperation!).
- the degree to which many community members view the CAS as something to be feared rather than as a source of useful and/or needed support.

CAS/NSB Input to Date

The NSB was asked if management and staff wanted to participate in the discussions. In response, an email was received indicating that there were "errors of fact" in the discussion paper that needed to be addressed before participation.

The NSB was then asked to specify the items in the discussion paper that needed to be corrected.

The only "error in fact" pointed out by the NSB related to the caseload numbers used in the discussion paper (60 vs. the 106 children in care specified in the discussion paper). The "numbers" over several years will have to be confirmed in any case should the project proceed to the design phase. The rest of the points raised by the

NSB needed only to be clarified (see appendix 3 for a list of all of the points raised by the NSB and the responses provided).

The Central Question raised about accepting the protection designation:

While community members and community-based program staff raised many questions about CAS/NSB actions and explained their concerns through examples of CAS/NSB actions as listed above, the key, central question posed in the discussion sessions is

“...will Six Nations be able to design and implement a community-based, controlled and directed protection program that will be generally acceptable across the various interests in the community (including a place for traditional community roles and methods of intervention) within the constraints of applicable provincial law, regulations and standards”.

As one participant noted, “...a brown CAS is still a CAS...”.

In response, it has been noted repeatedly in the discussion sessions that the answer to this general question – “can we come up with a better way to protect children within the constraints of the CFSA” – may well be “YES” based on at least three primary considerations:

1. The CFSA is flexible as reflected in the considerable differences between non-native CASs in the manner in which the protection function is executed – in particular, but not exclusively on the various First Nation territories. Despite the constraints of the CFSA, the issues identified above characterize many but not all CAS/First Nation relationships.
2. Some, if not all First Nation Programs (Weechi-it-te-win and Akwesasne are good examples) have been able to ensure that children are protected - but in a manner which incorporates traditional roles and helping methods, significantly reduces the rate of apprehension and of the use of the courts and makes maximum use of locally-defined alternative dispute resolution and (typically subsidized) customary care arrangements.
3. The CFSA provides for First Nation programs to be exempted from any part of the Act or Regulations (that make it difficult to implement a First Nation-specific Protection Model) - in favour of alternatives that support delivery in a more culturally appropriate manner - as long as the alternatives proposed adhere to the key principle of meeting the best interests of the child.

Several participants have asked why, if it is the case that a First Nation can develop a culturally appropriate model for child protection that is acceptable under the CFSA, did Six Nations not take responsibility for protection after the effort to become designated in the early 1990’s?

It has been pointed out in response to this specific question that Six Nations did develop and successfully completed negotiation of a protection services model that was acceptable to the community at the time, yet fell within the framework of the CFSA. It has also been pointed out that the various reasons Six Nations did not proceed to implement at the time (including an arbitrary 5% cut in the funding that had been negotiated) did not include an inability to negotiate acceptance of a

community-based model for the delivery of protection services (which required four key exemptions for provisions of the legislation at the time).

Summary of Specific Questions (and Answers Provided) re: assuming responsibility for child protection

(see appendix 2 for detailed list of questions raised)

There have been very practical questions raised about assuming responsibility for protection, for example:

- *how would a Six Nations' Protection Program be held accountable to the community so that staff will deliver on the protection responsibility in a manner consistent with the service delivery model that is developed/approved – and, at the same time, ensure that the staff of the Program are fully able to operate on the principle of meeting the best interests of the child – free of or with the means to deal effectively with any attempted political intervention in the day-to-day execution of the protection responsibility in specific cases?*

In response, it was suggested that this will be a central question to answer in the next, design phase of the pathway to designation – and noted that the fact that other First Nations (e.g. Akwesasne) and First Nations organizations (e.g. Weechi-it-te-win, Tikinagan, etc.) have been able to address this concern effectively, should provide the confidence that this, potential issue, can be addressed effectively by Six Nations as well.

- *will a Six Nations Protection Program deliver solely on the territory or could it assume responsibility for member families living off reserve as well?*

In response to this question, it was pointed out that not all CASs have a strictly geographically defined area of responsibility for the protection of children and the support of families experiencing protection issues. For example, Jewish Family Services, the Metro Toronto CAS, the Toronto Catholic CAS and Native Family Services of Toronto all work in the same geographic area. In addition, the “designation” of Weechi-it-te-win provides for the organization to serve members of 10 First Nations living both on and off First Nation territory.

It was, however, noted that it is likely that even if a Six Nations' CFS Program sought and obtained a designation to serve its members regardless of residence, those living off territory would likely retain the choice to be served by a CAS rather than the Six Nations' Program.

Finally, it was noted that, in response to this question in 1994/95, Six Nations decided to assume a designation for protection only on territory – but informed Ontario that a designation covering members living off reserve might be applied for once the on-territory protection work was fully implemented.

- *will there be a recruitment and training plan for the staff handling the protection function so as to ensure that these staff members will deliver according to the Six Nations Protection Program Design?*

It was pointed out that part of the next stage in the designation process (i.e. program design), if it is decided to proceed, will include the development of position descriptions setting out both duties and minimum qualifications and a recruitment and training plan – and that it would be important to ensure that the people hired are both clear about and prepared to serve as per Six Nation-specific protection policies and procedures.

- *will there be a transition plan to ensure that responsibility for children currently in care of the CAS will not experience any negative impact as a result of Six Nations assuming responsibility for protection?*

It was noted that Ontario will require that, with designation, there be a transition plan covering the transfer of responsibility for the children/youth currently in care of the CAS (and for their families) to ensure a minimum of disruption. Akwesasne was referenced as an example: that First Nation assumed responsibility for receiving and responding to all new reports that a child or youth might be in need of protection as of a specific date – and then proceeded to take responsibility for any case files initiated prior to that date on a case-by-case basis over the next several months.

- *how quickly can a program design be developed and acceptance by Ontario negotiated (and expression of concern about more children being taken into care by the CAS in the interim)?*

It was suggested that, given the program design work done in 94/95 and the probability that First Nations such as Akwesasne will be willing to share the operational policies and procedures they have developed, it should be possible to complete the program design work and, if so decided at that point, to initiate designation negotiations by December 31st, 2012 (targeting April 1, 2013 as the target date for designation).

It was also suggested, that Six Nations might be able to convince Ontario to provide not only the funding required to carryout the program design work, but also the funding required to hire a number of workers to “shadow” NSB protection workers while this work is being carried out. This would provide Six Nations the opportunity to develop its protection workers before designation; but also, to be much more involved and therefore have direct influence in NSB protection work from the point of initial investigation (something the existing Six Nations CFS Prevention Program has not had the resources to do) prior to a Six Nations’ designation.

- *will there be enough funding to ensure effective delivery of the child protection function by Six Nations?*

It has been noted that the exercise of the protection function is funded by formula based on the number of reports received, the number of investigations initiated, the number of on-going service cases opened as a

result of investigations, the number of children in different types of care, etc.

Given that protection services funding will initially be based on the CAS/NSB numbers, the initial funding should be the same as the funding received by the CAS for NSB service delivery on reserve.

- *will funding be increased for traditional or customary care?*

It was noted that under Part X of the CFSA, "customary care" (which is defined by each First Nation) can be used as a means other than foster care of ensuring the safety and development of children and youth who cannot remain in their own home – and that, typically, this means placement with an extended family or other community member whose home meets provincial standards (as these are applied by the First Nations Program staff) and who are willing to engage in training as alternative care providers.

It was also noted that under Part X, the organization responsible for protection in the area has the ability to pay a subsidy equivalent to a foster care subsidy to the family caring for a child in need of protection under a customary care arrangement. Since the funding required, to provide any alternative care to a child in need of protection, must be paid, if there is an increase in the use of customary/traditional care (as opposed to foster care), the funding will be available.

- *will we be able to secure additional funds to support an enhanced primary and secondary prevention focus (to reduce the need for protection interventions)?*

This question cannot be answered yes or no at this point. Prevention services funding is not based on a formula.

It can be expected that Six Nations will retain the prevention services funding it is currently receiving - and that Ontario will shift any prevention services funding currently provided to the CAS for the NSB operation to Six Nations. Whether we can secure additional prevention services funding (should it be determined in the program design phase that an increase is required) will be a subject of the designation negotiations should it be decided to proceed to that stage.

Conclusion

It is reasonable to conclude:

1. that CAS delivery of the protection responsibility on Six Nations' Territory is of concern to a significant portion of the Six Nations' population,
2. that there is no opposition to moving into the second, design phase of the designation process,

3. that community members and program staff would prefer that a decision on entering into actual negotiations respecting designation be taken only after a program design has been developed and judged, through further community discussion, an acceptable community-based approach to ensuring the protection of children.

Appendix 1

Six Nations of The Grand River Territory

Child Welfare Designation

A Discussion Paper

Prepared by the Child Welfare Designation Steering Committee

December 2011

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PROTECTING OUR CHILDREN

INTRODUCTION

Six Nations of the Grand River Territory is, once again, considering taking responsibility for protecting those of our children and youth who are suffering from abuse or neglect.

Historically, we, as a Nation, looked after our own without outside involvement, and we never formally gave up the right to do so. However, for many years now, the responsibility for protecting our children has been exercised by the Brant County Children's Aid Society (CAS) under provincial and federal laws and agreements.

We do have a long-established Child and Family Services Prevention Program (1980's), funded by Ontario and Canada, which provides services to families and their children on a voluntary basis; but we do not hold legal responsibility for determining if any of our children are being abused or neglected, or for pro-actively providing the services needed by these children and their families in order to ensure the children's safety and well-being.

In 1994, after extension community consultation, a decision was made by Six Nations to take back responsibility for the child protection function, and an agreement was signed with Ontario for the authority and funding required in 1995. However, for a variety of reasons, not the least of which was a unilateral decision by a new Ontario government to cut the funding that had been agreed to, we decided not to proceed at that time.

Fifteen years on, the question as to whether or not to take responsibility for the protection of our children is again before Council. However, before a decision is made on the question, Council wants to know, through a broad consultation process, whether or not there is sufficient community member interest in and support for such action.

This brief paper has been prepared to provide a basis for discussion of the question and to help you come to an informed answer to the key question:

"Do you think that Six Nations of the Grand River should act to create our own child protection service, rather than leaving responsibility for the protection of our children to Ontario and the Brant County CAS?"

WHAT IS CHILD PROTECTION?

The various governments in Canada have established provincial, public medical systems to ensure equal access to health care when needed; a federal employment insurance system to assist those temporarily out of work; provincial social assistance systems to ensure a person or family has at least a minimum income when unable to work or work is not available and a whole series of social services to assist those experiencing problems in

daily life. Six Nations has also established and provides a wide variety of community support services (Child and Family Prevention Services Program, Mental Health, New Directions, Healthy Babies, etc.).

The same is true in respect to the safety and development of children and youth. In situations in which parents and their extended families for some reason cannot prevent the abuse and/or neglect of a child, provincial governments have enacted law (the Child and Family Services Act or CFSA) and "designated" and empowered certain organizations with the legal right and obligation to intervene and to act to ensure that the child is safe and able to continue their development. These organizations (Children's Aid Societies in Ontario) have the power:

- to intervene, involuntarily, with families "in the best interests of the child", when it is suspected that a child is being abused and/or neglected,
- to place the family under "supervision" (and provide remedial services), or
- to remove ("apprehend") the child from the situation if deemed necessary to ensure the child's safety, and place the child in another home temporarily (and provide remedial services), and
- to place the child for adoption with another family if the child's family situation cannot be changed for the better through the services provided so that s/he can safely be returned home.

These designated organizations are required by the law to investigate any report that a child may be in need of protection and to act to ensure the safety of that child should it be determined that the child is in need of protection. The circumstances in which a child may be in need of protection are defined in the Ontario Child and Family Services Act (CFSA) as follows:

- a child has suffered physical harm or is at risk of suffering physical harm inflicted by a person having charge of the child either through "failure to adequately care for, supervise or protect the child, or a pattern of neglect in caring for, providing for, supervising or protecting the child"
- a child has been sexually molested or exploited or is at risk of being sexually molested or exploited by a person having charge of the child or by another person where the person having charge should know or the possibility of sexual molestation or exploitation and fails to protect the child;
- the child requires medical treatment and the child's parent or person having charge does not provide, refuses or is unable or unavailable to provide consent;
- the child has suffered or is at risk of suffering serious emotional harm and there are "reasonable grounds" to believe that this results from the actions, failure to act or pattern of neglect on the part of the child's parent or person having charge of the child;

- the child is abandoned, the child parent has died or is unavailable and has not made adequate provisions for the child's care and custody, or the child is in a residential placement and the parent is unable, unwilling, or unavailable to resume the child's care and custody;
- a child under twelve years of age has killed or seriously injured another person or caused serious damage to another person's property, and the parent or person having custody does not provide, refuses or is unavailable or unable to consent to necessary services or treatment to prevent a reoccurrence;
- a child of less than twelve years old has, on more than one occasion, seriously injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; and
- the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is more than twelve years of age, with the child's consent.

These designated child protection or child welfare organizations do not, however, act alone. In the absence of the voluntary agreement of a family to a protection intervention and to a plan of corrective action, the protection organization must prove to a family court judge that the child is in fact in need of protection and that the plan of action proposed will serve the best interests of the child. In other words, the child protection system as a whole consists of both the designated child protection organizations themselves and the courts.

RESPONSIBILITY FOR CHILD PROTECTION ON RESERVE IN ONTARIO

In Ontario, the legal obligation (i.e. the child protection designation) to investigate and intervene if necessary to protect a child is delegated by the Ontario government (Minister of Child and Youth Services (MCYS) to several Children's Aid Societies (CASs).

For many years, the CAS responsibility to protect children extended to all First Nation territories in Ontario (under federal and provincial law and agreements to which First Nations were and are not parties) – as it still does for Six Nations¹.

However, in 1984, under pressure from First Nations, the then new Ontario Child and Family Services Act (CFSA) included a number of First Nation-specific clauses that, for example, made it possible for First Nations to form

¹ The Constitution of Canada accords responsibility for social services, including the protection of children, to the Provinces. The Indian Act holds that "provincial laws of general application" on which federal law is silent, apply on reserve. Thus Ontario Child Welfare Law as a law of general application under provincial jurisdiction applies on reserves.

their own child and family service organizations, to obtain the CAS designation to protect children and even to negotiate and secure “exemptions” from any objectionable CFSA requirements².

During the 1980’s and 90’s, a large number of First Nations created regional child and family service organizations (e.g. Tikinagan, Weechi-it-te-win, Payukotayno, Dilico, Nog-da-win-da-min, etc.) and several of these organizations have since been designated to handle child protection as well as prevention services. Most recently (September 2011), the Mohawk Council of Akwesasne’s Child and Family Services Program was designated to handle child protection on that portion of their territory located in Ontario (Akwesasne has held the protection designation for the Québec portion of their territory for over 10 years). At this time, over 75% of the First Nations in Ontario receive child protection services not from CASs, but from their own organizations – albeit under provincial law and the provincial court system. At least five additional First Nation Prevention organizations are at various stages in the process of negotiating the child protection designation.

As noted above, Six Nations was in fact designated in 1995 (and was the first (and only) First Nation to request and to be granted significant exemptions from CFSA requirements) – but chose not to proceed.

WHY WOULD FIRST NATIONS WANT THE ONTARIO CHILD WELFARE PROTECTION DESIGNATION?

In our society it is a basic expectation that people will look after themselves; and that families, nuclear and/or extended (and, in our society, clans), will look after their own.

However, it is also a basic value that our various governments (federal, provincial or First Nation) have a responsibility to assist those who, for one reason or another, cannot adequately meet all their needs on their own.

In the 1960’s, CASs removed many children from their families and placed a significant proportion of these children with non-native families in other parts of Canada and even the U.S. and other foreign countries (the so-called “60’s scoop”). This resulted in considerable conflict between the First Nations, the CASs involved and the Ontario government.

In an initial response to the outcry over the significant loss of children, the Ontario government first offered funding to First Nations to establish “prevention” programs.

² The CFSA also included provision for First Nation participation on the Boards of CASs (as a means of influencing CAS operations on reserve), and provision for “Band Representation” – i.e. the participation of First Nations as full parties to protection court actions initiated by CASs with respect to their members living both on or off reserve. The CFSA also “directed” the courts to take into account the culture, language, etc. of First Nation children in deliberating on the need for protection intervention and the plan of action proposed by a CAS to deal with the identified protection issues.

Most First Nations developed programs of prevention services in the late 1970's and early 80's, as did Six Nations, in the hope that being able to support families with child-rearing and other issues (on a voluntary basis) would significantly reduce the need for involuntary protection intervention by non-native, off reserve, CAS organizations.

For some First Nations, this prevention effort has and continues to work quite well; but for most First Nations it did not and has not worked well enough, and their children are still being lost to the child welfare system in significant numbers (despite the subsequent changes made to child welfare legislation in 1984 which gave First Nation much more influence over what happened to those of its children deemed in need of protection by CASs).

In large part, the fact that the establishment of prevention services and the increased ability to effectively influence CAS and Family Court decisions has not been sufficient for most First Nations, is a function of particular changes that have been made to the CFSA in the past 10 years, a failure of Ontario to ensure the CASs comply with the First Nation provisions in the CFSA, and of insufficient prevention services funding.

For example, specific changes to the Act brought into force in 2000 resulted in a huge increase in the number of children (both native and non-native) being apprehended and taken into care (this "millennium scoop" brought more First Nation children into care than were in the infamous residential schools). As a result of this change, CASs received significant increases in funding to handle the increased rate of protection intervention with families; but virtually no additional funding was provided to increase the prevention service activity that might have reduced the need for that protection intervention.

In fact, because of the increased CAS protection activity on reserve, many First Nation "prevention" staff find themselves with less and less time to provide early intervention prevention services as a result of having to devote more and more of their time to the increasing number of families involved with the CAS.

A recent review of the Six Nations' Child and Family Services Prevention Program found that while the prevention services budget has not even kept pace with inflation since 1994 (and the Program has had to cut back on its services), the average number of children taken into care by the Brant County CAS Native Services Branch grew by almost 300% from an average of 25 to an average of 106 and the number of staff grew by approximately 400% (from 7 to 23).

As a result of the continued loss of children and the continuing conflict between First Nations and CASs, many First Nations began taking advantage of the opportunity accorded in the CFSA to establish their own Child and Family Service agencies - as early as 1986 - and to assume responsibility for the protection function. It was thought by many, that if First Nations established their own community-based agencies and hired their own "protection" staff, they would be able to enhance their prevention services to reduce the need for protection intervention, and would be able to develop much more culturally sensitive and appropriate approaches to the protection of any children still being abused or neglected despite their prevention efforts.

The fact that assuming responsibility for protection means that First Nations continue to operate under provincial law and must (sometimes) take protection cases to the provincial courts has not deterred them taking the step.

- First, First Nation protection agencies find that there is considerable flexibility under the CFSA to deliver protection services in a more culturally appropriate manner than delivered by CASs, and that they can effectively use customary care arrangements (both short and long-term) when necessary to ensure the safety of a child.
- Second, the CFSA now provides for alternatives to court action to resolve protection disputes between families and the First Nation agency (locally defined mediation processes)³ that are intended to reduce the need to use the provincial court system to resolve protection disputes.

The fact that assuming responsibility for protection carries a “liability” for the safety of children has also not deterred First Nations from taking the step. The CFSA makes it clear that the First Nation and the First Nation Program and its staff are not liable for anything negative that might happen to a child in need of protection provided that the staff members have acted in accord with the Act. While the First Nation may face an increase in the cost of its liability insurance, the cost is included in the protection services funding available.

In short, from the mid-80’s to the present, over 75% of First Nations in Ontario have decided that they can do a better job, in a more culturally appropriate manner, of protecting their children - when and if it is necessary to do so - than can the CASs. Most of the remaining First Nations are now engaged in the process of securing designation.

All this being said, the preference of most First Nations is to protect their children under the terms of their own child and family services legislation⁴. Several First Nations and First Nation organizations are currently drafting a model for such legislation. However, it will take considerable time to complete the model to the satisfaction of all First Nations, and it will take time to negotiate the replacement of provincial law by First Nation law with the provincial and federal governments.

³ When Six Nations negotiated a protection designation in 1995, it asked for and was granted an “exemption” from the “5-day rule” under the CFSA in favour of a 30-day rule. The 5-day rule requires that when a CAS that determines that a child is in need of protection, it must apply to the courts within five days to schedule a hearing to determine that the child is in fact in need of protection, and that a particular course of action is warranted. At the time, Six Nations had argued that every effort must be made, to avoid the necessity of going to court; to resolve a protection issue with a family on a voluntary basis. Six Nations designed a process of mediation through this would be accomplished (in many if not all situations), but knew that the process would require more than 5 days. Thus, a request for an exemption from the 5-day rule in favour of a 30-day rule was made and was successful. In 2005, Ontario amended the CFSA to include what Six Nations had requested in 1994/5 – an alternative to court action. Specifically, all protection agencies are required to at least consider whether an “alternative dispute resolution process” (which includes a process designed by First Nations) might result in a voluntary agreement on the need for protection and on the course of action to be taken to correct protection issues.

⁴ In the United States, many Tribes deliver child and family services under a single federal First Nations law that partially supplants State law on the reservations.

In the meantime, while this work is being carried out, valuable experience is being gained by these First Nations and First Nation organizations through their delivery of both prevention and protection services under provincial law.

HOW DOES A FIRST NATION OBTAIN CHILD PROTECTION DESIGNATION?

If it is decided to negotiate a protection services designation, this will take a period of time.

Under Part 10 of the CFSA, any First Nation or group of First Nations can designate an organization as its "child welfare authority". If asked by this "authority" to negotiate Child and Family Services Agency status, the Minister of Child and Youth Services (MCYS) "must" enter into negotiations. The Minister "may", as a result of these negotiations, accept the First Nation "Authority", first as an "Agency", and provide funding under the CFSA for a variety of non-protection services. The Minister "may" then designate this Agency to assume responsibility for the protection function.

Ontario has gradually formalized a process through which these negotiations take place, and has defined a number of conditions that must be met through a series of stages in order for a First Nation agency to demonstrate that it has the capacity to deliver protection services according to certain standards set out in the CFSA and regulations (see attached flow chart).

1. The first stage is reflected in this consultation process – First Nations must ensure that the community gains "...an understanding of what is involved in taking on the responsibility for child welfare [i.e. protection]...", and determine that there is "community interest, readiness and support to proceed with pursuing designation".

If there is support for the move, this first stage also requires the First Nation to define the geographic area that it would assume protection responsibility for, to determine the likely size of the protection caseload that would be involved, to consider what local resources are available to support the initiative, to develop a service delivery model, etc.

Most of the work involved in this first stage of the process was completed by Six Nations in the 1994 designation process and much of the information that informed that development has been updated periodically through program reviews since that time.

2. The second stage is to develop and demonstrate "...the organizational and service delivery capacity to deliver child welfare [i.e. protection] services" consistent with provincial standards.

Assuming community support for the initiative, First Nations seeking designation are expected to prepare documentation setting out the policies and procedures that will govern the delivery of protection services in the areas of:

- governance and accountability
- financial management

- program design
- human resources
- service delivery
- protection staff orientation and training plan

Six Nations obviously has governance and accountability structures in place, as well as financial management and human resource (personnel) policies; policies that apply to all programs of service delivered in the community⁵.

A Protection Services Program design was developed in 1994 - which was acceptable to MCYS at the time - and may only need to be updated in response to various changes and experience over the past 15 years.

In addition, protection service descriptions, service delivery policies and procedures and job descriptions were developed in 1994/95. These will require significant updating due to changes that have been made to the CFSA in the intervening years. However, there are now many models to work from in these areas given that there are now several designated First Nation agencies in operation.

Finally, the First Nation seeking designation must develop a "transition plan" under which, if designated (typically with conditions), it would begin implementation of the delivery of the protection service.

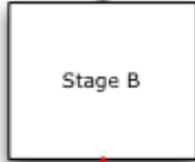
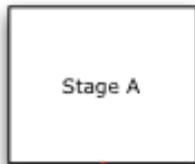
3. Once these documents have been completed, they are reviewed by a "Capacity Review Team" appointed by the Minister of MCYS to advise him or her and to recommend whether or not to proceed to the "transition stage" of the process, and, eventually, whether or not to designate (without conditions) based on demonstrated capacity to deliver.

Ontario provides funding to support each stage of the designation process.

Some individual First Nations and some groups of First Nations have found that the designation process takes several years. However, given that Six Nations has a well-established prevention services program in place and that much of the designation process work was completed in 94/95 and needs only be revised to take into account changes since that time, it is likely that designation to deliver protection services (in place of the CAS) could be achieved in one or possibly two years.

The following Diagram sets out the stages of the designation process in more detail.

⁵ There has been some concern that Six Nations would have to first establish a "corporation", separate from Council, to manage and deliver the protection function. However, where groups of First Nations have created a regional, incorporated agency to deliver these services (like CASs), this is not necessary for a single First Nation which already has an accountable governance structure in place. In its original application for designation (1995), Six Nations asked for and received an exemption from the incorporation requirement under the Act. Most recently, Akwesasne, asked for and received this exemption. Therefore, while incorporation of a body (under provincial or federal law) to deliver protection service is an option; it is not a necessary requirement for individual First Nations.



ASSESSMENT OF INTEREST AND SUPPORT

- Engage, inform and seek advice from the community re: protection designation
- Assess community interest and support for designation
- Determine geographic area that will be served
- Estimate protection workload
- determine local resources available to support protection service
- Determine CAS position re: First Nation designation

Make decision to proceed or not proceed

CAPACITY DEVELOPMENT RE:

- Governance and Accountability
- Financial management
- program design
- human resources
- service delivery
- staff orientation and training

Review by MCYS Capacity Review leading to recommendation to Minister to proceed to the transition stage

TRANSITION

- Develop transition plan
- Recruit/Train staff
- Finalize workload projections
- Finalize funding requirements
- Finalize protocols with other organizations
- initiate implementation

Review by MCYS Capacity Review leading to recommendation to Minister to Designate or Designate with conditions

DESIGNATION

- With conditions
- Without conditions

SUSTAINING CAPACITY

- Implementation reviews

Appendix 2

Specific Questions/Concerns Raised By Session

1. Initial, Open Community Meeting, Social Services Gym, December 21, 2011

1. A concern was expressed about restrictions, apparently in the legislation, currently preventing family/clan involvement in a CAS case. The participant also asked about the CAS denying that a home meets provincial standards for the purpose of providing care to a child. Finally, the participant noted that a history of trauma experienced by some families (e.g. you've been in residential school – how could you look after kids if you've had this experience) is used by the CAS as a barrier to being involved.
2. Can family/clan involvement can be designed into the program?
3. Why did the community did not proceed to take on protection back in 1995 when an agreement had been signed and designation granted?
4. A participant indicated they wanted but were having trouble getting access to the '95 proposal.
5. A participant noted that George Simard (E.D. of Weechi-it-te-win Family Services) says he's very successful doing things in their own way – and asked if we are aware of some of the things he does differently and whether or not this information would be useful to Six Nations.
6. If we take on protections, what will happen to current foster homes and kids in these homes – they wouldn't be homeless would they?
7. Will the present, unionized NSB staff have successor rights to continue to be employed by a Six Nations protection program?
8. Can the individual Nations making up the Six Nations of the Grand River develop their own C&FS Program and assume protection responsibility for their children? The participant noted that the CAS ignores those helping a family (including the clan mothers).
9. Is this forum considered stage "A"?
10. Why such a tight timeline for reaching a decision respecting taking responsibility for protection (i.e. March 31st).
11. A participant noted a concern that children are being taken and adopted out. He specifically wanted to know why there isn't the counselling needed to help these families stay together given that Six Nations has a child and family services program.
12. A participant asked if the petition that has been given to Council will be taken into account?
13. A participant noted that there were 1,300 names on the petition to have the NSB office removed from the community. The participant's expressed concern about the delivery of service by the CAS and asked what it's going to look like if Six Nations' assumes responsibility - how soon will the NSB be removed and what will it be replaced with?
14. A participant noted that Bill Montour had recently spoken about the issue of losing our children – noting that children under 7 who are taken from their homes must be placed for adoption after a certain period of time in foster care.
15. A participant asked if a Six Nations' Protection Program would work just on reserve or, as well, with Six Nation families living off reserve?
16. A participant noted that when the CAS opens a file, there is paper signed as to whether or not the family wants Six Nations' involved – if they don't want Band to be involved, SN CFS and Band Rep can't be involved.

17. A participant asked what the duties and responsibilities of Band Rep are.
 18. A participant indicated that there had been discussion with the staff of the NSB of the CAS in which it was suggested that a board with clan mothers be created to oversee what's done; and noted that's what some would like to see happen so that the best interests of kids are put ahead of other considerations.
 19. A participant asked about resources available to tell us about what's going on elsewhere.
 20. A participant asked about the different phases and different levels of community input that would be involved in the process of negotiating designation (what's not working now, what should replace it, what about financial support).
 21. A participant commented that clan mothers and their helpers have been meeting with clients over the past 3.5 years - but that the CAS has asked us to "leave" based on "confidentiality" concerns; and that the CAS staff tell families to sign or else they won't see their kids.
 22. A participant asked how the committee will determine the level of community support for establishing a Six Nations' Protection Program.
 23. A participant commented that we are talking about a year and a half to go through the designation process - which means more kids will be gone. It was stated that we need to FIX starting tomorrow - not two years from now.
- 2. Open Community Meeting, Social Services Gym, January 26, 2012, 7PM**
No one showed
 - 3. Open Community Meeting, Social Services Gym, January 27, 2012, 2:30PM**
1. What will a SN Protection Program look like?
 - 4. Open Community Meeting, Stoneridge, February 8, 2012, 6:30 PM**
 1. How many children are in care?
 2. Is the current NSB all about the money?
 3. How could the model be different?
 4. How long does it take for crown wardship?
 5. Can we get sample model from Akwasasne?
 6. What kind of education would workers need with the new model?
 7. Would families be able to help more under the new model?
 8. What is customary care?
 9. What is the difference between temporary wardship to crown wardship?
 10. What has the authority to take a child from the foster home that is doing wrong to the child?
 - 5. Open Community Meeting, Social Services Gym, February 10, 2012, 1:30 PM**
Did interview with 2 newspaper reporters - one community member showed up.
 - 6. SN SA Staff Meeting, Stoneridge, February 13, 2012, 9 AM**
 1. Why is Child and Family Services not cooperative? Clients complain about CF&S worker, and the worker gets defensive and is no helpful.
 2. CAS is not helping the whole family.
 3. All Six Nations agencies not working as a team. Need more community collaborations, less case management.
 4. Too many working in silos - find this problematic in being effective.
 5. Liability issue - afraid of walking into someone's house
 6. accountability of protection program - to elected Council? To confederacy?
 7. Need for community education re: enhanced prevention effort vs. protection
 8. **Program Design issues** - too much case management, neo-colonial models (not culturally appropriate), values have to change; band reps not

using their authority --- may be band reps are not effective, 9 to 5 mentality (no one likes to work overtime), low pay, lack of resources, economic disparities,

9. What if Six Nations does not take on? Will be fighting for extended family members to take on.
 10. Suggestion to revamp or retrain current CAS workers: re-education or fix what is there.
 11. The working committee needs reps from all organizations.
 12. CAS focuses on child versus the family.
 13. Will diversity be taken into consideration? (with new model and with ADR)
 14. Foster Homes – is the criterion going to change, lack of resources, no support for foster homes
 15. Finding Funding for transition – opportunity to get child and family services workers to shadow CAS workers
- 7. Open SN Staff Meeting, Stoneridge, February 14, 2012, 10 AM**
No One showed up
- 8. Open SN Staff Meeting, Stoneridge, February 15, 2012, 10 AM**
No One showed up
- 9. SN Family Health Team Meeting, Stoneridge, February 15, 2011, 2 PM**
1. much concern around establishing a clear distinction between politics and service delivery – how would protection delivery be structured and held accountable to the community?
 2. view assumption of responsibility for protection as a further opportunity to re-capture traditional ways and to get out from under external influences that have continued to undermine traditional values and ways
 3. Suggestion that there is too much case management and not enough service delivery in the programs at SN – especially SNCFS
- 10. Open Staff Meeting, Stoneridge, February 16, 2012, 10 AM**
No One showed up
- 11. Open SN Staff Meeting, Stoneridge, February 16, 2012, 2 PM**
No One showed up
- 12. Open Community Meeting, SS Boardroom, February 16, 2012, 4 PM**
1. Need to know the rights of parents and grandparents. CAS using the past of grandparents in preventing them from foster or caring for their grandchildren.
 2. Need advocate for mom --- or elder involvement.
 3. Need to integrate traditional supports into the new model or design.
 4. Biggest downfall is money or lack of money to help grandparents raising/caring for their grandchildren.
 5. Wonders what will be the lesser of two evils, band council or CAS.
 6. Currently, kin are not contacted to take kids/relatives into care, not given a chance to change or to consider someone has changed.
 7. Have to watch out for nepotism and friendships with new model.
- 13. Polytech Meeting, Polytech, February 17, 2012, 10 AM**
1. raised accountability/interference (political and family and staff family conflict of interest) issues
 2. raised interest in delivering to off reserve members
 3. money (need more for prevention but protection piece by same formula applied to CAS)
 4. lack of CAS willingness to involve family (clan mothers, runners, etc.) in cases
 5. reference to setting up child welfare course for BSWs with McMaster University

6. Interest in whether or not CAS has final say in what happens to kids, families.
 7. Once children are apprehended and removed does CAS consult with Six Nations?
 8. Is it the decision of CAS of where the child gets placed?
 9. Where is it written in the Indian Act that the federal law is silent?
 10. What is the rationale of the petition?
 11. For off reserve band members what jurisdiction do they go by?
- 14. Open Community Meeting, Social Services Boardroom, February 17, 2012, 1:30 PM**
1. Tried bringing young moms to the session, but they were fearful of the unknown. CAS brings anxiety.
 2. Young moms need parenting, they can't teach their children what they don't have.
 3. If Six Nations is taking over, how objective can you be as a worker in a community full of relatives?
- 15. Health Staff Meeting, Health Boardroom, February 21, 2012, 10 AM**
1. What will happen to current NSB staff?
 2. Will Six Nations develop their own design?
 3. Will grandparent's financial needs be considered when raising their grandchildren?
 4. There is no follow up with children who have been removed from their homes and go back to school.
 5. There are no support services in the community from CAS or just in general.
 6. Is it CASs responsibility to get children psychometric testing?
 7. Is there a certain number of votes of people from the community --- before we can go on to the next stage?
 8. Believes there will be barriers in communication when working with other CASs
 9. There may be financial barriers for off reserve residents - maybe sustainable if written into protocols.
- 16. Open Community Meeting, Social Services Boardroom, February 22, 2012, 2 PM**
1. Why didn't the proposal or agreement go through in 1994/1995?
- 17. Open Community Meeting, Stoneridge, February 22, 2012, 6:30 PM**
1. Will funding be increased for traditional care?
 2. Will there be increased funding for homes providing care?
- 18. Off Reserve Meeting, Niagara Friendship Centre, February 23, 2012, 10 AM**
1. Does the CAS worker have to have police officer with them?
 2. Are the 1995 documents available to the public?
 3. How are other first nations operating with designation?
 4. How many First Nations children are placed with First Nations Families?
 5. Will Six Nations have authority off the reserve
 6. Will the ADR be beneficial in Niagara?
 7. Will funding be increased for traditional care?
 8. Will there be increased funding for homes providing care?
 9. Will people have a choice in regards to mainstream CAS and Six Nations CAS?
 10. What is going to happen to change legislation to have First Nations to be able to do or have a right to their own processes or legislation regarding child welfare.

- 19. Open Community Meeting, Social Services Boardroom, February 22, 2012, 2 PM**
1. Will there be training dealing with protection in a different way or approach; and what does that look like?
- 20. Ganokwasra Staff Meeting, Ganokwasra Boardroom, February 24, 2012, 10 AM**
1. Will we be consulted in all the stages of the designation process?
 2. Will there be training dealing with protection in a different way or approach; and what does that look like?
 3. How do First Nations handle child welfare --- regards to foster homes, will the standards change?
 4. There are a lot of children requiring specialized care, is there any discussion placing them? How will that be handled?
 5. Concern: fear there will be political interference if you don't have a board.
- 21. Brantford Native Housing Staff Meeting, February 28, 2012, 10 AM**
1. The social worker reported that she has an excellent relationship with the Native Services Branch on Henry Street. She has witnessed clients' children being protected and children returning back to their parents. This unit appears to work collaboratively with families.
 2. Negative outlook on clients --- women using drugs, making poor choices, not looking at putting their children at risk.
 3. Recommends early intervention programming. CAS offers different programming but many women not accessing the resources because they don't want to be affiliated with CAS.
 4. Some not all NSB caseworkers help women and think outside the box. Some workers are better than others.
 5. Huge barriers for women is stable housing. Some are homeless and can't secure stable housing. Huge barrier is debt - no affordable housing - CAS cannot do much about.
 6. Other barriers are: dealing with trauma, addictions and mental health.
- 22. Hamilton Native Centre, March 5, 2012, 1 PM**
no one showed
- 23. Radio Session, March 1, 2012, 10AM**
- 24. Ganokwasra Client Meeting, March 1, 2012, 5 - 8 AM**
1. Who makes up the Alternative Dispute Resolution?
 2. Will there be an Aboriginal ADR?
 3. Will there be more band reps?
 4. How does CAS identify who the "family" of a person is?
- 25. SNCFS Staff, March 5, 2012, 1 PM**
1. In regards to fostering, a lot of families won't take in niece or other family members because there is a lack of money? Will foster care provisions be renegotiated?
 2. If Six Nations agrees, what is the time frame for full implementation?
 3. Will the band representative role change?
 4. Will home studies be modified?
 5. What happens to the deficit over at the CAS?
 6. How will CAS/NSB on the reserve, dissolve or move to Brantford?
 7. Where will the new CAS be located?
 8. How do we guarantee protection if we don't follow the guidelines?
 9. Why can't we use Akwasasne's model?
 10. How would liability be addressed?
 11. If we took on responsibility, our staff wouldn't be shadowing CAS workers?
 12. Why are our kids being adopted?

13. When developing the design, will front line workers have a say, would we be informed?

14. What would be the credentials of a worker if we do take over authority?

26. GREAT Board. March 7, 2012, 6 PM

1. How would delivery on reserve differ from off reserve?

27. Community Session (private home), March 15, 2012, 6 PM

1. Why does CAS not consult with extended family members?

2. Why does CAS so seldom place children with members of their extended family?

3. Why does the CAS not provide a subsidy to extended family members with whom children are placed?

4. Why does the CAS not make more use of ADR?

28. Six Nations Police

1. Question re: requirement to report suspected abuse/neglect vs. action taken by CAS.

2. Issues around professionalism.

3. Issues around dealing with neglect.

Appendix 3

Clarifications re: Changes/questions from Karen Hill, NSB re: Discussion Paper

Page 1

Paragraph 1 - Need to inform that NSB was located on Six Nations at the Band's request via BCR in 1976 (I think). The office was to serve as a vehicle through which Band members could be hired and trained to better position the Band to accept mandate.

Clarification:

The fact is that, historically, CASs have operated on First Nation territories in Ontario as a consequence first, of Canada contracting directly (with provincial agreement) with CASs to assume the responsibility for the protection of children – a responsibility that had been exercised by Canada (INAC staff) without legal authority to do so (in the absence of coverage of the matter under the Indian Act or of a federal child welfare law).

This direct Canada/CAS relationship was "corrected" in 1965 with the signing of the Agreement Respecting the Welfare of Indians under which provincial constitutional responsibility for all social services was acknowledged and Ontario began funding CASs directly to deliver child protection on reserve. In no case did Six Nations or any other First Nation ask for this to happen.

It is true that a BCR was passed at one point, asking the CAS to establish an office (the NSB of the CAS) on reserve. However, it is also true, according to a sitting Councilor, that Council at another point passed a BCR demanding that the CAS cease operations on the territory.

Last Paragraph in quotation - The statement is misleading in that it seems to imply that should the Band be mandated the province of Ontario will not be involved. The whole process is governed by the Province of Ontario as per Canada's constitution. The statement is confusing and perhaps misleading - unless the Band intends to establish a service independent of legislation, standards etc. This then is a whole other question.

Clarification:

It is made clear later in the discussion paper that obtaining designation to hold the legal responsibility for the protection of children can occur, at the present time, only under provincial law and regulations and that the provincial Courts continue to play a role. That is mentioned as one of the reasons Six Nations might not want to proceed.

Page 4

Third paragraph "At this time 75% of the First Nations in Ontario receive services not from CAS's...." This is not true as at least 50 % - some estimate more First Nations reside in urban settings and so like Six Nations would be served by a mainstream CAS. NCFST in Toronto is a mandated "Native organization" but does not represent a Band affiliated CAS so is not in the same category.

Clarification:

It is true that at least 50% of First Nation members live in urban settings; not on reserves. However, the 75% reference is to First Nations, not First Nation members.

Page 6 -

First paragraph the term 'millennium scoop' should be supported by hard data or numbers. It is highly inflammatory, while providing no real grounding.

Clarification:

This is a phrase that is commonly used to describe the huge jump in the number of children being taken into care as a result of the revisions made to the CFSA by the Harris government in 1999/2000 – for example, mandating the use of the Eligibility Spectrum as a tool to help determine whether or not a particular child is in need of protection. It is a term that has been used by both native and non-native critics alike in describing the outcome (i.e. the sudden and large increase in the number of children – both native and non-native - taken into care after 2000) resulting from those changes.

Third paragraph - "...the average number of children taken into care by the Brant County CAS, Native Services Branch grew by almost 300% from an average of 25 to an average of 106." This is simply wrong - we have a total of some 60 Six Nations children in care of which over half are Crown wards. We bring in on average 5-10 children per years.

Clarification:

The average 106 children/youth in care as set out in the discussion paper was based on data provided by the CAS in 2009/10.

If this average (for 2009/10) is incorrect, the committee would appreciate the correct figure for that year (as well as for at least the past 10 years so that we can look at the trend). If the 2009 average is right and the average has dropped to 60 that is a very positive change. However, it is still very much higher than the 1995 figure (also provided by the CAS) for 1995.

First Bullet point - "First, First Nation protection services find that there is considerable flexibility under CFSA to deliver services in a more culturally appropriate manner..." This statement is highly misleading. The numbers of children in care for First Nation mandated agencies has in fact increased dramatically once First Nations assumed mandate.

Clarification:

The reference to "delivering services in a more culturally appropriate manner" is not linked in the paper to fewer children in care. All it suggests is that there is sufficient flexibility under the Act (as evidenced by differences between the way in which the various CASs deliver on the protection mandate on (and off) different First Nation territories, and as evidenced by differences in delivery by First Nation Agencies as compared to CASs) to permit First Nations to deliver in a manner that takes into account traditional roles and intervention methods while still meeting

provincial standards.

In terms of the number of children in care of First Nation Agencies (which is a significant number), it is important to also remember that First Nations make extensive use of customary care arrangements based on agreement – often as a means of prevention – thus reducing apprehensions and the use of the courts.

Page 7

"The CFSA now provides for alternatives to court action....to reduce the need use the provincial court system. " This is a recent development and so too soon to estimate whether it will reduce us of the provincial court system. Further, there is limited and in many cases no funding available for alternative dispute resolution.

Clarification:

Alternative Dispute Resolution was a fundamental component of the protection service delivery model developed by Six Nations in 94/95. If this is still important to Six Nations, the designation negotiations (if it is decided to go forward) will in all probability contain the demand that sufficient funding be made available so that the inclusion of ADR in the 2005 CFSA amendments will become a reality in practice for a Six Nations child protection process. Lack of funding for this function could well become a deal breaker at that point.

Page 9

2nd paragraph - No reference or explanation is given around the issue of 'incorporation'. This is the primary mechanism through which a CAS limits its liability, and given community sensitivity around incorporating under the Province, this should be made clear.

Clarification:

Footnote 5 notes that Six Nations asked for and received exemption from the requirement to incorporate in 1995 and that Akwesasne has received the same exemption (September 2010). The footnote concludes with the statement, that "...while incorporation of a body (under provincial or federal law) to deliver protection service is an option; it is not a necessary requirement for individual First Nations".

Page 11

The fact that individuals are asked to simply say yes or no does not give opportunity to comment on the 'how' this should be done and so would seem to limit the need for this committee to develop a 'culturally sensitive' model. To do that it would have been helpful to ask questions or provide options for discreet service functions.

Clarification:

At this stage, Council is simply trying to determine if there is community support for moving into the next stage of the formal designation process. As you (and others in the discussion sessions have rightly noted), it is hard to answer "yes" or "no" to the question of applying for designation without having a model or models developed. In response, during the discussions, it

has been noted that there are several decision-making points in the process. Right now the question is yes or no to proceeding to the next stage on the designation pathway as laid out by Ontario – i.e. model development. If the answer is yes, work will begin on developing a model or models. Once that model or models has/have been developed, it/they will be circulated for review and further discussion – at which time a second decision will be made to apply for designation (on the basis of a preferred model) or not as the case may be.

Anticipating that some people would want, at this early stage, to put forward ideas that could be incorporated into the model, the yes/no form was followed by space to enter comments.