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The Structure of Aboriginal Child Welfare in Canada

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The Structure of Aboriginal Child Welfare in Canada

Abstract
Aboriginal children are currently overrepresented in out-of-home care in Canada; this extends a historical pattern of child removal that began with the residential school system. The overrepresentation of Aboriginal children persists despite legislative and structural changes intended to reduce the number of Aboriginal children in care. Several recent developments suggest potential for improvement in services for Aboriginal children and families in the near future. However, greater information about the structure of Aboriginal child welfare in Canada is needed to support program and policy development. We present a broad overview of the variation in Aboriginal child welfare legislation and standards, service delivery models, and funding formulas across Canadian provinces and territories. We draw on this review to suggest specific priorities for future research.

Keywords
Aboriginal, Canada, child welfare, child protection

The Structure of Aboriginal Child Welfare in Canada

Aboriginal children comprised 6% of the Canadian child population in 2006 (Statistics Canada, 2009). According to the Constitution Act (1982), the Aboriginal population consists of three distinct groups: First Nations, Métis, and Inuit peoples. Within these groups, 65% of Aboriginal children are First Nations (Statistics Canada, 2009). The child welfare system is Canada's primary state-sponsored mechanism for responding to reports that a caregiver's actions (or failures of action) pose a significant risk of harm to a child's physical or emotional development. Placement of a child in out-of-home care is one of the system's most serious protective measures (Gough, Shlonsky, & Dudding, 2009). Aboriginal children are currently greatly overrepresented in out-of-home care in Canada, perpetuating a historical pattern of removing Aboriginal children from their homes that started with the residential school system of the past (Sinha et al., 2011).

The recent emergence of a system of child welfare agencies that are managed by Aboriginal communities, together with legislative changes across the provinces and territories, are among measures intended to reduce the overrepresentation of Aboriginal children in out-of-home care. However, child welfare agencies face the challenging task of serving Aboriginal children and families with complex needs (Sinha et al., 2011), and of doing so in contexts complicated by the intergenerational effects of past colonial, federal, and provincial or territorial policies (Evans-Campbell, 2008; Miller, 1989). Efforts to address the needs of Aboriginal families are also complicated by a legislative framework in which the federal government has responsibility for funding on-reserve health and social services for Status First Nations people while the provinces and territories fund these services for all others. Multiple evaluations point to persistent federal underfunding of on-reserve child welfare services, especially those provided by Aboriginal child welfare agencies (Auditor General of Canada, 2011; First Nations Child and Family Caring Society of Canada, 2005).

Several recent developments in Canada point to a growing public awareness of the issues involved and to increasing government attention on the challenges in Aboriginal child welfare. A 2006 class action settlement allocated federal funding for the establishment of a "truth and reconciliation" commission mandated to promote knowledge about the long-term impact of residential schooling (Indian and Northern Affairs Canada, 2010b). In 2007, the Canadian Parliament formally supported *Jordan's Principle* ("Private members' business," 2007), which was an initiative intended to ensure that First Nations children receive needed services without experiencing delays or disruptions caused by disputes between federal and provincial or territorial governments or departments about payment for services (MacDonald & Craddock, 2005). The same year, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (FNCFCS) filed a human rights complaint charging the Canadian government with systematically providing less funding for child welfare services to on-reserve First Nations children than is provided for children who are off-reserve (Blackstock, 2011). Also in 2007, Aboriginal Affairs and Northern Development Canada[1] (AANDC) initiated the introduction of a new First Nations child welfare funding strategy (AANDC, 2010a). In 2008, the Prime Minister of Canada, Stephen Harper, made a formal statement of apology to residential school survivors on behalf of the government; his apology acknowledged the persistent and serious negative

[1] In May 2011, Indian and Northern Affairs Canada (INAC) changed its name to Aboriginal Affairs and Northern Development Canada (AANDC).

repercussions of residential school policies (AANDC, 2010b). Finally, in 2012 the federal court for judicial review ruled that failure to ensure comparable funding for on- and off-reserve services can be considered racial or ethnic discrimination, ending a lengthy appeals process that had blocked hearing of the AFN and FNCFCS human rights complaint filed in 2007 ("First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada," 2012).

Collectively, the above developments point to the potential for the expansion and improvement of services for Aboriginal children and their families in the near future. However, greater knowledge about the policies that shape Aboriginal child welfare is needed to support development of these services. Currently, significant barriers exist to the compilation of even basic information about Aboriginal child welfare policy and structure. Barriers include the challenge of collecting information about multiple jurisdictions in a decentralized child welfare system, limited academic literature on Aboriginal child welfare, and an AANDC culture in which even complex and essential information - such as the terms and conditions of federal funding for Aboriginal child welfare agencies – has sometimes been verbally or informally communicated rather than being published in formal documents (O. Johnston, 2009).

This article presents an overview of the current structure of Aboriginal child welfare in Canada. We review legislation, service delivery models, and funding, while placing this information in its historical context. The information presented here builds on previous work on Aboriginal children presented in the Canadian Incidence Study of Reported Child Abuse and Neglect (FNCIS-2008) (see Sinha et al., 2011; Trocmé et al., 2010). FNCIS-2008 researchers, in conjunction with representatives of the Aboriginal child welfare organizations analyzed, contextualized, and disseminated information about child welfare investigations involving First Nations children (Sinha et al., 2011) by having advisory committee members complete a two-page questionnaire about the historical trajectories, umbrella or support organizations, legislative or policy frameworks, funding models, and scope of First Nations child welfare agencies in each individual's jurisdiction. Research team members collected and reviewed legislation, government and court documents, and research reports in order to refine and provide formal references for the information provided by committee members. Advisory committee and research team members then worked collaboratively to draft and review information sheets that summarized the findings. The current paper offers a synthesis of the First Nations child welfare information collected through that process and adds information about child welfare for other Aboriginal children whenever available.

The Current Overrepresentation of Aboriginal Children in the Child Welfare System in Canada

Table 1 shows that Aboriginal children are greatly overrepresented in out-of-home care across provinces for which data is publicly available. Although provincial statistics separating First Nations children from other Aboriginal children are rare, available data suggests that First Nations children are overrepresented compared to other Aboriginal children (Manitoba Ministry of Family Services and Housing, 2009). Findings from the FNCIS-2008 report suggest that the overrepresentation of First Nations children begins at the point of first contact with child welfare agencies. In the areas served by sampled agencies, the investigation rate for First Nations children was 4.2 times that for non-Aboriginal children (140.6 investigations per 1,000 First Nations children vs. 33.5 investigations for every 1,000 non-Aboriginal children in 2008.) This overrepresentation is driven primarily by cases involving child neglect, which is

linked to factors including poverty, poor housing, domestic violence, and substance abuse (Sinha et al., 2011).

Table 1. Provincial Statistics on Aboriginal Children in Out-of-Home Care

Province	Aboriginal children as a % of the total child population	Aboriginal children as a % of children in care	Age of children covered in child welfare legislation
Ontario	3	21	0 - 16
Manitoba	23	85	0 - 18
Saskatchewan	25	80	0 - 16
Alberta	9	59	0 - 18
British Columbia	8	52	0 - 19

Note. Adapted from Sinha et al., 2011, p. 5; Trocmé et al., 2005, p.10.

The Historical Context of Aboriginal Child Welfare in Canada

Prior to colonization, Aboriginal families and communities cared for their children in accordance with their cultural practices, laws, and traditions. Culturally based systems of care shared basic tenets, including viewing children as prized gifts from the creator and valuing extended family interdependence (Royal Commission on Aboriginal Peoples, 1996). The existence and continuity of customary care traditions in Canada have been documented in a number of court cases (Zlotkin, 2009), as well as in research which, for example, demonstrates that First Nations communities rely on grandparents as primary caregivers of children more than any other cultural group in Canada (Fuller-Thomson, 2005).

The arrival of European settlers and the subsequent imposition of colonial policies disrupted traditional systems of care by imposing state practices that resulted in the removal of tens of thousands of Aboriginal children from their homes. Starting in 1879, the Canadian government systematically separated Aboriginal children from their families, placing them in residential schools in order to assimilate them into colonial culture. Residential schools also provided state care for First Nations children who were found to be abused or neglected in their homes. These practices served as the initial mechanisms for state-sponsored Aboriginal child welfare (Milloy, 1999). A 1920 amendment to the Indian Act of 1876 made attendance at state-sponsored schools mandatory for all school age children physically able to attend and allowed truant officers to enforce attendance by pursuing, arresting, and conveying to school truant children ("An Act to Amend the Indian Act," 1920, A10). Inside the schools, overcrowding and underfunding resulted in poor living conditions that facilitated the spread of disease, contributing to many preventable deaths (Bryce, 1922; Milloy, 1999). One estimate suggests that 50% of children attending residential school in the early 20th century died as a result of poor conditions (Duncan Campbell Scott as cited in Miller, 1996). Accounts from the time show that children in many schools were subject to severe physical abuse and, once the residential system began to close, there were revelations of widespread sexual abuse (Milloy, 1999; Royal Commission on Aboriginal Peoples, 1996). The residential school system was slowly phased out during the second half of the 20th century and responsibility for Aboriginal child welfare shifted from the school system to the child welfare system. The introduction of Section 88 to the Indian Act in 1951 made “all laws of general application from time to time in force in any province applicable to and in respect of Indians in the province” ("Indian Act,”

1985, section 88). This was interpreted as meaning that, for the first time, provincial or territorial child welfare legislation applied on-reserve. Provinces and territories initially provided on-reserve services only in extreme emergencies, but expanded their efforts upon allocation of federal funds to support provincial and territorial delivery of on-reserve services in the mid-1950s (Indian and Northern Affairs Canada, 2007). As a result, the number of Aboriginal children placed in care increased sharply in the following years (P. Johnston, 1983). Many children were permanently removed from their homes; over 11,000 Aboriginal children, including up to one third of the child population in some First Nations communities, were adopted between 1960 and 1990 (Royal Commission on Aboriginal Peoples, 1996). In some jurisdictions, special programs facilitated the adoption of Aboriginal children. For example, the Adopt Indian and Métis (AIM) program in Saskatchewan allowed for adoptions of Aboriginal children to take place outside of the provincially regulated adoption system (Sinclair, 2009).

Concern over the scale of child removal and the treatment of Aboriginal children by provincial and territorial child welfare authorities laid the groundwork for First Nations groups to develop federally funded child welfare agencies which provided services on-reserve (Auditor General of Canada, 2008). Some First Nations groups pioneered efforts in the 1960s and 1970s; the number of First Nations agencies grew from 4 in 1981 to 30 in 1986 (Armitage, 1995) before a federal moratorium on the recognition of new agencies was imposed. The moratorium was lifted in 1991 when a national funding formula (Directive 20-1) and a program manual for First Nations child welfare agencies were introduced. Both placed greater constraints on First Nations child welfare agencies, requiring them to comply with provincial standards and introducing strict controls on funding (Auditor General of Canada, 2008). Despite these restrictions, the number of First Nations child welfare agencies and the scope of their responsibilities have continued to expand. While First Nations agencies initially served only on-reserve populations, they now increasingly serve off-reserve populations as well. In addition to First Nations agencies, there are now multiple agencies serving Métis children and families and pan-Aboriginal populations in urban areas (urban Aboriginal agencies).

The Current Structure of Aboriginal Child Welfare in Canada

Canada has a decentralized child welfare system in which over 300 provincial and territorial child welfare agencies operate under the jurisdictions of 13 Canadian provinces and territories (Trocmé et al., 2010). In addition, as summarized in Table 2, there were 121 Métis, First Nations, and urban Aboriginal child and family services agencies either in operation or proceeding with provincially or federally recognized planning processes as of 2011. Of these, 84 agencies have signed agreements with provincial governments affirming their rights to apply provincial child welfare legislation and to provide the full range of child protection services, including child welfare investigations (but excluding adoption services for most agencies). The remaining agencies assumed a more limited range of responsibilities under provincial or territorial child welfare legislation. There are currently no comprehensive estimates of the proportion of the Aboriginal population served by Aboriginally governed agencies. However, the Auditor General (2008) estimated that First Nations agencies provide at least partial services to about 442 of 606 First Nations groups. In addition, Sinha and Leduc (2011) recently estimated that 30% of First Nations children live in areas where First Nations or urban Aboriginal agencies are responsible for conducting child welfare investigations. Finally, it is estimated that 50% of the Aboriginal population lives in urban areas (Statistics Canada, 2009), and Aboriginally governed agencies now serve the large

Aboriginal populations of Toronto, Vancouver, and Winnipeg, as well as several smaller urban communities.

Table 2. Number of First Nations, Urban Aboriginal, and Métis Child Welfare Agencies by Province or Territory and Range of Services Offered, 2011

		Agencies offering full range of services[b]			
Province	Total[a]	All	First Nations	Urban Aboriginal	Métis
Nova Scotia	1	1	1	0	0
New Brunswick	10	10	10	0	0
Quebec	16	8	8	0	0
Ontario	11	6	5[c]	1	0
Manitoba	16	15	13[c]	1	1
Saskatchewan	17	17	17	0	0
Alberta	18	18	18[c]	0	0
British Columbia	31	9	8[c]	1	0
PEI	1	0	0	0	0
Northwest Territories	0	0	0	0	0
Newfoundland and Labrador	0	0	0	0	0
Yukon	0	0	0	0	0
Nunavut		*Because Inuit represent the majority ethno-racial group, the distinction between territorial and Aboriginally governed child welfare agencies is unclear*			
Total	121	84	80	3	1

[a] Includes British Columbia Agencies in planning or pre-planning stages.

[b] Includes initial investigations and intake, but not adoption services.

[c] Includes First Nations agencies serving off-reserve populations.

Service Delivery Models

All provincial and territorial child welfare systems share certain basic goals and characteristics; nonetheless, they vary considerably in terms of their organization of service delivery systems, child welfare statutes, assessment tools, competency-based training programs, and other factors. Variation in services for Aboriginal children is even more pronounced. Table 3 describes existing service delivery models in terms of governance and lawmaking authority, service providers, and funding control. The first row depicts service delivery for non-Aboriginal children and families; in this unified model, the province or territory has responsibility for all aspects of child welfare services. In contrast, models of service delivery for Aboriginal children are both more diverse and more complicated.

Table 3: Child Welfare Agency Service Delivery Models

	Service provider	Governance management authority	Lawmaker	Funding control	
Services for non-Aboriginal children	Provincial or territorial child welfare agencies	Provincial or territorial government	Provincial or territorial government	Provincial or territorial government	
Services for Aboriginal children				**On-reserve**	**Off-reserve**
Provincial or territorial model	Provincial or territorial child welfare agencies	Provincial or territorial government	Provincial or territorial government	Federal government	Provincial or territorial government
Delegated or mandated model[1]	Aboriginal child welfare agencies	Aboriginal community	Provincial or territorial government	Federal government	Provincial or territorial government
Integrated model	Aboriginal child welfare agencies	Aboriginal community & provincial government	Provincial or territorial government	Federal government	Provincial or territorial government
Tripartite agreement[2]	First Nations child welfare agency	First Nations	First Nation (federally and provincially approved)	Federal government	
Band by law[3]	First Nations child welfare agency	First Nations	First Nation (federally approved)	Federal government	

[1] Note alternate interpretation under Saskatchewan First Nations legislation.
[2] Nisga' Lisms First Nation Band.
[3] Spallumcheen First Nation Band

Provincial or territorial model. This model is very similar to that for non-Aboriginal children and families; the province or territory is responsible for service provision, lawmaking, governance, and funding for off-reserve families. However, funding for on-reserve services is provided by the federal government; the reasons for and implications of this difference are discussed below.

Delegated or mandated model. The second most common service delivery model for Aboriginal children involves the transfer of responsibilities described under provincial or territorial child welfare legislation from a province or territory to an Aboriginal child welfare agency. The First Nations band or Aboriginal community assumes governance responsibility, but remains bound to provincial or territorial legislation, and receives federal (on-reserve) or provincial or territorial (off-reserve) funding. Responsibilities can be transferred incrementally to Aboriginal agencies. The most formal system for incremental transfer is in British Columbia where agencies acquire increased responsibilities as they progress through the six "gradual delegation" stages described in Table 4.

Table 4. Six Stages of Gradual Delegation in British Columbia

Level of delegation	Child welfare activities
Pre-planning	Agency has completed an application to offer child welfare services and is engaged in preliminary discussions of service development.
Planning	Agency is operationalizing service delivery plan.
Start-up	Agency engages in activities that actualize development plans.
Voluntary-service delivery	Agency offers support services to families, handles voluntary care agreements, and handles special needs agreements.
Guardianship service delivery	Agency offers the same services in voluntary service delivery stage, as well as guardianship services for children in care. These include services such as handling plans of care for children in care, permanency planning, transition to independence services, and quality care reviews.
Fully delegated service delivery	Agency offers the same services as agencies in guardianship service delivery stage, as well as child protection services. These include investigation of reports of child abuse or neglect, development of protection plans, placement of children in care when necessary, and obtaining court orders or taking other measures to ensure a child's ongoing safety and well-being.

Note: Adapted from British Columbia Ministry of Children and Family Development (n.d.)

Integrated model. Some agencies operate under a model in which governance responsibilities are formally shared by the Aboriginal community and the provincial or territorial government. Manitoba child welfare agencies, for example, operate under the auspices of four regional authorities (the General Authority, Métis Authority, the First Nations of Northern Manitoba Authority, and the First Nations of Southern Manitoba Authority) that have mandates received from the cultural communities they serve and the provincial government (Manitoba Child and Family Services Act, 2009). The regional authorities have the right to direct child and family service agencies. The Minister is responsible for determining the policies, standards, and objectives of child and family services, and for monitoring and funding child welfare authorities (Manitoba Child and Family Services Act, 2009). In addition to the Manitoba agencies, there appear to be Aboriginal child welfare agencies in other jurisdictions that are at least partially integrated into provincial or territorial systems; additional research is still needed to specify the nature and extent of the differences between the service delivery models in these agencies and those in delegated or mandated agencies.

Band-by-law model. In 1981, the Spallumcheen First Nation, the British Columbia, and the federal governments signed an agreement legally acknowledging the right of the Spallumcheen Indian Band to jurisdictional control over child welfare services to members of the Spallumcheen Nation (J. A. Macdonald, 1985). As a result, it became the only First Nation in Canada to operate under a band-by-law model that frees it from provincial laws and standards (Union of British Columbia Chiefs, 2002).

Tripartite model. The British Columbia, the federal, and the Nisga'a Lisims First Nation governments signed a treaty in 1999 agreeing that the Nisga'a Lisims Nation may "make laws with respect to children and family service on Nisga'a lands" (Foster, 2007, p. 55) as long as they are comparable to provincial standards. The Nisga'a Lisims Nation agency is funded by the federal government and is the only First Nations agency in Canada to operate under this type of tripartite model.

Legislation and Standards

Provincial or territorial legislation. Child welfare legislation in most provinces and territories now includes special considerations for service provision to Aboriginal children, families, and communities. Table 5 summarizes statements included in primary provincial or territorial child welfare legislation that specifically include the keywords "Aboriginal," "First Nations," or "Native." It does not reflect alternate legislation, standards, or protocols, and it excludes provisions that do not specifically refer to these keywords, but which may have important implications for Aboriginal child welfare. The most common Aboriginal-specific provision included in legislation for all provinces and territories, except New Brunswick and Quebec, is a requirement to notify Aboriginal bands of court hearings involving Aboriginal children.

Legislation in some jurisdictions also includes provisions for Aboriginal involvement in provincial or territorial child welfare services for Aboriginal children; suggested forms of involvement range from engagement in individual child protection cases to participation in service design and delivery. For example, Ontario legislation states that Aboriginal people are entitled to provide culturally appropriate services to Aboriginal children and their families and that Aboriginal representatives should be involved in decision-making related to protection services for Aboriginal children. Similarly, British Columbia

legislation states, "aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children" ("British Columbia Child, Family and Community Service Act," 1996, Part 1, Service delivery priniples, 3b). In addition, Prince Edward Island, Manitoba, Saskatchewan, and Alberta legislation suggests consultation with Aboriginal representatives in cases involving Aboriginal children.

In some jurisdictions, legislation contains special provisions for Aboriginal children placed in out-of-home care. Legislation in British Columbia, Ontario, and the Yukon prioritizes kinship care, a living arrangement in which a child is placed under the supervision of a family member (Gough, 2006) for Aboriginal children being placed in out-of- home care. Legislation in Alberta and British Columbia requires that when an Aboriginal child is placed out of the home, the aspiring guardian must present a plan describing ways that the child's Aboriginal culture, heritage, spirituality, and traditions will be fostered. In Prince Edward Island, Ontario, and the Northwest Territories, Aboriginal bands have the right to be involved in the development of or to propose their own care plans for Aboriginal children being placed out-of-home or adopted. Finally, some jurisdictions have legislative provisions that allow for exemption or adaptation of specific legislative requirements in order to support the development of culturally appropriate services. For example, Quebec legislation allows agreements for the establishment of special youth protection programs, which are designed to better adapt the act to the realities of life in First Nations communities (Quebec Youth Protection Act, 2007). Similarly, Ontario legislation allows the Lieutenant Governor in Council to exempt First Nations child welfare authorities from any provision in the *Child and Family Service Act* (1990).

Provincial and territorial standards. Some jurisdictions also have Aboriginal-specific practice standards. For instance, the Aboriginal Operational and Practice Standards in British Columbia were developed by representatives of the Caring for First Nations Children Society (CFNCS), Aboriginal child welfare agencies, AANDC, and the British Columbia Ministry of Children and Family Development. The standards manual outlines expectations that child placement within Aboriginal communities will be prioritized, families and communities will be involved in intervention plans, children's access to information on their heritage will be promoted, and a child's access to cultural ceremonies will be ensured (British Columbia Ministry of Children and Family Development, 2005). Similarly, the *MicMac and Maliseet First Nations Services Standard Manual* details culturally based standards introduced in New Brunswick in 1993. The New Brunswick Office of the Ombudsman and Child and Youth Advocate recently reviewed these standards and, while endorsing the importance of culturally based standards, their report also noted that due to the "complex approval process" (p. 41) the First Nations standards were last updated in 2004 and may not reflect current best child welfare practices (Office of the Ombudsman and Child and Youth Advocate, 2010).

Table 5. Considerations for Aboriginal Children, Families, and Communities in Primary Provincial or Territorial Legislation

Province or Territory	Legislation	Band notification of court or placement	Aboriginal involvement in case management	Aboriginal involvement in service planning or delivery	Prioritization of kinship care	Band submission of cultural connection plan invited	Connection to Aboriginal culture -best interest of child
British Columbia	*Child, Family and Community Service Act*	√		√	√	√	√
Alberta	*Child, Youth and Family Enhancement Act*	√	√	√		√	√
Saskatchewan	*Child and Family Services Act*	√	√				
Manitoba	*Child and Family Services Act; Child and Family Services Authorities Act*	√	√	√	√		
Ontario	*Child and Family Services Act*	√	√	√	√	√	√
Quebec	*Youth Protection Act*			√	√		
Nova Scotia	*Child and Family Services Act*	√[a]					
New Brunswick	*Family Services Act*						
Prince Edward Island	*Child Protection Act*	√	√			√	√
Yukon	*Child and Family Services Act*	√		√	√		√
Northwest Territories	*Child and Family Services Act*	√				√	
Newfoundland and Labrador	Child Youth and Family Services Act	The Labrador Inuit Land Claim Act takes precidents over the Child Youth and Family Services Act (no other special considerations).					
Nunavut		Because Inuit represent the majrity ethno-racial group, the Aboriginal-specific provisions assessed here are not necessarily directly applicable to Nunavut legislation.					

Note. Based on 2010 legislation and specific statements about Aboriginal children, families, and communities.

[a] In Nova Scotia, the First Nations child welfare agency, which serves all First Nations (reserve) communities, is notified, as opposed to the child's band.

Aboriginal laws and customs. In addition to the legislation and standards developed by or in connection with the provinces and territories, child welfare practices may be shaped by Aboriginal laws and customs. While we know of no formal review of the role of Aboriginal laws and customs in child welfare, their influence is reflected in the descriptions that Aboriginal child welfare agencies offer of their own work. For example, Nisga'a Child and Family Services state on their website that they provide services "consistent with both the Ayuukhl Nisga'a (the laws and customs of the Nisga'a people) and British Columbia statutes and policies" (Nisga'a Child and Family Services, n.d., para. 1). There is also at least one example of Aboriginal legislation that applies to multiple Aboriginally governed child welfare agencies. The Federation of Saskatchewan Indian Nations (FSIN) developed the *Indian Child Welfare and Family Support Act* (ICWFSA, 1990); the ICWFSA exists alongside provincial legislation and includes standards that have been formally recognized by the Ministry of Social Services as being "equivalent to ministerial policies, practices and standards" (Saskatchewan Minister of Social Services, 1993, p. 1; see also Saskatchewan Child and Family Services Act, 1989-90;). The ICWFSA (1990) is grounded in an understanding that First Nations have pre-existing rights over the well-being of First Nations people in Saskatchewan and ultimate authority over First Nations affairs. It asserts that First Nations "have the authority to make, adopt and enact laws" with respect to First Nations child welfare and that these laws "honour and take precedence over" provincial laws (Article III.2, p. 8). Through these and other provisions, ICWFSA sets out a clear alternative interpretation of the political relationships reflected in the *Child and Family Services Act* (1990) of Saskatchewan. For example, while Saskatchewan legislation contains a provision allowing the minister to delegate provincial child welfare responsibilities to First Nations bands, the ICWFSA framework would portray these same agreements as the resumption of pre-existing authorities by First Nations after a period of temporary delegation of responsibility to the province.

Aboriginal Child Welfare Funding

The Constitution Act (1982) describes those responsibilities that are "the exclusive legislative authority of the Parliament of Canada," including "Indians and lands reserved for the Indians" (Section 91.24). Accordingly, the federal government provides funding for health and social services to Status First Nations people living on-reserve, while provincial and territorial governments fund these services for all other people (see Table 6). One consequence of this framework is that governments and departments, sometimes disagree about who bears responsibility for funding specific health and social services for on-reserve children and families. These "jurisdictional disputes" can result in disruptions or delays in service delivery for vulnerable First Nations children. *Jordan's Principle*, a child-first principle intended to reduce these delays, has received support from numerous organizations, including the Canadian Parliament, but it has not been fully implemented in any Canadian jurisdiction (Canadian Paediatric Society, 2009).

Another important consequence of the exisiting funding framework is a lack of parity in funding for on-reserve and off-reserve child welfare servcies. As described above, most child welfare agencies providing services on-reserve are bound by provincial or territorial legislation and standards. Nonetheless, the Auditor General of Canada (2011) recently concluded that there is no mechanism to ensure comparability of federal funding for on-reserve services to provincial or territorial funding off-reserve. Assessing comparability of child welfare funding is complicated by gaps in complementary health and social services on-reserve (Allec, 2005; Lemchuk-Favel, 2007; Stout & Harp, 2009); these gaps translate

into unmet family needs which pose added burdens for child welfare agencies and must be considered in any comparison of funding levels (Auditor General of Canada, 2011). Finally, as described below, models for funding on-reserve services vary markedly across provinces and territories, and this variation also complicates systematic assessment of funding comparability.

Table 6. Funding for Aboriginal Child Welfare by Agency and Community Type

	On-reserve services and child maintenance costs	Off-reserve services and child maintenance costs
Provincial or territorial agencies, urban Aboriginal and Métis agencies	AANDC provides funds in accordance with agreements with provinces, territories, or individual agencies	Provinces and territories provide funds, in accordance with provincial or territorial budgeting processes
First Nations agencies	AANDC provides funds in accordance with Directive 20-1, Enhanced Prevention Focused Funding Model, or the Ontario Child Welfare Act of 1965	Provinces and territories provide funds, in accordance with agreements with First Nations agencies

Funding for provincial and territorial services. The Auditor General of Canada (2008) reviewed AANDC's arrangements for funding provincially administered, on-reserve services in five provinces and found that they varied greatly. Funding levels in some provinces were tied directly to expenditures. For example, Ontario is reimbursued 93 cents for every dollar spent for on-reserve services and maintenance costs (Indian Welfare Services Act, 1990, c.I.4). In other provinces, like Quebec, funding was based on Directive 20-1 (described below) and in British Columbia, the province was reimbursed for estimated (rather than actual) maintenance costs.[2] In addition, federal funds in some provinces were transferred to the province, while in others funds flowed directly to agencies.

Directive 20-1. Until 2007, First Nations child welfare agencies in every province, other than Ontario, received funding under the terms of AANDC's national formula, Directive 20-1. British Columbia and New Brunswick First Nations agencies continue to receive Directive 20-1 funding, which consists of two components: operations funds based child population size, and funds for maintenance of children placed in out of home care (McDonald & Ladd, 2000). Directive 20-1 has been criticized for underfunding services for First Nations children, failing to fund preventative or support services for families of children who are not in care, and, as a result, for contributing to the overrepresentation of children in care (Blackstock, Prakash, Loxley, & Wien, 2005; Indian and Northern Affairs Canada, 2007). The Auditor General of Canada (2008) found that it does not accurately represent the work done or actual costs incurred by First Nations agencies.

[2] AANDC announced a shift to funding actual, rather than estimated costs, for out-of-home care services in British Columbia starting in April 2011 (AANDC, 2010a).

Enhanced Prevention Focused Funding. AANDC has begun shifting to a new funding model that provides increased funds (see Table 7) by specifically targeting funds for prevention services, and allowing increased flexibility in the use of funds. This "Enhanced Prevention Focused" formula consists of three funding streams, which are intended to cover maintenance costs for children in care, administrative expenses, and child maltreatment prevention programs (Government of Canada, 2009). Thus, the new model addresses some key criticisms of Directive 20-1. However, it also reproduces some of the flaws identified in Directive 20-1: operations costs continue to be partially based on child populations rather than actual agency expenses, and there is still no formal mechanism for linking AANDC funding levels to the shifting responsibilities mandated by provinces and territories (Auditor General of Canada, 2008, 2011). An evaluation of the Enhanced Prevention Focused funding approach in Alberta (Indian and Northern Affairs Canada, 2010a) determined that, because of unavailable and unreliable data, no conclusions could be drawn about the effects of the Alberta funding shift. The impact of this funding model has not yet been evaluated in other jurisdictions.

Table 7. Federal Projections for Enhanced Prevention Focused Funding for First Nations Child Welfare Agencies

Province	Additional funds, over 5-years, associated with shift to Enhanced Prevention Focused funding model	5-year period commences
Nova Scotia	$10 million	2008 - 2009
New Brunswick	Directive 20-1	Directive 20-1
Quebec	$59.8 million	2009 - 2010
Manitoba	$177 million	2010 - 2011
Saskatchewan	$105 million	2008 - 2009
Alberta	$ 98.1 million	2007 - 2008
British Columbia	Directive 20-1	Directive 20-1
PEI	$1.7 million	2009 – 2010

Note. Based on AANDC, 2010a; O. Johnston, 2009

Ontario funding. The 1965 Indian Welfare Agreement made AANDC responsible for reimbursing the Ontario government 93 cents for every dollar spent on Aboriginal child welfare services on-reserve (Indian Welfare Services Act, 1990, c.I.4). The Ontario Commission to Promote Sustainable Child Welfare (2011) recently reviewed the Ontario child welfare funding structure and made several recommendations for improving the allocation of funds to Ontario agencies. However, they found that their model did not adequately capture the unique circumstances and differing cost structures of Aboriginal agencies and recommended development of a separate funding approach for Aboriginal agencies.

Discussion and Implications for Future Research

Aboriginal child welfare is currently in a period of great transition. Aboriginal communities are increasingly responsible for provision of child welfare services to Aboriginal people living both on-reserve and off-reserve. Federal funding for on-reserve child welfare has recently increased in most provinces and territories. Finally, there is an ongoing human rights case charging the federal government with systematically underfunding on-reserve child welfare services. The cumulative result is the potential for the expansion, development, and adaptation of services in order to address the persistent overrepresentation of Aboriginal children in the child welfare system and to better serve Aboriginal children and families. Existing variation in the structural factors that shape Aboriginal child welfare represents a valuable source of potential information about the impacts of policy and program changes; however, little systematic information about this variation is currently available. This review has presented a broad overview of some of the structural factors that currently shape Aboriginal child welfare such as child welfare legislation, service delivery models, and funding formulas. Our review highlights the pronounced variability in all three of these factors. All provincial and territorial and most Aboriginally governed agencies are tied to provincial or territorial legislation; however, some are fully exempt by virtue of treaty or tripartite agreements, whereas other jurisdictions allow Aboriginally governed agencies to seek exemption from specific legislative provisions. Finally, agency practice may also be influenced by Aboriginal laws and customs. In terms of funding, the underlying framework, which makes the federal government responsible for funding child welfare services for Status First Nations people living on-reserve while the provinces and territories are responsible for funding services to all others, gives rise to funding disparities that are compounded by variation in federal funding agreements across and within jurisdictions. The range and variation in service delivery models means that the distinction between Aboriginally governed and provincial or territorial agencies becomes increasingly blurry. While initial efforts to establish Aboriginally governed agencies came in the form of federally funded First Nations agencies serving on-reserve populations, Aboriginally governed agencies now employ increasingly diverse service delivery models and a number of agencies currently reflect an integrated model in which responsibilities are formally shared by provinces or territories and Aboriginal communities.

Our review points to a general need for enhanced knowledge about the structure of Aboriginal child welfare. We have documented the existence of variation in the structural factors shaping Aboriginal child welfare, but the finer details of this variation are still elusive: funding agreements are not publicly accessible, details of the legislative exemptions granted have not been compiled, and information about the specific differences between service delivery models is difficult to access. Accordingly, the rich variation that could potentially support comparison of policy and structural alternatives, and

development of new Aboriginal child welfare programs and policies, remains largely unexamined. Our review also suggests specific areas of research that may help support development of new programs and policies. In terms of funding, a clear research priority was identified by Auditor General of Canada (2011), who called for the development of a mechanism for assessing comparability of federal and provincial and territorial child welfare funding and noted that any mechanism must take into account complex factors such as gaps in complementary services. Given the multiple layers of funding and service variations that need to be accounted for, the development of such a mechanism on the national, or even provincial or territorial level, is a daunting task. Our review indicates that there are Aboriginally governed child welfare agencies that serve both on-reserve and off-reserve Aboriginal populations and, accordingly, receive both provincial and federal funding in four provinces. Analysis of provincial and federal funding disparities, and any existing mechanisms for ensuring equitable treatment of families and children living on-reserve and off-reserve, *within* such agencies would limit the variation in contextual factors that need to be considered. This type research could provide a stronger foundation on which to build broader, more complicated funding comparisons.

A second issue has been less explicitly specified as a priority for research, but permeates our analysis of legislation and governance models: the existence of dual mandates – one derived from provinces and territories and enshrined in legislation, and another derived from Aboriginal communities and shaped by customary laws and practices. These dual mandates are reflected in Aboriginally governed agency descriptions, the existence of Aboriginal-specific practice standards, the passage of child welfare legislation by the Federation of Saskatchewan Indian Nations, and the creation of legislative provisions allowing Aboriginal agencies to seek exemption from specific statutes and standards. The approval or acceptance of Aboriginal standards, as well as the existence of agencies with an integrated service delivery model, suggests that there are areas of significant overlap between the two mandates. However, the existence of contrasting frameworks of provincial and First Nations child welfare legislation in Saskatchewan, the conclusions drawn in province-specific reviews of Aboriginal child welfare (e.g. Ontario Commission to Promote Sustainable Child Welfare, 2011), and our informal conversations with Aboriginal child welfare organizations suggest that negotiating the tensions between these dual mandates is the central challenge of Aboriginal child welfare. Yet, we could find no systematic documentation or analysis of the specific challenges that child welfare agencies face in negotiating dual mandates. Questions that might inform policy or program development include general questions such as: What are the common areas of overlap and tension between Aboriginal and provincial or territorial mandates? How do child welfare agencies manage any tensions that do exist? They also include more specific questions linking the task of negotiating dual mandates to specific structures and legislative provisions: Does the ability of an agency to manage tensions differ based on service delivery model? How have Aboriginally governed child welfare agencies made use of provisions allowing them to seek exemptions from specific legislative provisions?

Pursuit of research questions such as these has the potential to facilitate both the identification of key challenges to be addressed in future development of Aboriginal child welfare policies, and the determination of which existing policies should be maintained or enhanced in order to support the creation and delivery of effective child welfare services for Aboriginal children and families. While the review presented here has focused on Aboriginal child welfare in Canada, it also has implications for Aboriginal child welfare in Australia and the U.S., where the historical patterns of Aboriginal child removal, the persistent overrepresentation of Aboriginal children in out-of-home care, and efforts to

address overrepresentation through legislative or structural changes to a decentralized child welfare system mirror those in Canada.

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