

Six Nations of The Grand River Territory

Child Welfare Designation Stage B: Program Design

**A Discussion Paper
(DRAFT#3)**

Prepared by the Child Welfare Designation Steering Committee for
Community Discussion

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INTRODUCTION

In December 2011, the Elected Council of Six Nations of the Grand River Territory mandated a Committee made up of Councilors, program staff, Clan Mothers and community members, to undertake discussions with community members on the question of whether or not the community "...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?"

In response to the positive support for creating our own child protection service (as reported in March 2012), Council mandated the Committee to proceed with the second phase of the protection designation process: i.e. the design of a program that would assume responsibility for child and youth protection (assuming a decision to proceed to Phase 3: implementation). After some delay, funding has been acquired to carry out the design phase of the work and this work has been initiated.

As part of this second phase, the Committee has instructed the technical team to meet with any and all community members who would like to voice ideas about how the protection function should be organized, held accountable to the community and delivered. This process will begin with a public meeting that will focus on how a Six Nations child protection program would be best held accountable to the community and about how best to organize the delivery of protection services. Subsequently, the technical team members will meet privately with any individuals or groups who want to present ideas about how a protection program should exercise its mandate to protect children and youth in need of protection.

Much criticism was voiced during the community discussions about the manner in which the responsibility to protect our children and youth is carried out by the Brant County Children's Aid Society. The focus now shifts to how we can do it better - and more in line with Haudenosuanee values.

The following pages provide a brief overview of the protection function, the principles adopted by Council back in 1993/94 as basis on which to design a Six Nations protection program and pose some questions that need to be answered in the process of designing a program that will hopefully be acceptable to our entire community.

WHAT IS CHILD/YOUTH PROTECTION?

It is probably a universal expectation or norm across cultures and societies that children's parents will do their very best to raise them into a positive adulthood – and that they will not abuse them or neglect their needs or allow them to be abused by others.

And in most societies throughout history, there was also an expectation or norm that parents would be assisted in the task of raising their children by their extended family members and clan – to the point of it being an obligation for another family or clan member to intervene to sanction inadequate or abusive parenting, or even to take over the care of a child if the child's parents should not correct unacceptable parenting or should become disabled, ill or die.

Up until a few hundred years ago, there were no social service agencies (other than perhaps Religious Organizations) and certainly no agencies legally designated as "child protection agencies" in any society – the family and clan systems were sufficient to ensure that child and youth were not abused or neglected – or, if they were, action was taken to correct the situation.

Gradually however, with industrialization and urbanization, the family/clan system in most societies broke down. This system has been augmented, if not fully replaced, first (in the 1800's), by charitable organizations that took in and cared for abused and neglected children outside of any legal framework; subsequently by provincial, government funded organizations like Children's Aid Societies (CASs) operating (in Canada) under provincial laws requiring that children not be abused or neglected.

And this "new" system of ensuring the protection of children and youth who were being abused or neglected was gradually imposed on our society as well (beginning in the early 20th century).

Essentially, although they can provide other services (e.g. preventive, early intervention services on a voluntary basis), the central role of Ontario Children's Aid Societies is to respond to reports that a child may be need of protection – first by investigating in order to determine whether or not the reported child or youth is in fact in need of protection; and, where it is determined that the reported child or youth is in need of protection, to intervene in the family situation as extensively as required to ensure the child or youth is no longer in need of protection.

CASs are required (where their decision that a child or youth is in need of protection is disputed by the family) to prove to a Family Court judge that: a) the child or youth is in fact in need of protection and b) that a particular course of action or plan of service/care is appropriate (or, since 2005, to initiate a voluntary process of "alternative dispute resolution (ADR)" that results in a resolution of the dispute).

When it is agreed or determined that a child or youth is need of protection, an agreed (or court-imposed) plan of service is initiated to ensure the child or youth is safe and well cared for. A CAS has many tools at its disposal to achieve this assurance. For example, the CAS:

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- can place the family under “supervision”, require the family take specified steps (e.g. psychological assessment, parenting skills training, place a young child in day care, make regular medical and dental appointments, etc.) and visit the home periodically to ensure the child or youth is no longer in need of protection;
 - can (but rarely do) place a homemaker in the family home to observe, train and support;
 - can remove the child or youth from the home temporarily (while the parents complete requirements set for having their child return home) and place him/her in another “approved” home (the home of a relative or a friend willing to take on the responsibility, the home of a licensed foster parent, a group home, etc.).
 - can remove the child or youth from the home permanently (make him or her a “crown ward” - and place them in another home with the objective of finding an adoptive home.

THE BASIS OF FIRST NATION ALTERNATIVES TO CAS DELIVERY OF THE PROTECTION FUNCTION

A key problem for First Nations has been that CASs historically applied their responsibility to protect children and youth on reserve without reference to the traditional norms and social structures traditionally tasked with this responsibility. This has resulted in continuous conflict between most First Nations and the CASs that hold responsibility under law for the protection of our children and youth.

During phase 1 community discussions, several concerns were voiced about the CAS approach to protecting children – 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).

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- 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 (no literature on rights is being provided to families and relatives).
 - 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.

There are several "Indian and Native" provisions incorporated in to Ontario child welfare law to address this conflict (beginning in 1982 in response to First Nation objections to CAS protection operations on reserve); for example:

- The provision of funding to establish "prevention programs" that were intended to reduce the necessity for protection intervention by CASs.
- The creation of the role of Band Representative.

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- The inclusion of a requirement that CASs inform and consult with First Nations about cases involving their families, children and youth.
 - The inclusion of a requirement that CASs and Family Court Judges consider the culture, language and traditions of aboriginal children and youth in making decisions.
 - The inclusion of a requirement to consider the possibility - where alternative care is deemed required - of placing the child or youth with a member of his/her extended family, a family in the community or native family outside the community), etc.

Despite these changes, the conflict continues between First Nations and CASs (as was amply demonstrated during the Phase 1 community discussion sessions).

However, there have been four other changes made to Ontario's child and family services legislation that can be used to remove this source of conflict:

1. It was made possible for First Nations to create their own child and family service organizations, to seek designation of these organizations to handle the child/youth protection function and thereby end external CAS interventions on reserve (Part V of the CFSA).
2. The concept of customary care was recognized in the legislation.
3. It was made possible for the provincial government to grant exemptions to requirements set out in the CFSA and regulations in favour of alternatives more reflective of First Nation cultures and traditions.
4. Alternative (to the courts) Dispute resolution has recently been recognized in the legislation (a concept first proposed by Six Nations in 1994).

In 1994, when a first attempt was made by Six Nations to re-assume local responsibility for protection of children and youth under these provisions in the CFSA, Council first adopted a Child and Family Services Framework policy (built through community consultation) to guide the development of the Six Nations' Child and Family Prevention Services Program – which at the time was to have included responsibility for the protection of children and youth.

As set out in first two principles underlying that Child and Family Services Framework Policy, Council felt there was a need to first express the traditional expectations placed on parents, extended family and clan around child-rearing in our society:

1. The strength and well-being of our Nation rests in the strength and well-being of each of us individually and of each of our extended families and clans, as well as in the strength and quality of our relationships with each other and with the Earth.

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2. The first and fundamental obligation and resource for the nurturance, and protection of our children and for the provision of emotional, mental and material support and healing to children, adults and the elderly rests with and in each family - both immediate and extended, and with the family's clan.

At the same time Council recognized that, given the negative impact of recent history on our traditional ways – the impact of the residential school system, the imposition of the external legal system and, for that matter, the continuing impact of external child protection agencies up to the present – there are going to be situations arise in which parents do not or cannot live up to their traditional child-rearing obligations, and in which the extended family and clan either do not or cannot exercise their traditional obligations to support, intervene and even take over responsibility for raising a child or youth who is being neglected and abused or not kept safe from the abuse of others.

Given that these situations will sometimes arise in which a child or youth is being neglected or abused and in which family/clan support fails, the Child and Family Services Framework Policy was also based on a third principle:

3. When the need for support, assistance and healing exceeds the capacity of immediate, extended family members and clan, our community as a whole has an obligation to provide support.

However, despite the fact that it was recognized that “the community as a whole has an obligation to provide support”, the Framework Policy (and subsequent program design) required that:

4. All community support provided will be *community specific* - designed and delivered in a manner that addresses local needs; is fully consistent with and reinforces our culture and our informal patterns of community sharing, caring, healing and cooperation; incorporates traditional Haudenosaunee teachings and practices; draws both guidance and practical assistance from those holding traditional and contemporary support obligations and our elders, and reflects concern for the impact of present decisions on future generations.
5. Community-level support will, in particular, be provided in an integrated, holistic and family-focused manner, the objective of which is to help prevent the development of problems whenever possible, and, when problems have developed, to heal and to strengthen individuals, families and the informal and traditional systems of reciprocal support; and to avoid the creation of dependency on the services provided.

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6. Community support will also be provided in a manner that is least intrusive, non-judgmental, non-adversarial and respectful of the individual and family in need.
 7. Community support will be provided by a *well-trained staff*, capable of assisting in a manner that is consistent with, works with and strengthens the informal and traditional patterns of community sharing, caring, healing and cooperation, and the historical roles, within these patterns, of particular community members such as clan mothers, runners, spiritual healers and elders.
 8. Community support will be *community determined* - designed and developed within the community by and in consultation with our members.
 9. Community support will be *community based* - managed and delivered within the community.
 10. Community support will be *community controlled* - provided under the authority and sanction of our government and fully accountable to our members.

SOME PROTECTION PROGRAM DESIGN QUESTIONS

Some of the key questions that must be answered in designing our own, culturally appropriate program (within the framework of these principles and within the parameters of provincial legislation and any alternatives set in place through exemptions) are:

1. How should the Program be held accountable for its operations to the Community?

CASs are “incorporated” under provincial or federal corporations law. They are “accountable” to the communities they serve through a Board of Directors elected by “the members of the corporation” who are representative of various community interests. This Board establishes the policies and procedures that the CAS operates under, the definitions of services the CAS provides, the organization of the CAS and the specific job descriptions of staff (although all these must be consistent with requirements set out, by Ontario in the Act, regulations and policy directives).

Our Programs are typically accountable through a Manager, a Department Director and the SOA to a Committee of Council and Council as a whole. They operate under Committee and then Council-approved policies and procedures, service descriptions, and organizational structure (which must be consistent with funder requirements). Some of these Programs have established an Advisory Committee to provide a forum for community interest to have an impact on Program design and operations.

Some Programs (e.g. Ganokwasra) are accountable to a Board of Directors (which includes a representative of Council) that approves operational policies and procedures, organization structure, etc. on behalf of the community; but is NOT incorporated under either provincial or federal law.

For a more detailed discussion of accountability and service delivery organization see the companion document "General Accountability and Organization Options".

2. What services should be provided by Six Nations' Protection Program?

Currently, the CAS (Native Services on and off reserve) is funded to do more than provide protection services – i.e. it also provides early intervention services to "prevent" the need for protection intervention and to provide supports to families that are referred for or request services on a voluntary basis.

We have had a Program (Six Nations Child and Family Services) in place since the 1980's that provides prevention services on a voluntary basis.

If we should proceed to take over the protection function, Six Nations could receive the "native services" funding and two options to consider:

1. spend the money entirely through the new Protection Program (i.e. offer both prevention and protection services) **OR**
2. use some portion of or all the prevention services component of the funding received to expand our voluntary, prevention Child and family Services Program (and perhaps other community-based programs that serve the needs of children and their families) in the interests of reducing the need for protection intervention.

3. If a Six Nations' Protection Program is to follow the principles set out above (or a modified version of these principles), how exactly should it involve traditional roles, responsibilities and methods of intervention, support and healing?

In this regard, some First Nation protection agencies have established an advisory committee to advise the Protection Program's Management and staff on ways to respect and/or incorporate traditional practices; others have created paid positions in the Program for persons who hold traditional roles and engage in traditional intervention and healing practices.

Most are now making extensive use of alternative dispute resolution (as a means of minimizing the necessity of using the provincial family courts), and are also making extensive use of the customary care provision of the CFSA (which provides for financially supported placement of children and youth, when necessary, with extended family members in the community).

Some have established family healing lodges that offer residential programs to whole families.

In addition, the work of First Nation Protection agencies is typically based in carefully worded operational policies and procedures, which, while complying with provincial requirements and standards (for which an exemption in favour of an alternative has not been pursued), emphasize a more traditional approach to service delivery.

Furthermore, job descriptions are written to guide staff in their day-to-day work that reflect more traditional approaches and, in some instances, a code of ethics is written which sets out the principles on which staff are to exercise the protection responsibility.

In particular, these organizations place much emphasis on active consultation with members of the extended family when it is determined that a child or youth is being abused or neglected, or is at serious risk of abuse or neglect – and respect the principle of least intrusive intervention.

HOW DO YOU ANSWER THESE GENERAL QUESTIONS?

WHAT OTHER QUESTIONS NEED TO BE ANSWERED IN DESIGNING A SIX NATIONS' PROTECTION PROGRAM AND WHAT IS YOUR ANSWER TO THESE QUESTIONS?