Six Nations of the Grand River Territory

Child Welfare Designation: Stage B

General Accountability and Program Organization Options

Draft for Discussion

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Introduction

The Child and Family Services Act (CFSA) indicates that organizations funded by Ontario, in particular, to exercise the child welfare protection function, will be not-for-profit corporations, incorporated under either provincial or federal Corporation Legislation.

The Federal/Provincial Corporate Model

Under the "corporate" model assumed under the legislation, agency staff members are hired by and accountable through Supervisors to the Director of the Agency (which is named their "Authority" by the First Nation or First Nations involved, under the terms of Part 10 of the CFS Act); and the Director is hired by and is accountable to an elected (or appointed) Board of Directors. The Board Members are elected or appointed by and accountable (at Annual General Meetings) to the wider "Membership" of the corporation.

The definition of the membership of the corporation can vary widely; but in the instance of First Nation Corporate Agencies, the members are the several First Nations as represented by their Chiefs and Councils – each of which elects or appoints a person (and typically an alternate) to sit on the Board of the First Nation Agency. The First Nations influence the Agency through control of the Board positions, but the Board is ultimately responsible in provincial or federal law for the policies followed and operations of the Agency.

To become incorporated, an organization must apply to the provincial or federal government stating its "objectives" (which must be deemed to reflect the legislation under which it is to be funded) and its "by-laws" (which must be deemed as appropriate rules by which it will operate at the Board level).

The Corporate Accountability Model

There are two main reasons why Ontario Legislation assumes incorporation of organizations (transfer payment agencies) that it funds to provide any social and health services:

1. Ontario can only fund a “legal” entity that can be held accountable to the province, its legislation and regulations. If a funded corporation fails to spend the funds provided according to its “objectives” (which reflect the legislation under which the funding is provided) and fails to operate according to its “by-laws”, Ontario can simply stop funding the corporation, assume direct responsibility for the delivery of services and even take legal action against the Board of the corporation to recover losses. This has happened only once in Ontario in respect to Child Protection (Ontario took over the Kenora-Patricia (non-native) CAS and replaced the Board with an provincial official who ran the organization until such time as identified problems were resolved and a new Board could be established).

2. Ontario also wants to ensure, especially in respect to the protection of children and youth, that there will be no political interference with the delivery of services pursuant to provincial law and regulation – i.e. that the organization receiving the funds and designated as having the responsibility will be able to operate at arms length from political bodies in a community (e.g. municipal government representatives in the instance of CASs) to act in the best interests of any child.

Individual First Nation Child Protection Accountability

A First Nation is not a corporation, but is, nonetheless, a legal entity that can be held accountable for the expenditure of funds provided for a specific purpose.

Although it took some argument by Six Nations in 1994/95, and more recently in the case of Akwesasne, although a First Nation is not a corporation, it was successfully argued that these Nation’s governing structures can ensure that any attempted political interference in the exercise of the protection mandate can be addressed effectively within that structure.

In the Akwesasne model (a non-corporate, individual First Nation child protection organization – which is similar to the model negotiated by Six Nations in 1995), staff members are hired by and accountable through supervisors or unit coordinators to the Manager of the Program, the Manager is hired by and accountable to a Department Director, the Department Director is hired by and accountable to the Senior Administrative Officer and the SAO is hired by and accountable to the elected Chief and Council (which represents and is accountable to the entire community through the electoral process).

Specifically, it was demonstrated that the role of Chief and Council is clearly to establish policy, while the role of Management/Administration is to meet the requirements of the policy put in place. As long as senior and program management ensure staff are following the policies approved by Chief and Council (which must also be acceptable to Ontario), management of the protection function is in a position to refuse attempted political interference knowing that procedures are in place to sanction any such efforts by the Chief and/or Councilors.

Ontario remains in a position to withdraw designation and funding (as with a corporation) if such changes made to the First Nation’s child protection policy are deemed unacceptable in terms of the CFS Act and regulations (or such alternative policies as are adopted by Chief and Council are not accepted through the First Nation exemption process provided for under the CFS Act).

Given this argument (backed up by documents governing the role and procedures of Chief and Council in the instance of Akwesasne plus the fact that Ontario has a long history of funding First Nation non-protection Human Services Programming without incorporation), Ontario granted an exemption from the requirement that a single First Nation protection program must be incorporated in order to receive designation (first in 1995, more recently in 2011).

To conclude, while a single First Nation has the option to Incorporate, it is not required given the exemption now on the provincial books.

First Nation Accountability Structure Options

1. Theoretically, under Part X of the CFS Act, Six Nations could "designate" the existing, external Brant CAS "corporation" (or any other CAS or any other non-designated human service delivery agency that would agree to seek child protection designation) as its "child welfare authority" on the basis of negotiation of a relationship that was deemed to ensure culturally appropriate/sensitive delivery of protection services to members.

   Given the history of Six Nations/CAS relationships and given that it is unlikely that an existing CAS would want to adopt two, potentially very different service delivery models, under one roof, this is unlikely to be a realistic approach.

   Six Nations could also negotiate with an existing, incorporated and designated First Nation Child Protection Agency, to accept designation as the Six Nations Child Welfare Authority. However, the only potential candidates are Akwesasne and Toronto Native Family Services, which, while they could establish branch office, are unlikely to want to do so. The London-area First Nation agency is perhaps a possibility but is as yet not designated as a Child Protection Agency.

2. The second corporate option is to create and incorporate (under provincial or federal corporations legislation) a Six Nations' Child Welfare Organization– and maintain a degree of First Nation government control of the corporation through careful definition of the "membership" of the corporation, through the composition of and means of determining the members and officers of the Board of Directors and through the primary fact that it is the First Nation government that designates the "corporation" (and can therefore remove the designation) as its Child Welfare Authority.

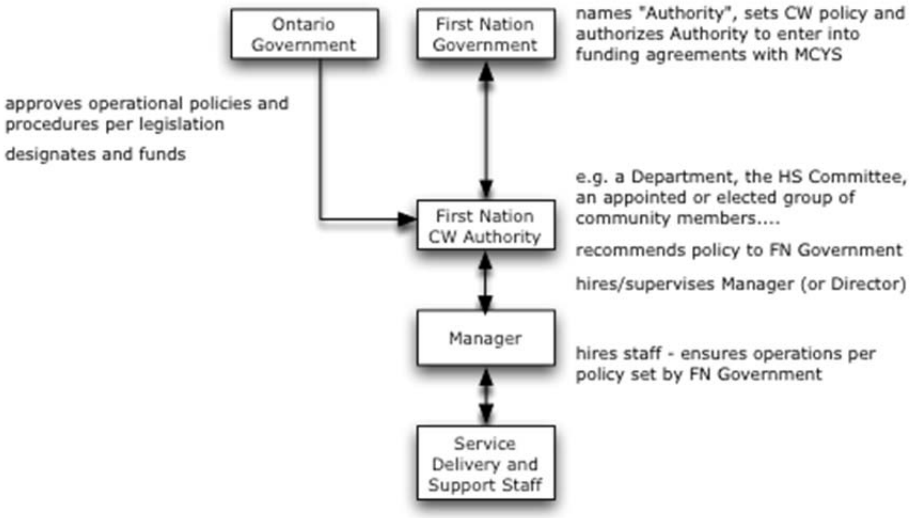
   For example, the membership of the corporation could be limited to elected Councillors or limited to elected Counsellors plus representatives of various community groupings, and the Board of directors could be designed to ensure a certain number of the Directors elected by the membership are elected Counsellors.

   The primary problem with these corporate approaches is that a "corporation" is a legal entity in of itself, established under provincial or federal, not First Nation law. This fact makes it theoretically possible for the corporation, whatever its composition, external or internal, to come into conflict with First Nation Government and to use its non-First Nation legal status to pursue such conflict as might arise in the courts (and there are several examples of this occurring). Since the First Nation Government designates the corporation as its Child

Welfare Authority, it at least has the power to withdraw this designation and name another, non-corporate body as its Authority. However, as noted, it is not necessary for a First Nation to incorporate a body as its child welfare authority.

3. Since Ontario has once again granted an exemption from the need to incorporate a First Nation-designated child welfare authority (to Akwesasne), the other accountability structure options essentially revolve around the ways in which a First Nation establishes and designates a body to act as its child welfare "authority". And there are several non-corporate accountability structure options – all variations on the general, non-corporate model diagramed below:

A General Non-corporate First Nation Accountability Model:



3.1 The child welfare "Authority" could be the First Nation elected Government – and the person employed to manage the protection program (also named the local director for purposes of the Act) could simply report to the Government through the Senior Administrative Officer.

However, this first non-corporate option may be problematic for MCYS in terms of the arm's length issue. In addition, it is problematic for a First Nation because a First Nation Government is not likely to want to reduce its status to that of a provincially-designated child protection agency.

3.2 the "Authority" could be a Committee of Government (e.g. the Human Services Committee) - and the person employed to manage the protection program (the local director under the CFS Act) could report directly to this committee and through it to the First Nation Government.

3.3 the "Authority" could be a Committee of Government (e.g. the Human Services Committee) - and the person employed to manage the protection program could report through a Department Director to the SAO to this Committee - and through it to the Government. This option was chosen by Six Nations in 1995.

3.4 the “authority” could be a service department (e.g. Social Services or Health) - and the person employed to manage the protection program could report to the Director of the Department and through him or her to the CAO and the Human Services Committee of Government to Council. This option is consistent with the current administration and practices of Six Nations’ Elected Council.

These four non-corporate options (3.1 to 3.4) reduce community member influence on the shaping of policy guiding service delivery through the election of the Government members (Chief and Counsellors).

In order to allow for a broader degree of community member influence, Six Nations could, under any of these four non-corporate options:

i. establish a position within its child welfare “Authority” to provide cultural guidance to the Authority and directly to the manager of the program in respect to shaping policy (for approval by the First Nation Government) and in respect to addressing specific issues as they arise. Akwesasne has included such a position (along with hiring traditional practitioners) as a method of ensuring culturally appropriate service delivery.

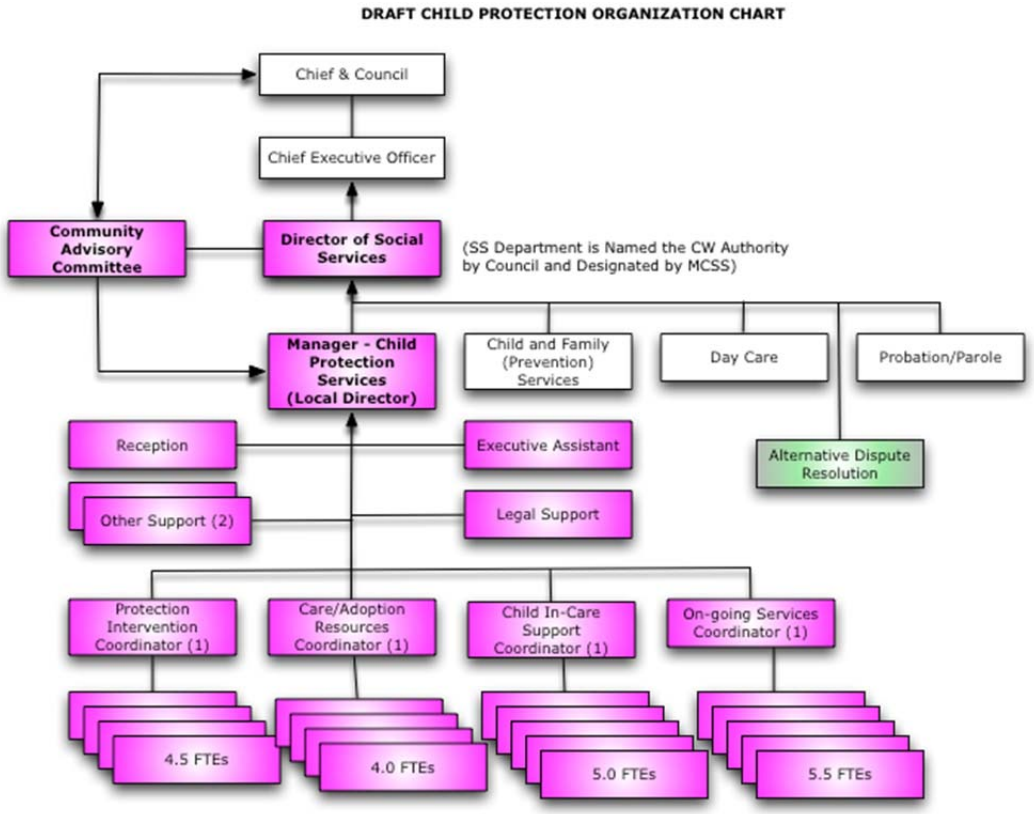
ii. establish an “advisory” committee (to the “Authority” and the manager of the Program) that is representative of the various interests in the overall community (from care givers, to youth, to service “consumers”, to those following traditional norms and practices, to elders, to human service practitioners, etc.).

iii. establish its own “corporate” law, establish a Six Nations’ “corporation” pursuant to this law and then designate this “corporation” as the Nation’s child welfare authority. The “membership” of this “FN corporation” (those that select the Board members and to whom the Board members are accountable) could be defined in different ways ranging from all community members to representatives of the various components of the community with an interest in child and family services (from care givers, to youth, to service “consumers”, to those following traditional norms and practices, to elders, to human service practitioners, to members of Council, etc.).

    This particular option ensures the greatest degree of community member influence on the delivery of child protection services (although still under the framework of provincial child welfare law) and maximizes the degree of “arm’s length” relationship between the First Nation Child Welfare Authority and the First Nation Government – while at the same time ensuring that <u>both</u> the “authority’s” recognition as a corporation and its designation as the Nation’s child welfare authority remains in the hands of the Six Nations’ Government (so that the problems that can arise between provincial or federal corporations and First Nation Government cannot arise).

First Child Protection Service Delivery Organization

The following diagram sets out one way of organizing the delivery of the Child Protection function (within the existing administration and practices of the Six Nations' Elected Council and with provision for an community member advisory committee).



In this model, which is typical of the way in which other First Nations have organized child/youth protection service delivery, the delivery of the protection function is organized around 4 key sub-functions:

1. Intervention – receipt and investigation/assessment of reports that a child or youth may be in need of protection.

2. Alternative Care Resource Development and Support – the recruitment, training and provision of on-going support to families willing to provide temporary or permanent care (whether the care is provided under foster, kinship, customary or adoption arrangements).

3. Child-in Care Support – the provision of support to children and youth who are in alternative care on a temporary or long-term basis.

4. On Going Services – the provision of support to families experiencing a protection issue whether or not their child or children have been taken into care.

Provision could be made within each of the 4 divisions for the employment of persons holding responsibilities within the traditional community structure and/or who practice traditional methods of support.

Since Alternative Dispute Resolution (i.e. alternative to court proceedings) is likely to be emphasized by Six Nations, the diagram includes ADR as a separate function within the Social Services Department (separate from the delivery of protection services as required under the CFSA). Responsibility for ADR could also be assigned to another department or made a separate department reporting through the SAO to Council.

Please note that the numbers included in the diagram add up to the number of staff currently in place in the Native Services branch of the CAS. There is another 16 staff employed by the Aboriginal Services Unit of the CAS, which serves native persons resident off reserve in Brant County – most of whom are Six Nations' members or relatives.

In addition, at this point in the Committee's analysis, it is not clear how many management, administration and legal services positions are involved in the delivery of the protection function on reserve and to native children and their families off reserve.

For discussion.