



First Nations not affiliated to  
a First Nations child and  
family (FNCFS) services  
agency: Defining a baseline

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***IFSD is grateful to the 75+ First Nations who shared their time, information, and expertise on child and family services. Their generous and honest contributions during national gatherings, regional workshops, a questionnaire, and in-depth analyses made this work possible.***

Institute of Fiscal Studies and Democracy (IFSD)

This report was prepared at the request of the First Nations Child and Family Caring Society (Caring Society).

The views expressed here are those of the author and do not necessarily represent the views of the Caring Society.

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## Executive summary

There are 172 First Nations not affiliated to a First Nations child and family services (FNCFS) agency that typically receive protection services from their respective province/territory. Prevention services (primary, secondary, and tertiary) may come from the province/territory or the First Nation. The service landscape is complex with multiple actors and limited information from provinces/territories on the integration of service delivery with First Nations.

Implementing reforms to the FNCFS Program for First Nations not affiliated to an FNCFS agency will require the integration of:

- Provincial/territorial service delivery and funding with First Nations receiving services (protection and/or prevention);
- Federal government funding (to the provinces/territories and to First Nations); and,
- First Nations not affiliated to an FNCFS agency's delivery of prevention services (primary, secondary, tertiary) and their integration with protection services.

To ensure First Nations children can thrive, gaps in the integration of services and funding among these actors must be overcome to define and implement a service delivery approach, funding model, and performance reporting framework. This means working consistently across jurisdictions to define common understandings of service delivery and ensuring that in practice, protection and prevention services (primary, secondary, tertiary) are integrated among multiple actors. This will be a significant undertaking.

In November 2021, at the request of the First Nations Child and Family Caring Society (Caring Society), with the support of the Assembly of First Nations (AFN), IFSD was contracted to undertake a child and family services (CFS) needs assessment regarding First Nations not affiliated to an FNCFS agency. The purpose of this project was to assess needs in First Nations not affiliated to an FNCFS agency for the delivery of prevention and other CFS-related services. The data gathered for this project was intended to define a range of approaches and costs for the delivery of CFS in First Nations not affiliated to an FNCFS agency.

46% national participation in a questionnaire (2022); 9 regional workshops (75 First Nations); 2 national gatherings (65+ First Nations); and 5 in-depth analyses.
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***IFSD is grateful to the First Nations who shared their time, information, and expertise on CFS. This work would not have been possible without their honest and generous contributions.***

IFSD worked with First Nations to build the information analyzed and discussed in this report that considers current funding, needs, and options for a way forward. First Nations were invited to contribute and collaborate in this work in different ways:

- 1) National questionnaire;
- 2) Regional workshops;
- 3) In-depth case study collaborations; and,
- 4) National gatherings to review findings.

At its launch, the project was expected to be completed by December 2022. However, it took significantly more time than planned to work with First Nations to gather data and to access data from the Government of Canada. More time was needed to ensure First Nations had a meaningful opportunity to participate given spare capacity in First Nations on CFS is limited, mandates for CFS vary, and starting points are different. Unlike existing FNCFS agencies and provincial/territorial service providers, there is limited history of practice or of peer networks. The regional workshops and national gatherings represented for many First Nations not affiliated to an FNCFS agency, the first time they gathered with peers.

In addition, agreements on FNCFS between federal and provincial/territorial governments are not publicly accessible. This limits understanding of service requirements and associated resources for the province/territory. For First Nations not affiliated to an FNCFS agency, this means a gap in information that impedes their ability to harmonize protection and prevention (primary, secondary, tertiary) in the best interests of the child, with least disruptive measures, and with a culturally informed approach.

The variability in starting points and service delivery models in First Nations not affiliated to an FNCFS agency meant that no single approach could be defined. This circumstance is distinct from that of FNCFS agencies which have a common set of services and consistency in their delivery. With the commonality of services in FNCFS agencies, a national funding approach could be defined and modelled. Given the heterogeneity in starting points of First Nations not affiliated to an FNCFS agency, differentiation in needs, activities, and services should be expected.

Despite challenges associated with heterogeneity, IFSD defined options for a funding structure, i.e., the way money moves to First Nations and the associated conditions, and funding amounts, i.e., national estimates for prevention (primary, secondary, tertiary) service delivery in First Nations not affiliated to an FNCFS agency.

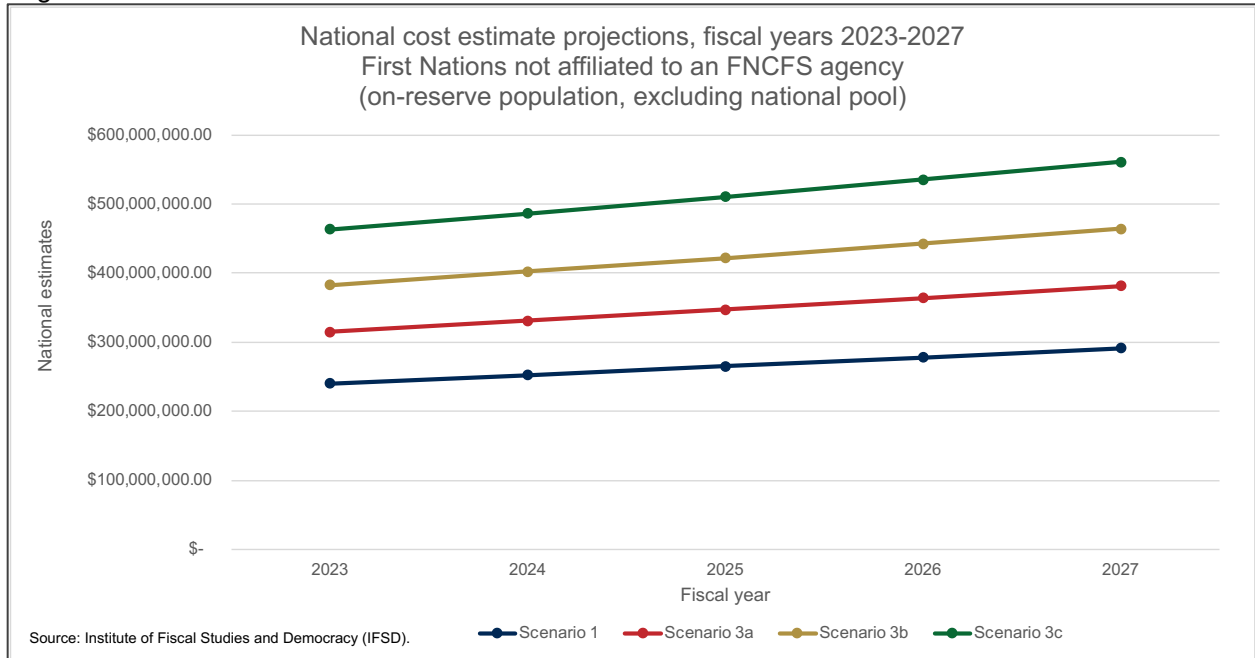
The three structures include status quo, a regional support model, and a needs assessment model (Table A).

Table A

Option	Description	Change from current state
1) Status quo	Fixed contribution approach.	None. Likely revision to terms and conditions.
1a) Status quo plus	Apply block contribution approach.	First Nations have greater flexibility in how funds are used for CFS in communities. Must work with a fixed amount of funding.
2) Regional support model	Trusted regional organizations would serve as the funding allocator and capacity support provider for First Nations not affiliated to an FNCFS agency.	Variation in regional allocation models. Localized capacity support for CFS.
3) First Nations needs assessments	Funding held in trust by regional organizations until First Nation is prepared to accept the funding for use (within approx. 1-5 years), following consultation with community on their own timeline.	Resources accessed based on readiness of First Nation.

To estimate funding amounts, IFSD developed a series of scenarios. There are three scenarios (scenarios 3a, 3b, 3c), in addition to the base scenario (scenario 1), that are reviewed in the integral report (all other scenarios are included in the appendix). These scenarios use different per capita allocations to define a baseline and include top-ups for service-related activities, e.g., information technology. Over the five-year period, estimates range from \$1.3B in scenario 1 to \$2.6B in scenario 3c (Figure A).

Figure A



The proposed structures and funding amounts represent a starting point. These changes do not represent a reformed approach to CFS delivery in First Nations not affiliated to an FNCFS agency. Without a consistent history of practice and prevention service delivery (primary, secondary, tertiary), it is not possible to define a baseline for operations. This means that any funding decisions implicating prevention service delivery in First Nations not affiliated to an FNCFS agency must recognize the need for time and effort to support the development and growth of consistent operations. This is about getting First Nations not affiliated to an FNCFS agency to a starting point. It will take time to clarify activities and their resource requirements, given the limited history of consistent service delivery.

Based on the report's findings, IFSD makes the following recommendations:

- 1) Clarify the prevention services (primary, secondary, tertiary) that First Nations are being asked to deliver with FNCFS resources.
  - Define federal reporting requirements for the funding.
  - Define service delivery expectations with their respective provincial/territorial FNCFS service providers, e.g., province/territory.
- 2) Publish agreements between the federal and provincial/territorial governments on FNCFS.
- 3) Require provincial/territorial governments to report to the First Nations they serve on the types of protection and prevention services (primary, secondary, tertiary) being offered, and their results.
- 4) First Nations and provincial/territorial governments should work in partnership to define memoranda of understanding to integrate protection and prevention (primary, secondary, tertiary) in service delivery.
- 5) On a regional/territorial basis, First Nations should define the funding approach that best suits their needs. This means that First Nations in different places may have different funding structures, e.g., regional organization managing allocation, separate bilateral agreements between First Nations and the federal government.
- 6) First Nations not affiliated to an FNCFS agency are only beginning to develop their approaches to the delivery of prevention services (primary, secondary, tertiary) with a limited history of practice. It will take time to clarify required activities and their resource requirements. Funding approaches should reflect that reality and should not be considered final until a consistent and stable set of activities are defined.
- 7) Ensure a review of the five-year approach at year three of funding and structure, relative to actual and desired activities in First Nations not affiliated to an FNCFS agency. Funding structure and resources should be adjusted based on findings.



## Introduction

In 2016, the Canadian Human Rights Tribunal (CHRT) found Canada’s funding of First Nations child and family services (FNCFS) and Jordan’s Principle to be discriminatory. The Tribunal ordered Canada to end the discrimination and ensure it does not reoccur. Efforts are underway to reform FNCFS and Jordan’s Principle. Upholding CHRT rulings in child and family services (CFS) involves various actors and systems.

CFS promotes child safety and well-being through the delivery of protection and prevention services (Table 1). Structural drivers of contact with the protection system include poverty, inadequate housing, the effects of intergenerational trauma, substance misuse, etc. Prevention services exist to stop a child’s interaction with protective services by providing supports and services to the child and their family. Prevention services may continue even after the protection concern has ended.

Table 1

<b>Protection<sup>1</sup></b>	Services for child safety to ensure children are free from harm, abuse, and neglect.
<b>Prevention<sup>2</sup></b>	Activities and services to stop or reduce child maltreatment.  3 types of prevention:

<sup>1</sup> See for instance :

UNICEF Child Protection Section, “Child Protection Strategy 2021-2030” (New York, July 2021), <https://www.unicef.org/media/104416/file/Child-Protection-Strategy-2021.pdf>.

The Alliance for Child Protection in Humanitarian Action, *Minimum Standards for Child Protection in Humanitarian Action, 2019 Edition*, 2019, <https://handbook.spherestandards.org/>.

Nanne Isokuortti et al., “Effectiveness of Child Protection Practice Models: A Systematic Review,” *Child Abuse & Neglect* 108 (2020): 104632, <https://doi.org/10.1016/j.chiabu.2020.104632>

<sup>2</sup> See for instance:

Indigenous Services Canada, “FNCFS Transitional Terms and Conditions: Contributions to provide children, youth, young adults, families, and communities, with prevention and protection services,” *Government of Canada*, last modified April 1, 2022, <https://www.sac-isc.gc.ca/eng/1648577221890/1648577242550#chp5-3>.

Capacity Building Center for States, Working across the prevention continuum to strengthen families, Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, 2021, [https://capacity.childwelfare.gov/sites/default/files/media\\_pdf/prevention-continuum-strengthen-families-cp-20119.pdf](https://capacity.childwelfare.gov/sites/default/files/media_pdf/prevention-continuum-strengthen-families-cp-20119.pdf).

FRIENDS National Center for Community-Based Child Abuse Prevention, “What is Prevention of Child Abuse and Neglect,” n.d., <https://friendsnrc.org/prevention/what-is-prevention-of-child-abuse-and-neglect/>.

Child Abuse & Neglect Prevention Board, “Types of Prevention Approaches,” Wisconsin.Gov, n.d., <https://preventionboard.wi.gov/Documents/PreventionApproaches.pdf>.

	<p><b>Primary:</b> Directed to the community as a whole, designed to educate and prevent child maltreatment.</p> <p><b>Secondary:</b> Aimed to support a child who may be at risk of harm or maltreatment, e.g., home visit programs for parents, addictions treatment for parents, etc.</p> <p><b>Tertiary:</b> Used when a child has been identified as at risk of harm of child maltreatment, e.g., immediate crisis intervention.</p>
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First Nations in Canada deliver and access CFS in different ways. There are 634<sup>3</sup> First Nations in Canada, among which 451 are served by an FNCFS agency<sup>4</sup>, 172 are not affiliated to an FNCFS agency, and 11 have enacted their own laws to exercise jurisdiction (this means that their funding arrangements may have terms and conditions different than those being funded through the FNCFS Program) (Figure 1).<sup>5</sup> Based on total population on-reserve, the vast majority of First Nations are served by an FNCFS agency (80%), with the majority of those remaining not affiliated to an FNCFS agency (17.5%) (even though some from both groups may be in a coordination agreement process or have declared their intent to exercise jurisdiction). Only 3% of the First Nations population is served by a First Nation exercising jurisdiction. Note that the numbers are current to November 25, 2023, with changes to jurisdiction captured by Indigenous Services Canada (ISC) on their website.<sup>6</sup>

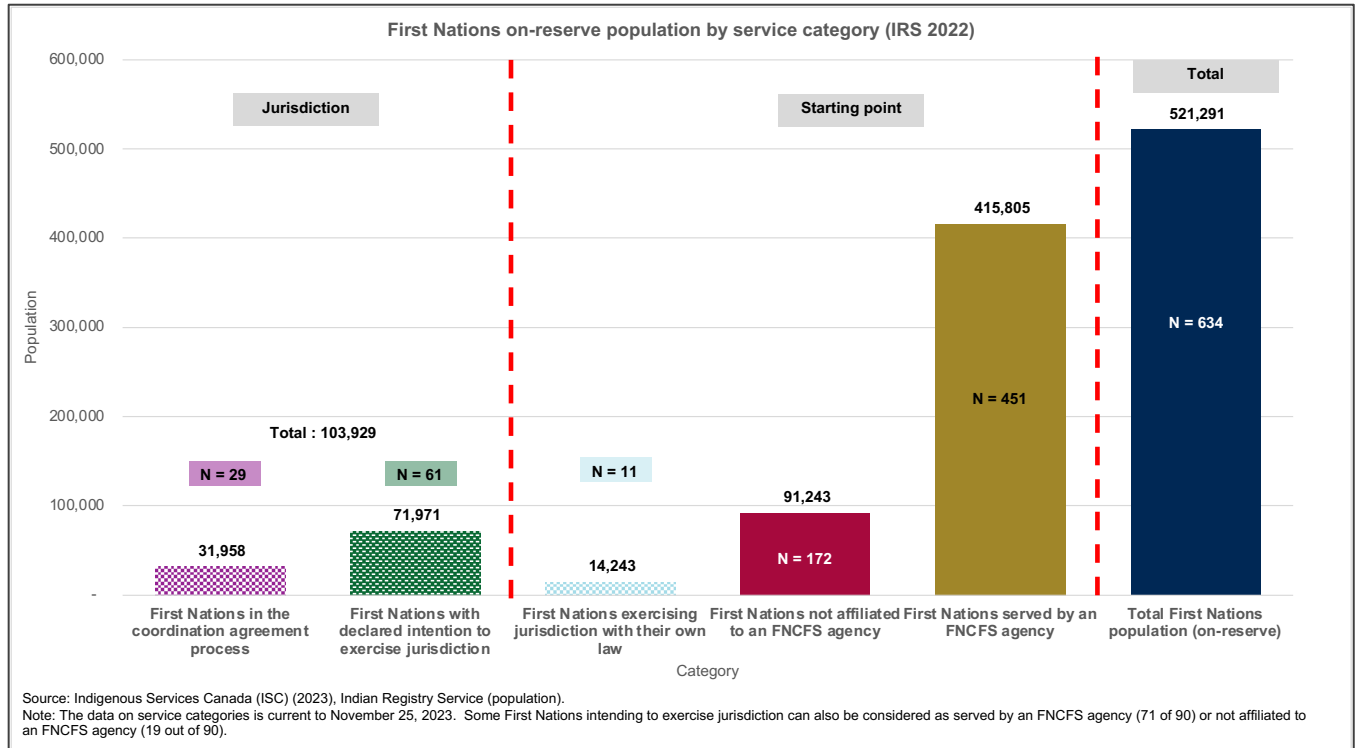
<sup>3</sup> The count of 634 First Nations includes registry groups. Otherwise, there are 620 First Nations.

<sup>4</sup> A First Nations Child and Family Service agency (FNCFS agency) operates pursuant to provincial/Yukon legal delegation and/or in some cases First Nations legal delegation to deliver child welfare services to First Nations children, youth, and families. These agencies are funded by the Federal Government in whole or in part, with most providing a full range of statutory protection and prevention services and others known as partially delegated or partially mandated agencies providing a more limited range typically guardianship of children in care and prevention.

<sup>5</sup> The 27 First Nations in the Northwest Territories have a different arrangement from those in the provinces and Yukon in CFS. They are not subject to the relevant CHRT orders.

<sup>6</sup> Indigenous Services Canada, "Notices and requests related to An Act respecting First Nations, Inuit and Métis children, youth and families," Government of Canada, accessed November 25, 2023, <https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367>.

Figure 1

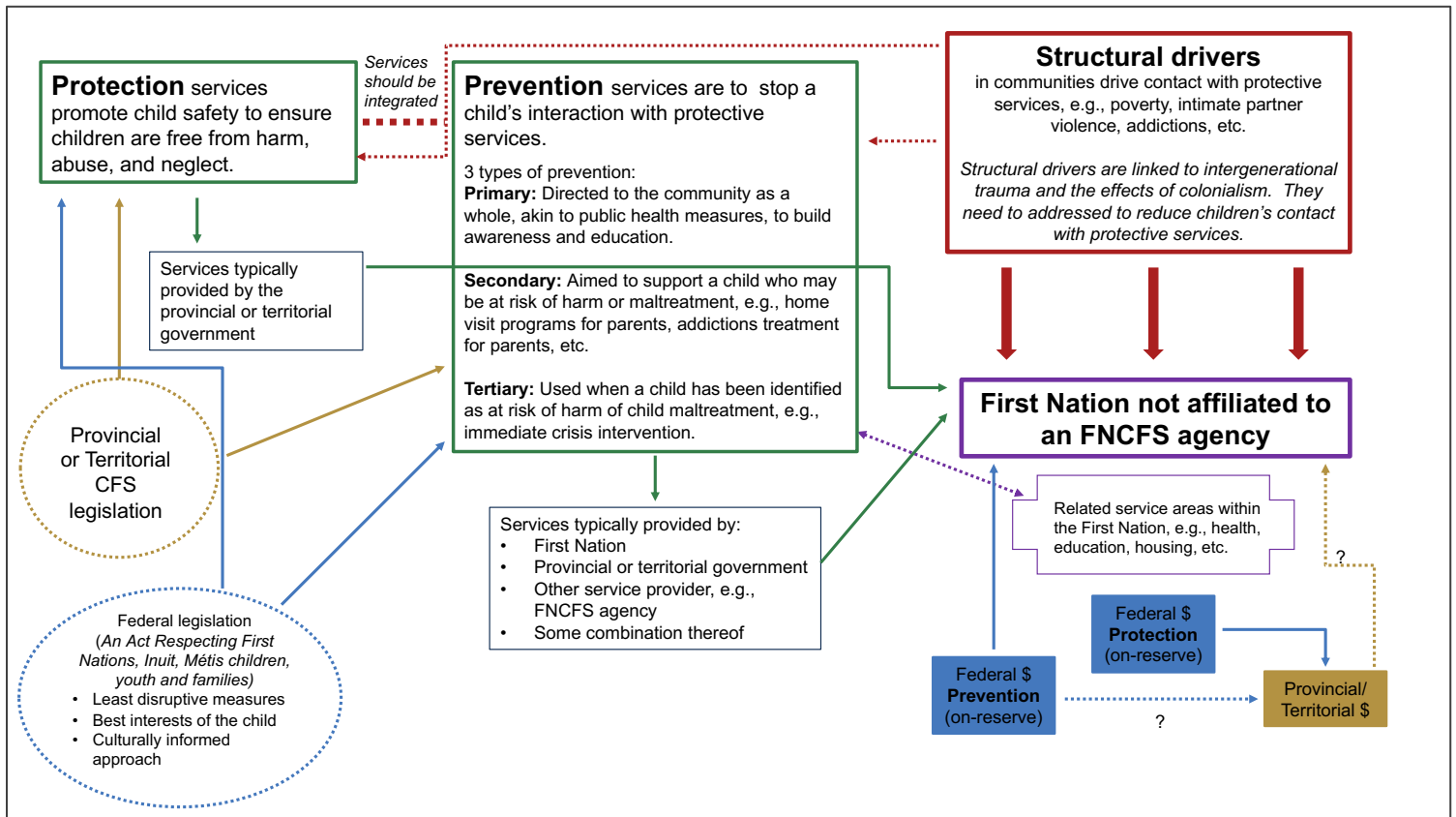


While there has been a great deal of emphasis on the exercise of jurisdiction in CFS and on FNCFS agencies, First Nations not affiliated to an FNCFS agency have been largely left unconsidered in the reform of FNCFS. Service provision in CFS engages several actors and considerations for First Nations not affiliated to an FNCFS agency (Figure 2). Where a First Nation served by an agency may work with their service provider, it is the provider that typically ensures coordination of protection and prevention services. For First Nations not affiliated to an FNCFS agency, the service landscape is more complex.

Figure 2: Service Landscape for First Nations Not Affiliated to an FNCFS Agency

*The provision of child and family services in First Nations not affiliated to an FNCFS agency includes several actors. Their coordination is necessary to ensure that protection and prevention services are integrated and working in tandem to keep children out of care. Structural drivers are at the root of contact with protective services and need to be addressed.*

- Possible disconnects:
- Integration of protection and prevention services
  - Interaction of and integration between protection and prevention service providers to ensure needs of children and families are being met
  - Protocols, agreements, relationships between province and First Nation



Structural drivers that promote contact with protective services exist across communities. Addressing or mitigating the effects of those structural drivers can be done through an integrated combination of protection and prevention. For First Nations not affiliated to an FNCFS agency, protection services are typically provided by the province/territory, with funding from the federal government for services on-reserve. Prevention services may be offered by the province/territory, the First Nation, a nearby delegated agency, or other service providers. Provincial/territorial, and now federal, legislation influences the delivery of protection services, and secondary and tertiary prevention services. Ensuring the coordination of protection and prevention services is essential for keeping children out of care. Such coordination requires protocols, agreements, and working relationships between the First Nation, provincial, and federal governments, as well as with service providers (including those within the First Nation).

There are several questions that arise from this service delivery space. What are the provinces spending in CFS on-reserve? Are they focused on protection or is prevention (with consideration of the best interests of the child, a culturally informed approach, and least disruptive measures) engaged? Are protection and prevention services aligned? Who is managing that alignment, and how? What federal funding is being allocated to for these activities and to whom? What are the relationships of First Nations with funders and other service providers in CFS? While the answers to these questions will differ by province/territory and First Nation, how the questions are managed merits consideration as they impact how children receive CFS.

In November 2021, at the request of the First Nations Child and Family Caring Society (Caring Society), with the support of the Assembly of First Nations (AFN), IFSD was contracted to undertake a CFS needs assessment regarding First Nations not affiliated to an FNCFS agency. The purpose of this project was to assess needs in First Nations not affiliated to an FNCFS agency for the delivery of prevention and other CFS-related services. The data gathered for this project was intended to define a range of approaches and costs for the delivery of CFS in First Nations not affiliated to an FNCFS agency. First Nations not affiliated to an FNCFS agency were invited to participate through regional and national gatherings, a questionnaire, and in-depth collaboration.

46% national participation in a questionnaire (2022); 9 regional workshops (75 First Nations); 2 national gatherings (65+ First Nations); and 5 in-depth analyses.

At its launch, the project was expected to be completed by December 2022. However, it took significantly more time than planned to work with First Nations to gather data, and to access data from the Government of Canada. More time was needed to ensure First Nations had a meaningful opportunity to participate given spare capacity in First Nations on CFS is limited, mandates for CFS vary, and starting points are different. The variability in starting points and service delivery models in First Nations not affiliated to an FNCFS agency meant that no single approach could be defined.

***IFSD is grateful to the First Nations who shared their time, information, and expertise on CFS. This work would not have been possible without their generous contributions.***

This report proceeds by:

- 1) Reviewing current context of First Nations not affiliated to an FNCFS agency;
- 2) Discussing the project's data gathering tools and analysis;
- 3) Reviewing approaches to service delivery in First Nation not affiliated to an FNCFS agency;
- 4) Defining scenarios and related cost estimates;
- 5) Concluding with recommendations and considerations for next steps.

Common terms	Definition
First Nation not affiliated to an FNCFS agency	A First Nation that receives protection services from the province/territory or another service provider. They are not associated to an FNCFS agency accountable for delivering protection and/or prevention services.
FNCFS agency	An organization mandated by one or more First Nations to provide protection and/or prevention services, following provincial/territorial law, and <i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> . <sup>7</sup>

<sup>7</sup> See Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 (CanLII), at para 67, accessed February 22, 2024, <https://canlii.ca/t/k2qhn>.

Protection	Services for child safety to ensure children are free from harm, abuse, and neglect.
Prevention	<p>Activities and services to stop or reduce child maltreatment.</p> <p>3 types of prevention:</p> <p><b>Primary:</b> Directed to the community as a whole, designed to educate and prevent child maltreatment.</p> <p><b>Secondary:</b> Aimed to support a child who may be at risk of harm or maltreatment, e.g., home visit programs for parents, addictions treatment for parents, etc.</p> <p><b>Tertiary:</b> Used when a child has been identified as at risk of harm of child maltreatment, e.g., immediate crisis intervention.</p>
Funding approach	A series of principles and rules that determine the amount of resources that flow to a recipient for a defined purpose, how the resources are flowed, when, and with what terms and condition for use and performance.
Fiscal year	The period from April 1 to March 31.
FNCFS Program	The federal program that funds First Nations child and family services (FNCFS) related activities, e.g., FNCFS agencies, prevention funding for First Nations not affiliated to an FNCFS agency, etc.
C-92	House of Commons Government Bill, sponsored by the Minister of Indigenous Services, which received royal assent on June 21, 2019. It is at times used to refer to the Act respecting First Nations, Inuit and Metis children, youth and families (the Act).
the Act	<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> that affirms inherent right to self-government in child and family services and defines principles for the provision of CFS to Indigenous children.
Starting point/point of departure	The current social, economic, and geographic context of a First Nation.

## Part I: Current context and funding practices

The 172 First Nations not affiliated to an FNCFS agency (145 First Nations, when those in the Northwest Territories which are not affected by the CHRT orders on CFS are excluded) are concentrated (by number of communities) in British Columbia with 82 communities (Figure 3). Total population (on-reserve and off-reserve) is highest in British Columbia, although the largest on-reserve populations among First Nations not affiliated to an FNCFS agency are in Quebec (Figure 4).

Figure 3

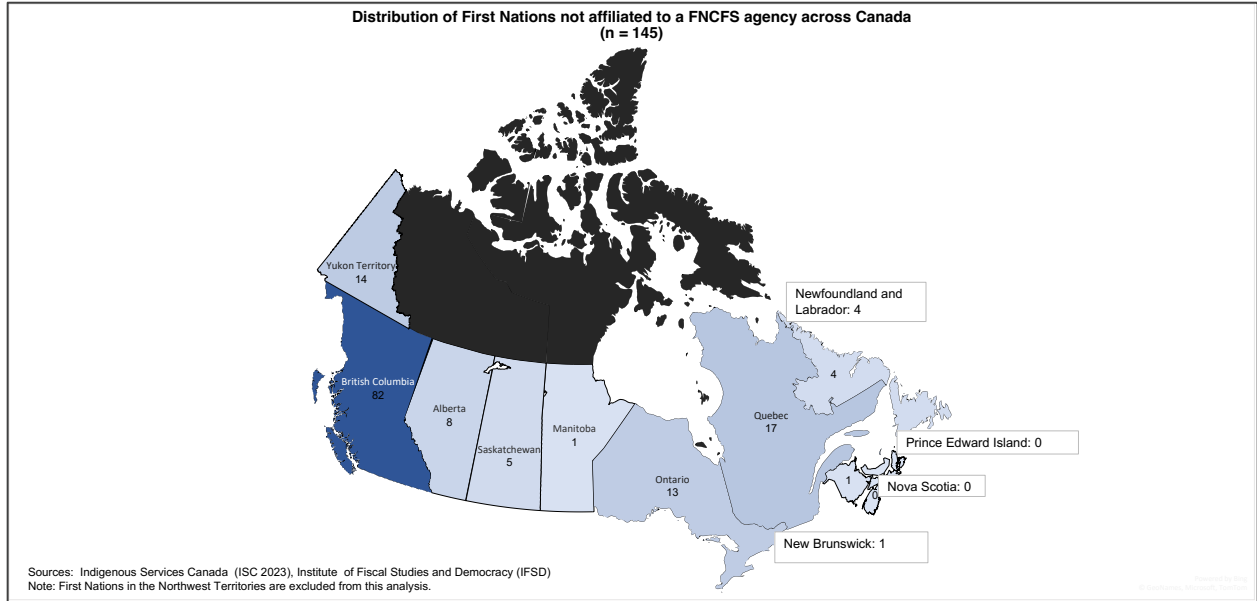
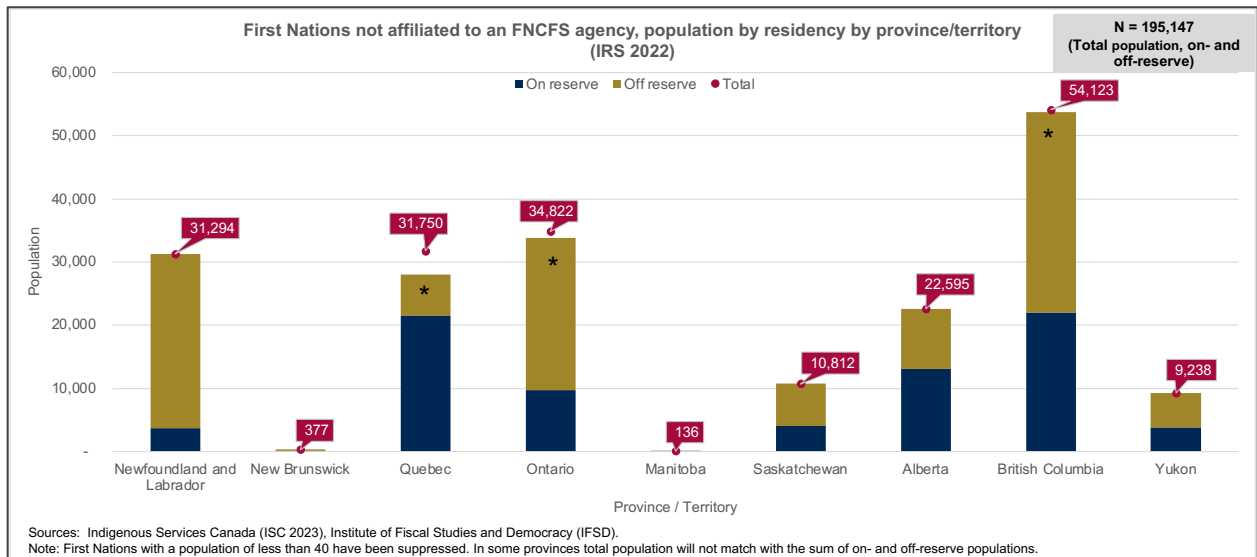


Figure 4



Since 2018, funding has increased for First Nations not affiliated to a FNCFS agency for child and family services through the FNCFS Program. From a low of \$7M in 2017-2018, total federal expenditures increased to \$171M in 2021-2022 for these First Nations (Figure 5). Changes in funding were a function of CHRT orders and the now ended Community Well-being and Jurisdiction Initiative (CWJI).

Most of this federal funding is flowed through the fixed contribution approach and has become increasingly so across fiscal years, i.e., must be used for specific purposes

within a specific period (Figure 6) (see contribution approach definitions in Table 4). On a regional basis, as of fiscal year 2018-19, nearly 30% of funding was allocated to British Columbia per fiscal year, with Ontario following closely behind (Figure 7). In fiscal years 2018-2019 to 2020-2021, most funding to First Nations not affiliated to an FNCFS agency was associated to CWJI. In 2021-2022, most funding was for a combination of CWJI and CHRT-mandated retroactive payments (Figure 8).

Figure 5

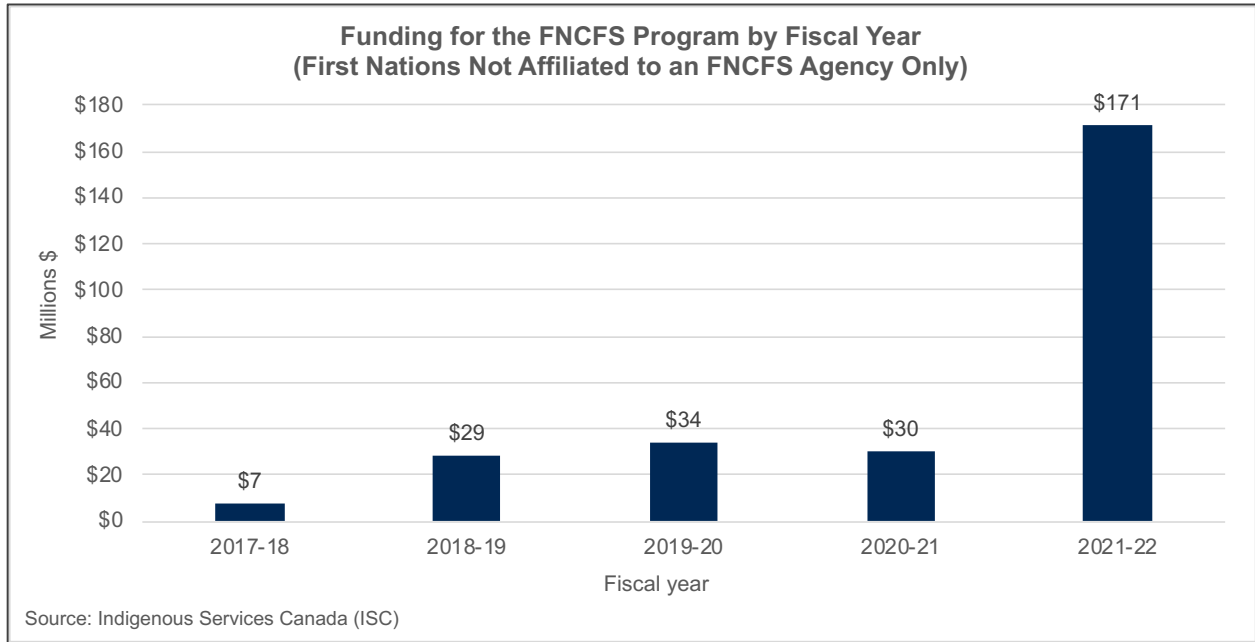


Figure 6

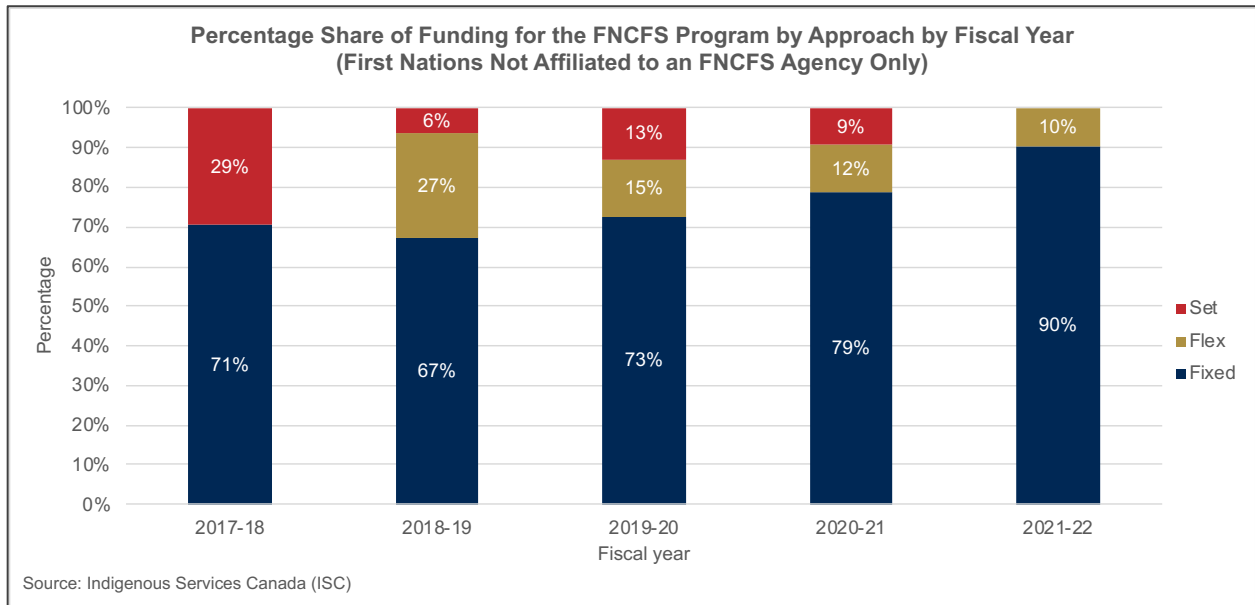


Figure 7



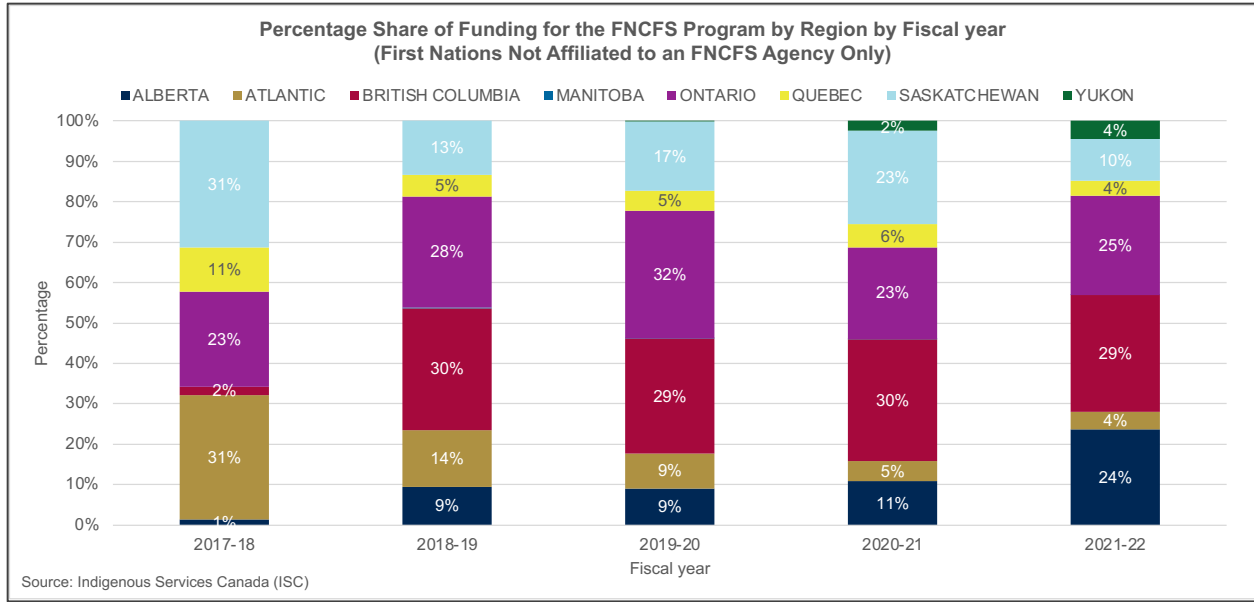
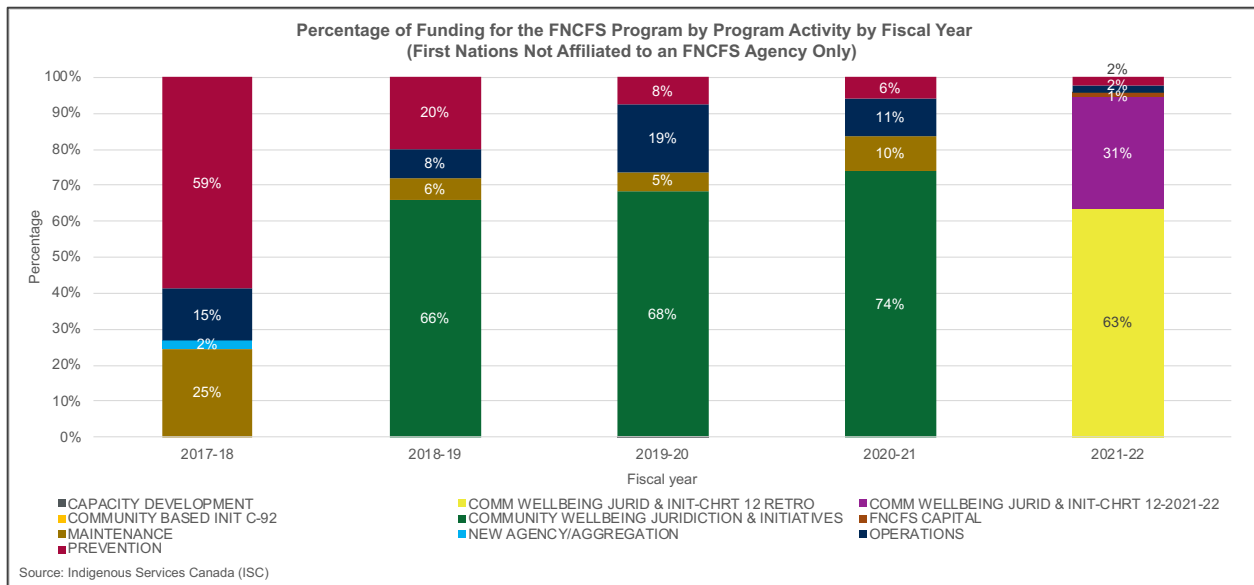
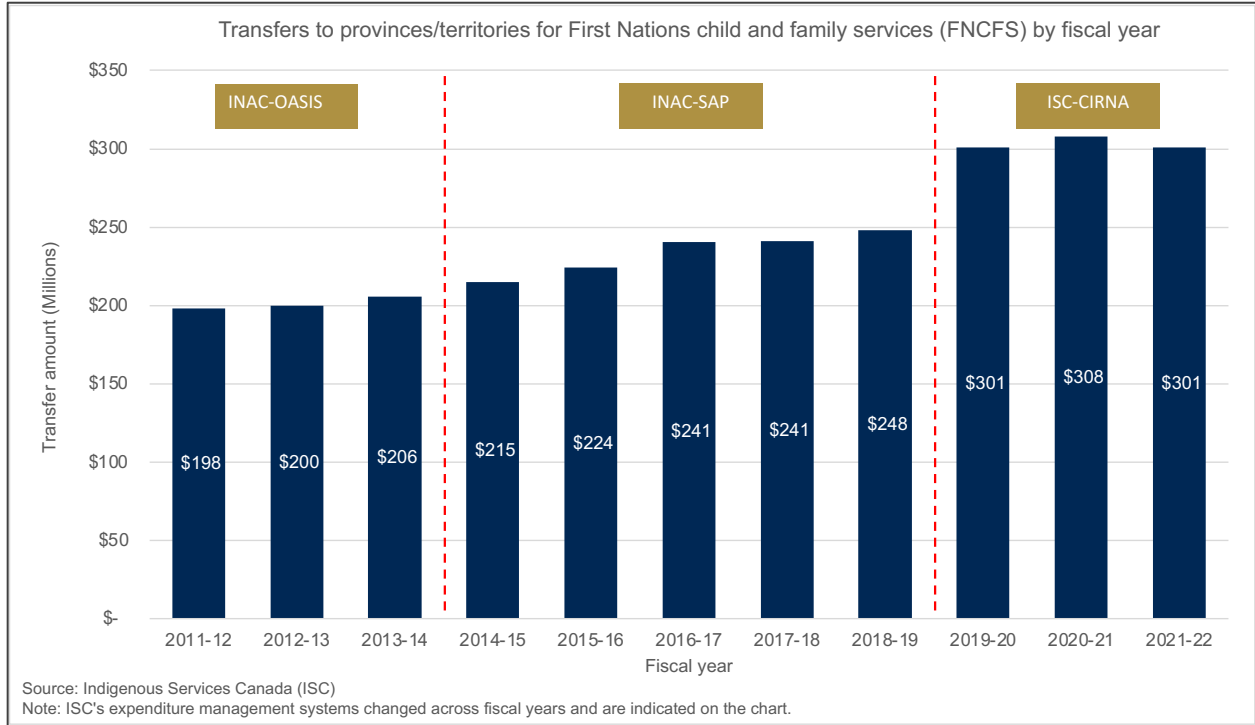


Figure 8



Provinces and territories are accountable for delivering protection services to First Nations not affiliated to an FNCFS agency (provincial/territorial legislation and service delivery differs). For CFS provided on-reserve (an area of federal responsibility), the federal government provides financial resources to the province/territory delivering the services.

Figure 9



Federal transfer data indicates an increase in the amount transferred to provinces/territories for FNCFS between 2011-12 and 2021-22, from a total of \$198M to \$301M (Figure 9). The composition of those resources, e.g., portions for maintenance, prevention, protection, operations, are not identifiable from the transfer data obtained by IFSD.

On a provincial/territorial basis, annual transfers generally increase, although there is variability between fiscal years (Figure 10). Ontario receives the largest transfer amount, followed distantly by Alberta and British Columbia.

Figure 10

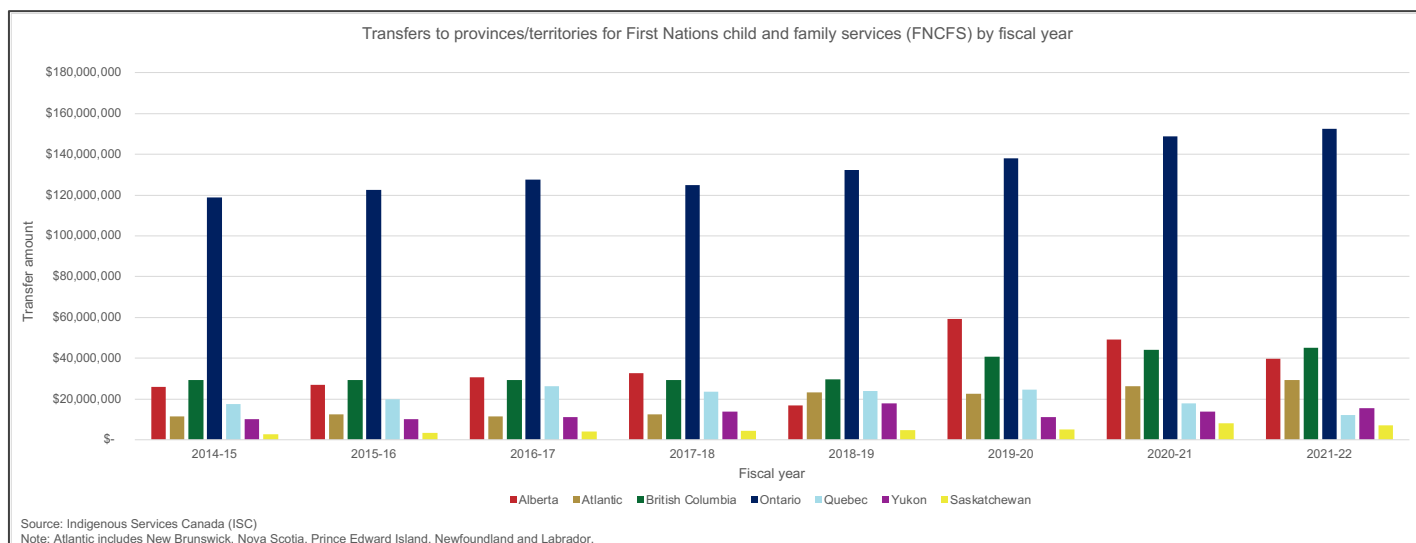


Table 2

First Nations child and family services transfer entity	Province/territory	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Department/Agency of Provincial/Territorial Government	Alberta	\$ 25,826,851	\$ 26,976,918	\$ 30,775,341	\$ 32,749,248	\$ 16,660,394	\$ 59,369,484	\$ 49,223,086	\$ 39,600,001
	Atlantic	\$ 11,503,465	\$ 12,534,580	\$ 11,362,967	\$ 12,301,038	\$ 23,199,458	\$ 22,618,817	\$ 26,332,079	\$ 29,402,392
	British Columbia	\$ -	\$ -	\$ 29,400,000	\$ 29,100,000	\$ 29,624,713	\$ 40,620,717	\$ 43,986,001	\$ 45,100,000
	Ontario	\$ 118,704,118	\$ 122,605,318	\$ 127,657,643	\$ 124,898,457	\$ 132,214,318	\$ 137,900,099	\$ 148,883,000	\$ 152,542,818
	Quebec	\$ 17,466,128	\$ 19,710,236	\$ 26,154,772	\$ 23,502,543	\$ 23,973,039	\$ 24,537,693	\$ 17,837,275	\$ 11,921,460
Provincial/Territorial Government	British Columbia	\$ 29,100,000	\$ 29,100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Yukon	\$ 9,919,816	\$ 10,000,000	\$ 11,136,669	\$ 13,913,571	\$ 17,803,578	\$ 11,102,301	\$ 13,822,336	\$ 15,594,554
	Saskatchewan	\$ 2,652,285	\$ 3,191,612	\$ 4,044,141	\$ 4,440,000	\$ 4,750,000	\$ 5,000,000	\$ 7,995,996	\$ 7,000,000

Resources transferred from the federal government to a province/territory for FNCFS are transferred to a specific department (for service delivery) or to the province/territory generally. As indicated in Table 2, transfers to Alberta, the Atlantic provinces (New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador), Ontario, Quebec, and British Columbia (as of fiscal year 2016-17) are made to a specific department or agency of the provincial government (presumably accountable for delivering FNCFS). Transfers to Saskatchewan and Yukon, as well as British Columbia in fiscal years 2014-15 and 2015-16, are made to the province/territory generally. This means that the resources would flow to their consolidated revenue fund without necessarily being allocated to a department/agency delivering FNCFS.

While resources are transferred from the federal government to provinces and territories for specific activities related to the delivery of FNCFS, there is no guarantee that the precise amount of funding is fully dedicated to the discharge of the obligation. For instance, if a province receives \$40M for FNCFS, there is no way of knowing how the amount was determined, tracking how the funds were used and what results were generated, other than through provincial/territorial reporting.

Provinces/territories are not required to report to the federal government on their use of funds transferred for FNCFS. Given the lack of reporting requirements of provinces and territories, it is not clear if current services align with CHRT orders and applicable legislation.

Provinces as funding recipients operate under different policies than First Nations recipients.<sup>8</sup> Provincial governments have inherent organizational capacity

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<sup>8</sup> Various acts of parliament regulate government spending. Foremost among the acts is the Financial Administration Act (FAA) which establishes principles for how government spending is authorized and allocated (Financial Administration Act (R.S.C., 1985, c. F-11), <https://laws-lois.justice.gc.ca/eng/acts/f-11/>). The FAA establishes the Treasury Board, a Cabinet committee (of which the Minister of Finance is a member) that directs government financial management. The FAA does not exhaustively outline government financial management policy, but rather gives this authority to the Treasury Board. Through a series of control gates for public spending, the FAA is designed to foster increased accountability in spending.

Regulations established by the FAA and other relevant acts (such as the Federal-Provincial Fiscal Arrangements Act (R.S.C., 1985, c. F-8), <https://laws-lois.justice.gc.ca/eng/acts/f-8/>.) have resulted in a system that facilitates government expenditures to institutions and organizations with a high degree of organizational capacity. The Treasury Board, working under the relevant acts, has established a policy and directive on transfer payments that sets clear requirements the recipient must meet to qualify for government transfers. A transfer payment, according to the Policy on Transfers (Treasury Board of Canada Secretariat, "Policy on Transfer Payments," Government of Canada, last modified April 4, 2022, <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=13525>.) is:

**transfer payment** (paiement de transfert)

A monetary payment, or a transfer of goods, services or assets made, on the basis of an appropriation, to a third party, including a Crown corporation, that does not result in the acquisition by the Government of Canada of any goods, services or assets. Transfer payments are categorized as grants, contributions and other transfer payments. Transfer payments do not include investments, loans or loan guarantees.

The Policy on Transfers notes the reporting requirements related to different types of transfers:

**contribution** (*contribution*)

A transfer payment subject to performance conditions specified in a funding agreement. A contribution is to be accounted for and is subject to audit.

**grant** (*subvention*)

A transfer payment subject to pre-established eligibility and other entitlement criteria. A grant is not subject to being accounted for by a recipient nor normally subject to audit by the department. The recipient may be required to report on results achieved.

Requirements vary based on the type of recipient. Provincial governments have inherent organizational capacity. Federal requirements for receiving transfer payments (i.e. for accountability, program management, and financial capacity) are readily met by provinces. For example, Ontario has an organizational structure that closely mirrors the federal government. Ontario has a legislature, and Auditor General, and its own Financial Administration Act that sets out its responsibilities vis-à-vis public expenditures. Conversely, *First Nations may or may not possess similar capacity (at a scale suitable to their populations) relative to provinces which may influence the nature of financial transfers.*

requirements. Federal requirements for receiving transfer payments (i.e. for accountability, program management, and financial capacity) are readily met by provinces. For example, Ontario has an organizational structure that closely mirrors the federal government. Ontario has a legislature, and Auditor General, and its own Financial Administration Act that sets out its responsibilities vis-à-vis public expenditures. Conversely, First Nations may or may not possess similar capacity (at a scale suitable to their populations) relative to provinces which may influence the nature of financial transfers. For this reason, transfers to First Nations are different and defined as contribution approaches (set, fixed, flexible, block) or through grant funding.

Reporting is not typically required for federal transfers to provinces. There is an assumption that the mirroring of financial and legislative controls in the provinces provide sufficient oversight for the use of funds. In some instances, however, there are requirements to uphold certain standards, e.g., those of the Canada Health Act with funding through the Canada Health Transfer. In rarer instances, reporting against indicators is required for federal transfers to provinces. Consider the supplementary health funding announced in February 2023 through bilateral agreements between the provinces and federal government.<sup>9</sup> As a condition of the supplementary transfers, reporting on depersonalized health indicators is required, with consideration of four shared priorities.<sup>10</sup> Provinces agreed to the reporting requirements as a condition of the transfers. There may be incentives for committing to the reporting in exchange for the additional health resources for broad population and political benefits. The same political calculations may not be true for FNCFS.

In its Merit Decision (2016 CHRT 2), the CHRT found the federal FNCFS Program to be discriminatory and underfunded. The agreements between the federal and provincial/territorial governments were identified as part of the problem. The

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Indigenous Recipients have their own set of funding approaches defined in the Directive on Transfer Payments (Appendix K) (Treasury Board of Canada Secretariat, "Policy on Transfer Payments" last modified April 1, 2022, <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=14208>.) Indigenous Recipients have three contribution funding agreements: fixed, flexible, and block, as well as the grant approach. Grants have greater latitude on the use of funds with reporting on outcomes. Contribution approaches have performance provisions and specific criteria for eligibility and purpose. Flexible and block contributions are reserved for recipients with "demonstrated capacity to manage transfer payments." Such demonstrated capacity should consider, governance structure, program management organization, financial and administrative experience, accountability mechanisms for transparency, disclosure, responsibility and redress, and financial position.

<sup>9</sup> Health Canada, "Working together to improve health care for Canadians," Government of Canada, February 7, 2023, <https://www.canada.ca/en/health-canada/news/2023/02/working-together-to-improve-health-care-for-canadians.html>.

<sup>10</sup> See Health Canada, "Working together to improve health care for Canadians," Government of Canada, February 7, 2023, <https://www.canada.ca/en/health-canada/news/2023/02/working-together-to-improve-health-care-for-canadians.html#a2>.

Priorities include:

- expanding access to family health services, including in rural and remote areas;
- supporting our health workers and reducing backlogs;
- improving access to quality mental health and substance use services; and
- modernizing the health care system with standardized health data and digital tools.

agreements and lack of service coordination led to adverse impacts for children. As explained in 2021 CHRT 12 (at par. 35)<sup>11</sup>:

As noted in 2018 CHRT 4 at paragraph 40, “[t]he Tribunal made extensive findings in [the Merit Decision] and provided very detailed reasons as to how it arrived at its findings.” As noted in the Merit Decision, “[t]hose findings demonstrate that “AANDC’s design, management and control of the FNCFS Program, along with its corresponding funding formulas and the other related provincial/territorial agreements have resulted in denials of services and created various adverse impacts for many First Nations children and families living on reserves” (Merit Decision at para. 458, emphasis added). Moreover, “[t]he Tribunal also found that “[t]he failure to coordinate the FNCFS Program and other related provincial/territorial agreements with other federal departments and government programs and services for First Nations on reserve, resulting in service gaps, delays and denials for First Nations children and families” (2016 CHRT 2 at para. 458, emphasis added).

Reforming federal agreements with provincial/territorial governments to align to the CHRT's rulings (to end discrimination and ensure it does not reoccur) would be an important step to ensuring First Nations children are receiving necessary supports and services. Reporting requirements on services and integration with First Nations could be part of the reformed agreements.

Reporting requirements for provinces in FNCFS are most likely to be voluntary unless they were imposed in agreements with the federal government. Some provinces could choose to report on the funds received for FNCFS through federal transfers and on their uses in First Nations. Yukon, for instance, has shared its agreement on FNCFS with First Nations in the territory. Reporting on results, however, is less common. Provinces/territories may report on the number of children in care and even outcomes in their own reporting, but the alignment of expenditure data to specific activities (to ensure resource sufficiency and track results) is lacking. Even in British Columbia where there have been declared commitments to upholding the principles of the United Nations Declaration on Indigenous Peoples (UNDRIP), the province cannot align expenditures to Indigenous children in care or their well-being.<sup>12</sup>

Given the roles of provinces and territories in the provision of FNCFS, they should be reporting to First Nations not affiliated to an FNCFS agency on the allocation of resources, coordination of service delivery, and results of First Nations children in contact with their services. The province/territory as the service provider should coordinate with the First Nation not affiliated to an FNCFS agency to ensure integrated service delivery. These actions, while valuable, would be voluntary on the part of the province/territory.

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<sup>11</sup> 2021 CHRT 12 at para. 35: [https://fncaringsociety.com/sites/default/files/ruling\\_2021\\_chrt\\_12\\_non-agency\\_consent\\_order.pdf](https://fncaringsociety.com/sites/default/files/ruling_2021_chrt_12_non-agency_consent_order.pdf)

<sup>12</sup> Helaina Gaspard, Resource analysis in the provision of Indigenous and non-Indigenous child and family services in British Columbia, Institute of Fiscal Studies and Democracy (IFSD), November 2021, in Representative for Children and Youth, At a Crossroads: The roadmap from fiscal discrimination to equity in Indigenous child welfare, March 2022, [https://rcybc.ca/wp-content/uploads/2022/03/RCY\\_At-a-Crossroads\\_Mar2022\\_FINAL.pdf](https://rcybc.ca/wp-content/uploads/2022/03/RCY_At-a-Crossroads_Mar2022_FINAL.pdf).

### **Allocations in FNCFS to First Nations not affiliated to an FNCFS agency**

The CHRT ordered in 2021 that First Nations not affiliated to an FNCFS agency receive funding for child and family services (retroactive to January 2016). The retroactive payments were to cover the period from January 2016 to April 2021, at \$947 per capita (see 2021 CHRT 12 at par. 42).

Consultation was ordered to:

[...] ensure the funding meets the First Nations needs until long-term reform is implemented. Funding would ensure substantive equality, the best interests of the child, and ensure inflation, population growth, remoteness and governance capacity are accounted for. The interim funding model would apply until one of the following occurs: a Nation-to-Nation agreement respecting self-government encompassing child and family services is established; a Nation specific agreement is reached that is more advantageous to the First Nation; program reform is completed in accordance with best practices; or unforeseen circumstances require other adjustments (2018 CHRT 4 at para. 413). There will be a needs assessment to support long-term reform (2021 CHRT 12 at para. 15).<sup>13</sup>

Prior to the order for retroactive payments and other funding, the Community Well-being and Jurisdiction Initiative (CWJI) was announced in 2018. Eligible First Nations, including those recognized as Bands in Yukon, and First Nations with self-government agreements who have not exercised jurisdiction over child and family services were eligible for the prevention funding.<sup>14 15</sup>

The CWJI was intended to provide First Nations (whether or not they were served by an FNCFS agency)<sup>16</sup> with support for prevention (primary, secondary, tertiary) funding for culturally appropriate prevention programs in keeping with the best interests of the child, and supported First Nations capacity in child and family well-being. Among other eligible activities, CWJI enabled projects to support the development and implementation of jurisdictional models, e.g., upholding the principles in the Act, research, development, and consultation on jurisdictional models, support for meetings with federal and/or provincial governments, etc.<sup>17</sup> The funding did not include developmental phases (similar to those of Directive 20-1) to ensure First Nations had the capacity to deliver the range of prevention services they chose.

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<sup>13</sup> 2021 CHRT 12 at par. 15, [https://fncaringsociety.com/sites/default/files/ruling\\_2021\\_chrt\\_12\\_non-agency\\_consent\\_order.pdf](https://fncaringsociety.com/sites/default/files/ruling_2021_chrt_12_non-agency_consent_order.pdf).

<sup>14</sup> This can include, authorities, boards, agencies, or other entities created by the First Nation.

<sup>15</sup> Indigenous Services Canada, "Community Well-Being and Jurisdiction Initiatives Program," *Government of Canada*, last modified July 12, 2023, <https://www.sac-isc.gc.ca/eng/1638565024162/1638566154510>.

<sup>16</sup> See for example, cross-examination of Nathalie Nepton, January 8, 2021. [https://fncaringsociety.com/sites/default/files/transcript\\_of\\_cross-examination\\_of\\_nathalie\\_nepton\\_jan\\_8\\_2021.pdf](https://fncaringsociety.com/sites/default/files/transcript_of_cross-examination_of_nathalie_nepton_jan_8_2021.pdf)

<sup>17</sup> Indigenous Services Canada, "Contributions to support Community Well-Being." *Government of Canada*, last modified July 11, 2023, <https://www.sac-isc.gc.ca/eng/1635435393871/1635435617423>.



In 2023, CWJI ended as Canada funded prevention (at \$2,500 per person registered with the Indian Act resident on reserve) and Band Representative Services (\$283 per person). Funding at \$2,500 “per person resident on reserve” was ordered by the CHRT in 2022 (see 2022 CHRT 8 at para 172 (7)(8)).<sup>18</sup> The CHRT required flexibility on implementation for First Nations (or FNCFS agencies) that were not ready on the start date, due to exceptional circumstances. This included the provision of a carry-forward for unused funds.

FNCFS transitional terms and conditions (adopted in 2022 and remaining in effect) inform prevention program activities through the FNCFS program. Eligible recipients include First Nations, FNCFS agencies, and non-delegated FNCFS service providers (if authorized by the First Nation).<sup>19</sup> Prevention services in the terms and conditions are categorized as primary, secondary, and tertiary:<sup>20</sup>

- Primary prevention is directed at the community as a whole e.g., public awareness and education, crisis help line, coordination with other departments, etc.

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<sup>18</sup> 2022 CHRT 8 (para 172 (7)(8)) [https://fncaringsociety.com/sites/default/files/2022\\_chrt\\_8.pdf](https://fncaringsociety.com/sites/default/files/2022_chrt_8.pdf):

(7) “Pursuant to paragraph 413(3) of 2018 CHRT 4, adding the following paragraph to the Tribunal’s order in 2018 CHRT 4

[421.1]: In amendment to paragraphs 410, 411, 420 and 421 Canada shall, as of April 1, 2022, fund prevention/least disruptive measures at \$2500 per person resident on reserve and in the Yukon in total prevention funding in advance of the complete reform of the FNCFS Program funding formulas, policies, procedures and agreements. Canada shall fund the \$2500 on an ongoing basis adjusted annually based on inflation and population until the reformed FNCFS Program is fully implemented. This amount will provide a baseline for the prevention element in the reformed FNCFS Program pursuant to paragraph 1 of the Consent Order. Flexibility will be provided on the implementation for First Nations governments and FNCFS agencies not ready on the start date, which will require more time due to exceptional circumstances that will be further defined with the parties. Funds will be directed to the First Nations and/or First Nations child and family service providers(s) responsible for the delivery of prevention services. These funds shall be eligible to be carried forward by the First Nation and/or First Nations child and family service providers(s).”

(8) “Pursuant to 2021 CHRT 12 at paragraph 42(5), adding the following paragraph to the Tribunal’s order in 2021 CHRT 12:

[42.1] In amendment to paragraph 42(1), Canada shall, as of April 1, 2022, fund prevention/least disruptive measures for non-Agency First Nations (as defined in 2021 CHRT 12) at \$2500 per person resident on reserve and in the Yukon, on the same terms as outlined in 2018 CHRT 4 at paragraph 421.1 with respect to FNCFS Agencies.”

<sup>19</sup> Indigenous Services Canada, “FNCFS Transitional Terms and Conditions: Contributions to provide children, youth, young adults, families, and communities, with prevention and protection services,” *Government of Canada*, last modified April 1, 2022, <https://www.sac-isc.gc.ca/eng/1648577221890/1648577242550#chp5-3>.

<sup>20</sup> Indigenous Services Canada, “FNCFS Transitional Terms and Conditions.”



- Secondary prevention can support a child who may be at risk of harm or maltreatment e.g., home visit programs for parents, family counseling, addictions treatment for parents, etc.
- Tertiary prevention, is used when a child has been identified as at risk of harm of child maltreatment e.g., immediate crisis interventions, domestic violence interventions, mental health or addictions treatment for families or youth, etc.

Eligible expenditures for prevention include: salary and benefits for the delivery of prevention services, court related costs, costs that support governance and administration, and program costs to support families at risk.<sup>21</sup>

The delivery of prevention services, especially secondary and tertiary prevention may heighten liability risk. Providers of prevention services should consult their insurers and legal counsel for information specific to their circumstances. For general information, IFSD requested a liability opinion for First Nations delivering prevention services (and not under their own law/the exercise of jurisdiction). The full opinion is available in Appendix A.

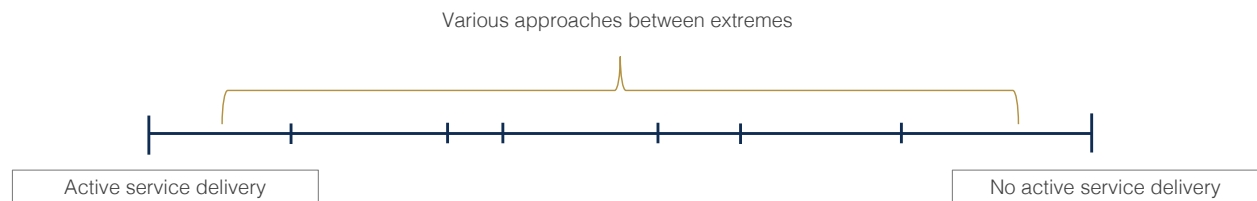
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<sup>21</sup> Indigenous Services Canada, “FNCFS Transitional Terms and Conditions.”

## Part II: Approach and data gathering tools

There is significant variability among First Nations not affiliated to an FNCFS agency operationally, financially, and organizationally. Unlike delegated agencies, not all First Nations have a designated staff for child and family services.

Most First Nations are offering some prevention services, but not the full complement or standard they would like to offer to meet their communities' needs. There are two extremes: there are First Nations offering a variety of services in CFS and related areas at one end, and at the other, First Nations without active service delivery (or, where service delivery is desired). Most First Nations fall in the middle of the range, offering some services, but not the full complement that would meet their community's needs.



Publicly accessible information on the starting points and needs of First Nations not affiliated to an FNCFS agency from a national perspective is not available. IFSD worked with First Nations to build the information analyzed and discussed in this report that considers current funding, needs, and options for a way forward. First Nations were invited to contribute and collaborate in this work in different ways:

- 1) National questionnaire;
- 2) Regional workshops;
- 3) In-depth case study collaborations; and,
- 4) National gatherings to review findings.

**It is important to note that the size of the First Nations not affiliated to an FNCFS agency population is variable. The questionnaire analysis was undertaken with a population size of 133 First Nations<sup>22</sup> (or 160 First Nations when the Northwest Territories are included).**

**In the balance of the report, the population size at November 25, 2023 is used: 145 (and 172 when the Northwest Territories are included). These variances include adjustments for service and funding approaches, and the exercise of jurisdiction. The changes in population do not impact the applicability of the questionnaire findings.**

<sup>22</sup> In January 2022, IFSD requested lists of First Nations by type of service provision in CFS from Indigenous Services Canada. These lists were updated with subsequent analysis from IFSD, resulting in a change in the base population number in 2023.

## Questionnaire

Beginning in April 2022, IFSD reached out to First Nations not affiliated to an FNCFS agency. First Nations were invited to join a regional workshop to complete the questionnaire or to complete it on their own. A call to First Nations to participate in more in-depth collaborations/case studies was made during the initial outreach to explore more specific questions. See Appendix B for the outreach materials, including the questionnaire.

The outreach approach to contact First Nations not affiliated to an FNCFS agency involved both calling and emailing 169 relevant First Nations. Nine First Nations were removed from the sample (totaling 160 when the Northwest Territories are included) because they were not covered by the existing FNCFS Program. Initial calls were made the week of April 4, 2022. If contact was made with the relevant person, an email including the project overview and registration for the workshop were sent. Following the initial contact, outreach continued by phone and email from April to the end of June 2022. On average, each First Nation was contacted by phone at least three different times, and by email five to seven times.

A follow-up question was shared with First Nations not affiliated to an FNCFS agency that submitted a questionnaire on November 28, 2022, to supplement the limited financial information shared in the questionnaire:

“What is the annual budget for which you are responsible, i.e., the funds you have to work with, for services to children and families?”

A total of 9 responses were received by December 15, 2022 (a follow-up had been sent on December 5, 2022). After December 15, 2022, no additional responses to the questionnaire were accepted.

The outreach process took significantly more time than expected. There were issues identifying the contact or relevant personnel in child and family services at several First Nations. Some First Nations were unfamiliar with IFSD which limited engagement. Many First Nations indicated they were extremely busy addressing pressing community needs and did not have the capacity to complete the questionnaire.

IFSD addressed the results from the initial outreach in different ways. Working with regional groups, IFSD redoubled efforts to connect with First Nations through trusted regional or representative organizations. All First Nations not affiliated to an FNCFS agency that submitted a questionnaire were offered a \$300 gift card in recognition and appreciation of their time and efforts.<sup>23</sup>

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<sup>23</sup> Most persons completing a questionnaire for a First Nation self-identified as being either the director of CFS, executive administrator, director of health and social services, or a family centre coordinator.

Figure 11

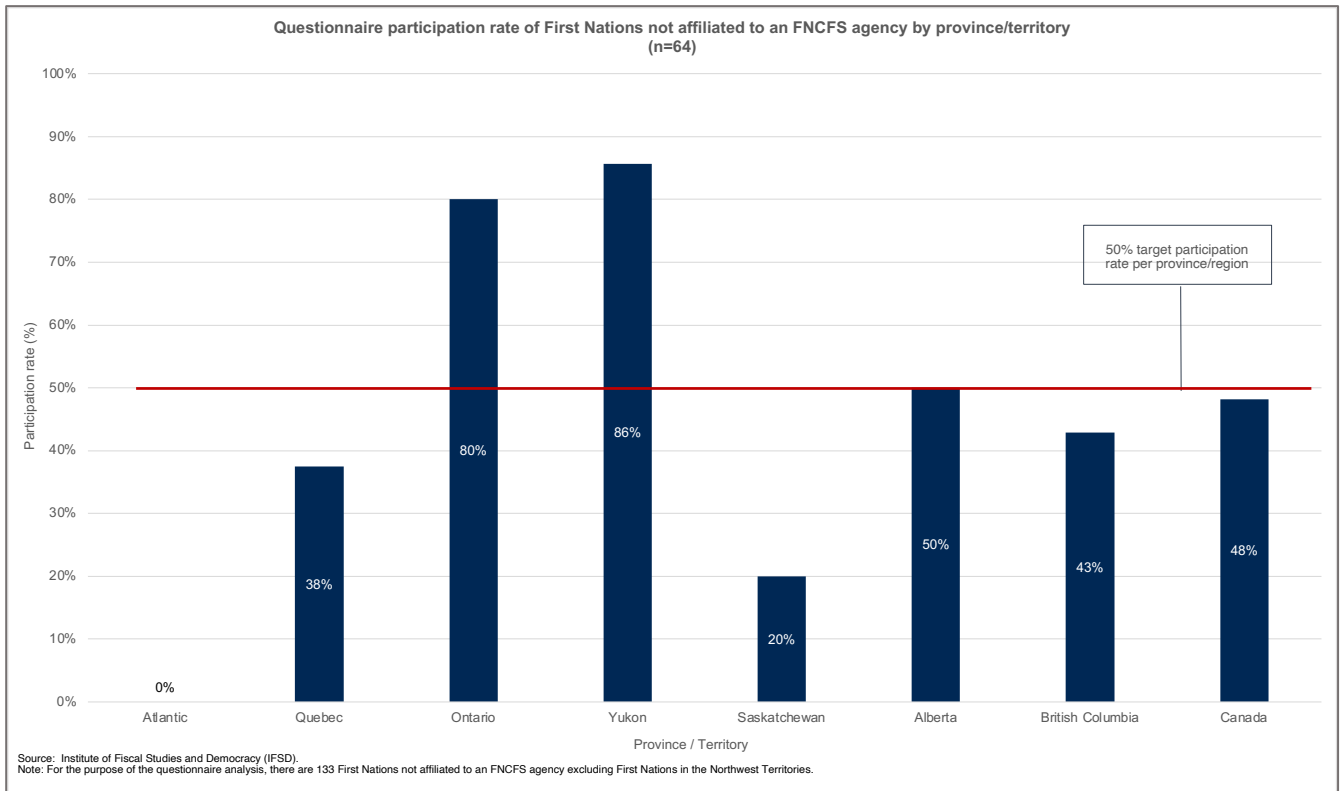
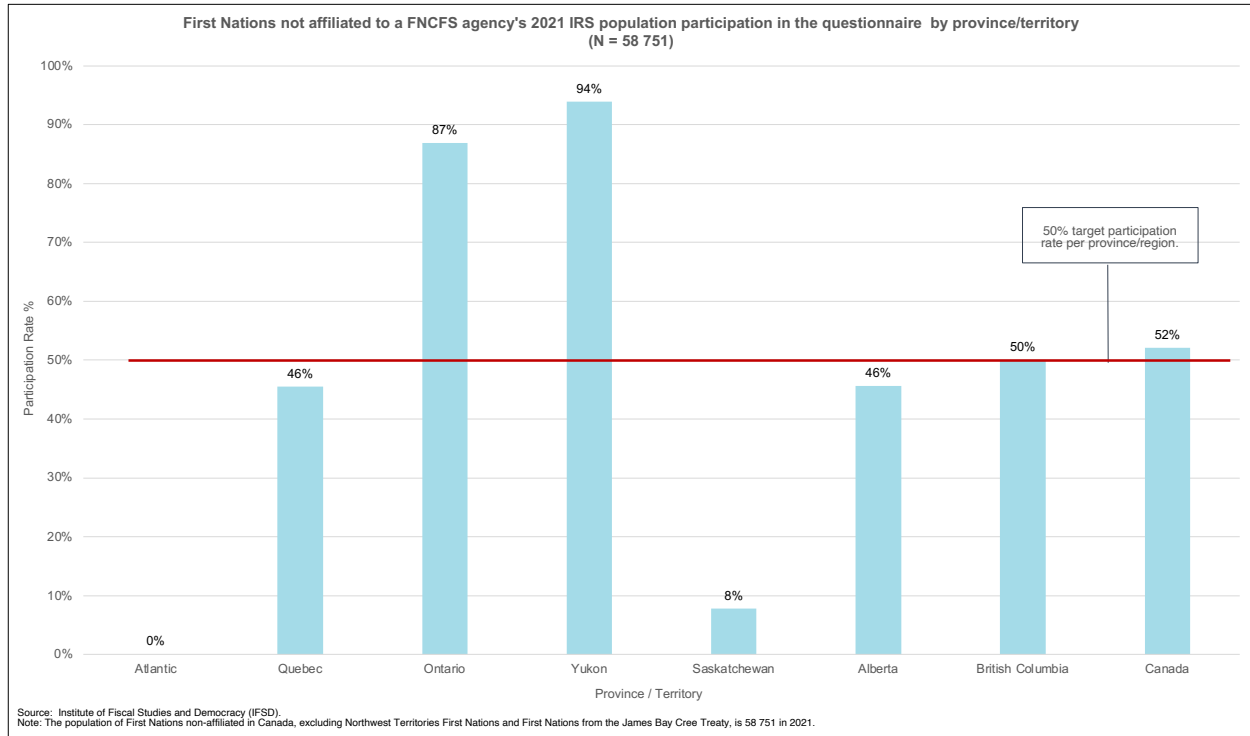


Figure 12



The questionnaire (see Appendix B) was completed by 64 First Nations representing 48% of First Nations not affiliated to an FNCFS agency (64/133) (Figure 11). On the basis of population, nationally, 52% of the First Nations population not affiliated to an FNCFS agency contributed to the questionnaire (Figure 12). Nationally, the response rate for an attempted census of population is reasonable. There was, however, no representation from Atlantic provinces (in which there are four First Nations not affiliated to an FNCFS agency).

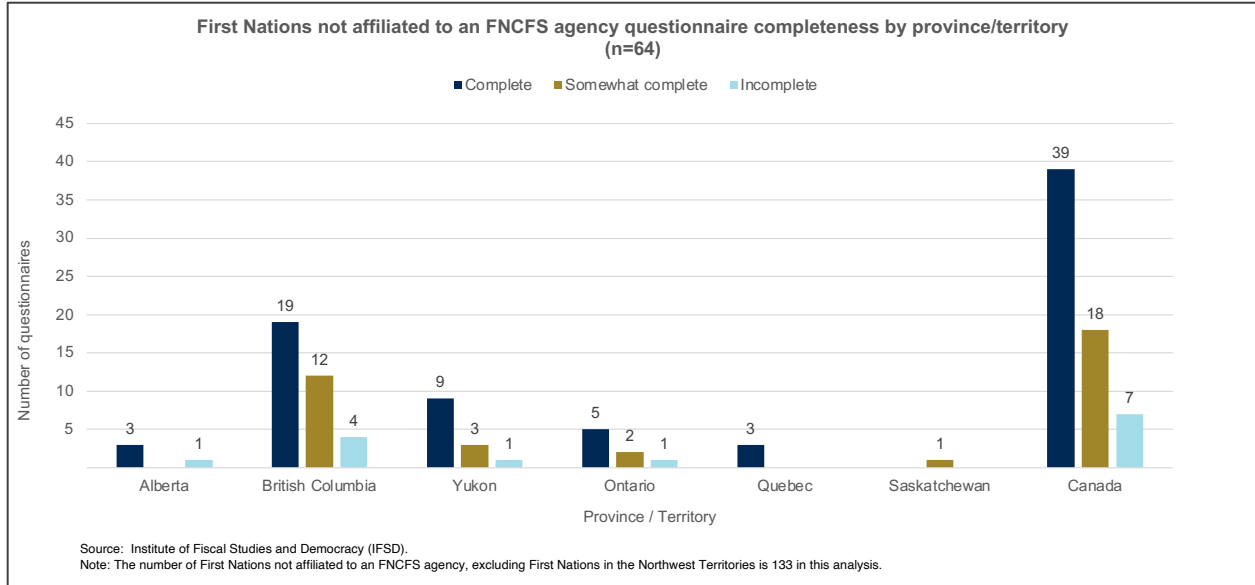
The results from the questionnaire illustrated the variability in starting points and the inconsistency in funding among First Nations not affiliated to an FNCFS agency. No relevant correlations or cost-driving relationships were observable from the questionnaire data. Due to significant gaps in budgets and overall financial portraits, IFSD's ability to produce cost analysis from the questionnaire data is limited.

Questionnaire information on expenditures and available financial resources were limited. This may suggest that those delivering services do not control or influence their budgets but rather, may be provided budgets by their First Nation. It is also possible that they did not wish to share the information.

Questionnaire completeness varied. Not all questions were answered, and some responses were incoherent or contradictory. Of submitted questionnaires, nearly 60% were complete, 28% somewhat complete, and 14% were incomplete (Figure 13). In the

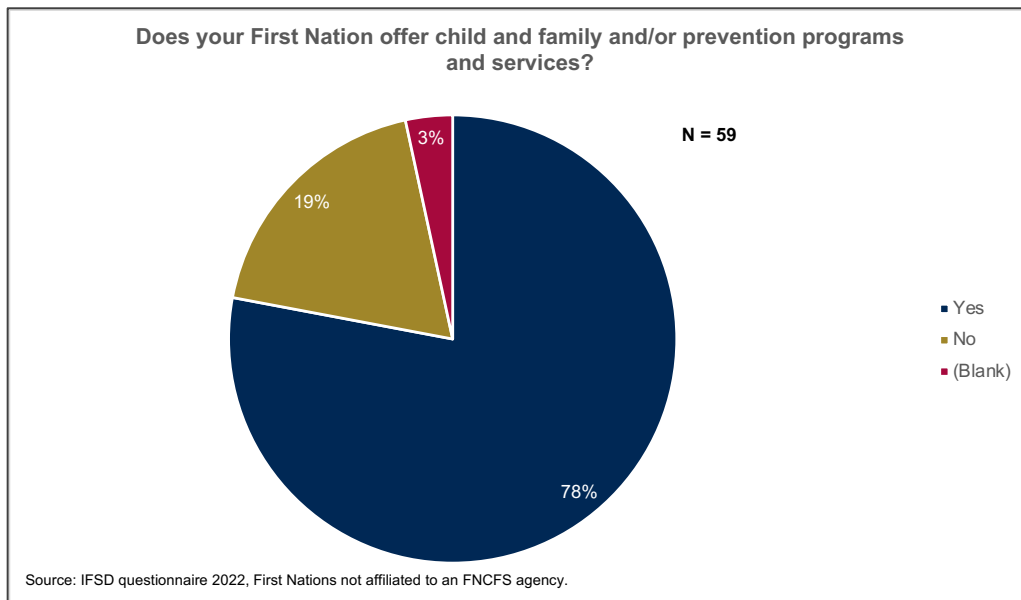
questionnaire analysis, the n-value (i.e., number of responses included in the analysis) will vary by theme or question. While 37% of First Nations from the Northwest Territories completed a questionnaire, their responses were assessed separately (as they are not affected by the CHRT orders on CFS, and thus, are not included in the national analysis).

Figure 13



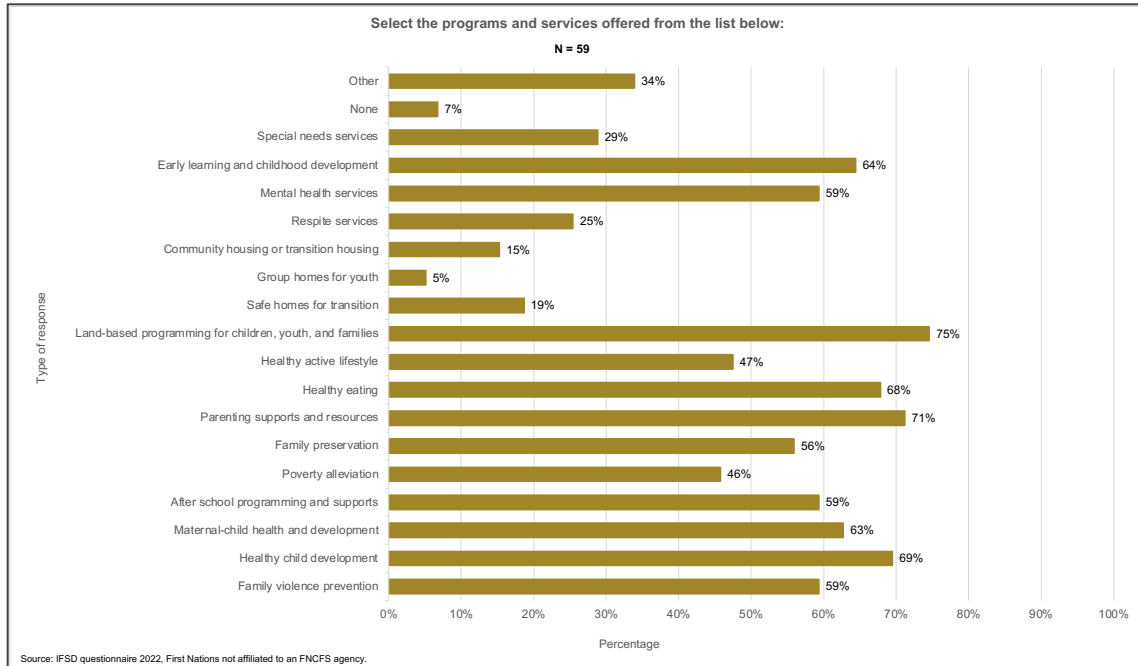
Nearly 80% of respondents reported offering some child and family services and/or prevention programs and services in their communities, while nearly 20% did not (Figure 14).

Figure 14



When asked to select the types of CFS and/or prevention programs that were being offered (multiple responses were possible), First Nations reported focusing offerings on land-based programming for children, youth, and families (75%), parenting supports and resources (71%), and healthy child development (69%), among several other activity areas that tend to emphasize physical and mental health (Figure 15). Most reported services/programs appear to be voluntary forms of primary prevention services.

Figure 15



Despite the variety of programs and services reported by respondents, 80% of respondents reported not being able to provide the child and family and prevention services their First Nation wants and needs (Figure 16). When asked about factors limiting their ability to deliver the programs and services they wished to offer, respondents most often cited insufficient staff (93%) and programming spaces and tools (86%) where the most cited limitations (Figure 17).

Figure 16

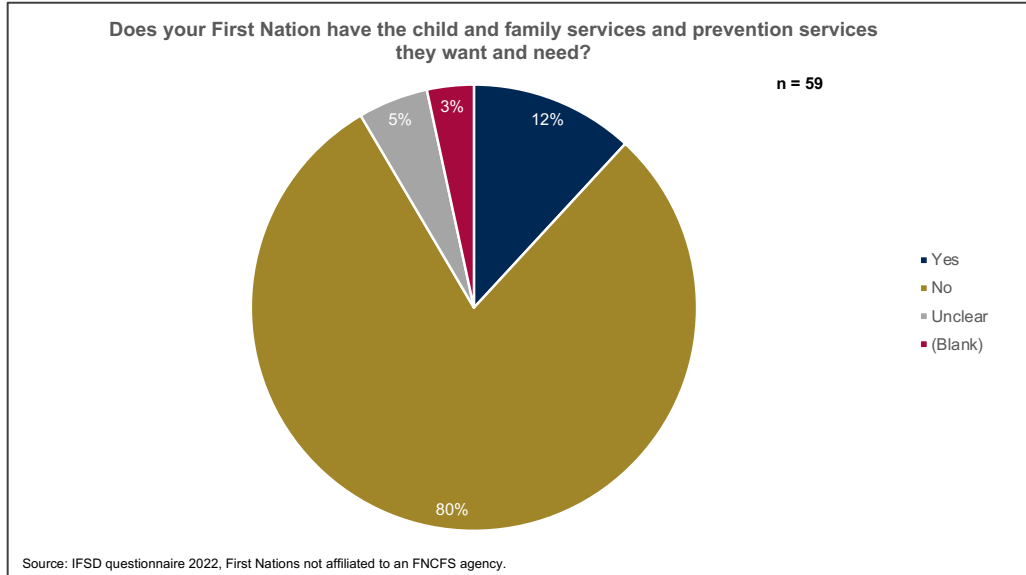
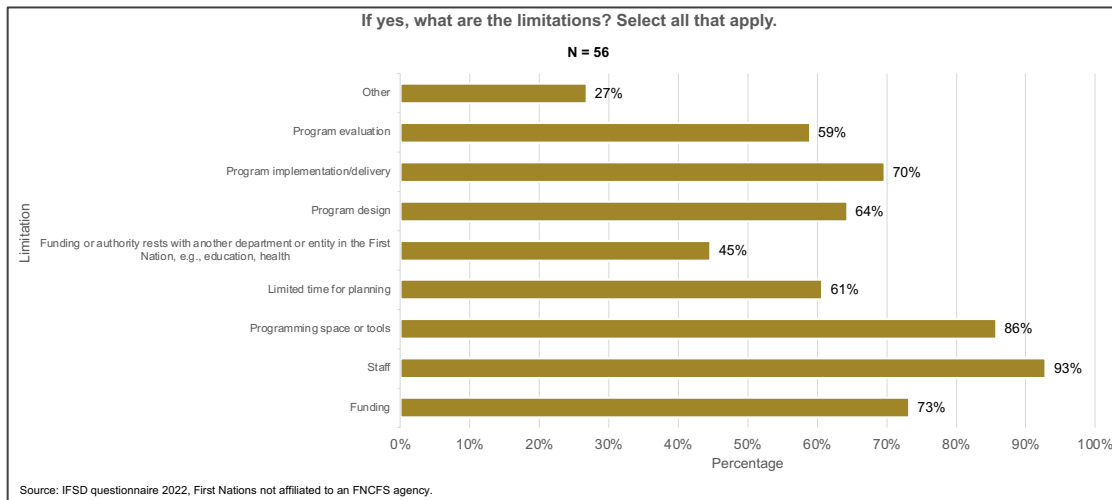


Figure 17



While a significant majority of First Nations report having children in care, supports and services related to post-majority and customary care are provided in less than 40% of responding First Nations. Less than 40% of First Nations report offering post-majority supports and services to youth exiting protective services (Figure 19). Similar proportions of First Nations report having policies in place for customary adoption and kinship care (Figure 20).



Figure 18

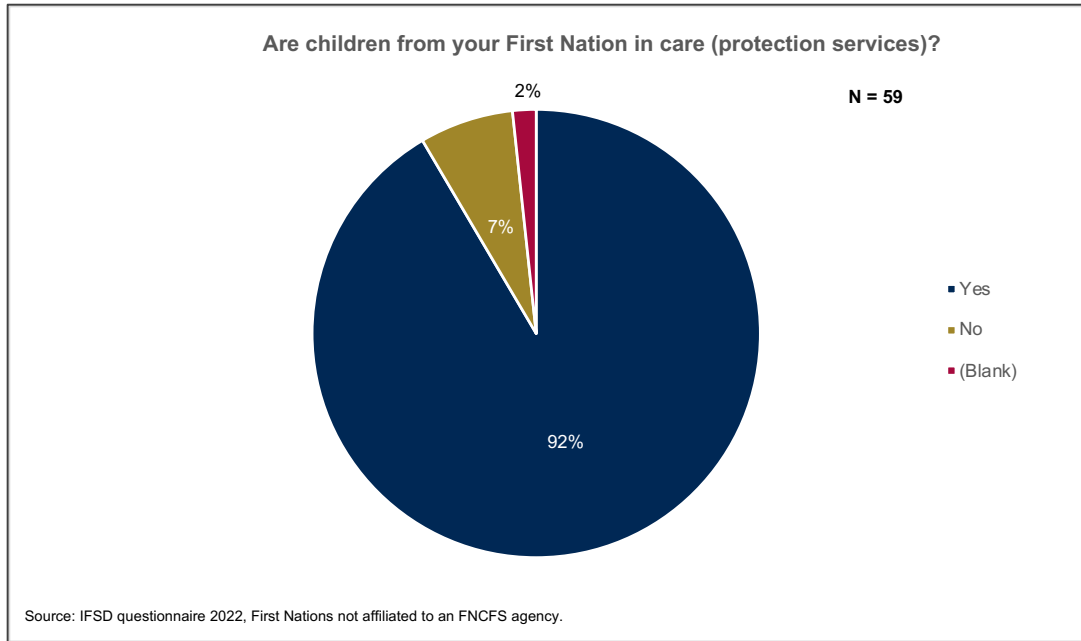


Figure 19

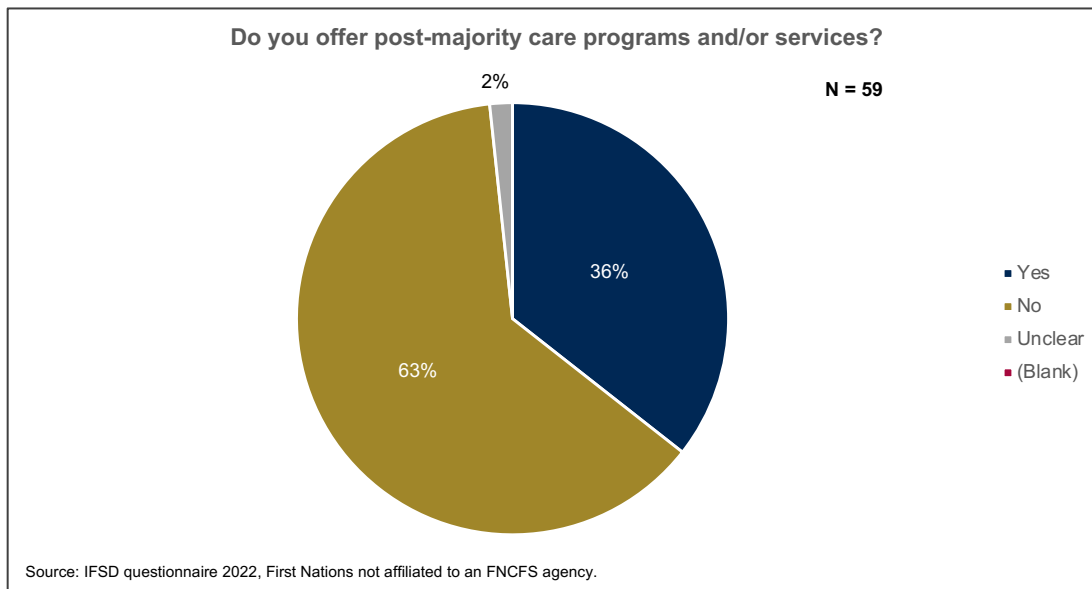
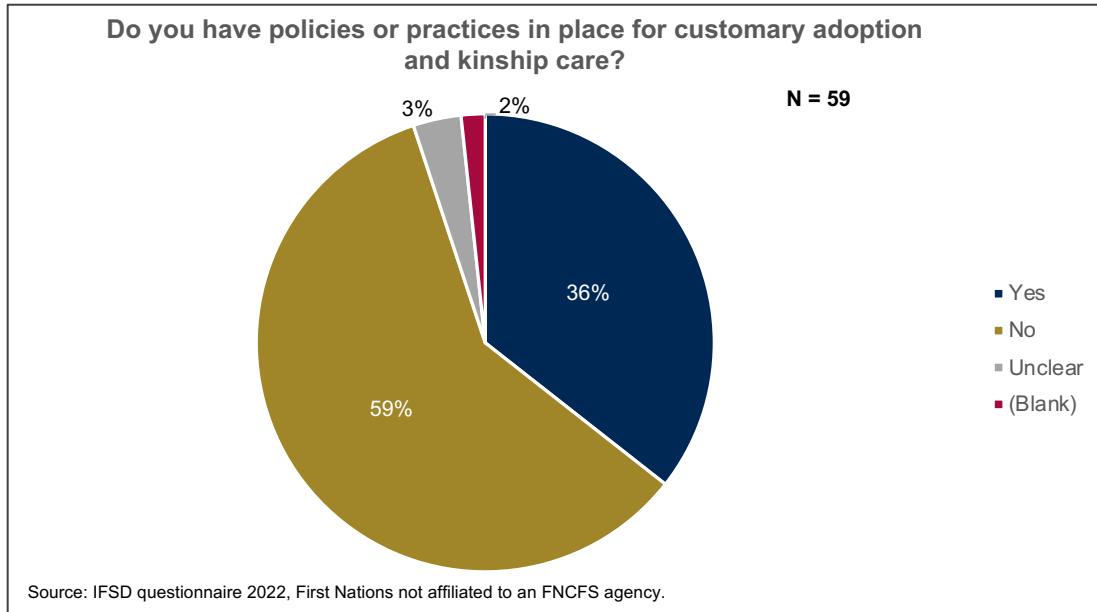
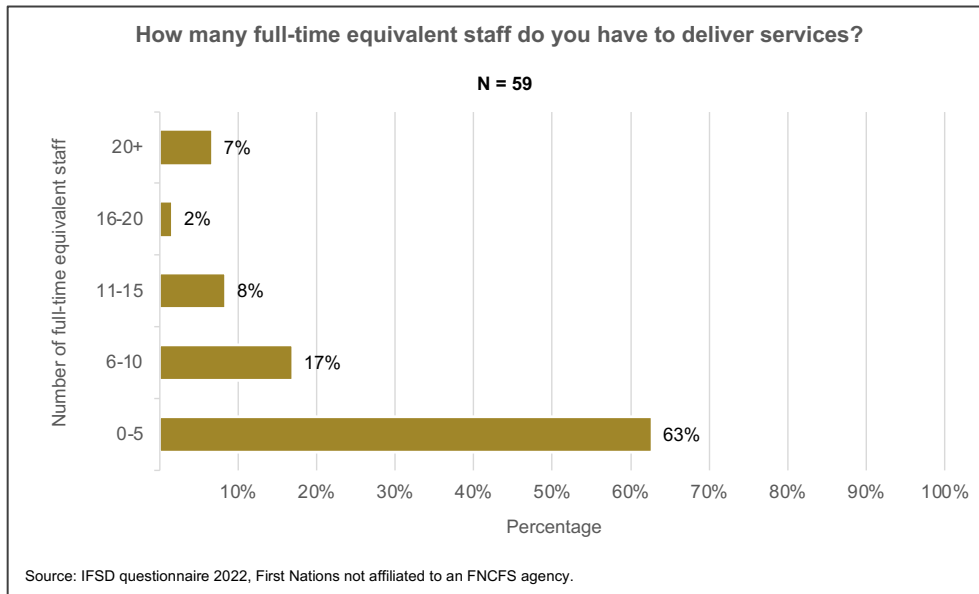


Figure 20



Staff teams were reported to be between 0-5 full-time equivalents for 63% of respondents (Figure 21).

Figure 21



Challenges attracting qualified staff were reported by nearly 70% of respondents (Figure 22). Retaining staff was also reported to be challenging (Figure 23).

Figure 22

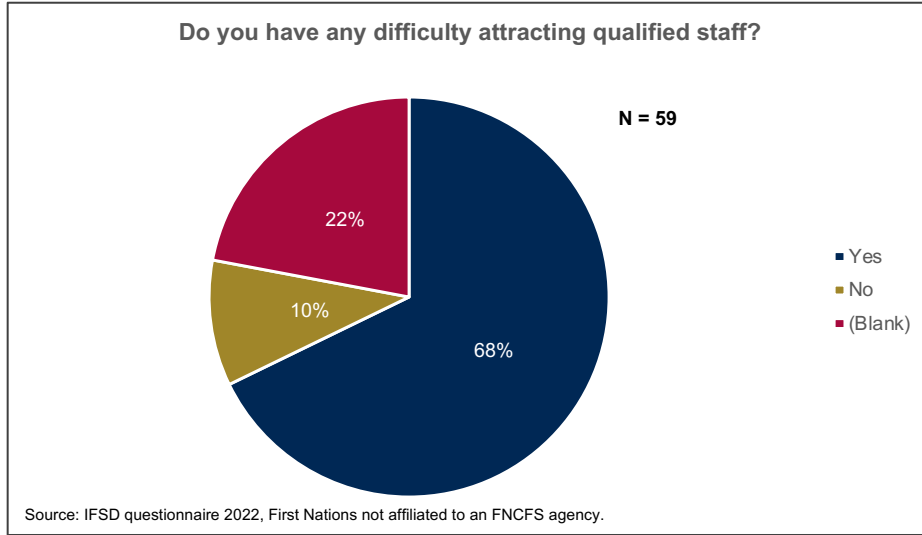
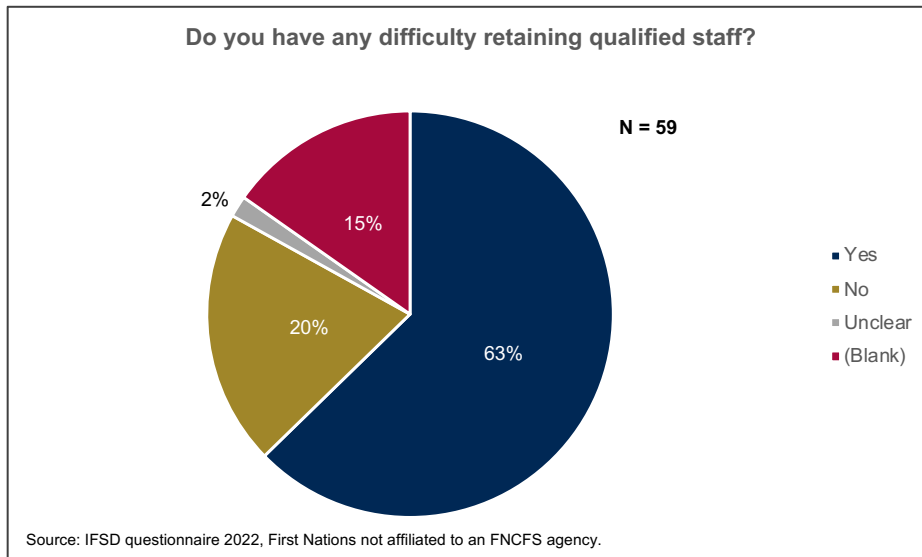


Figure 23



Just over 60% of respondents provided expenditure information through the questionnaire. However, 40% of respondents could not or did not provide expenditure information in the questionnaire (Figure 24). When broken down, ranges of expenditures appear relatively low (relative to reported program activities) with 30% of those responding reporting budgets of less than \$500,000 (Figure 25).

When asked to estimate the cost of desired services, just over 30% of respondents reported they would require a budget under \$1M (Figure 26). Given that several budgets were less than \$500,000, it is reasonable that they fall in the estimated range.

Figure 24

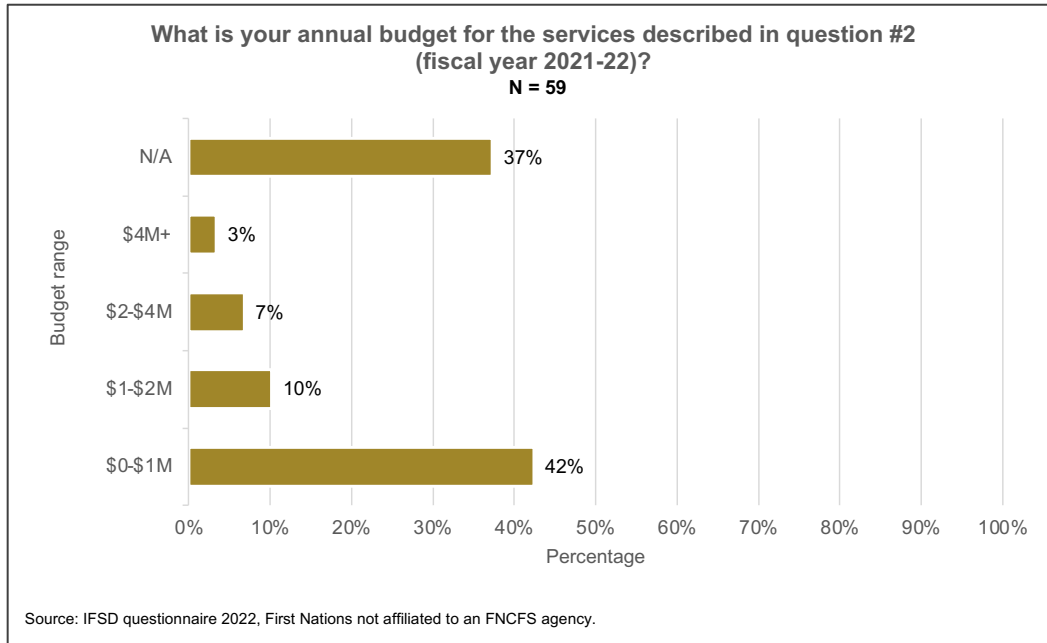


Figure 25

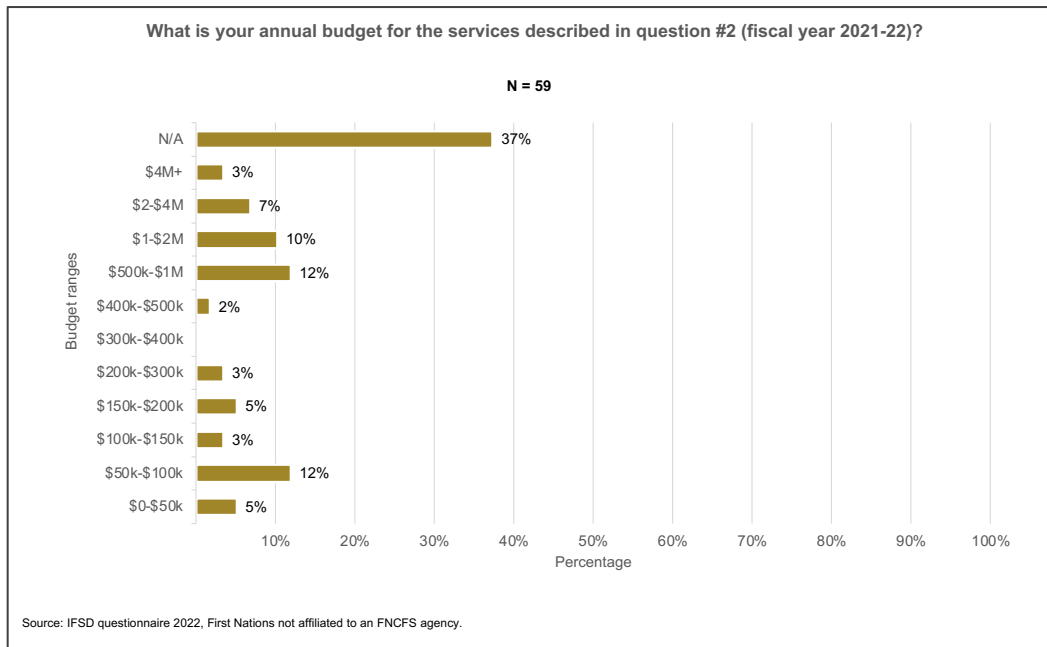
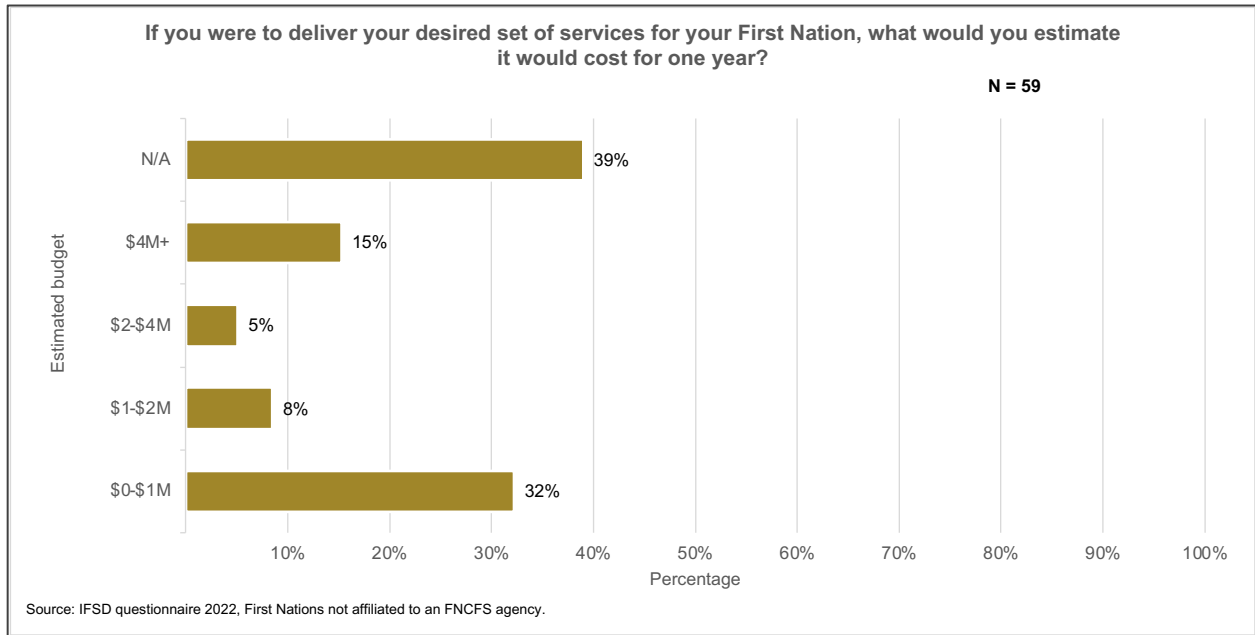


Figure 26



Nearly 80% of respondents reported not having the space required to deliver their programming (Figure 27). Just over 70% reported needing more space for their staff (Figure 28). Improvements were needed, according to respondents, for both programming and staff spaces.

Figure 27

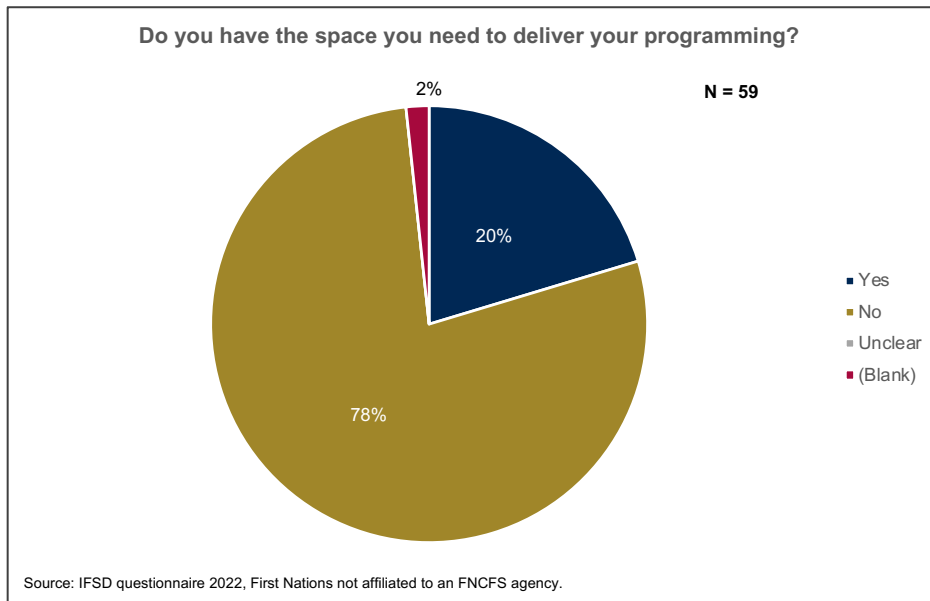
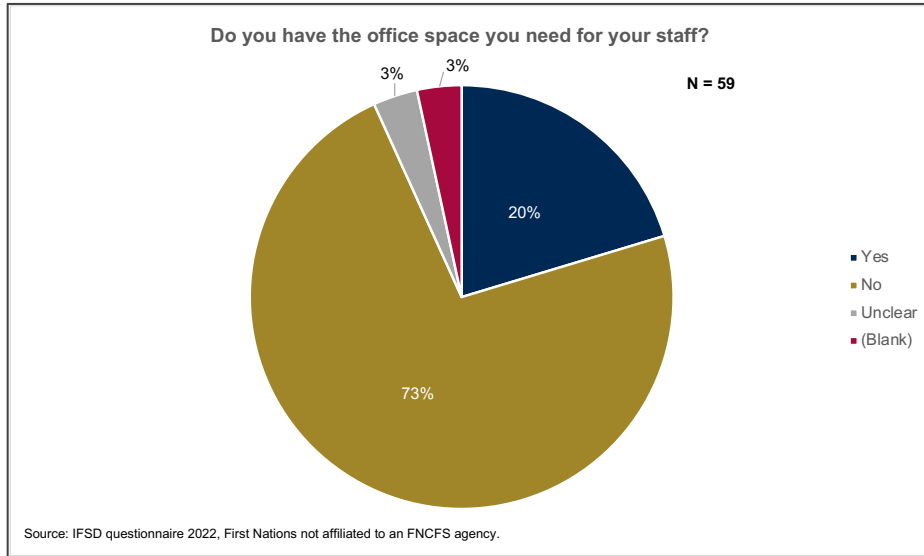


Figure 28



Just over half of respondents reported not having the necessary technology to do their work (Figure 29). Respondents reported gaps in tools for data collection and analysis, software, hardware, and internet connectivity, among others (Figure 30). These limitations have implications for service delivery, including access to services outside of the community (requiring internet), monitoring for planning, and needs assessments.

Figure 29

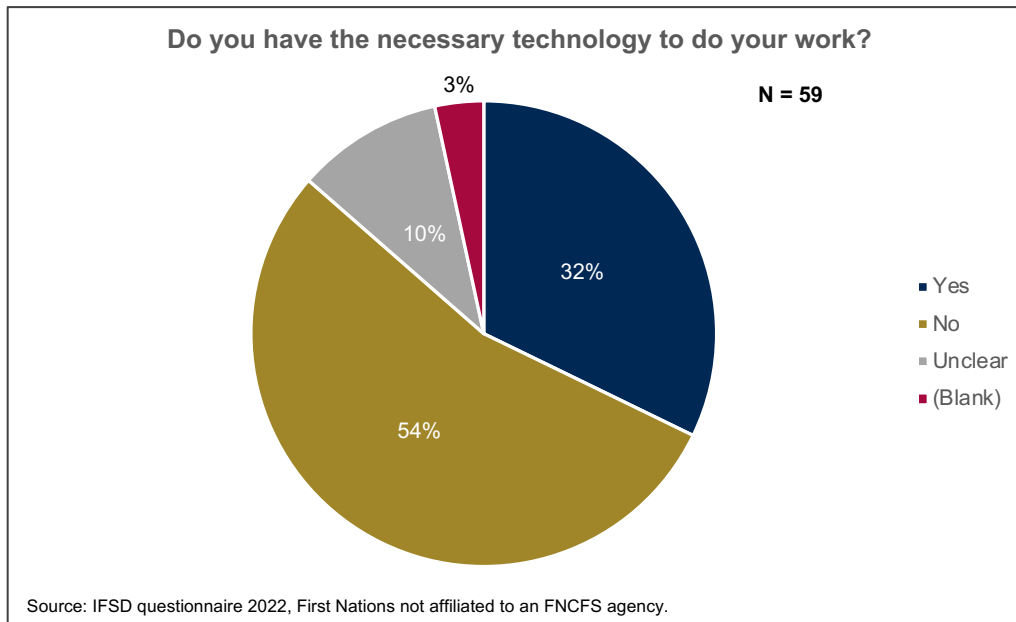
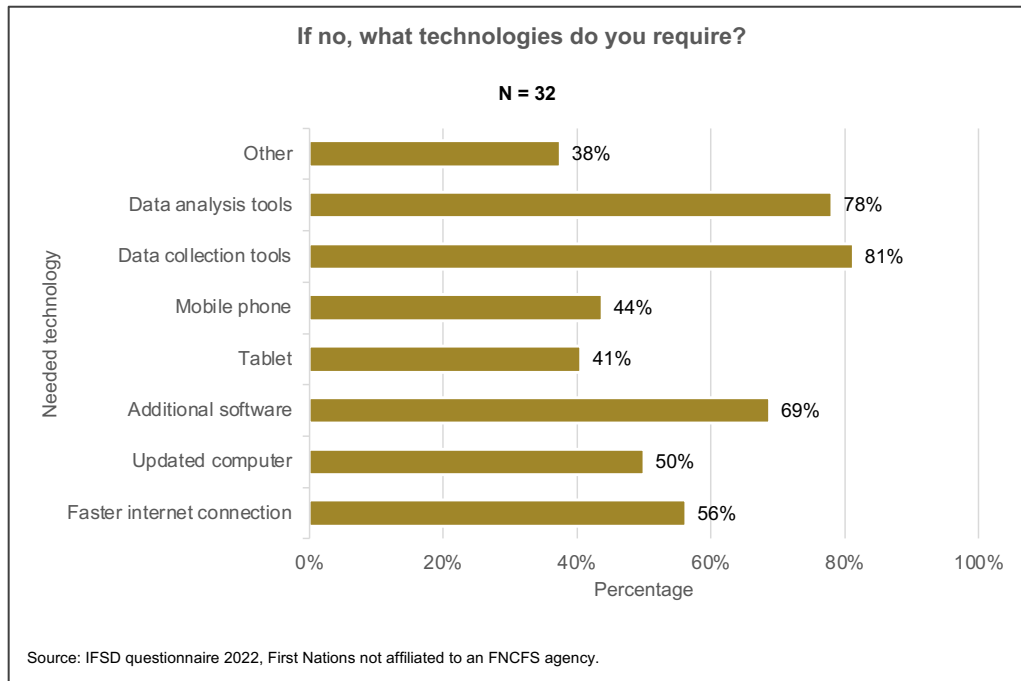


Figure 30



Over half of respondents reported gathering information on the well-being of children and families in their communities (Figure 31). However, when asked about the type of data collected, the information was input focused, e.g., number of children in care, number of families accessing services, number of people participating in activities. Outcome related information would include data on the structural drivers of contact with protective services, rates of family reunification, information on child well-being, etc.

The Canadian Incidence Study on Reported Child Abuse and Neglect<sup>24</sup> studies have emphasized consideration of structural factors, e.g., inadequate housing, poverty, the legacy of colonialism, when comparing rates of maltreatment-related investigations between First Nations children and non-Indigenous children. The information is helpful for monitoring, i.e., telling us what is happening, such as an increase or decrease in children in care (Figure 32). Developing a more complete understanding of wellness,

<sup>24</sup> B. Fallon et al., Denouncing the continued overrepresentation of First Nations children in Canadian child welfare: Findings from the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect-2019, Ontario: Assembly of First Nations, 2021, [https://cwrp.ca/sites/default/files/publications/FNCIS-2019%20-%20Denouncing%20the%20Continued%20Overrepresentation%20of%20First%20Nations%20Children%20in%20Canadian%20Child%20Welfare%20-%20Final\\_1%20%282%29.pdf](https://cwrp.ca/sites/default/files/publications/FNCIS-2019%20-%20Denouncing%20the%20Continued%20Overrepresentation%20of%20First%20Nations%20Children%20in%20Canadian%20Child%20Welfare%20-%20Final_1%20%282%29.pdf).

pursuant to the Measuring to Thrive<sup>25</sup> framework or similar set of indicators, would require consideration of broader community factors and trends.

Figure 31

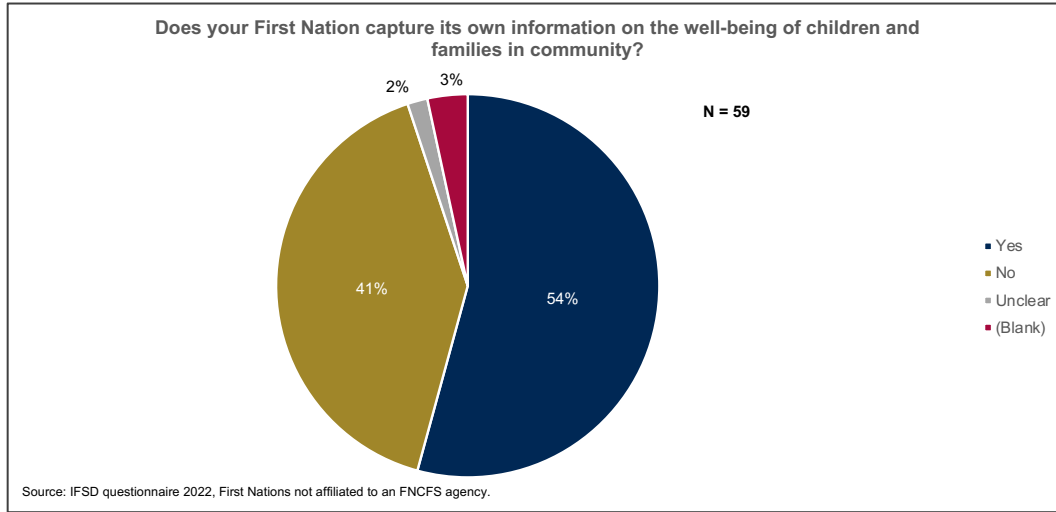
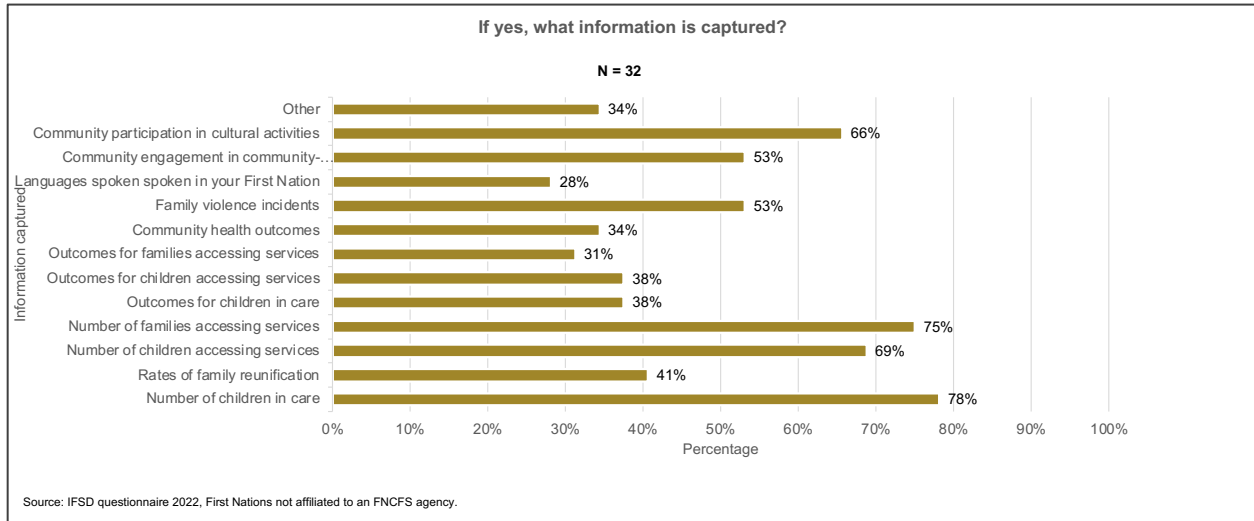


Figure 32



Questionnaire findings provide an understanding of the current state of First Nations not affiliated to an FNCFS agency. There is commitment to providing needed programming but limitations in staff, technology, and space to deliver on the necessary activities. In addition, expenditure data was limited, reflecting the challenges in accessing consistent and sustainable funding.

<sup>25</sup> Measuring to Thrive is a set of indicators first developed by FNCFS agency directors intended to measure changes in communities, families, and children. Community-level indicators reflect structural drivers of contact with protective services, e.g., housing, poverty, addictions, etc. See *Helaina Gaspard, Funding First Nations child and family services (FNCFS): A performance budget approach to well-being, Institute of Fiscal Studies and Democracy (IFSD), 2020, p. 39-116.*



### **Regional workshops**

Between May and June 2022, IFSD hosted nine regional workshops with over 125 participants from over 70 First Nations (bands/self-governing First Nations). Regional workshops were attended by representatives of First Nations including practitioners and elected leadership, e.g., Chiefs and Members of Council. The in-person workshops were hosted in Vancouver (2), Prince George, Whitehorse, Yellowknife, Edmonton, and Ottawa, with one virtual session also offered.

The workshops were opportunities to gather to share experiences, practices, and considerations for assessing and meeting needs in child and family services. Participants were also invited to complete the questionnaire during the workshops. The main takeaways of each of the workshops were captured in separate discussion summaries (see Appendix C).

There are similar findings from the workshops. There is a common commitment to the well-being of children among First Nations and their service providers. The points of departure of First Nations and FNCFS agencies, however, vary. There are important differences in scale, capacity, and operational sophistication. These are essential considerations for any long-term and sustainable reform.

For those delivering services in First Nations, excitement and hope at the prospect of change have been expressed, along with concern and uncertainty. National-level decision-making has not always reflected local realities. First Nations not affiliated to an FNCFS agency are grappling with various issues including capacity challenges, politics, and serving members on- and off-reserve, with inadequate facilities to offer services. Additional resources are welcome, but their use will not come quickly or easily because of capacity challenges (people, infrastructure, systems, processes). Practitioners, i.e., those delivering child and family services in First Nations, may have considerations that are different than those expressed by leadership.

While it is understood that long-term reform of child and family services is being pursued, what that will ultimately look like and how it will be sustained and is still evolving. That lack of certainty in what happens in the next fiscal year makes planning a challenge.

### **Case study collaboration**

At the outset of the project, IFSD sought the collaboration of 10 First Nations not affiliated to an FNCFS agency to participate in case studies. The intent was to develop in-depth profiles of experiences and practices to share on child and family services. Case studies are important sources of detailed information and perspective on how funding, programming, and political actions manifest in communities. Profiles that represent a range of experiences and contexts are essential for perspective on the higher-level national data from the questionnaire.

While there were 11 First Nations that expressed interest, five First Nations from four provinces/territories reflecting different contexts, participated in the case study process.



Each of the profiles highlight a lesson and considerations for future policy, funding, and operational considerations in child and family services.

### Part III: Service delivery in First Nations not affiliated to an FNCFS agency

*The First Nation analyses presented in this section were reviewed and approved by the collaborating First Nations. IFSD wishes to recognize the gifts of knowledge shared by the First Nations. Their honesty in sharing successes and challenges is a tribute to their commitment to improving the lives of children and families.*

The analyses present different starting points, approaches to service delivery, and factors that influence the discharge of mandates. Each one highlights a lesson for consideration in planning, developing, and delivering programs and services. First Nation D breaks down funding silos in program and service delivery to meet their community's needs. As a regional hub, the Council of Yukon First Nations (CYFN) shares a lesson in capacity development and programming support for First Nations in urban areas. For First Nation C, the importance of stable and supportive governance is emphasized for program and service delivery, even with experienced staff. First Nation B highlights the importance of building or accessing capacity to support community needs. First Nation A shares the importance of sequencing steps to pursue jurisdiction and the time it takes to journey through them. Challenges and successes were shared with frankness and honesty. Despite the obstacles, the analyses emphasize the commitment of First Nations to supporting children and families.

IFSD is grateful to the First Nations that shared their expertise, time, and practices to develop these profiles and provide added perspective on the realities of First Nations.

#### *First Nation D*

##### ***Flexibility: the key to meeting evolving needs of community***

The integrated approach to health and social services delivery in First Nation D is built on collaboration to meet community needs. First Nation D is dedicated to serving the community by breaking down the artificial silos imposed by government funders.

*"We're all there for the people."*

The integrated approach includes aligning objectives, vision, and sharing and leveraging resources. This work happens behind the scenes to ensure members seeking services can get the support they need seamlessly.

When it comes to child and family services (CFS), First Nation D is focused exclusively on prevention services with the province delivering protection services. Their activities are dedicated to reducing contact with protective services, and often integrate health and wellness as part of their integrated approach to service delivery. Building trusted relationships with the members of their community is central to their

approach. Sometimes, this means inviting them to formal programming, and other times, informal interactions.

First Nation D considers their community's context when designing their wellness services. This means considering demographics, employment, etc., as they make plans for the short-, medium-, and long-terms.

The lesson First Nation D shares is the benefit of breaking down funding silos to meet the evolving needs of their community. **Flexibility is key.**

### **Leading an integrated approach to service delivery**

First Nation D has a population of 350 people on-reserve with another 500 members nearby that seek services from their community. With a nearby paper mill, members are employed and have financial resources, which contributes to the community's overall wellness. Changes in employment at the mill impacts community mental health, which can be challenging.

*“If that mill shuts down, we will be living in crisis.”*

Demographics, however, are changing. Much of the population is in their 40s and birth rates are low (relative to other First Nations). This has required the health and social services team to reconsider their priorities to meet the changing needs of the First Nation.

*“I want to say, we have a good model. But I caution that the model is not necessarily copy and paste because their [another First Nation's] needs may be different than ours.”*

The director of health and social services is well-respected. A member of First Nation D, one of the conditions of his employment was that he be provided independence from political interference to deliver on the mandate. The director's leadership is credited by staff as having created an integrated and collaborative approach to service delivery. There is no micro-managing. Staff are encouraged to work together, share resources, and solve problems to address the needs of the community.

*“This is how we do it. You don't work in your own department and stay there. We are all in this together for the benefit of our clients. You help and you support across the board. That's expected.”*

For instance, a social pediatrics approach (i.e., a focus on early years and supportive programming) has been introduced unofficially with staff working together to improve outcomes for children. Soon, it will be formalized in a framework that defines the roles and functions for education, nutrition, health, etc. The approach is different than the way funding flows to the First Nation. They made a decision to work collaboratively rather than in program driven silos.

## **Prevention in CFS**

First Nation D has no desire at this point to take on protection. A high probability of political interference reinforces the importance of a "strong and mature" governance structure with separation between politics and protection to ensure people have space to do their jobs. In a small First Nation where everyone is related or connected, this is a challenge.

The focus in First Nation D is on building relationships, promoting positive interactions through prevention, and reducing the need for child and protection. With the full community from elders to children involved in programming, First Nation X can build relationships and trusted spaces where people can be supported to avoid crisis.

Working 'upstream' with a focus on prevention, means serving children and families in a culturally informed way by meeting their needs. Rather than waiting for a crisis, First Nation D can be supportive by addressing the root causes of contact with protection services. Sometimes, the issues are related to deprivation, other times, related to supports for parents and caregivers. When a family is in need, the full complement of health and social services supports can be mobilized to address it together.

There is a shortage of social workers in the area. First Nation D benefits from low staff turnover which is attributed to their positive working environment and near parity with provincial salary levels.

## **Funding matters**

Annually, the director of health and social services in First Nation D shares a report. This is used at once to 'satisfy the funders' reporting needs,' and is destined for the community served. The reports discuss the community's context, programming, achievements, and challenges. Resource allocation follows First Nation D's integrated approach to service delivery: solve the problem in a culturally informed way. Often, this means working around existing funding arrangements.

*"Don't bog us down with minor details like how many pens we buy. Give us flexibility to adjust and get out of these fixed contribution agreements. Flexibility is about control. We are continuing to pursue better control."*

Community control means defining and addressing challenges on your own terms. First Nation D gathers information about its community to support better planning. The health and social services team promote survey and data collection to better understand needs. To achieve this, trusted people are needed to create space to share information. There are two band members to support data collection efforts, supplemented with online options. With the support of a regional body for data management and analysis, First Nation X is exploring longitudinal trends on what health means in the community, what diseases are prevalent, and the medications used by members, etc. The gathering and analysis of the information is integral to First Nation

D's approach to planning and service delivery. The evidence supports the team in continuously evolving to meet the needs of their community.

When it comes to health and social services, First Nation D considers themselves to be adequately funded to deliver on their mandate. Jordan's Principle was highlighted as an especially helpful resource to ensure First Nations children (individuals and groups) are getting support they would have otherwise never received.

Most funding comes from the federal government. There are 10 full-time staff that are dedicated primarily to CFS, and supported by the broader team in health and social services. Including Jordan's Principle funding, First Nation D expended roughly \$1.6M in fiscal year 2021-2022 across the total population served. On a per capita basis, this represents nearly \$4,600 per person residing on-reserve, or \$3,200 per person across the entire membership.

The integrated approach to health and social services delivery in First Nation D is built on collaboration to meet community needs. First Nation D is dedicated to serving the community by breaking down the artificial program specific silos imposed by government funders to promote health and wellness.

#### *Council of Yukon First Nations (CYFN) Family Preservation Services*

##### Lessons learned

The ability to design and deliver programs and services for children and families is different across First Nations. Regional organizations can help to support First Nations with capacity development and programming support by leveraging economies of scale and serving as a resource hub. One such example is Family Preservation Services, through the Council of Yukon First Nations (CYFN).

While not all Yukon First Nations are formal members of CYFN, the organization has been working as a de facto provider of child and family services (CFS) for urban Indigenous clients as well as a Jordan's Principle service coordinator.

CYFN's Family Preservation program is an example of a growing and evolving Indigenous led regional organization that can support First Nations in service delivery, both as a provider and as a centre of resources.

The lesson CYFN shares is the need to consider a regional hub for capacity development and programming support for First Nations in CFS in urban areas.

The Council of Yukon First Nations (CYFN) was established in 1973, and acted as a key negotiating body in Yukon First Nations land claims. Today, the organization advocates for First Nations in Yukon and delivers front line services. On CFS, CYFN's Family Preservation program serves principally Yukon First Nations (75%) and other First Nations (25%).

*Connection to community and culture are essential to good outcomes for children. The best way to do that is to have our own people raising our children and keeping them in community.*

CYFN's operations are not funded to provide CFS-related supports. Instead, the organization relies on grants and project-based funding to sustain its operations and services. At a time when resources are flowing, the capacity gaps are increasingly visible. Not all First Nations can absorb the prevention funding to deliver programs and services. This is where Family Preservation can provide support. From convening First Nations to offering program models, the organization is trying to build-out its support services to fill a need it perceives in many communities.

*“Working for your own people, with your own people in management, and your own people in decision-making makes a difference. I don’t know how to quantify that.”*

All but three of the 28 staff working in CFS at Family Preservation Services are Indigenous. Working with people with different skill and degree backgrounds is important to the organization. From CYFN's perspective, it helps draw people to the organization and gets them to contribute to the design and delivery of culturally appropriate supports and services.

CYFN is funding its Family Preservation programs through a \$2.2M Jordan's Principle group request. As a resource, Jordan's Principle is covering CFS-related matters in the territory from housing supports, e.g., rent, to baby items. There are limited administrative fees from this allocation, which leaves the organization to find administrative dollars from other programs to cover staff. In addition to its role as a service coordinator, CYFN receives funding through contracts for service delivery from the territorial government. This includes [Cultural Connections](#), a five-year pilot project which aims to safeguard connection to culture for children and youth in out-of-home care.

Family Preservation receives most of its service referrals from the Yukon Government, since the territory's role is to focus on protection. Others seeking services can walk in or are referred by their First Nation.

*“There is no pot of funding for not-for-profit urban Indigenous organizations.”*

From hosting cultural services, programming (i.e., pre-natal support circles, on-the-land camps), to coordinating housing supports and navigating the child welfare system, Family Preservation is providing wraparound support services. CYFN wants Yukon First Nations to have a say in what happens to their children. With over 90% of children in care in the territory being First Nations, CYFN wants to continue to provide services in an urban environment while supporting First Nations to deliver their own services.



***The importance of stable and supportive governance and programming practices for jurisdiction***

In a tenuous political environment, service design and delivery can be challenging, especially in an area as sensitive as child and family services (CFS). For First Nation C, the combination of political uncertainty with crisis-response style programming has complicated their intent to pursue jurisdiction.

Existing services in First Nation C are delivered by a team of trained social workers and others with decades of experience in mainstream and on-reserve CFS. With their ongoing work, they are developing a vision defining *the good life* for their First Nation. The structure or approach that will deliver that vision remains a work in-progress. Community support is needed; political support is needed. This work is happening as First Nation C is on its own healing journey.

The lesson First Nation C shares is the importance of stable and supportive governance and programming practices for jurisdiction.

**Complexities of context**

It is a time of healing for First Nation C. Many members are residential school survivors who are struggling, along with their descendants, with the long-time tensions of Christian views and Indigenous beliefs, practices, language, and culture. For instance, there are concerns about submitting invoices for traditional healers to the finance department out of fear of being denied. The tension within the community extends to its leadership.

Elections every two years of Chief and Council and the reorganization and reprioritization that ensues puts strain on various departments and services, including CFS. Following the latest election, for instance, CFS mandate and efforts on jurisdiction were frozen until a new mandate was confirmed. The constant change, internal disagreement, and administrative manoeuvring within Chief and Council means departments spend time working around the system rather than with it.

The political system in the First Nation is creating challenges for progress.

**Existing CFS services**

First Nation C is a large community and roughly half of the population reside in the community (on-reserve).

Solutions up to now have been bandages; there are limited resources and opportunities to address the root causes of need, e.g., housing, groceries, infrastructure, etc. This reality is perpetuating a cycle of need and ongoing pressure in families taking care of children in care.



Today, an experienced team with decades of experience in the mainstream and on-reserve CFS system are delivering prevention and protection-related supports in First Nation C.

*“We are carrying the weight of our community and the damage the child welfare system has done. We have to focus on our own healing; we have to heal ourselves.”*

Technically, their mandate is to provide prevention and some limited intervention for children, youth, and families. This should take the form of family support work, traditional customary care work, and Band Representative tasks, e.g., attending for investigations, doing visits with provincial protection workers related to protection concerns, protection case management, etc. The mandate, however, does not mean much as staff are reacting to problems.

The organization considers itself short staffed: *“people are not even recognizing what they’re doing”* and *“this doesn’t even include what [provincial protection workers] are asking front-line workers to do, even though it’s not their job.”* From the perspective of staff, children in care are being “offloaded” to the First Nation by being placed in customary care without the same resources that a provincial foster home would have. This lack of financial support puts a strain on the family and the First Nation who become responsible and liable for services. On the front-line in the First Nation, not all staff have the same credentials or consistent resources as those in the mainstream agency to hire expert staff or to provide ongoing support to families. This reality adds an additional burden for service delivery, liability, and feeling that the First Nations is being set up to fail.

In pursuing jurisdiction, CFS managers have implemented a more structured approach to the delivery of CFS with set protocols and practices. For some staff that are unaccustomed to the compliance-focused approach, the changes are stressful. They are taking leave or considering leaving the First Nation. CFS managers have gone back to basic training to reinforce the importance of workplace culture, data gathering, and protocols. As the First Nation takes on roles in secondary and tertiary prevention, additional training, credentials, and supports are required to manage the complex needs and liability.

#### **Healing and wellness of staff**

Staff are working in challenging environments. Working with colleagues that are healing from their own trauma means that interactions between managers and staff and between staff can require tact and understanding.

First Nation X has retained Indigenous counsellors to support staff in their healing journeys. This is an ongoing need. When staff are working in their own community, working in CFS can be more triggering.

In general, there is a shortage of CFS-related staff. With the shortage and pressures in First Nation C, the CFS team sought adjusted salaries for parity with the province. After a great deal of effort with the Band Council (which had fixed all salaries), CFS salaries were adjusted with supplements from Canadian Human Rights Tribunal (CHRT)-related funding. The increase did not reach parity with provincial salaries and created grief and tension with other departments in the First Nation. This is a common challenge expressed by CFS delivery departments and agencies aiming for salary parity with provincial levels. Without adequate salary levels, CFS delivery organization may struggle to attract and retain staff (as they compete with the province). Parity with provincial salary levels, however, may not align with the salaries of the Band Council.

The millions of dollars through prevention funding coming to First Nation C are a challenge to absorb. Due to the internal disruption in administrative support, CFS staff do not have the appropriate time to plan while managing constant crises due to a lack of staff. Complicating matters are pressures from the Band Council wanting to use funds for other purposes that they think best, rather than relying on the technical, front-line, and evidence-informed expertise of their CFS managers. This makes it a constant struggle to manage the funds for CFS. There have been efforts from CFS to work across the First Nation, e.g., with the school, for language revitalization, etc. to apply funds for the broader purpose of wellness across the community.

### **Future vision**

Spirit-centred and heart-centred work with language is at the core of the vision for a *good life*. Efforts are underway to work *toward* developing their own law. The initial steps are focused on increasing staff and working with the existing provincial organization, as the community is eventually engaged and consulted on the vision.

With all the hope and commitment to change in CFS, there remains a soberness. The CFS team was clear that you "can't ram transition through the community [...] you have to work at the pace of your community and your staff." The team is continuing to work extensively alongside the provincial staff but remains adamant that they do not want an agency.

However the First Nation decides to pursue jurisdiction, it will take several years to envision, define, and implement. With the recognition of First Nation C's complex starting point, there was an underlying suspicion of federal and provincial government intentions with jurisdiction.

*"They're setting us up for failure. They know we have a lot of dysfunction. They know we don't have the human capacity or the structure in place...they created this situation and now they want us to fix it [the problems governments created through CFS]. The government will claw back money as soon as the photo-ops are done and no one thinks we can do it anymore."*

As the jurisdiction process gets underway, there are still needs that need to be met and work to be done.

### *First Nation B*

#### ***Supporting community through internal capacity***

First Nation B has the advantages of self-government and economic prospects. Those factors alone, however, are insufficient to ensure well-being for children and families in their community. The challenges of intergenerational trauma and a lack of qualified staff for support create an environment in which issues persist and risk becoming engrained.

The lesson First Nation B shares is the importance of building or accessing internal capacity to support community needs.

#### **The realities of small First Nations**

In a small population (approximately 400 people on community territory) there is no separation between politics and family. Connections (and feuds) can run deep and colour politics and decision-making. At times, the lateral violence limits progress for the First Nation.

In a small community, it can be a challenge to share personal matters with another person that you might know. As deeper and more complex issues emerge, support from outside of the First Nation would be helpful. Community members themselves are not all well. There is trauma from residential schools and compounding trauma from grief.

As a new project may bring economic development opportunities to the First Nation, there are concerns about compounding addictions challenges, environmental impacts, and increased risks with more traffic and activity in the area. The First Nation has an excellent working relationship with the adjacent village notably on infrastructure, e.g., sewers, subdivision planning, etc. and good employment prospects, but that is insufficient for wellness.

#### **Operational matters**

A self-governing First Nation, the community will provide services to their members wherever they reside. In this case, anywhere from one third to one half live in an urban centre over 50km away. The First Nation, however, is not funded to provide such services for any member that does not reside on the settlement territory. This is creating increasing concern as migration between the territory and the urban centre continues.

Protection services are provided by the territorial government. Any CFS related programs, focused on prevention and wellness, are offered through the health and social department. Despite their best efforts, the vision for CFS is not articulated. There appears to be a lack of understanding in vision, mission, and goals of the department. Staff can clearly express needs, e.g., evening youth worker and programming, but struggle to define basic activities aligned to wellness in CFS.

The expressed need for hybrid practice that links Western and traditional approaches was clear. To paraphrase staff, *you can't make parkas and alleviate trauma; people have deep issues that require complex interventions and support.* To make progress in healing trauma, staff need to meet people where they are. That means using phone, virtual platforms, and ways of accessing services without feeling like they are community spectacles being watched by others.

Economy of scale in service delivery is a challenge for small First Nations. Per capita funding allocations do not meet needs. There are fixed costs of doing business that are greater in rural places and across a small population. The same amount of funding per person in such places does not have the same impact as in other places.

Staff turnover is high which makes planning and execution challenging. First Nation B cannot find the qualified staff they need. Several positions in health and services remain unfilled. There is a perceived newness or inexperience among staff, with challenges in delivering basic programming for skills development, e.g., cooking classes.

### **A way forward**

Getting to a better place will require community-based needs assessments in the First Nation and the urban centre. Having members define their needs and vision for CFS and related services will help to focus the First Nation's efforts and map a plan forward.

#### *First Nation A*

#### ***Sequencing the steps of jurisdiction***

Jurisdiction in child and family services is about making decisions in the best interests of children and families in their own culture and on their land. From the perspective of First Nation A, this means:

*The development of thriving, safe, and happy children that are engaged in the cultural life of their community with supportive and unified families. This will be done by recognizing and leveraging the strengths of families to take action in the best interest of the child and family in a culturally informed way.*

To give meaning to their vision of jurisdiction, First Nation A set out to define their resource needs. The exercise highlighted the need to answer crucial questions to guide their next steps. Before any discussion of required resources (e.g., money, people, buildings), the First Nation had to define what they were trying to achieve, how they would achieve it, and how they would monitor their progress. With the support of First Nation A, this case study defines a basic framework that others can use to ground their first steps on the path to jurisdiction.

The lesson First Nation A shares is the value of sequencing the steps to jurisdiction and being mindful of the time it takes to journey through them.

A small First Nation (less than 500 registered members, with fewer than half living on-reserve), has decided to pursue jurisdiction in child and family services (CFS).

Community consultations were undertaken. While the First Nations is supportive of taking on jurisdiction in CFS, there are outstanding questions that should be answered to shape plans, laws, and oversight of the development process. Defining an accountability framework for the design and implementation of jurisdiction is crucial. The support and guidance of the community is essential, but clarity around responsibility is necessary to move the process forward.

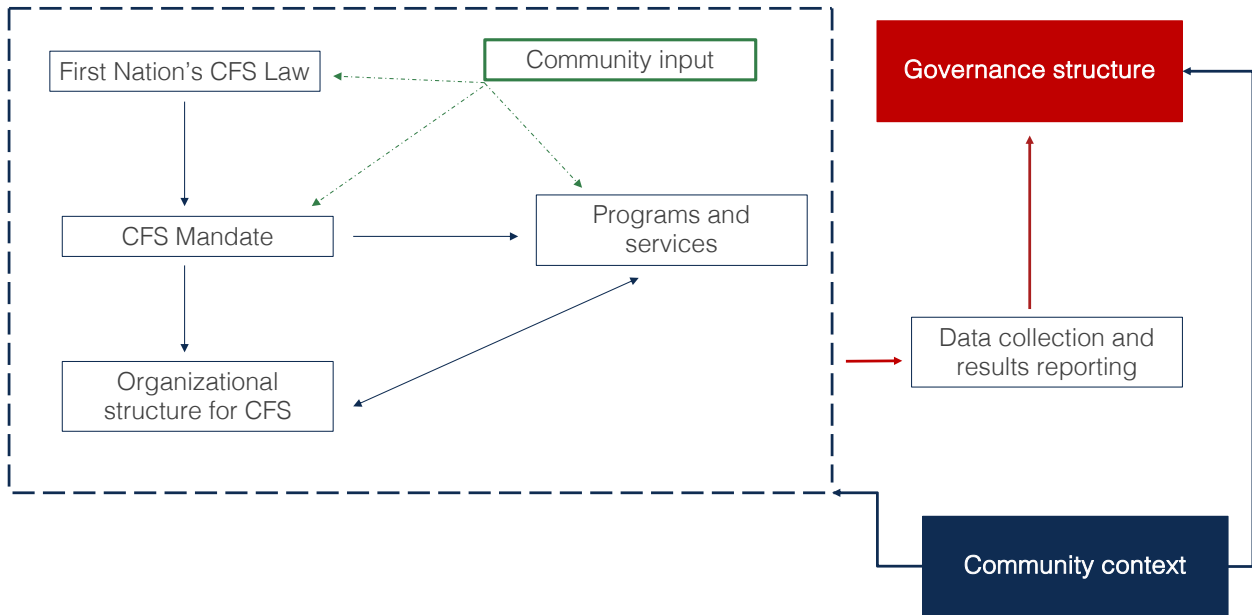
**Outstanding questions:**

- Who is accountable for overseeing the development of the approach for CFS?
- What is the process for developing options for CFS?
  - o Review other legislation and approaches for ideas
  - o Structure and governance, e.g., independent organization and board; band council department, etc.
  - o Mandate, e.g., goal and purpose
- Who will be accountable for reviewing/adjudicating options for CFS?
- Who will be accountable for making the decision on the final approach for CFS?
- Who will be accountable for implementing the chosen approach to CFS?

The decision to take back jurisdiction can be exciting. Moving forward requires a clear understanding of the starting point (i.e., community context), the goal/purpose of jurisdiction (i.e., mandate), and the legal and governance frameworks for jurisdiction (reflected in an eventual law).

Once those decisions are in place and the law established, there are a series of steps for implementation (Figure 33). For instance, programs and services should be designed based on the CFS mandate emanating from the law (and its adjudication structure). An organizational structure need to be defined consistent with the mandate and informed by service delivery. The entire approach will be monitored by a governance and accountability structure. An essential source of information will be the data gathered and results reporting on progress. The evidence generated should help to inform decisions and adjust the approach to meet the goals of the law. These activities are shaped by the community's context. The community's context, e.g., housing needs, water access, capacity, size, etc., must be defined and considered from the start to ensure they are being built into the approach.

Figure 33



To explore their path to jurisdiction, the First Nation collaborated to define guiding questions and considerations designed to organize and initial approach and help to identify gaps. The information from the exercise can be used to plan and establish frameworks for laws and resource needs. The guiding questions are designed to organize an initial approach and help to identify gaps. As an example, the First Nation shared their available responses and considerations in (Table 3) below. These initial questions were expanded with the support of the First Nation to assist others as they explore jurisdiction.

Table 3

Guiding question	Responses/considerations	
What's the problem you're trying to solve?	The development of thriving, safe, and happy children that are engaged in the cultural life of their community with supportive and unified families. This will be done by recognizing and leveraging the strengths of families to take action in the best interest of the child and family in a culturally informed way.	
What will you do to solve the problem?	<ul style="list-style-type: none"> <li>- Programs and services for children and families</li> <li>- Capacity building for community members/staff</li> </ul>	
What do you need to solve the problem?	Law	<ul style="list-style-type: none"> <li>- Guiding structure</li> <li>- Essential to align the operating plan to the legal framework</li> </ul>
	Structure/organization	<ul style="list-style-type: none"> <li>- Accountability mechanism</li> <li>- Mandate and approach to CFS</li> </ul>
	People	<ul style="list-style-type: none"> <li>- Align to mandate and service delivery</li> </ul>

		<ul style="list-style-type: none"> <li>- Consider training/capacity development</li> </ul>
	Money	<ul style="list-style-type: none"> <li>- Cost estimate approach to CFS; use proxies, e.g., from Band Council or from other sources, e.g., IFSD's work</li> </ul>
	Capital	<ul style="list-style-type: none"> <li>- Needs assessment</li> <li>- Engage with other departments in the First Nations on need</li> </ul>
	Time	<ul style="list-style-type: none"> <li>- 2026 target to begin implementation? What's needed to get there?</li> </ul>
	Data	<ul style="list-style-type: none"> <li>- Approach to data gathering and evidence generation</li> <li>- System, tools, and practices for data collection and applications</li> </ul>
	Services (expert services)	<ul style="list-style-type: none"> <li>- Various, e.g., psychologist, counsellors, etc.</li> <li>- Identify sources, or approaches to sharing resources</li> </ul>
	Education (ongoing development)	<ul style="list-style-type: none"> <li>- Explore training and development approaches to building community skills in CFS, e.g., partnering with colleges and universities</li> </ul>

Guiding questions	Considerations	
What is your vision?	- What is the vision of a healthy child and family in your community?	
What's the problem you're trying to solve?	- Define the purpose and goals of designing and delivering services	
What will you do to solve the problem?	<ul style="list-style-type: none"> <li>- Identify the activities you will take to deliver on goals</li> <li>- What are the root causes/sources of the problem?</li> <li>- What are options and tools at hand to address the problem?</li> </ul>	
What do you need to solve the problem?	- Define the inputs, e.g., tools, resources, services, necessary to take action to deliver on your goal. Examples include, people, money capital, and data, etc.	
	Structure/organization	<ul style="list-style-type: none"> <li>- Accountability mechanism</li> <li>- Mandate and approach to CFS</li> </ul>
	People	<ul style="list-style-type: none"> <li>- Align to mandate and service delivery</li> <li>- Consider training/capacity development</li> <li>- Human resources, e.g., salaries and benefits, staff wellness supports and services, etc.</li> </ul>
	Money	<ul style="list-style-type: none"> <li>- Cost estimate approach to CFS; use proxies, e.g., expenditure information from Band Council or from other sources, e.g., IFSD, regional organizations, service providers, etc.</li> </ul>
	Time	<ul style="list-style-type: none"> <li>- When do you plan to begin implementation?</li> <li>- What's needed to get to the starting line? How will your needs change along the way?</li> <li>- Consider the different phases of planning, implementation, evaluation, etc., while ensuring children and families receive services while the approach is being developed and is ready to be delivered</li> </ul>
	Data	<ul style="list-style-type: none"> <li>- Approach to data gathering and evidence generation to measure change to ensure your program and services have the desired impacts</li> <li>- System, tools, and practices for data collection and applications</li> </ul>
	Services (expert services)	<ul style="list-style-type: none"> <li>- Various, e.g., addictions services (especially, for children and youth), psychologist, counsellors, etc.</li> <li>- Identify sources, or approaches to sharing resources</li> <li>- Coordinated approach for families receiving both protection and prevention services</li> <li>- Coordinated approach for families moving on- and off-reserve (moving between services and systems)</li> </ul>
	Capital	<ul style="list-style-type: none"> <li>- Needs assessment</li> <li>- Engage with other departments in the First Nations. Are there common areas of need? Opportunities to leverage resources?</li> </ul>
	Education (ongoing development)	<ul style="list-style-type: none"> <li>- Explore training and development approaches to building community skills in CFS, e.g., partnering with colleges and universities, engaging with Elders</li> <li>- Opportunities for training for leadership, and other internal and external stakeholders, and service providers on the vision and service delivery approach</li> </ul>



### **National gathering**

Before drafting its final report, IFSD gathered with First Nations not affiliated to an FNCFS agency for a one-day gathering on November 2, 2023, in Ottawa.

The gathering was an opportunity to confirm the context and experiences of First Nations not affiliated to an FNCFS agency were captured appropriately; to define the range of options and tools for supporting the design and delivery of CFS; and to capture anticipated challenges moving forward.

The working session was attended by over 65 First Nations who gathered in person or joined virtually via Zoom. The significant participation was representative of different geographies, regions, approaches to service delivery, and populations sizes.

At the conclusion of the workshop, participants defined seven recommendations related to their work in child and family services:

- 1) Access to shared resources in CFS for strategic planning, programming, and staff supports are needed.
- 2) There must be a respect for the time and space needed to reflect, engage with, and support children and families. This does not happen quickly or easily.
- 3) Total membership (irrespective of residency) should be modelled in all cost modelling and analysis.
- 4) Remoteness should be considered in all cost analysis.
- 5) Funding must be clear, sustainable, and on-going. Block and multi-year approaches to funding should be explored.
- 6) Account for the different starting points for First Nations not affiliated to an FNCFS agency that will impact their transition to future/desired states.
- 7) A **call for another in-person** gathering to spend more time exchanging and sharing ideas over two full days. (*Note: IFSD responded to this call by hosting a second national gathering in Vancouver on February 12, 2024*).

The discussion among the assembled participants was helpful in confirming challenges and realities in First Nations, as well as approaches for cost estimation modelling. The message in 2023 is consistent with that of spring 2022: change takes time and cannot be done without a plan or capacity for execution. The findings from the workshop are included in Appendix D.

### **What we learned together**

The questionnaire, regional gatherings, case studies, and national gathering sketch the current state for First Nations not affiliated to an FNCFS agency. There are differences in capacity and community realities, and there are common challenges they are confronting from staff shortages to governance matters to communities in crisis. While First Nations have cultural, linguistic, and contextual differences, they share common desires and challenges.

The starting point is different for each First Nation not affiliated to an FNCFS agency. Most, however, have staff shortages, are seeking supports to enhance their program and planning, and would benefit from consistent and reliable funding to deliver on their mandates. As changes in funding continue to emerge, there should be careful attention paid to calls for increased time to plan for change and absorb resources. Assuming First Nations not affiliated to an FNCFS agency would all be similarly equipped to manage change is attributable only to a lack of understanding and consideration of their varied realities.

The Government of Canada's decision-making on CFS has been disconnected from the realities of First Nations not affiliated to an FNCFS agency. While financial resources have been committed and allocated, there was no consideration of different starting points (i.e., existing child and family service capacity, needs, context, etc.), the needed time and resources for community consultation and planning, or for service delivery, design, and staffing.

Political cycles and sound implementation of decisions may not always align. In this instance, the government's attempt to move quickly yielded a short-sighted goal of releasing prevention funds without ensuring First Nations were set up for success or coordinating these activities with the provinces/Yukon. By not paying attention to the implementation of the prevention funding, Canada lost sight of its obligation to end the discrimination towards First Nations children and families. Yes, financial resources are needed, but how much at each stage of development? To whom? To achieve what objectives? On what timelines? The government is following their timelines with limited consideration of the requirements for service delivery in First Nations or the goal of eliminating the discrimination toward children.

There is hope and excitement in First Nations communities and a clear commitment to provide good quality services. However, this excitement is tempered by the ongoing challenges of dealing with the consequences of residential schools and other colonial harms (from trauma to housing), limited staffing, and politics and governance, as reflected in collaborator case studies. CFS is a work in progress. The initial excitement of new resources is quickly tempered by limited capacity for execution. Paraphrasing a First Nation representative from a November 2023 gathering: *Money alone does not solve all problems. Without people and plans, you cannot execute no matter how much money you have.*

First Nations not affiliated to an FNCFS agency have expressed feeling like they are in crisis response mode: constantly addressing problems as they emerge. The reality is attributable to a variety of factors including communities in crisis, staff shortages, and complex community needs. As resources are allocated to First Nations not affiliated to an FNCFS agency, some may wish to assess their current state and capacity to manage change. In collaboration with a First Nation, IFSD developed elements of the framework below (sections 2 and 4, henceforth the "Framework"). With their permission, this has been shared in this report.

The Framework provides general considerations for First Nations not affiliated to an FNCFS agency for planning and delivering child and family services (CFS). It is not intended as a complete guide, nor is it necessarily appropriate for all communities and contexts. Rather, the Framework is a tool that First Nations can choose to use as part of their planning approach.

The Framework uses a four-stage approach:

- 1) *Current State*
  - a. Articulating the current state (i.e. where are you now?)
- 2) *Future Vision*
  - a. Determining and articulating a future-state vision (i.e. where do you want to be?)
- 3) *Gap Analysis*
  - a. Identifying differences between the current state and the future state (i.e. what are the gaps?)
- 4) *Transition Planning*
  - a. Preparing plans and timelines for addressing the gaps (i.e. how do you get there?)

At each stage, IFSD proposes segmenting issues into four categories:

- 1) People (e.g. staffing, recruitment, retention, training)
- 2) Process (e.g. program activities, workflow design, organizational structure)
- 3) Strategy (e.g. mission, priorities, goals, and culture)
- 4) Systems (e.g. financial systems, IT systems, data systems, legal and governance frameworks)

## Section 1 – Current State

IFSD has prepared a set of guiding questions to help First Nations define their unique starting points. Users may wish to reflect on the prompts below to begin outlining their current state. Consider whether you have the people, processes, strategy, and systems you need.

With these questions and themes, you may wish to consider what responses and actions are within the control of CFS and which it cannot control. The participation and collaboration of other departments, organizations, services, may be required. For instance, where the province/territory is providing protection services to a First Nation, it would be necessary to understand their role, mandate, and how their services intersect or connect with those of the First Nation. What is the role of the province/territory in CFS? What protection (and possibly, prevention) services are being provided? Does your First Nation collaborate with the province/territory? If so, how? If not, why not? Building a full portrait of the current state means defining the starting point for services, environment, and needs, including other service providers, like the province/territory.

Category	Guiding questions	Considerations	Yes, No, N/A
People	Do you have requisite staff?	<ul style="list-style-type: none"> <li>Consider what staff your community currently has.</li> <li>Do you already have CFS staff?</li> <li>Are there staff in adjacent departments (e.g., health) that could provide insight or expertise?</li> <li>What roles are critical to delivering needed services in your community?</li> </ul>	
	Are your staff qualified to meet the specialized needs of the children you serve?		
	Do you offer educational supports, job training and/or skill development?		
	Do you have staff dedicated to CFS? What are their roles?		
	Do you have difficulty attracting staff?		
	Do you have difficulty retaining staff?		
	What salary or compensation scales do you follow?		
Process			

		<ul style="list-style-type: none"> <li>• Consider what your community currently delivers to members.</li> <li>• Who delivers services?</li> <li>• What organizational structures are in place already?</li> </ul>	
	Can you describe the CFS needs of the children, youth, and families in your First Nation?		
	How is information on needs used to develop or refine service offerings?		
	How do you define success and CFS? How do you evaluate it?		
	What programs and services do you deliver?		
	Do you gather information from your community to help inform planning?		
	What is your management structure?		
Strategy	Are you delivering the programs and services in CFS that your First Nation wants and needs?	<ul style="list-style-type: none"> <li>• Consider your goals and priorities.</li> <li>• What are the needs of your community?</li> </ul>	
	What is your mandate?		
	What are your goals and organizational priorities?		
Systems	How is CFS governed, ex., department within the Band, independent organization, etc.?	<ul style="list-style-type: none"> <li>• Consider existing resources in your community.</li> <li>• Are there already systems in place, or will new ones have to be built?</li> </ul>	
	Do you have a protocol with the province/territory?		
	Do you have a protocol with the First Nation and other service providers?		
	Do you have regular/reliable revenues and expenditures?		
	Do you have adequate IT systems?		
	Do you have adequate financial systems?		
	Is your legal framework defined?		

## Section 2 – Future Vision

IFSD has prepared a table of guiding questions and considerations to help First Nations determine their unique future vision. Users may wish to reflect on the prompts below to begin outlining their future vision.

Guiding questions	Considerations
What is your vision?	<ul style="list-style-type: none"> <li>• What is the vision of a healthy child and family in your community?</li> </ul>
What are the current CFS needs of the children and family you serve?	<ul style="list-style-type: none"> <li>• What are the issues that lead children to be at risk of maltreatment?</li> </ul>
What's the problem you're trying to solve?	<ul style="list-style-type: none"> <li>• Define the purpose and goals of designing and delivering services, with consideration of the existing needs of children and families.</li> <li>• What is the ultimate goal of your service delivery?</li> </ul>
What will you do to solve the problem?	<ul style="list-style-type: none"> <li>• Identify the activities you will take to deliver on goals</li> <li>• What are the root causes/sources of the problem?</li> <li>• What are options and tools at hand to address the problem?</li> </ul>

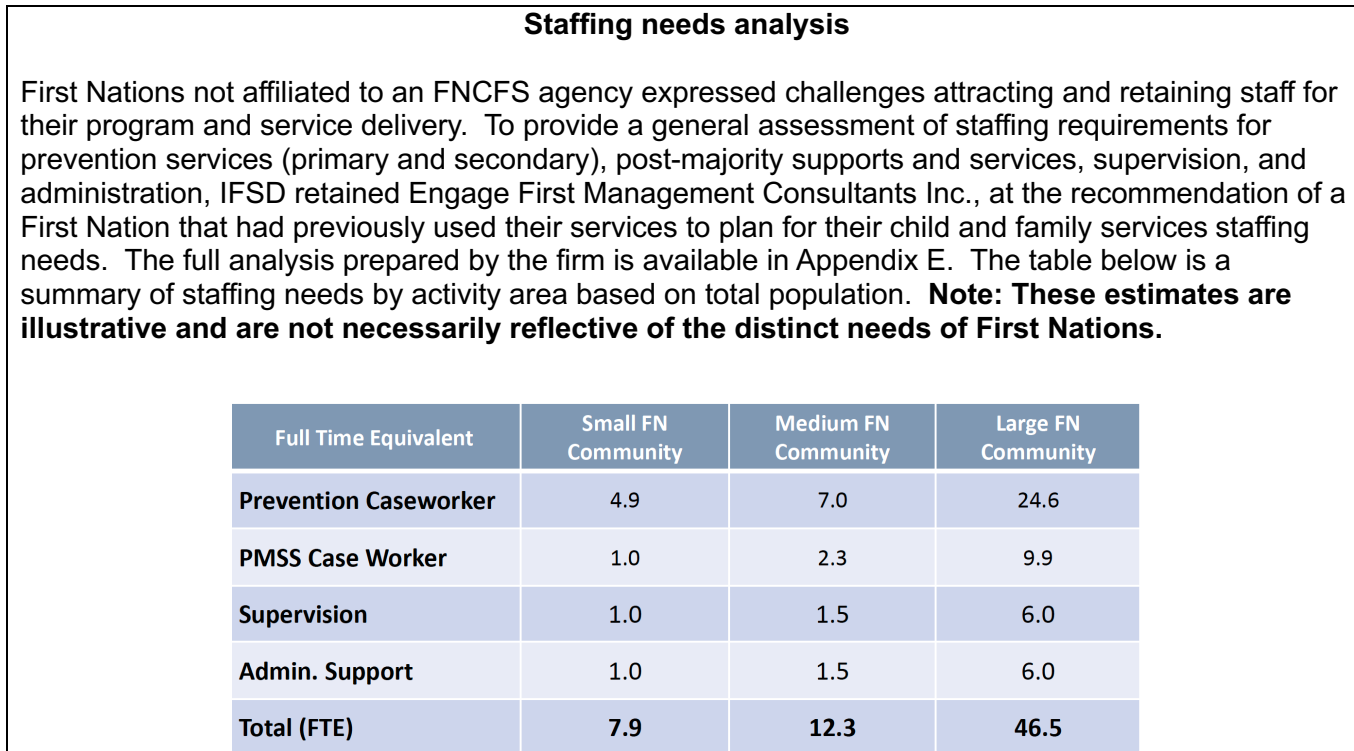
### Section 3 – Gap Analysis

Users may wish to reflect on their responses to the questions and prompts provided in sections 1 and 2 of the Framework (Current State and Future Vision). Users might consider where their current state does not align with their future vision, i.e., our mission is not yet defined, our governance framework is not in place, our IT system is inadequate.

Category	Considerations	Yes, No, N/A
People	Do you have enough staff to operationalize your vision?	
	Is your compensation competitive?	
	Do you recruit staff from your First Nation? From other First Nations?	
	Do you have high retention of employees?	
	Do you offer benefits to you employees e.g., health, dental, etc.?	
	Do employees receive adequate on-the-job training?	
	Are you attracting adequately credentialed staff?	
Process	Have needs in CFS been defined?	
	Are your current operating baselines meeting needs?	
	Do you have a clear vision of your future state?	
	Are your activities defined?	
	Is your workflow defined?	
	Is your management structure established?	
Strategy	Is your mission defined?	
	Is your mandate defined?	
	Is your strategy defined?	
	Are your goals and organizational priorities defined?	
	Are all of your services or programs developed?	
Systems	Are all of your necessary organizational partnerships in place?	

Is your governance framework defined?	
Is your legal framework defined?	
Is an adequate data system in place?	
Is an adequate performance management framework in place?	
Is an adequate IT system in place?	
Is an adequate financial system in place?	
Is an adequate reporting system in place?	

Figure 34





## Section 4 – Transition Planning

IFSD has prepared a table of guiding questions and considerations to help First Nations assess and address gaps identified in section 3 (Gap Analysis). Users may wish to reflect on the prompts below to begin outlining their transition plan.

Guiding questions	Considerations	
What do you need to solve the problem?	<ul style="list-style-type: none"> <li>Define the inputs, e.g., tools, resources, services, necessary to take action to deliver on your goal. Examples include, people, money capital, and data, etc.</li> </ul>	
	Structure/organization	<ul style="list-style-type: none"> <li>Accountability mechanism</li> <li>Mandate and approach to CFS</li> </ul>
	People	<ul style="list-style-type: none"> <li>Align to mandate and service delivery</li> <li>Consider training/capacity development</li> <li>Human resources, e.g., salaries and benefits, staff wellness supports and services, etc.</li> </ul>
	Money	<ul style="list-style-type: none"> <li>Cost estimate approach to CFS; use proxies, e.g., expenditure information from Band Council or from other sources,</li> <li>e.g., IFSD, regional organizations, service providers, etc.</li> </ul>
	Time	<ul style="list-style-type: none"> <li>When do you plan to begin implementation?</li> <li>What's needed to get to the starting line? How will your needs change along the way?</li> <li>Consider the different phases of planning, implementation, evaluation, etc., while ensuring children and families receive services while the approach is being developed and is ready to be delivered</li> </ul>
	Data	<ul style="list-style-type: none"> <li>Approach to data gathering and evidence generation to measure change to ensure your program and services have the desired impacts</li> <li>System, tools, and practices for data collection and applications</li> </ul>
	Services (expert services)	<ul style="list-style-type: none"> <li>Various, e.g., addictions services (especially, for children and youth), psychologist, counsellors, etc.</li> <li>Identify sources, or approaches to sharing resources</li> </ul>

		<ul style="list-style-type: none"> <li>• Coordinated approach for families receiving both protection and prevention services</li> <li>• Coordinated approach for families moving on- and off-reserve (moving between services and systems)</li> </ul>
	Capital	<ul style="list-style-type: none"> <li>• Needs assessment</li> <li>• Engage with other departments in the First Nations. Are there common areas of need? Opportunities to leverage resources?</li> </ul>
	Education (ongoing development)	<ul style="list-style-type: none"> <li>• Explore training and development approaches to building community skills in CFS, e.g., partnering with colleges and universities, engaging with Elders</li> <li>• Opportunities for training for leadership, and other internal and external stakeholders, and service providers on the vision and service delivery approach</li> </ul>

## **Part IV: Cost estimation analysis**

Past funding for First Nations not affiliated to an FNCFS agency has varied through the CWJI and now, per capita prevention allocations. When self-reported expenditures were assessed in the questionnaire, no cost driving relationships emerged from analysis of the data. With the variability in services and activities, starting points, and limitations in expenditure data, the child and family services system cost for First Nations not affiliated to an FNCFS agency could not be defined. To address the limitations in information and differences in practice, IFSD developed cost estimation scenarios using different baselines and top-ups.

During the national gathering of First Nations not affiliated to an FNCFS agency, several of the final recommendations made by participants related to funding. The importance of support and time for planning, sustainable and predictable funding, were included with calls to include remoteness adjustments and full membership in funding allocations. Based on this feedback, questionnaire findings, and collaborations with First Nations, IFSD developed the cost-estimation scenarios for consideration.

Unlike FNCFS agencies that have years, and in many cases decades, of service delivery experience, established operating and programming baselines, as well as existing staff, most First Nations not affiliated to an FNCFS agency do not. The variability in activities meant limited consistency in expenditures and cost driving relationships for modeling. A baseline could not be defined, other than through per capita allocations (either reported through the questionnaire or inferred through ISC's current committed per capita expenditures). Given the different needs and starting points, funding for First Nations not affiliated to an FNCFS would ideally align to their needs, current capacities and grow with them. This way, First Nations that are delivering complex programming can continue their trajectory while those that are starting out can access resources on their timelines.

### **Defining a new approach for prevention funding**

The following options on funding amounts and approaches are intended to support First Nations not affiliated to an FNCFS agency in taking care of their children and families. There is a presumption that there will be no provincial/territorial service disruptions.

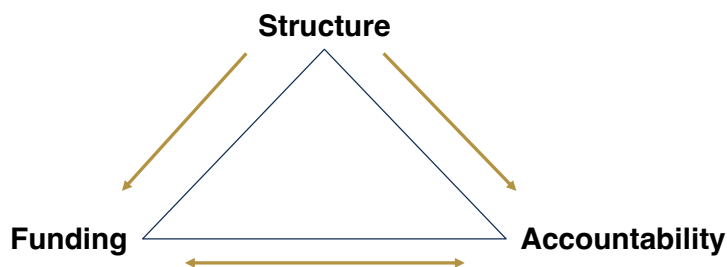
The CHRT found that federal agreements with provincial/territorial governments to have contributed to service disruptions and a lack of service integration for First Nations children on-reserve.<sup>26</sup> These agreements should be revisited in alignment with the CHRT's rulings. In addition, with the Supreme Court of Canada's ruling on *An Act respecting First Nations, Inuit and Métis children, youth and families*, there is clarity on the Act's binding national standards on provincial governments and the work of their

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<sup>26</sup> 2021 CHRT 12 at par. 35, [https://fncaringsociety.com/sites/default/files/ruling\\_2021\\_chrt\\_12\\_non-agency\\_consent\\_order.pdf](https://fncaringsociety.com/sites/default/files/ruling_2021_chrt_12_non-agency_consent_order.pdf).

public servants.<sup>27</sup> These national standards should be part of federal agreements on FNCFS with the provincial/territorial governments.

The way forward in child and family services among First Nations not affiliated to an FNCFS agency with an understanding of different starting points should consider structure, funding, accountability. The approach is intended to resource the design and delivery of prevention services (primary, secondary, and tertiary). While additional financial resources can address discriminatory practices of underfunding, adequate structure and accountability are necessary to monitor and ensure discrimination does not reoccur. The three interrelated elements should be revised to align to the intent of supporting the well-being of First Nations children, families, and communities.



Component	Description
Structure	Structure is composed of the objectives and rules that define the purpose and operation of the FNCFS Program. The Program’s objectives, the rules associated to the flow of funds (contribution approach), and the terms and conditions associated to the use of funds make-up the structure. These rules are important as they can enable and constrain the decision-making of those in communities working with children and families.
Funding	Funding is the amount of money allocated to the recipient for activities associated to program and service delivery. Consider for instance, planning, program and service delivery, assessment, and evaluation. Funding should be commensurate to mandate and should be based on principles linked to the differentiated contexts of recipients and those they serve.
Accountability	Accountability ensures that the system is delivering its intended objectives for children and families. Gathering relevant data, measuring change, and monitoring outcomes are essential for ensuring

<sup>27</sup> Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 (CanLII), accessed February 22, 2022, <https://canlii.ca/t/k2qhn>.

	accountability to First Nations communities, funders, as well as to support planning and advocacy efforts.
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At the time of writing, there are discussions to change the funding allocation to First Nations not affiliated to an FNCFS agency for the delivery of child and family services. *Changes, i.e., increases, to funding allocations alone will not resolve longstanding challenges in communities, nor will they ensure the sustainable development of services to support children and families.* Creating sustainable change connected to the different cultures and starting points of First Nations will take time. Sustainable change will also require remediation of the drivers of the overrepresentation of First Nations children in care, i.e., poverty, poor housing, mental health, addictions, and family violence. A national baseline of starting points and needs is but a first step. There will be significant work to be undertaken by First Nations to plan, develop, evaluate, and sustain their initiatives to meet the changing needs of their communities.

***“Sending out the money is not the victory.”***

As the federal program that funds First Nations and FNCFS agencies for services to children, families, and communities (on-reserve), the Program’s structure, funding, and accountability mechanisms should align to support the best interests of those being served. Improving outcomes for children and families, requires predictability and sustainability of funding for First Nations to plan services and deliver them over a number of years. For instance, funding announcements close to the start and end of fiscal years limit time for planning and meaningful engagement and risk disrupting service delivery to children and families.

First Nations not affiliated to an FNCFS agency have been clear that their starting points are different, the challenges facing their communities are complex, and that the way forward must include sustainable and clear funding. Those defined priorities are consistent with existing federal funding options and the *Act respecting First Nations, Inuit, Métis children and youth*. Discussions about FNCFS Program funding for First Nations not affiliated to an FNCFS agency need to move beyond amounts and consider the structure and accountability mechanisms to support well-being.

At the time of writing, negotiations on the long-term reform of the FNCFS Program are ongoing. It will be for First Nations and their leadership to define a way forward and negotiate the relevant structure, funding, and accountability to support it.

Whatever the way forward will be, there need to be clear purpose and objectives for child and family services in First Nations, viewed in tandem with services provided by the province/territory, with an emphasis on flexible implementation to achieve the objectives by First Nations based on their cultures and circumstances.

As First Nations not affiliated to an FNCFS assess needs, plan, and execute their chosen approach to service provision in CFS, children will still require support and care. It is imperative that as First Nations ramp up their service delivery capacity, and that

services are available to meet the immediate needs of children. Some First Nations may already offer services, others may be collaborating with the province/territory, and others may purchase services from other providers, e.g., nearby FNCFS agency, other provider. What is most important is that children are provided with integrated protection and prevention services to reduce contact with protective services.

Based on the preceding analysis of data shared by First Nations not affiliated to an FNCFS agency, there are three potential paths forward.

#### *Option 1: Status quo*

Funding to First Nations not affiliated to an FNCFS agency will continue, likely at higher levels. The structure of the funding will remain the same as the current state. It will largely be flowed under a “fixed” contribution approach, i.e., the uses are predefined (see Table 4). Terms and conditions may be revised, but First Nations will be operating under the same enabling and constraining factors that existed previously, e.g., siloed funding, inconsistent funding, etc. The only difference would be the amount of money available.

Table 4

Funding <sup>28</sup> Approach	Description
<b>Grant<sup>29</sup></b>	
Regular Grants	<ul style="list-style-type: none"> <li>• Transfer payment based on agreement.</li> <li>• Must report on results, but not required to account for spending.</li> <li>• Recipient must meet “eligibility and other entitlement” criteria.</li> <li>• Duration is flexible.</li> </ul>
10-year Grant	<ul style="list-style-type: none"> <li>• Subject to more stringent eligibility requirements co-developed with the Assembly of First Nations.</li> <li>• Flexible to design services and allocate and use funds suited to local needs.</li> <li>• Can retain unspent funds.</li> <li>• Annual escalator based on population growth and inflation.</li> <li>• No compliance-based reporting requirement.</li> </ul>
<b>Contribution<sup>30</sup></b>	
Set	<ul style="list-style-type: none"> <li>• Funds used for a defined purpose and subject to performance conditions.</li> <li>• Any unused funds must be returned at the end of the fiscal year (no</li> </ul>

<sup>28</sup> Reproduced from Kevin Page, 2022, “Expert analysis: Federal funding and First Nations in Canada” (July 2022), online: Institute of Fiscal Studies and Democracy (IFSD), <[https://ifsd.ca/web/default/files/Reports/2023-01-19\\_For%20website\\_Questions%20for%20federal%20funding%20of%20First%20Nations.pdf](https://ifsd.ca/web/default/files/Reports/2023-01-19_For%20website_Questions%20for%20federal%20funding%20of%20First%20Nations.pdf)>.

<sup>29</sup> Indigenous Services Canada, “10-year grant,” Government of Canada, last modified December 21, 2021, <https://www.sac-isc.gc.ca/eng/1527080791657/1527080813525>.

Indigenous Services Canada, “Funding approaches,” Government of Canada, last modified April 16, 2018, <https://www.sac-isc.gc.ca/eng/1322746046651/1618142957561>.

<sup>30</sup> Treasury Board of Canada, “Directive on Transfer Payments,” Government of Canada, last modified April 1, 2022, Appendix K, <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=14208>.

	<p>carry forward option).</p> <ul style="list-style-type: none"> <li>The use of this approach has been limited since April 1, 2018, and is used only as needed, e.g., risk management.</li> </ul>
Fixed	<ul style="list-style-type: none"> <li>Total expenditure is fixed with annual transfers estimated using a formula.</li> <li>Carry forwards are possible; cost-overruns are the responsibility of the recipient.</li> <li>Approach applied to a defined purpose or program and must be (re)issued annually.</li> </ul>
Flexible	<ul style="list-style-type: none"> <li>Funds are for programs for a minimum of two-year duration.</li> <li>Requisite capacity and relationship with the department are required.</li> <li>Funds can be reallocated between cost categories within a program.</li> </ul>
Block	<ul style="list-style-type: none"> <li>Funds are moveable between a block of programs (so long as objectives are achieved). Unspent funds can be kept and used within the same program block.</li> <li>Recipient must meet “readiness assessment criteria” for this approach.</li> </ul>

For some First Nations, this change in resources will be sufficient. They will leverage the resources to expand existing programs and services, hire more staff, and engage in regular planning. For most First Nations not affiliated to an FNCFS agency, however, the funding change will mean more resources with limited capacity to absorb funding and translate into programming. Increasing available resources without considering community engagement and needs definition, plans to define activity areas, and hiring the staff needed to execute, cannot be expected to alone change outcomes for children. Perhaps some First Nations may seek out and purchase external supports and services with the resources.

*Option 1a: Status quo plus*

To improve the status quo option, an alternative contribution approach, such as a block approach, could be available to First Nations ready and willing to accept it. For some First Nations with established program and service offerings, the block approach is a mechanism to promote flexibility in the application and use of resources in community. In the block approach, funding is transferred to the recipient for use to achieve a program objective (rather than for specific activity areas). Rather than resources that are tied to activity areas, e.g., prevention, operations, etc., the resources from a block represent one source of funds for all the activities associated to the delivery of child and family services. Recipients, however, must work within the predefined allocation of the block.

Relative to the fixed approach, the block has flexibility to solve problems and address the changing needs in communities. With the block, the recipient reports on overall outcomes, rather than the discreet application of resources to specific activities. The block is consistent with the horizontality of challenges confronted by First Nations by enabling a whole of community approach to problem solving, instead of the false silos of other funding mechanisms.



### *Option 2: Regional support model*

Participants in the November 2023 gathering called for strategic planning, programming, and staff supports. Consistent with this recommendation and principle of First Nations care and control in delivery, a regionally focused model for funding and support could be adopted.<sup>31</sup> In this model, trusted regional organizations (many of which already exist), would serve as the funding allocator and capacity support provider for First Nations not affiliated to an FNCFS agency. Regional organizations would be funded to undertake this work, rather than the federal government. Funding and support would be guided by First Nations for First Nations. An overhead fee of 12% could be applied to support the existing organization's supplementary activities. This rate is consistent with Global Affairs Canada's overhead compensation for contribution agreements in international development.<sup>32</sup>

Most (47%) First Nations not affiliated to an FNCFS agency are in British Columbia, Yukon, Ontario, and Quebec, where regional organizations already exist and could be engaged on this approach. Existing FNCFS agencies (in regions other than Yukon, as they do not exist) could also be sources of technical support.

Guided by national principles and objectives of a reformed FNCFS Program, the regional organizations would work with First Nations on local execution. The regional organizations would have three activity areas: 1) funding; 2) convening; 3) capacity building, including technical child and family services support. As funders of FNCFS, regional organizations would work with First Nations not affiliated to an FNCFS agency and their leadership to determine regionally relevant funding allocation models or approaches. Funding allocation by the regional organizations could be through a regional funding approach, an application basis, a per capita allocation, or some combination of thereof.

The organizations would serve as conveners to host quarterly meetings with First Nations not affiliated to an FNCFS agency and practitioners to share successes, challenges, and to problem solve. Best practices and lessons learned by First Nations and FNCFS agencies can be leveraged by others to address similar challenges. The peer-to-peer engagement for operational support and problem solving was a recommendation of First Nations not affiliated to an FNCFS agency during the November 2023 gathering. Participants called for more regular meetings to share practices, challenges, and solutions.

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<sup>31</sup> With thanks to Dr. Margo Greenwood, see Joint First Nations/Inuit/Federal Child care Working Group, "Considerations and Recommendations for the First Nations/Inuit Child Care Program and Funding Framework," 1995 as cited in Margo Greenwood and Shawna Perry, *Appropriateness of Outcome-Based Framework for Aboriginal Child Care*, Human Resources Development Canada, May 2002, <https://files.eric.ed.gov/fulltext/ED468507.pdf>

<sup>32</sup> Global Affairs Canada, "Overhead Compensation Policy for Non-Repayable Contribution Agreements with Canadian Organizations under the International Development Assistance Program," Government of Canada, last modified April 26, 2022, [https://www.international.gc.ca/development-developpement/partners-partenaires/bt-oa/overhead-compensation\\_amendment.aspx?lang=eng](https://www.international.gc.ca/development-developpement/partners-partenaires/bt-oa/overhead-compensation_amendment.aspx?lang=eng).



As a capacity building resource, the regional organizations would work with First Nations not affiliated to an FNCFS agency to determine an annual or multi-year workplan. Guided by the needs of First Nations in the region, the regional organization could focus on staff capacity development, program planning resources, data gathering and analysis, and other areas of activity as needs and priorities dictate (Figure 35).

Established regional organizations will likely already have contribution agreements with ISC, which should facilitate the flow of funds for regional allocation. The regional allocation model by non-government bodies already exists, e.g., British Columbia's Aboriginal Child Care Society (BCACCS) for early learning and child care.<sup>33</sup> A regional organization with the consent of First Nations not affiliated to an FNCFS agency to manage the allocation of funds, serve as a convener, and support capacity development, could better meet local needs reducing the space between funding decisions and community execution.

With a regional model, a phased approach to funding allocation could be integrated. A regional body would hold resources for First Nations, moving them from the federal government's balance sheet. This phased approach could be possible with option 1, but would require resources be set aside within ISC in a Special Purpose Allotment (SPA) for a defined period of time to ensure that they are not reallocated to other purposes within the department. The SPA would ensure defined resources for First Nations not affiliated to an FNCFS agency through the FNCFS Program would be available to them as they move through the developmental phases.

As resources are provided from the federal government to the regional body, the regional body could work directly with First Nations to support them in their readiness assessments. While there were noted challenges with the Directive 20-1 that informed the establishment and funding of FNCFS agencies, there was also a helpful step-based approach to resources and organizational development. In section 7 of the Corporate Manual of Directive 20-1<sup>34</sup>, three steps are defined:

- 1) Pre-planning: support for community consultation and engagement to assess needs and prepare a proposal.
- 2) Planning: development of organizational plans and agreements to prepare for execution.
- 3) Start-up: execution of the plan with staff hiring, office setup, governance arrangements, etc.

Funding was provided at each stage as recipients worked through prior stages to achieve full operations. Working with a trusted regional body, First Nations may find the readiness assessment and step-based approach useful. Working through these or

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<sup>33</sup> BC Aboriginal Child Care Society, Moving Forward Together The BC Aboriginal Child Care Society (BCACCS) Annual Report for 2021/2022, BC Aboriginal Child Care Society, n.d., <https://www.acc-society.bc.ca/wp-content/uploads/2023/12/BCACCS-Annual-Report-2021-to-2022-DRAFT-8-DEC14-2023-1.pdf>.

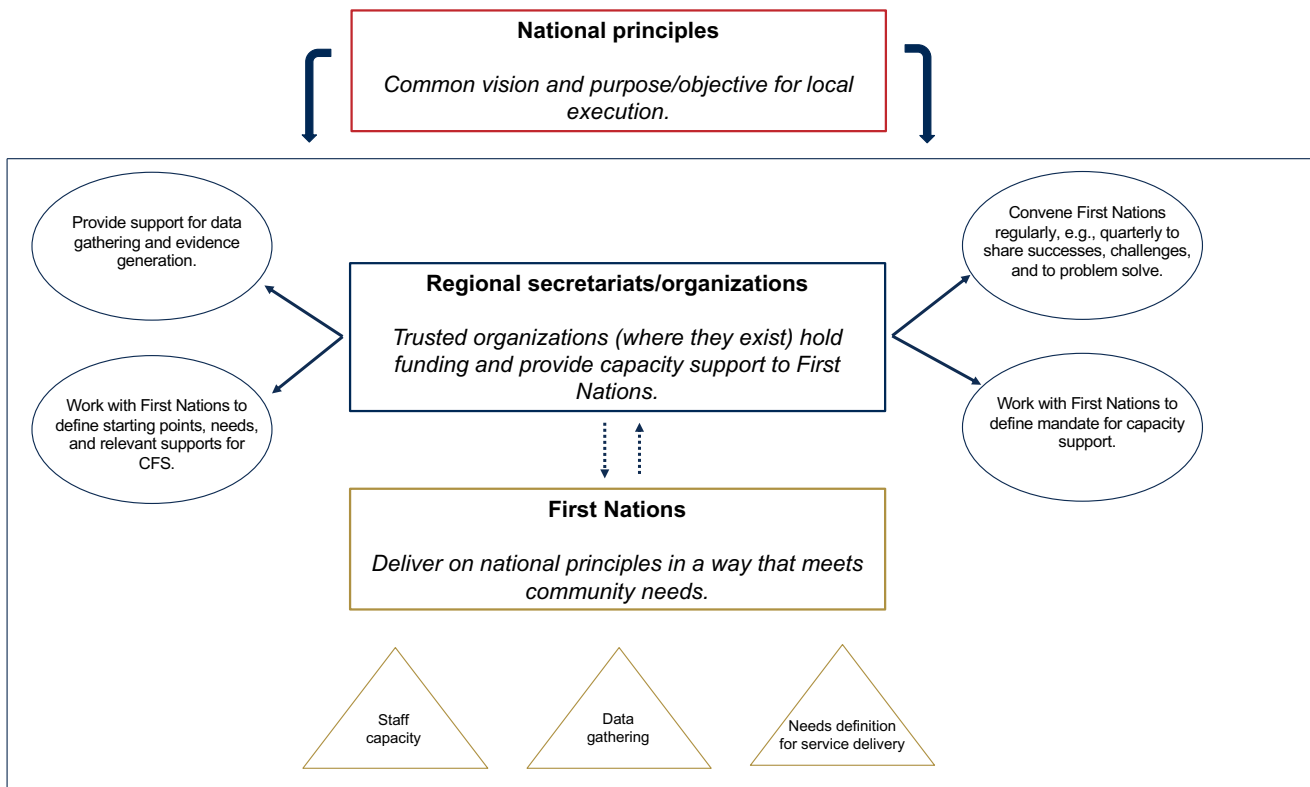
<sup>34</sup> Directive 20-1, Corporate Manuals System, Amend./Modf. 23 95-04-01.

other steps would provide the time, space, and opportunity to engage with community, and develop internal support and capacity before moving to service delivery.

The step-based approach to funding is considered reasonable in a regional allocation context where a First Nation is working with a trusted First Nations organization to access resources and assess readiness. The step-based approach may not be viable if the federal government is the arbiter of readiness. With the regional model, federal resources are transferred to the regional organization. The regional organization is then accountable for their allocation. The regionally devolved approach means that the resources are insulated from federal political timelines, e.g., change in government, and afford First Nations the opportunity to focus on regional or local priorities with the support of a trusted organization.

Not all First Nations, however, may trust or wish to work with a regional organization. Should a regional model be adopted, there should be a requirement for a region to not unreasonably withhold funding to a First Nation. Some First Nations may wish to receive the funding directly, only seeking out additional support, e.g., for grant writing, from a regional organization. From this perspective, First Nations should continue to receive funding directly from the federal government, with the regional organization serving only as a source of technical support.

Figure 35



Such a regional model with a phased approach to implementation and flexible use of funding is consistent with a proposal presented for other social policy areas, such as early learning and childcare. In an assessment in the mid-1990s, Dr. Margo Greenwood and the Joint First Nations/Inuit/Federal Child Care Working Group proposed an approach with three crucial components for funding early learning and childcare. First, flexibility of funding was deemed essential. Flexibility was needed to promote the local control of resources to solve problems in communities. Second, a phased approach for change was proposed. In the initial phase, federal and First Nation and Inuit groups would collaborate to plan for management and allocation of funding. In the following phase, regions were engaged to prepare to take on the role. The phased approach recognized that priorities and needs in regions differed and that timing for implementation would be impacted. Third, a regional model to allocate funding (where a relevant body exists) to support the differentiated needs. With a regional body responsible for allocating funds, regional priorities and needs could be targeted and funded in a sustained manner (rather than defaulting to a single national approach).<sup>35</sup>

The same three issues of regional support for differentiation, flexible application of funds, and time for implementation were reflected over 25 years later with First Nations not affiliated to an FNCFS agency. The principles and approaches proposed in this report are not new. They have been considered and recommended in different areas of social policy. This question remains why such approaches that promote First Nations control and care in delivery have not been implemented by governments.

### *Option 3: Building toward prevention service delivery*

First Nations not affiliated to an FNCFS agency that are seeking to develop a complete needs assessment should be afforded the necessary time. Rather than working on the current federal timetable with hastened funding announcements that require immediate reactions, those First Nations not affiliated to an FNCFS agency wishing to prepare should be supported in that choice. Leveraging the regional organizational model (defined in option 2), funding could be held in trust by the trusted regional bodies until the First Nation is prepared to accept the funding for use. This would provide ISC with a mechanism to flow the funds to a recipient, i.e., the regional organization, (ensuring resources have been allocated and are “off its books”).

In this model, First Nations not affiliated to an FNCFS agency could take one to five years to engage with their communities, to plan their programs and services, hire and train staff, and prepare for data gathering. The regional organization would play a role in supporting their efforts. Supporting implementation for sustainable program and service delivery requires time to define a baseline, assess needs, and develop a plan. In the status quo approach, First Nations would be absorbing new funding without the time to work with their communities. While financial resources are needed and welcome, they will not solve challenges in communities alone. People and

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<sup>35</sup> “Considerations and recommendations for the First Nations/Inuit Child Care Program and Funding Framework.” Technical report prepared by the Joint First Nations/Inuit/Federal Child Care Working Group. N.d.

infrastructure are needed to translate dollars into the culturally relevant interventions communities wish to offer.

Making the most of financial resources means being able to apply them to solve problems, meet needs, and deliver results for communities. That requires a combination of people, plans, and execution capacity that may not exist across communities. To make the most of this significant financial allocation, First Nations should be in control of their timetable, rather than responding to the arbitrary one imposed by the federal government.

### **Second national gathering**

During the second national gathering of First Nations not affiliated to an FNCFS agency (February 2024, Vancouver, British Columbia), IFSD's proposed funding approaches were reviewed with assembled participants (see Appendix F for the complete summary). There was support for a regionally/territorially focused funding approach where First Nations in their territories define an approach that best suits them. Others preferred continued bilateral agreements between the First Nation and the federal government. A national pool of funds was proposed to ensure First Nations not affiliated to an FNCFS agency could access additional funds for different activities, e.g., community engagement and consultation, during this period. Irrespective of the funding approach, participants indicated that a steady state for service delivery has not yet been defined and that funding levels and approaches were subject to change.

**The assembled participants emphasized that any decisions related to funding and structure are a starting point.** These changes do not represent a reformed approach to CFS delivery in First Nations not affiliated to an FNCFS agency. **It will take time to clarify required activities and their resource requirements.**

### **Principal takeaways and recommendations from the second national gathering of First Nations not affiliated to an FNCFS agency:**

- 1) First Nations view CFS as a sacred duty. No one asked about their readiness for prevention service delivery (primary, secondary, tertiary), but they will do it.
- 2) First Nations not affiliated to an FNCFS agency have not had the opportunity to consistently plan or design their prevention service delivery approach. This means that activities are in development and will evolve. Funding is only a starting point. Funding needs are expected to change as service provision stabilizes.
- 3) Funding approach options defined during the gathering included:
  - a. Maintaining separate bilateral agreements between First Nations and the federal government (no national approach)
  - b. First Nations work together regionally/territorially to define the funding approach that best suits their needs
  - c. Maintaining a national pool to access funding for supplemental activities (outside of service provision), e.g., community engagement
- 4) A call for more gatherings:

- a. Resources for local and regional gatherings to consider approaches
- b. National gatherings to share experiences, practices, and knowledge

It is imperative to clarify required activities in prevention (which includes primary, secondary, and tertiary services). There is limited (if any) information available from the provinces, inconsistency in the starting points of First Nations, and no history of service delivery with sustained funding. First Nations not affiliated to an FNCFS agency are only beginning to develop their approaches to the delivery of prevention services. Funding approaches should reflect that reality.

### **Funding estimates**

First Nations not affiliated to an FNCFS agency have emphasized the importance of considering their total membership (irrespective of residency) in their service population count. To model the impacts of population, IFSD presents all scenarios twice: 1) with only the on-reserve population (IRS 2022) and 2) total membership (IRS 2022).<sup>36</sup>

At November 25, 2023, there were two funding amounts confirmed for First Nations not affiliated to an FNCFS agency (pursuant to the CHRT's rulings):

- 1) \$283/person on-reserve for the First Nations Representative Service;
- 2) \$2,500/person on-reserve for prevention services.

The two funding amounts are for fiscal year 2024-25. Future funding amounts and structures are subject to the ongoing negotiations on FNCFS Program reform. The options presented in this report are intended to support consistent funding to build capacity and sustainability in the delivery of CFS. Funding for service delivery in First Nations not affiliated to an FNCFS agency have been inconsistent in the past. This is an opportunity to leverage resources to assess needs, plan, and execute an approach to service delivery.

These funding options should not be considered final. They are works in progress that will need to be reviewed and reassessed as capacity is developed, mandates are defined, and services provided. As part of a First Nation, the design and delivery of CFS is not happening in a vacuum. There are existing services, people, and resources that should be leveraged to move forward in CFS.

Determining which of the funding scenarios and structures best meets the needs of your First Nation requires consideration of current mandate and capacity for execution. With each funding scenario, there are differences in the principles to generate the allocations and their total amounts. For the different approaches to structure, there are trade-offs in flexibility in the use of funds, the source of funding allocation, and the prioritization of regional v. national approaches. Any decision on approaches and their implementation will be subject to the results of the negotiation.

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<sup>36</sup> First Nations in the Northwest Territories do not receive prevention or other CFS funding and are excluded from the national estimates.

In its national estimates and projections, IFSD applies the following assumptions to all scenarios for First Nations not affiliated to an FNCFS agency (Table 5):

Table 5

<b>Component</b>	<b>Description</b>
Population	<ul style="list-style-type: none"> <li>- Base population is from the IRS 2022 (on-reserve and total membership)</li> <li>- Population growth is from projections provided by ISC based on 2020 population data</li> </ul>
Inflation	<ul style="list-style-type: none"> <li>- Consumer Price Index (CPI) is Canada's rate of inflation (based on previous year's prices)</li> <li>- Inflation is variable and adjusted for the previous year's average inflation rate</li> <li>- The Bank of Canada's five-year inflation target ranges between 1% and 3% (based on the CPI)</li> <li>- IFSD proposes using 3% inflation in the projections, based on the upper end of the Bank of Canada's inflation target (as inflation tends to run higher in many First Nations relative to the general population)</li> </ul>
Prevention	<ul style="list-style-type: none"> <li>- Resources to design and deliver programming to reduce child contact with protective services and keep families unified</li> <li>- \$2,500 per capita</li> </ul>
First Nations Representative Service	<ul style="list-style-type: none"> <li>- Support to ensure First Nations represent the best interests of their children and families in a culturally relevant manner</li> <li>- \$283 per capita</li> </ul>
Remoteness	<ul style="list-style-type: none"> <li>- The Cost Adjustment Factor (CAF) scaled to an average of 15% across all First Nations not affiliated to an FNCFS agency. The CAF is calculated based on the remoteness index of a First Nation and whether it has access to roads               <ul style="list-style-type: none"> <li>o The allocation can be made to all First Nations based on their remoteness index.</li> <li>o The allocation can be made to First Nations with a remoteness index of 0.4 or higher.</li> </ul> </li> <li>- Applied to the baseline and top-ups</li> </ul>
Poverty	<ul style="list-style-type: none"> <li>- Allocation to mitigate some impacts of poverty and its triggers associated with contact with protection services. Not meant to alleviate or solve poverty in a First Nation</li> <li>- Difference between Market Basket Measure (MBM) by province/region for populations &lt;30,000 people and after-tax median household income on-reserve (Census 2016 data). Data is not available for household median</li> </ul>



	<p>income and the number of households for all First Nations. For First Nations without data, the average median income of those First Nations with data in the same province and geographic zone was applied</p> <ul style="list-style-type: none"> <li>- 7% of value of difference</li> </ul>
Information technology (IT)	<ul style="list-style-type: none"> <li>- Allocation for hardware, software, and relevant services, based on not-for-profit industry standards</li> <li>- Applied to the baseline budget</li> <li>- 6% of baseline</li> </ul>
Results	<ul style="list-style-type: none"> <li>- Allocation to support data collection and analysis</li> <li>- Applied to the baseline budget</li> <li>- 5% of baseline</li> </ul>
Average per capita expenditure (questionnaire)	<ul style="list-style-type: none"> <li>- Per capita expenditure as reported in the First Nations not affiliated questionnaire based on total expenditures for child and family services from federal sources (fiscal year 2021-2022)</li> <li>- Calculated by dividing total budget by IRS (on-reserve population, 2021) per response. An average per capita allocation was calculated based on all questionnaire contributions.</li> </ul>
Average per capita expenditure (integrated service providers)	<ul style="list-style-type: none"> <li>- Some Quebec First Nations integrate the delivery of their health and social services. This model represents an integrated approach to service delivery.</li> <li>- The per capita allocation for integrated service providers was calculated by dividing the total budget by IRS (on-reserve population, 2021). An average per capita budget was calculated based on contributions from First Nations in Quebec providing integrated services.</li> </ul>

IFSD modelled the following scenarios based on feedback from First Nations not affiliated to an FNCFS agency, existing approaches to service delivery, and elements of a funding model developed with FNCFS agencies (as there are some consistent needs across program activity areas).

The funding scenarios reviewed in this section generate amounts of funding for service delivery. Different starting points of First Nations not affiliated to an FNCFS agency should be considered in the mechanism for resource transfer. The mechanism and its terms will impact how a First Nation not affiliated to an FNCFS can access and use the funds based on associated terms and conditions.

It is the funding mechanism through which resources are transferred to recipients, i.e., options 1-3 above, that should be considered in relation to existing service delivery. For instance, First Nations not affiliated to an FNCFS agency that can take on additional resources and expand their program and service delivery may be most comfortable with the status quo option. If, however, a First Nation not affiliated to an FNCFS agency is at

the beginning of its service design and delivery, the regional model with phased steps or the application-based model may be preferable.

There are 11 scenarios (Table 6):

Table 6

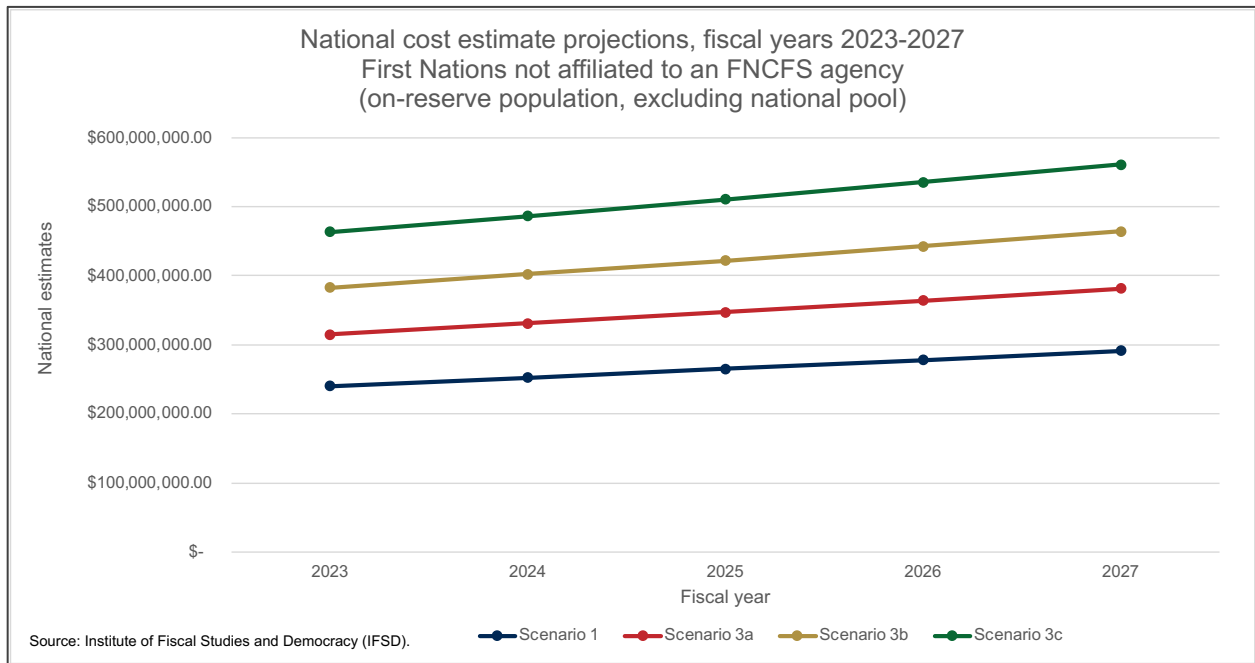
Scenario	Description
1. Base scenario	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Projections grown by population + inflation</li> </ul>
2. A) Base scenario + remoteness applied to all First Nations	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
2B) Base scenario + remoteness for remoteness index of 0.4 or higher	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (<b>applied to First Nations with a remoteness index of 0.4 or higher</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
3. A) Base scenario (\$2,500+ \$283) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
3B) Base scenario (\$3,123 questionnaire) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)</li> <li>- Band Representative Service, \$283 per capita</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
3C) Base scenario (\$3,859 integrated provider) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)</li> <li>- Band Representative Service, \$283 per capita</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
4. Per capita expenditure (from questionnaire)	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data) + \$283</li> </ul>



	<ul style="list-style-type: none"> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
5. Per capita expenditure of integrated health and social services model (from questionnaire)	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data) + \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
6. Base scenario + application supplement	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data) allocated to a fund for application-based access to resources</li> <li>- Projections grown by population + inflation</li> </ul>
7. Per capita expenditure (from questionnaire) + base scenario	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)</li> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Projections grown by population + inflation</li> </ul>
8. Per capita expenditure (from questionnaire) + base scenario + remoteness	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)</li> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
9. Per capita expenditure (from questionnaire) + base scenario + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)</li> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
10. Per capita expenditure of integrated health and social services model (from questionnaire) + base scenario + remoteness	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)</li> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>
11. Prevention + doubled First Nations Representative Service + remoteness	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$566 (i.e., 2 x \$283)</li> <li>- Remoteness (baseline and top-ups) (<b>applied to all First Nations</b>)</li> <li>- Projections grown by population + inflation</li> </ul>

The national estimates for each of the scenarios is reviewed in Appendix G. Scenario 1 produces the lowest national estimate over five years for the population on-reserve (\$1.3B) and Scenario 9 produces the highest (\$3.45B). The discussion in the integral report will focus on scenarios 3a, 3b, 3c. In Figure 36 below, the three scenarios are compared to Scenario 1 (per capita allocations of \$2,500 + \$283 for the on-reserve population). The three scenarios augment a baseline with one or more top-ups that are linked to different contexts and the costs of service delivery. Scenario 3a is the lowest and 3c provides the highest allocation relative to the selected options, as its per capita allocation is the highest.

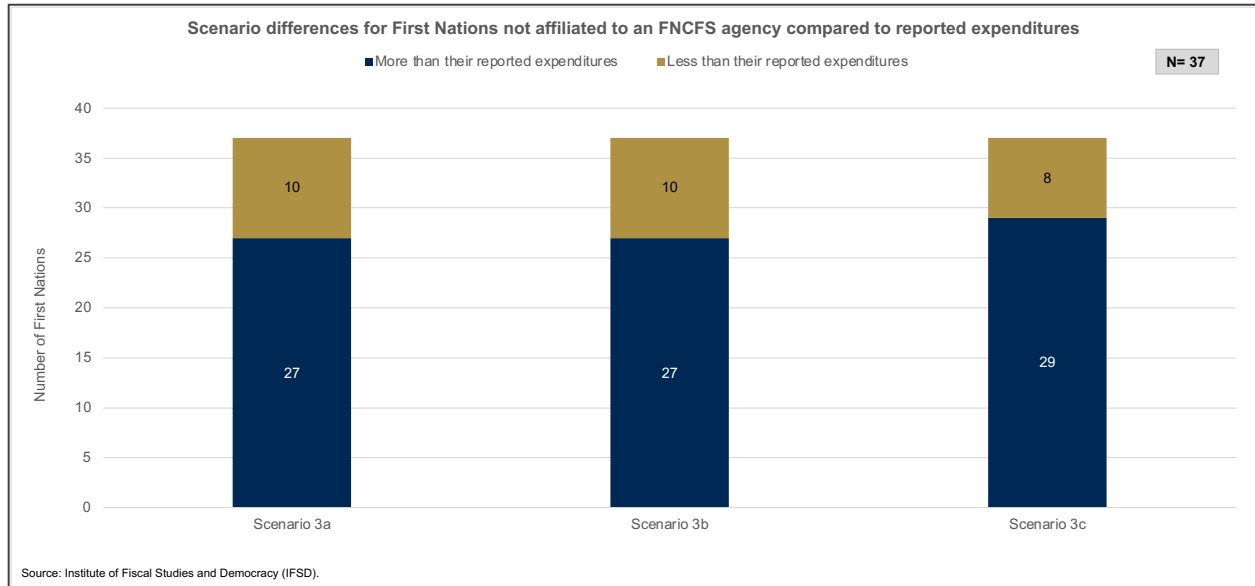
Figure 36



The scenarios are presented with population on-reserve and total membership. There are significant increases in the estimates when total membership numbers are applied. The scenarios using total membership were modelled based on feedback from First Nations not affiliated to an FNCFS agency during the national gathering in November 2023. It should be noted that **the existing federal program and mandate for this analysis is for First Nations on-reserve only.**

Relative to responses in the questionnaire, most of the First Nations would be allocated more resources than their current reported expenditures with scenarios 3a, 3b, or 3c. There are, however, some First Nations who would see reduced allocations in each of these scenarios (Figure 37).

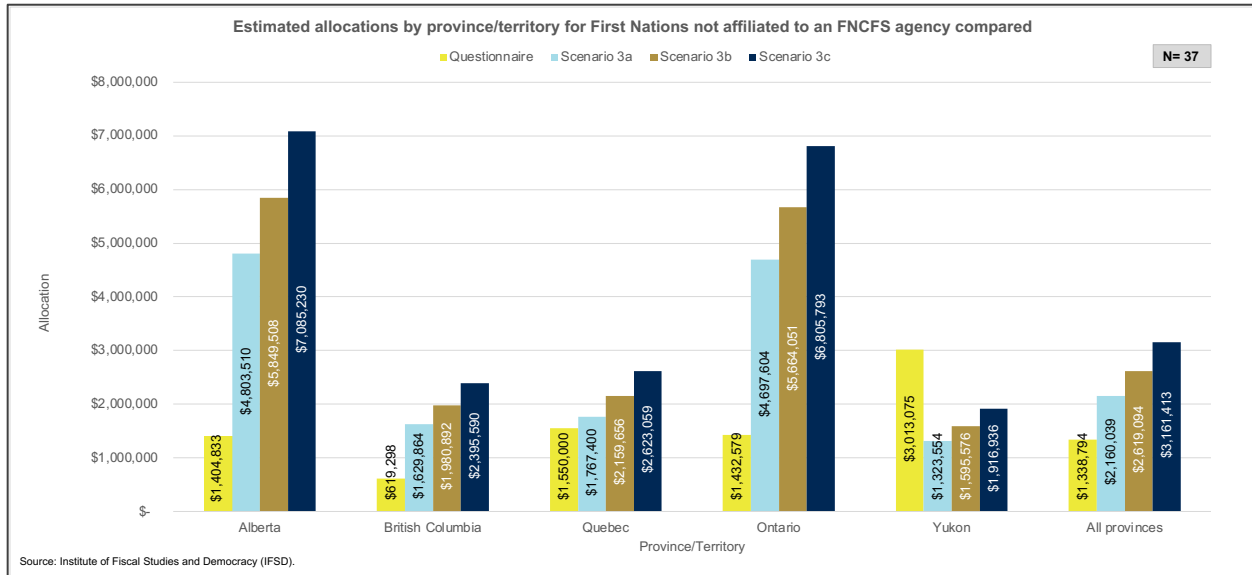
Figure 37



At a provincial/territorial level, when compared to the 37 questionnaire responses on total expenditures, only First Nations in the Yukon would see a reduction in territorial allocations with scenarios 3a, 3b, or 3c (Figure 38). All others would gain resources with the three scenarios. There could be various explanations for the divergence due to higher average per capita reported expenditures in Yukon relative to other provinces. In the questionnaire, expenditures beyond FNCFS may have been reported, or expenditures may be greater in Yukon as they are building capacity (not having been previously resourced).<sup>37</sup> The matter should be clarified with First Nations in Yukon prior to confirming a funding approach.

<sup>37</sup> Office of the Auditor General, "2014 February Report of the Auditor General of Canada," Government of Canada, 2014, at par. 16, [https://www.oag-bvg.gc.ca/internet/English/yuk\\_201402\\_e\\_39081.htm](https://www.oag-bvg.gc.ca/internet/English/yuk_201402_e_39081.htm)

Figure 38



The national pool (next section) would be a resource through which to supplement higher funding requirements. Alternatively, ISC could work with First Nations to develop their distinct budgets. For instance, another option is to use the First Nation’s current child and family services budget as the baseline and add the top-ups, or use one of the estimated baselines instead, with the top-ups.

### *National pool*

IFSD is recommending a national pool, in addition to the First Nation allocations, be established for those First Nations that require or are transitioning to a model providing higher levels of services. The value of this pool is proposed to be 5 or 10% of the five-year allocation. Applications to the fund would be developed with the input of practitioners, e.g., the National Advisory Committee (NAC), on matters such as workplan, program proposal. For the first three to five years, it may be practical to have ISC manage applications and funding allocations. In the future, should a regional model (with devolution of resources to a trusted regional organization for management) be adopted, it would be preferable to have the application-based national pool (should it continue to exist) managed by a trusted regional organization. This would encourage regional relevance and decision-making.

The main scenarios with the national pool at 5% and 10% are presented with the on-reserve population (Table 7, Figure 39 and Table 9, Figure 41) and total population (Table 8, Figure 40 and Table 10, Figure 42). National estimates for total population with the national pool are much higher than the estimates for the on-reserve population only. For the on-reserve population only, national scenarios (including the 5% national pool) range from approximately \$1.4B to \$2.7B over five years. Using the total population, that range increases to \$3.4B to \$6.5B over five years. With a 10% national pool, on-reserve national estimates range from \$1.5B to \$2.8B, and those with the total

population from \$3.6B to \$6.8B. The national funding pool would be accessible to all First Nations not affiliated to an FNCFS agency. There could be a regional allocation of funding, based on population size.

Table 7

<b>5-year estimate + 5% national pool (on-reserve population)</b>			
	<b>5-year estimate</b>	<b>National Pool (5%)</b>	<b>Total Allocation</b>
Scenario 1	\$ 1,327,153,699	\$ 66,357,685	\$ 1,393,511,384
Scenario 3a	\$ 1,738,339,479	\$ 86,916,974	\$ 1,825,256,453
Scenario 3b	\$ 2,113,428,888	\$ 105,671,444	\$ 2,219,100,332
Scenario 3c	\$ 2,556,552,170	\$ 127,827,608	\$ 2,684,379,778

Figure 39

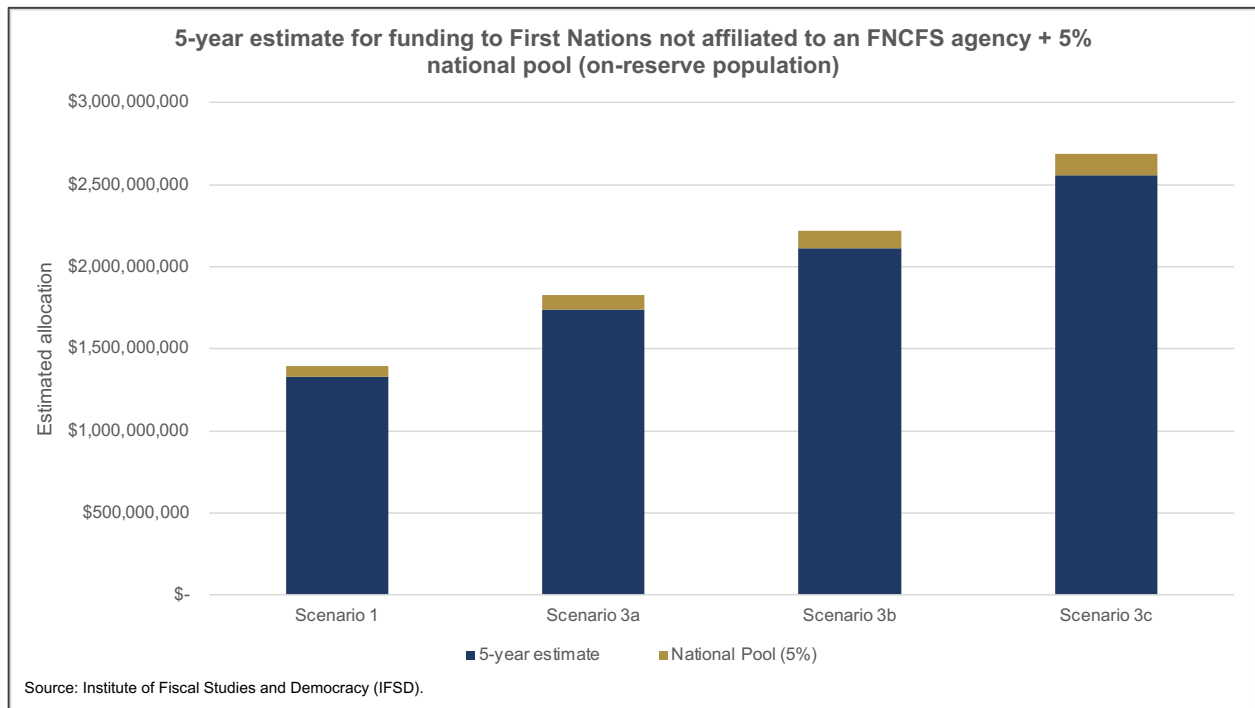


Table 8

<b>5-year estimate + 5% national pool (total population)</b>			
	<b>5-year estimate</b>	<b>National Pool (5%)</b>	<b>Total Allocation</b>
Scenario 1	\$ 3,269,756,584	\$ 163,487,829	\$ 3,433,244,414
Scenario 3a	\$ 4,178,328,361	\$ 208,916,418	\$ 4,387,244,780
Scenario 3b	\$ 5,099,772,358	\$ 254,988,618	\$ 5,354,760,976
Scenario 3c	\$ 6,188,348,252	\$ 309,417,413	\$ 6,497,765,664

Figure 40

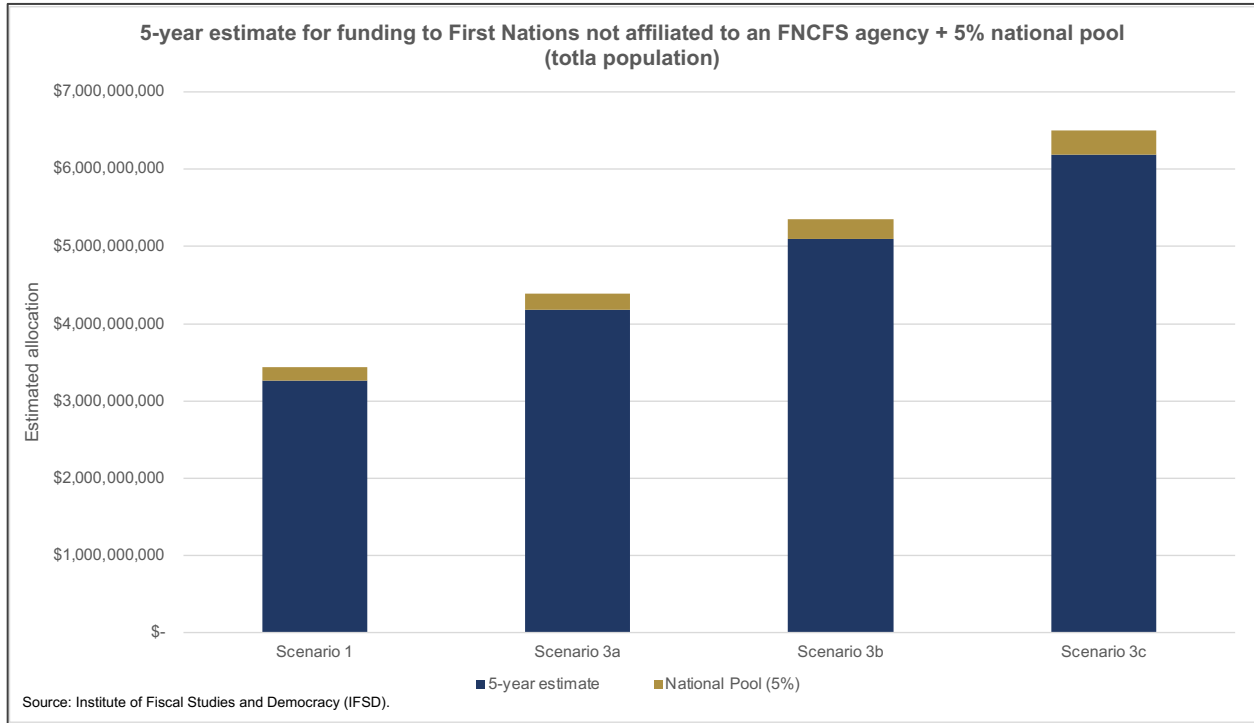


Table 9

<b>5-year estimate + 10% national pool (on-reserve population)</b>			
	<b>5-year estimate</b>	<b>National Pool (10%)</b>	<b>Total Allocation</b>
Scenario 1	\$ 1,327,153,699	\$ 132,715,370	\$ 1,459,869,069
Scenario 3a	\$ 1,738,339,479	\$ 173,833,948	\$ 1,912,173,427
Scenario 3b	\$ 2,113,428,888	\$ 211,342,889	\$ 2,324,771,777
Scenario 3c	\$ 2,556,552,170	\$ 255,655,217	\$ 2,812,207,387

Figure 41

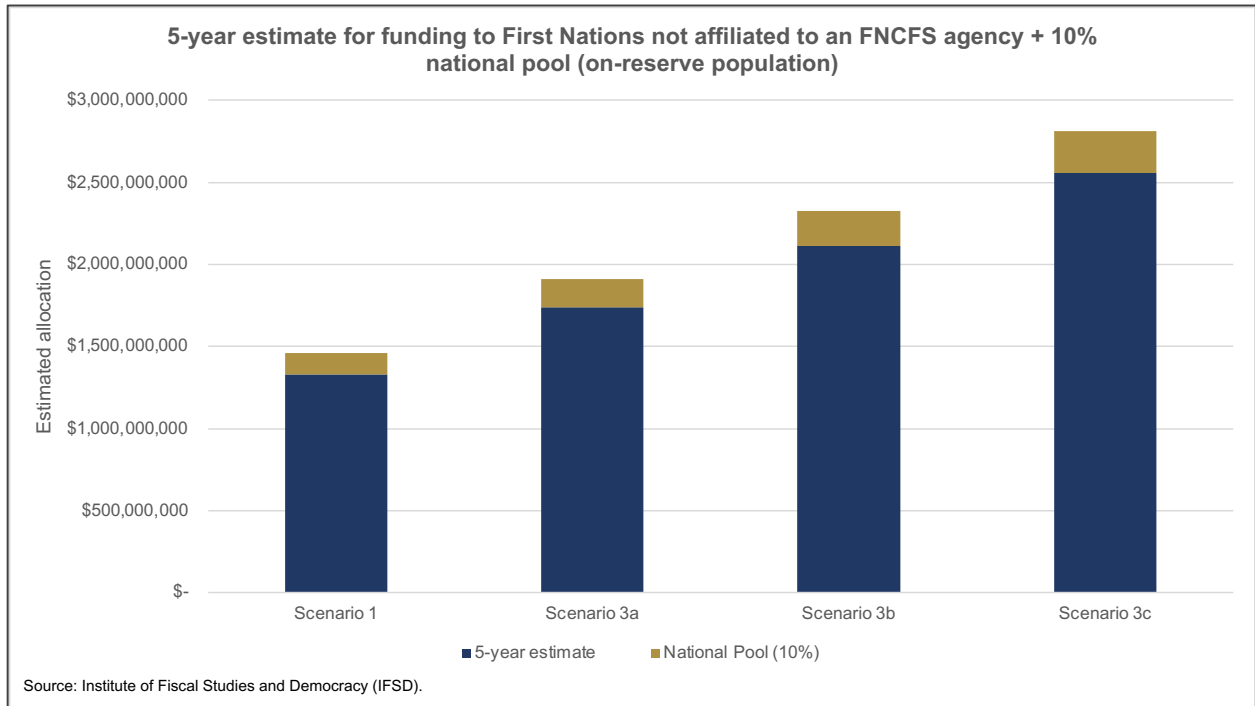
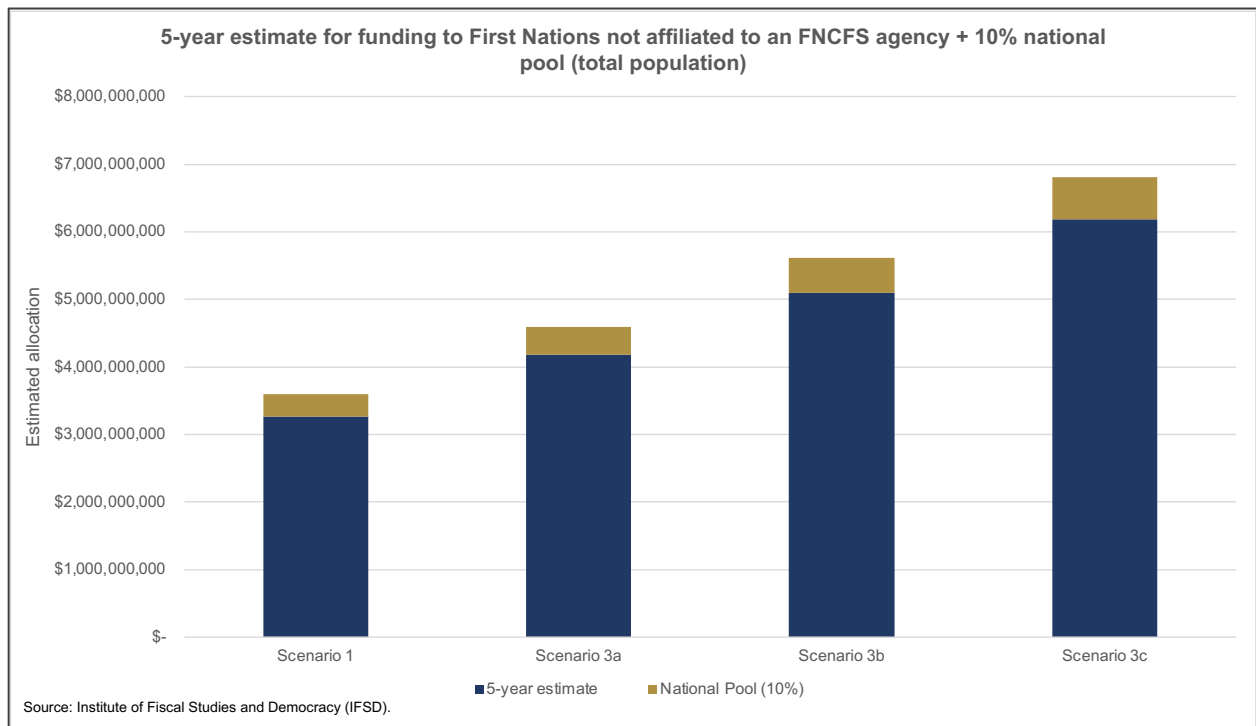


Table 10

5-year estimate + 10% national pool (total population)			
	5-year estimate	National Pool (10%)	Total Allocation
Scenario 1	\$ 3,269,756,584	\$ 326,975,658	\$ 3,596,732,243
Scenario 3a	\$ 4,178,328,361	\$ 417,832,836	\$ 4,596,161,198
Scenario 3b	\$ 5,099,772,358	\$ 509,977,236	\$ 5,609,749,594
Scenario 3c	\$ 6,188,348,252	\$ 618,834,825	\$ 6,807,183,077

Figure 42



*National cost estimates*

**Scenario 3a (on-reserve)**

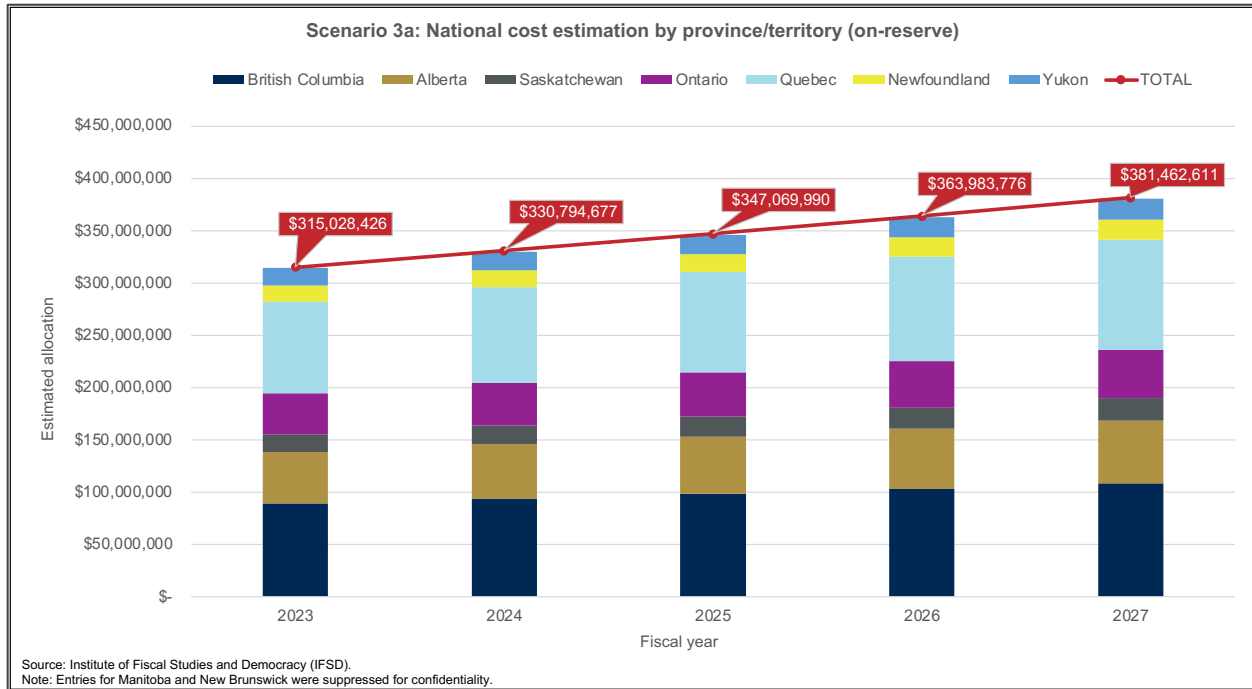
- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 11

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 89,127,760	\$ 93,784,307	\$ 98,568,811	\$ 103,592,350	\$ 108,681,180	\$ 493,754,408
Alberta	\$ 49,661,840	\$ 52,165,765	\$ 54,659,137	\$ 57,271,607	\$ 59,958,978	\$ 273,717,328
Saskatchewan	\$ 16,937,503	\$ 17,935,712	\$ 18,998,552	\$ 20,100,549	\$ 21,234,981	\$ 95,207,297
Manitoba	*	*	*	*	*	*
Ontario	\$ 38,904,732	\$ 40,709,525	\$ 42,603,877	\$ 44,558,426	\$ 46,600,042	\$ 213,376,602
Quebec	\$ 87,481,568	\$ 91,514,011	\$ 95,652,236	\$ 100,030,321	\$ 104,543,330	\$ 479,221,465
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 15,308,643	\$ 16,253,541	\$ 17,220,050	\$ 18,229,529	\$ 19,288,762	\$ 86,300,525
Yukon	\$ 16,780,095	\$ 17,558,306	\$ 18,440,564	\$ 19,222,627	\$ 20,123,105	\$ 92,124,696
<b>TOTAL</b>	<b>\$ 315,028,426</b>	<b>\$ 330,794,677</b>	<b>\$ 347,069,990</b>	<b>\$ 363,983,776</b>	<b>\$ 381,462,611</b>	<b>\$ 1,738,339,479</b>



Figure 43

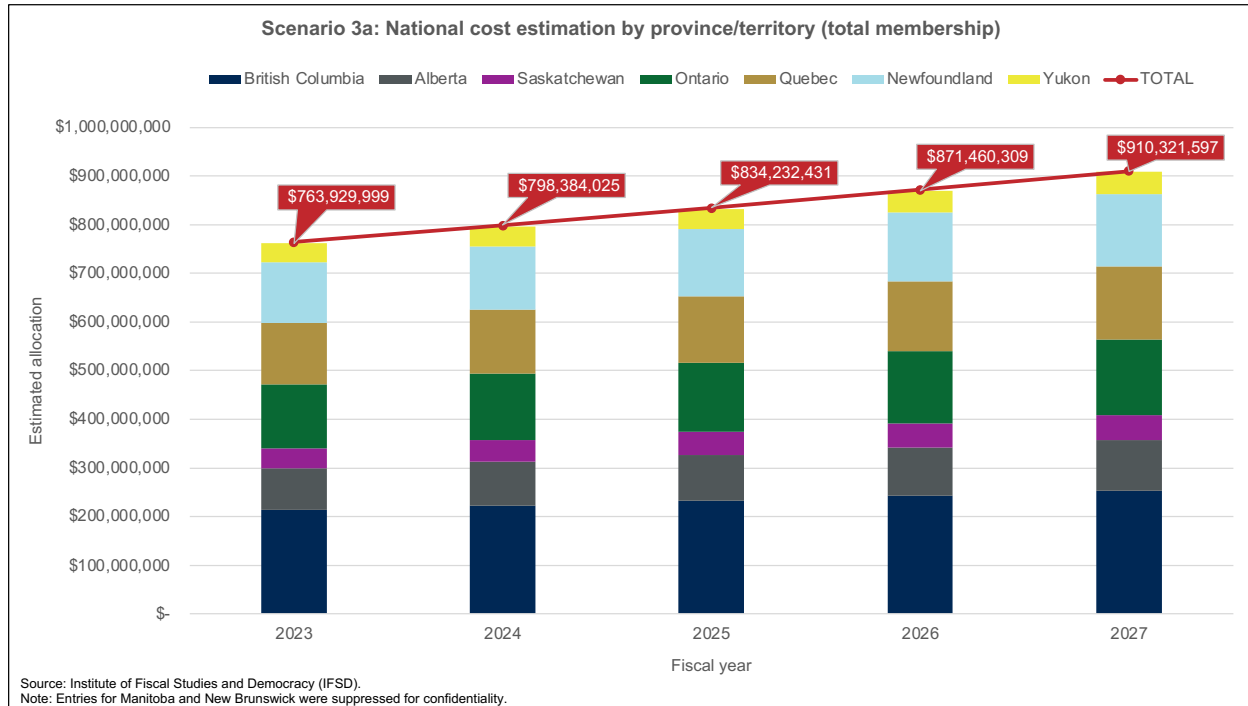


### Scenario 3a (total membership)

Table 12

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 213,738,794	\$ 223,297,119	\$ 233,193,831	\$ 243,413,367	\$ 254,040,873	\$ 1,167,683,984
Alberta	\$ 84,985,984	\$ 89,132,462	\$ 93,431,678	\$ 97,941,037	\$ 102,690,302	\$ 468,181,464
Saskatchewan	\$ 42,352,245	\$ 44,659,601	\$ 47,095,034	\$ 49,636,357	\$ 52,296,149	\$ 236,039,387
Manitoba	*	*	*	*	*	*
Ontario	\$ 131,056,080	\$ 136,669,192	\$ 142,579,310	\$ 148,721,448	\$ 155,120,497	\$ 714,146,528
Quebec	\$ 125,640,354	\$ 131,264,892	\$ 137,066,864	\$ 143,143,191	\$ 149,448,294	\$ 686,563,596
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 125,288,484	\$ 130,928,942	\$ 136,811,968	\$ 142,889,724	\$ 149,268,625	\$ 685,187,742
Yukon	\$ 38,905,559	\$ 40,379,947	\$ 41,909,026	\$ 43,469,769	\$ 45,110,756	\$ 209,775,058
<b>TOTAL</b>	<b>\$ 763,929,999</b>	<b>\$ 798,384,025</b>	<b>\$ 834,232,431</b>	<b>\$ 871,460,309</b>	<b>\$ 910,321,597</b>	<b>\$ 4,178,328,361</b>

Figure 44



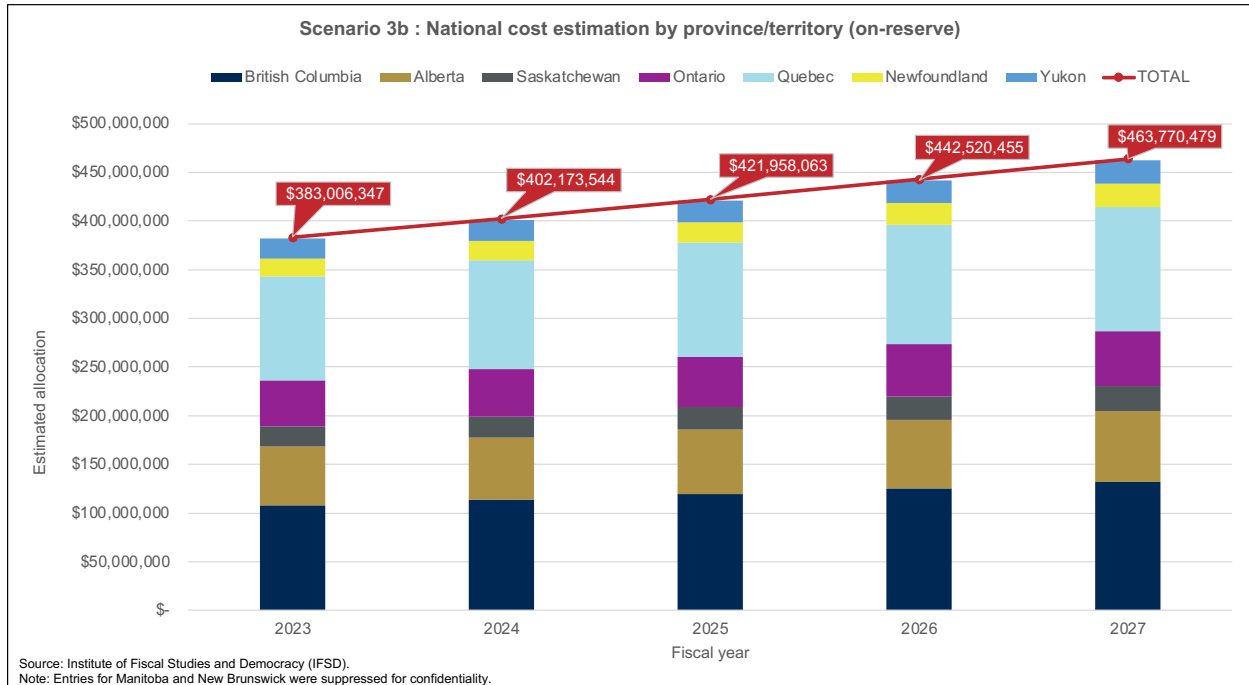
### Scenario 3b (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)
- Band Representative Service, \$283 per capita
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 13

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 108,111,387	\$ 113,759,624	\$ 119,563,032	\$ 125,656,046	\$ 131,829,737	\$ 598,919,826
Alberta	\$ 60,424,702	\$ 63,471,266	\$ 66,505,046	\$ 69,683,677	\$ 72,953,444	\$ 333,038,134
Saskatchewan	\$ 20,474,698	\$ 21,681,378	\$ 22,966,126	\$ 24,298,302	\$ 25,669,620	\$ 115,090,124
Manitoba	*	*	*	*	*	*
Ontario	\$ 46,966,753	\$ 49,145,489	\$ 51,432,400	\$ 53,792,005	\$ 56,256,760	\$ 257,593,408
Quebec	\$ 107,047,682	\$ 111,982,019	\$ 117,045,804	\$ 122,403,093	\$ 127,925,474	\$ 586,404,072
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 18,735,622	\$ 19,892,045	\$ 21,074,916	\$ 22,310,375	\$ 23,606,728	\$ 105,619,686
Yukon	\$ 20,234,247	\$ 21,172,670	\$ 22,236,512	\$ 23,179,575	\$ 24,265,407	\$ 111,088,410
TOTAL	\$ 383,006,347	\$ 402,173,544	\$ 421,958,063	\$ 442,520,455	\$ 463,770,479	\$ 2,113,428,888

Figure 45

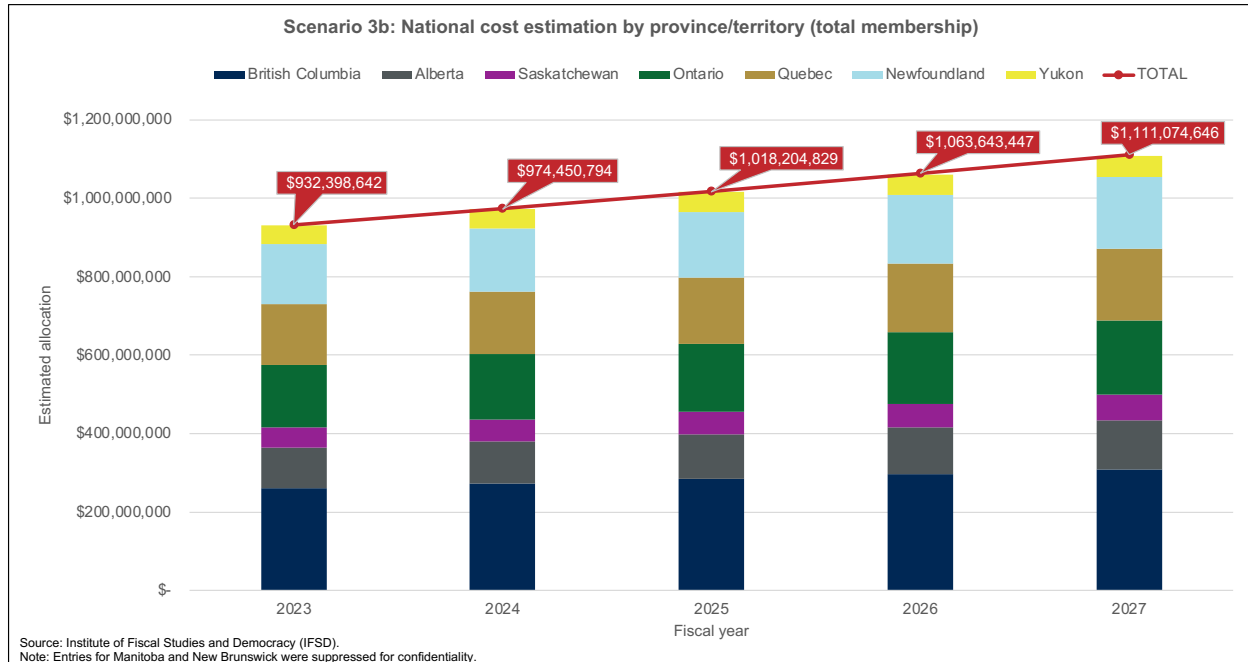


### Scenario 3b (total population)

Table 14

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 260,617,740	\$ 272,272,232	\$ 284,339,360	\$ 296,800,969	\$ 309,759,089	\$ 1,423,789,390
Alberta	\$ 103,656,479	\$ 108,713,893	\$ 113,957,624	\$ 119,457,630	\$ 125,250,266	\$ 571,035,891
Saskatchewan	\$ 51,578,763	\$ 54,388,775	\$ 57,354,770	\$ 60,449,732	\$ 63,688,953	\$ 287,460,993
Manitoba	*	*	*	*	*	*
Ontario	\$ 159,747,023	\$ 166,588,924	\$ 173,792,943	\$ 181,279,702	\$ 189,079,573	\$ 870,488,164
Quebec	\$ 153,748,662	\$ 160,631,523	\$ 167,731,514	\$ 175,167,239	\$ 182,882,924	\$ 840,161,861
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 153,335,457	\$ 160,238,582	\$ 167,438,578	\$ 174,876,895	\$ 182,683,771	\$ 838,573,284
Yukon	\$ 47,312,698	\$ 49,105,666	\$ 50,965,205	\$ 52,863,209	\$ 54,858,774	\$ 255,105,552
<b>TOTAL</b>	<b>\$ 932,398,642</b>	<b>\$ 974,450,794</b>	<b>\$ 1,018,204,829</b>	<b>\$ 1,063,643,447</b>	<b>\$ 1,111,074,646</b>	<b>\$ 5,099,772,358</b>

Figure 46



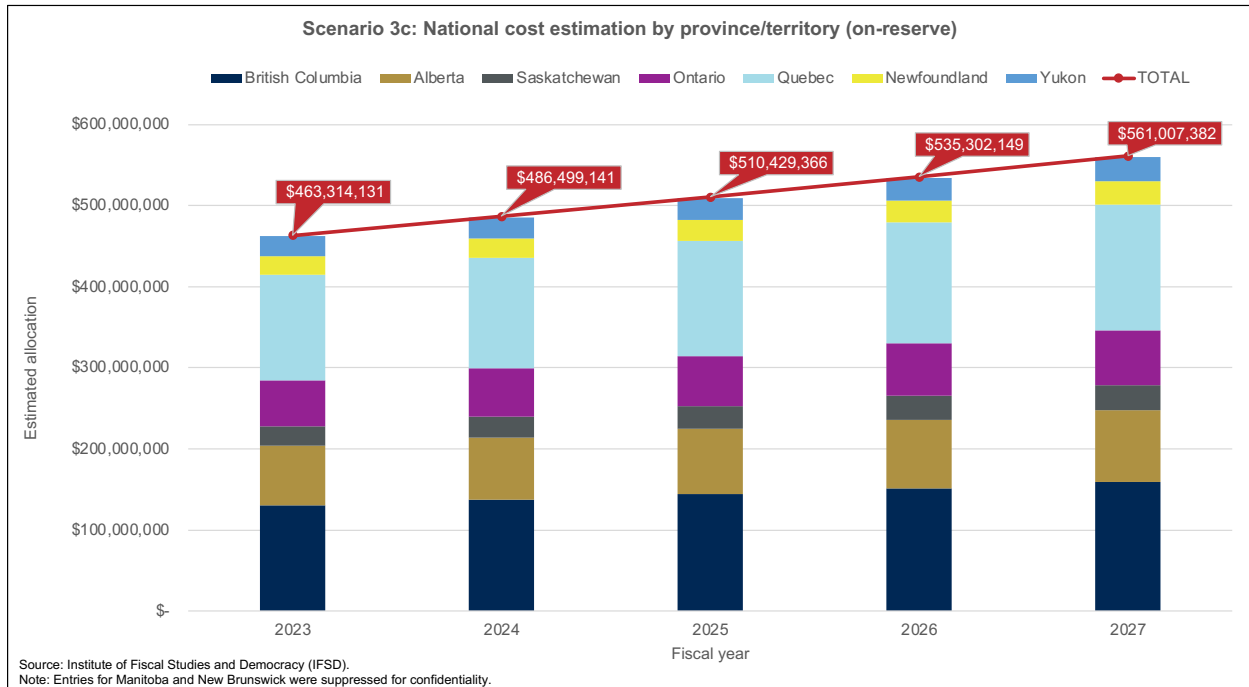
### Scenario 3c (on-reserve)

- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)
- Band Representative Service, \$283 per capita
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 15

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 130,538,272	\$ 137,358,073	\$ 144,365,194	\$ 151,721,664	\$ 159,176,988	\$ 723,160,191
Alberta	\$ 73,139,736	\$ 76,827,362	\$ 80,499,571	\$ 84,347,052	\$ 88,304,852	\$ 403,118,573
Saskatchewan	\$ 24,653,472	\$ 26,106,435	\$ 27,653,339	\$ 29,257,444	\$ 30,908,616	\$ 138,579,307
Manitoba	*	*	*	*	*	*
Ontario	\$ 56,491,066	\$ 59,111,573	\$ 61,862,245	\$ 64,700,373	\$ 67,665,019	\$ 309,830,276
Quebec	\$ 130,162,705	\$ 136,162,523	\$ 142,319,747	\$ 148,833,847	\$ 155,548,682	\$ 713,027,504
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 22,784,189	\$ 24,190,502	\$ 25,628,979	\$ 27,131,408	\$ 28,707,888	\$ 128,442,966
Yukon	\$ 24,314,914	\$ 25,442,610	\$ 26,720,971	\$ 27,854,235	\$ 29,159,041	\$ 133,491,770
<b>TOTAL</b>	<b>\$ 463,314,131</b>	<b>\$ 486,499,141</b>	<b>\$ 510,429,366</b>	<b>\$ 535,302,149</b>	<b>\$ 561,007,382</b>	<b>\$ 2,556,552,170</b>

Figure 47

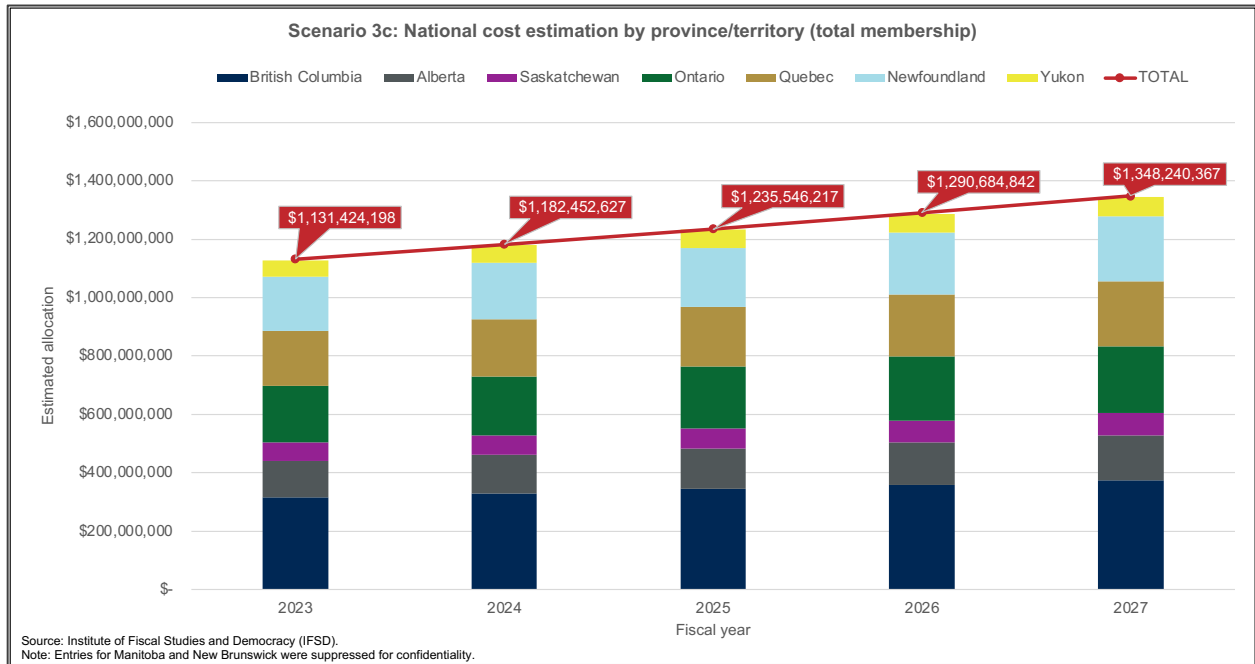


### Scenario 3c (total membership)

Figure 48

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 315,999,610	\$ 330,130,472	\$ 344,761,687	\$ 359,872,037	\$ 375,583,497	\$ 1,726,347,302
Alberta	\$ 125,713,435	\$ 131,847,011	\$ 138,206,574	\$ 144,876,912	\$ 151,902,164	\$ 692,546,096
Saskatchewan	\$ 62,478,790	\$ 65,882,631	\$ 69,475,420	\$ 73,224,441	\$ 77,148,189	\$ 348,209,470
Manitoba	*	*	*	*	*	*
Ontario	\$ 193,641,941	\$ 201,935,509	\$ 210,668,117	\$ 219,743,384	\$ 229,198,161	\$ 1,055,187,112
Quebec	\$ 186,955,265	\$ 195,324,685	\$ 203,958,131	\$ 212,999,822	\$ 222,381,940	\$ 1,021,619,843
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 186,469,601	\$ 194,864,418	\$ 203,620,255	\$ 212,665,913	\$ 222,159,771	\$ 1,019,779,959
Yukon	\$ 57,244,727	\$ 59,414,059	\$ 61,663,998	\$ 63,960,435	\$ 66,374,892	\$ 308,658,111
<b>TOTAL</b>	<b>\$ 1,131,424,198</b>	<b>\$ 1,182,452,627</b>	<b>\$ 1,235,546,217</b>	<b>\$ 1,290,684,842</b>	<b>\$ 1,348,240,367</b>	<b>\$ 6,188,348,252</b>

Figure 49



It is recommended that this five-year approach be reviewed and revised as required at year three. It is expected that First Nations not affiliated to an FNCFS agency will continue to build capacity through staffing, assessment of community needs, and operational sophistication with consistent funding.

## **Conclusion and Recommendations**

First Nations not affiliated to an FNCFS agency are delivering different services, many of which are primary prevention. Changes to the service delivery model and CFS activities, especially, for the delivery of secondary and tertiary services will require people, resources, and time. It is unrealistic and unfair to assume that First Nations can undertake the community consultation, service design, planning, and operation of services without adequate time and capacity to meet community needs. In an interim period, as capacity is being developed and program plans established, services may be sought from nearby service providers, or provided by the province/territory.

There are outstanding issues that should be addressed as First Nations not affiliated to an FNCFS agency continue to assess needs, establish approaches, and deliver services. These issues include:

- 1) Provincial/territorial prevention services. What services are provinces/territories providing? What are their results?
- 2) Internal assessment. Are First Nations equipped to define prevention needs for secondary and tertiary services for coordination with other service providers?
- 3) Provincial coordination. Are provinces coordinating and integrating protection and prevention activities? Are provinces coordinating with First Nations not affiliated to an FNCFS agency on the integration of their services that are being offered or are in development?

This needs assessment leveraged contributions from First Nations not affiliated to an FNCFS agency through a questionnaire, regional and national gatherings, and in-depth analyses. An attempt to define a national starting point, the findings indicate that a diversity of starting points are a reality. Any forward strategy must account for these differences, while recognizing the common commitment to building First Nations-led prevention services for children and families.

### **IFSD makes the following recommendations:**

- 1) Clarify the prevention services (primary, secondary, tertiary) that First Nations are being asked to deliver with FNCFS resources.
  - Define federal reporting requirements for the funding.
  - Define service delivery expectations with their respective provincial/territorial FNCFS service providers, e.g., province/territory.
- 2) Publish agreements between the federal and provincial/territorial governments on FNCFS.
- 3) Require provincial/territorial governments to report to the First Nations they serve on the types of protection and prevention services (primary, secondary, tertiary) being offered, and their results.

- 8) First Nations and provincial/territorial governments should work in partnership to define memoranda of understanding to integrate protection and prevention (primary, secondary, tertiary) in service delivery.
- 4) On a regional/territorial basis, First Nations should define the funding approach that best suits their needs. This means that First Nations in different places may have different funding structures, e.g., regional organization managing allocation, separate bilateral agreements between First Nations and the federal government.
- 5) First Nations not affiliated to an FNCFS agency are only beginning to develop their approaches to the delivery of prevention services (primary, secondary, tertiary) with a limited history of practice. It will take time to clarify required activities and their resource requirements. Funding approaches should reflect that reality and should not be considered final until a consistent and stable set of activities are defined.
- 6) Ensure a review of the five-year approach at year three of funding and structure, relative to actual and desired activities in First Nations not affiliated to an FNCFS agency. Funding structure and resources should be adjusted based on findings.

The forward strategies proposed in this report consider different funding approaches and structures to address different needs and starting points. As future paths are defined, financial resources and structures will need to be linked to outcomes for children. The integration of protection and prevention service delivery among all actors will be essential to ensuring First Nations children thrive. Programs and services will need to be adapted to changing circumstances and redefined over time. This is a start. There is more to be done.



## **Appendix A – Liability opinion, First Nations delivering prevention services**

January 20, 2023

VIA E-MAIL

Reply to: Kathryn McGoldrick  
Direct Line: 604.484.1763  
Direct Fax: 604.484.9763  
E-mail: kmcgoldrick@ahbl.ca  
Matter No.: 1137549

Institute of Fiscal Studies and Democracy (IFSD)  
115 Séraphin-Marion Private #107  
Ottawa, Ontario  
K1N 6N5

Attention: Helaina Gaspard, Ph.D., Director, Governance & Institutions

Dear Sirs/Mesdames:

**Re: Legal Opinion regarding potential Liability in Tort and Human Rights Law for First Nations providing Prevention Services**

We write to provide IFSD with a legal opinion on potential liability concerns in the areas of tort and human rights for First Nations who take on prevention funding directly as part of Canada's reformed funding model for the First Nation Child and Family Service Program ("FNCFS Program"). We also provide further information regarding the applicability to First Nations of immunity in tort law for core policy decisions. Based on your instructions, these issues are considered only in respect of First Nations who have not exercised jurisdiction over child and family services either under *An Act respecting First Nations, Inuit and Métis children, youth and families* (the "Act") or under s. 35 of the *Constitution Act, 1982* ("C-92").

## EXECUTIVE SUMMARY

In **Part I**, we provide a summary of our understanding regarding prevention services and the assumptions we have been asked to make regarding the ways in which First Nations may take on prevention funding and provide services within their communities.

In **Part II**, we provide a summary of the law of negligence, with a focus on principles and case law that have applicability to the child and family services context and to the common law duties owed by public authorities. We focus particularly on duty of care, given that in our view there is some uncertainty as to whether First Nations and their employees providing prevention services would owe a common law duty of care, and if such a duty is owed, to whom it would be owed. The other aspects of the negligence analysis (standard of care, causation, and damages) depend more on the facts of particular cases – the specific conduct of the defendant, the role it played in the plaintiff's injury, and we provide only general comments regarding the law on these elements.

We also provide a summary of the law of vicarious liability, and consider the statutory context and potential applicability of statutory immunity provisions in provincial and territorial child and family services legislation to First Nations and their employees.

In **Part III**, we focus on immunity for core policy decisions. While this was a principal subject of our September 2022 opinion, that opinion was aimed at First Nations who have exercised their jurisdiction under C-92 or pursuant to the right to self-government under s. 35. In this opinion, we opine that First Nations not falling in this category would likely still be considered sufficiently governmental in nature to benefit from core policy immunity. We have also included additional case law to provide further examples and guidance to assist First Nations in identifying core policy decisions and to ensure that such decisions meet the requirements set out by the courts in order for immunity to apply. These include that they be based on social, economic, or political factors; be made in good faith; not be irrational; and involve at least some level of consideration/deliberation.

We also consider whether a statutory duty impacts the availability of core policy immunity. The law is somewhat unsettled in this area, but provincial and territorial child and family services legislation likely does not fall within the category of statutes where policy defences may be unavailable. Further, there are in any event very limited duties under child and family services legislation that in our view would apply to First Nations providing prevention services other than under an agreement with the applicable province or territory.

In **Part IV**, we provide our analysis regarding whether a First Nation may owe a common law duty of care, and particularly whether the requirement of proximity is met, in the direct provision of prevention services, as well as with respect to decisions regarding how prevention funding should be used. This is a novel question, as First Nations providing prevention services other than under provincial/territorial legislation do not owe the same statutory duties as agencies and their employees who work under this scheme and have been found to owe a duty to children. However, in our view, a court would likely find sufficient proximity to support a duty of care owed to children in respect of the provision of secondary and tertiary prevention services. As with child protection, the purpose of providing these services to families is to reduce risk to children who are or may be at risk of harm, and secondary and tertiary prevention services are provided on an individual basis involving close interactions with families. However, it is less clear that there would be any positive duty to provide specific services, as opposed to as a duty to provide services in a non-negligent way.

It is unlikely the First Nation would owe a duty of care to parents or other family members, for the same reasons as social workers have been found not to owe a duty to anyone other than the child in the child protection context. While the potential for conflict between the interests of parents and children may be less likely at the prevention stage, courts may find that prevention is not significantly different than protection and that the rationale underlying the existing case law should also apply to prevention.

If the First Nation is providing only primary prevention services, it is difficult to see how a duty of care could be owed, as these services are being provided at the community level, or to particular groups, and not targeted at individuals. It is unlikely that this could place the First Nation into a sufficiently close and direct relationship with individual parents, children, or families to justify imposing a private law duty of care.

We also provide some comments on the standard of care that would apply to First Nations and their employees providing prevention services. If these employees are not trained social workers, the standard of care expected of them would likely be reduced at least somewhat.

In **Part V**, we provide our opinion regarding the potential liability of First Nations in human rights law regarding the direct provision of prevention services and decisions regarding how prevention funding should be used. In our view, a First Nation will be considered to be providing a “service” to the “public” within the meaning of s. 5 of the *Canadian Human Rights Act* (“CHRA”) where it is directly providing prevention services, and likely also if it is making decisions regarding which prevention services will be provided and/or to whom, even if those services are ultimately being delivered by an agency. However, making very high-level and general decisions – for example, how much funding will be available for each of primary, secondary, and tertiary prevention – is less likely to constitute a “service” offered to the “public”.

If a complainant has established *prima facie* discrimination in the provision of prevention services, undue hardship based on cost may be established. However, in our view, it will not be sufficient for the First Nation to simply decline to provide a service because the funding from Canada is too low. The Nation will likely be expected to have considered reasonable alternative services as well as whether funding can be obtained from elsewhere.

## **I. PREVENTION SERVICES AND FIRST NATIONS’ USE OF PREVENTION FUNDING**

You have asked us to assume that there are three potential models by which the prevention funding provided by Canada will be taken on and spent: 1) the First Nation spends all of the prevention funding and delivers prevention services itself; 2) the First Nation directs all of the prevention funding to an agency, which delivers the prevention services; and 3) a hybrid model where the First Nation keeps some of the prevention funding and delivers some prevention services, and directs the remainder to an agency who also delivers some prevention services. We understand that under the previous funding model, to the extent prevention was being done at all, it was being done through agencies, not by the First Nations themselves. Some prevention services can be provided by agreement – for example, a parent would be asked to agree to participate in addictions treatment in order for the child to remain in the home.

The three levels of prevention are described by the FNCFS Transitional Terms and Conditions<sup>1</sup> as follows:

### **(a) Primary prevention**

Primary prevention services are aimed at the community as a whole. A community centered approach to prevention programming could include the ongoing promotion, public awareness and education of traditional child caring approaches, healthy families and child development. Activities could include those that enhance protective factors at a community-level, and help to create the network that supports

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<sup>1</sup> [FNCFS Transitional Terms and Conditions: Contributions to provide children, youth, young adults, families and communities, with prevention and protection services \(sac-isc.gc.ca\)](https://www.sac-isc.gc.ca)

family retention and healing, cultural engagement, connection, and a sense of belonging.

**(b) Secondary prevention**

Secondary prevention services are activated when a child may be at risk of harm or child maltreatment and where intervention could enhance protective factors and remediate the risk.

Secondary prevention programming could include services that establish and build on secure and responsive social relationships between children and caregivers, and support parents in meeting their family's developmental, health, educational, social, cultural, and spiritual needs.

**(c) Tertiary prevention**

Tertiary prevention services target specific families when a child has been identified as at risk of harm or child maltreatment. Tertiary prevention attempts to mitigate the risks of separating a child from their family and end the crisis. Targeted, least disruptive interventions and measures refer to the most appropriate level of service needed by a family whose child(ren) is/are at risk of harm or maltreatment or where maltreatment has taken place.

Tertiary prevention programming could include services that provide increased support and/or targeted services with the intention that intervention will enhance protective factors and promote positive outcomes.

From the lists of examples provided in this document, it appears there is some overlap between secondary and tertiary prevention. Some key differences appear to be the level of risk identified to the child ("may be at risk of harm or maltreatment" vs "at risk..."), the inclusion of mental health treatment under tertiary prevention, the more targeted nature of tertiary prevention, and the stage at which it is employed (e.g., the point of crisis where violence, addictions, or other serious issues are impacting or could imminently impact children in the home may have already been reached).

We have been asked to provide an opinion regarding the potential liability concerns should First Nations choose to use some or all of the prevention funding to deliver prevention services through employees who have little to no training regarding the delivery of child and family services. We have been asked to address both the liability of the First Nation and the personal liability of its employees.

## **II. LAW OF NEGLIGENCE**

In this section, we provide a summary of the law of negligence, in order to provide a general understanding of the basis for tort claims and to assist in informing the discussion below as to the possible tort liability of First Nations delivering prevention services.

To succeed in a negligence action, a plaintiff must show that: 1) the defendant owed the plaintiff a duty of care; 2) the defendant's behaviour breached the standard of care; 3) the plaintiff sustained damage; and 4) the damage was caused, in fact and law, by the defendant's breach: *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 at para. 77 ("*Livent*").

## 1. Duty of Care

The duty of care analysis is grounded in the “neighbour principle”: a person must take reasonable care to avoid acts or omissions which may cause foreseeable injury to their “neighbour”. The neighbour principle is reflected, in modern case law, in the concept of “proximity”, which is a close and direct relationship between the parties that justifies the imposition of a duty of care on the defendant: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras. 40–41 (“*Imperial Tobacco*”).

The existence of a duty of care is determined in accordance with the two-stage *Anns/Cooper* test:

1. Is the harm suffered by the plaintiff a foreseeable consequence of the defendant’s acts or omissions, and is there a sufficient relationship of proximity between the parties that it is just and fair to impose a duty of care?
2. If step one is met, are there residual policy considerations outside of the relationship between the parties that may negate the imposition of a duty of care?

If the plaintiff’s claim falls within a clearly established or analogous category in which a duty of care has been recognized in prior case law (e.g., duty owed by a provincial government to maintain highways, duty owed by child protection worker to children in need of protection), a *prima facie* duty of care will be established and no analysis at the first stage of *Anns/Cooper* is necessary. The inquiry then moves to the second stage to determine if there are policy reasons that ought to negate the duty of care in the specific factual circumstances.

If there is not a sufficiently analogous precedent that definitively establishes the existence of a *prima facie* duty of care in the relevant circumstances, the court must undertake a full *Anns/Cooper* analysis.

### **(a) First stage of the *Anns/Cooper* test: foreseeability and proximity**

The foreseeability inquiry asks whether the risk of the type of damage that occurred was a reasonably foreseeable result of the defendant’s negligent conduct to the class of plaintiff that was injured: *Rankin (Rankin’s Garage & Sales) v. J.J.*, 2018 SCC 19 at para. 24. It is an objective inquiry – the defendant need not have actually foreseen the risk, but, rather, it must have been foreseeable by a reasonable person in the defendant’s circumstances.

The proximity inquiry asks whether the relationship between the plaintiff and defendant is sufficiently close and direct that the defendant should be expected to have the plaintiff in their contemplation as someone who could be injured by their negligent acts or omissions. The relationship is not limited to physical proximity. Factors that allow the court to evaluate the closeness of the relationship include expectations of the parties, representations made by the defendant, reliance by the plaintiff, and the property or other interests involved. However, the factors which may satisfy the requirement of proximity are diverse and depend on the circumstances of the case – there is no single unifying characteristic: *Cooper v. Hobart*, 2001 SCC 79 at paras. 34-35.

**(b) Duty of care involving a public authority**

There are special considerations in the proximity analysis where the defendant is a public authority. This is because, in the exercise of its functions, a government typically owes *public* duties – special circumstances will be required before it will be found to owe a *private* law duty to an individual or group that can ground a civil action. There are three ways in which sufficient proximity between a plaintiff and a governmental authority can be found: 1) through the applicable statutory scheme; 2) through interactions between the authority and the plaintiff; and 3) through a combination of the statutory scheme and interactions with the plaintiff: *Imperial Tobacco*.

It is difficult to establish a duty of care through a statutory scheme only, as most statutes confer public powers and duties on public authorities, which are often inconsistent with the establishment of a private law duty to individuals. Factors that will be relevant to whether proximity can be established through a statutory scheme include: whether the asserted duty would conflict with other duties owed by the governmental actor (more will be said about this in the next section); whether the purpose of the statute is to protect the interests of an identifiable class of individuals of whom the plaintiff is a member; whether the statutory powers at issue involve the provision of a service as opposed to the reduction of a risk through regulation; the vulnerability of the plaintiff class to the risk of harm that materialized; and whether the defendant had specific knowledge of the plaintiff's vulnerability: Karen Horsman & Gareth Morley, *Government Liability: Law and Practice*, Looseleaf (Toronto: Thompson Reuters, 2022) at § 6:16 (“Horsman & Morley”).

Where a relationship of proximity is alleged to arise out of the interaction between a plaintiff and the government body, the question is whether there are factual allegations that distinguish the relationship between the plaintiff and regulator from other members of the public. The case law is not entirely settled as to whether the specific interactions that may ground a duty of care must consist of direct interactions between the plaintiff and the government defendant: Horsman & Morley at § 6:17.

The funding and administration of programs at a high level is very likely insufficient to establish proximity, even if there are interactions between government employees and the plaintiff. In *Mitchell Estate*, 2004 CarswellOnt 3017 (Ont. Sup. Ct. Jus.), the plaintiffs alleged inadequate medical treatment for their infant daughter, which they claimed was due to insufficient funding for hospitals that resulted in overcrowding. The Court found that the legislative framework gave the Minister the power to act in the public interest, and in exercising her powers, she was required to balance a myriad of competing interests. Although the Province provided funding for hospitals, it had no role in their day-to-day supervision. Proximity was not met for these reasons.

In *Wareham v. Ontario*, 2008 CarswellOnt 176 (Ont. Sup. Ct. Jus.), the plaintiffs' claim related to delays in processing their applications for benefits under the Ontario Disability Support Program (ODSP). They argued that the Province was negligent in creating and maintaining a system that failed to provide income to eligible persons in a timely manner – essentially, the system was inefficient and too complex. The Court found that more than systemic allegations regarding the ODSP were required to satisfy the proximity requirement, and that interactions between Crown employees (who were exercising an adjudicative function in their administration of the program) and benefits applicants were not sufficient to constitute proximity.

In *Leroux v. Ontario*, 2021 ONSC 2269, the claim was similar to *Wareham* but involved the provision of specific benefits for developmentally disabled adults. The plaintiffs had received similar benefits as children, but “aged out” when they turned 18. The claim alleged that Ontario acted negligently in administering these programs, which led to wasted money, inadequate targeting of resources, and long waitlists. The Court found that proximity was not met:

[71] The governmental decision to fund or not to fund a particular program and the governmental decision as to how resources within a program should be allocated are also not the proper subject matter of judicial scrutiny - see *Cirillo v. Ontario*...Put differently, the determination of how a government decides to allocate resources does not establish a duty of care because the relationship lacks proximity.

[Emphasis added.]

*Cirillo v. Ontario*, 2019 ONSC 3066, related to the bail system in Ontario. The court found that it was in essence a challenge to the government’s executive authority to determine the allocation and adequacy of resources devoted to the criminal justice system. It argued that Ontario did not appropriately manage and otherwise resource the bail system to minimize delay caused by volume, staffing, and other funding-related shortages. This included challenging the failure to build new courthouses, the availability of interpreters, and the allocation of court time to bail. The court cited *Mitchell Estate* and *Phaneuf* (a case involving a challenge to government funding for forensic psychiatric hospital beds, discussed further below), noting that “courts have held that funding and resource allocations do not establish a duty of care, as the relationship that they engage lacks sufficient proximity” (at para. 25).

**(c) Second stage of the *Anns/Cooper* test: policy considerations**

The policy considerations at the second stage of the test are concerned with the effect of recognizing a duty of care on other legal obligations, the legal system, and society more generally: *Cooper v. Hobart*, 2001 SCC 79 at para. 37. They include such considerations as whether the recognition of the duty of care creates indeterminate liability (“the spectre of unlimited liability to an unlimited class”: *Livent* at para. 40), and, where the defendant is a public authority, whether the impugned decision is a core policy decision, and whether recognizing a private law duty of care would conflict with a public duty owed by the authority. This latter consideration is discussed in the next section.

**(d) Potential for conflict in the child protection context and whether a duty of care could be owed to parents/families**

Where an alleged duty of care is found to conflict with an overarching statutory or public duty owed by a public authority, this may constitute a compelling policy reason for refusing to find proximity. Such a conflict exists where the imposition of the proposed duty of care would prevent the defendant from effectively discharging its statutory duties: see, for example, *D.(B.) v. Children’s Aid Society of Halton (Region)*, 2007 SCC 38 (“*Syl Apps*”). In *Syl Apps*, the Supreme Court found that, because of the potential for conflict with the duty owed to an apprehended child, no duty of care was owed by a treatment centre and one of its social workers to the family of the child, who was treated at the centre and subsequently decided not to return to her family.



The family had alleged proximity on the basis of expectations and reliance on the defendants, given that the legislation (at that time, the Ontario *Child and Family Service Act*, R.S.O. 1990, c. C-11) included a recognition of the importance of the family and of the integrity of the family unit. The Court considered the sections of the *CFSA* that set out its purpose, noting that the references to parents and family were not stand-alone principles, but fell under the overarching umbrella of the best interests of the child. They could therefore not be relied upon to find a relationship of sufficient proximity with the parents. Justice Abella, for the Court, said:

[41] The deciding factor for me...is the potential for conflicting duties: imposing a duty of care on the relationship between the family of a child in care and that child's court-ordered service providers, creates a genuine potential for "serious and significant" conflict with the service providers' transcendent statutory duty to promote the best interests, protection and well-being of the children in their care.

She observed that the statutory mandate of child protection workers is to treat the child's interests as "paramount", and they must be free to execute this mandate to the fullest extent possible.

Some earlier Ontario cases did not interpret *Syl Apps* as foreclosing any duty of care owed by child protection workers and agencies to parents, particularly at the investigation stage before the child was deemed to be in need of protection: for example, *Durakovic v. Guzman*, 2013 ONSC 958 (Sup. Ct. Jus.), and *T.(D.) v. Highland Shores Children's Aid*, 2016 ONSC 1432 (Sup. Ct. Jus.). In these cases, the judges were of the view that it was "less clear" that the conflict identified in *Syl Apps* "in the context of the medical treatment of a child in care" arose at the investigation stage of a child protection matter, before the child was found to be in need of protection (*T.(D.)* at para. 37).

However, this issue was put to rest by the Ontario Court of Appeal in *J.B. v. Ontario (Child and Youth Services)*, 2020 ONCA 198. The Court rejected a distinction between "the child welfare investigation stage and proceeding stage (i.e., pre- and post-apprehension stage)", finding that *Syl Apps* was clear that "the duty at all stages is to the child" (at para. 41). It noted that the Ontario *CFSA* required the CAS to investigate allegations that children may be in need of protection, and to protect children where necessary, which also made clear that the duty was to the child.

In BC, this issue is similarly settled. In *Quinn v. British Columbia*, 2018 BCCA 320, the Court of Appeal held that a claim brought under the *Charter*, which it found in substance amounted to a tort claim of negligent investigation by a social worker, should be struck on the basis of insufficient proximity. Justice D. Smith for the Court agreed with the Province that "these types of allegations have no reasonable prospect of success in light of the reasoning in [*Syl Apps*]" (at para. 64).

Whether the lack of a duty of care to anyone other than a child in the child protection context would be determinative of whether a duty of care could be owed to parents in the provision of prevention services is not clear. We discuss this below.

**(e) Duty of care where in respect of a positive duty to act**

Where the duty alleged is to take positive steps (rather than a duty to avoid the doing of an overt negligent act), there must be a special relationship of proximity between the parties that imposes on the defendant a duty to take positive action – “[d]uties to take positive action in the face of risk or danger are not free-standing”: *Childs v. Desormeaux*, 2006 SCC 18 at para. 31. In such cases, the nature of the relationship must be examined to determine where there is a sufficient nexus between the parties. The reason for requiring this special relationship is because “the common law is a jealous guardian of individual autonomy” (at para. 31).

*Childs* identifies three situations in which a special relationship of proximity has been recognized in respect of a positive common law duty. The first is where the defendant intentionally attracts and invites third parties to an inherent and obvious risk that they have created or control. The second concerns paternalistic relationships of supervision and control, such as parent-child or teacher-student. The third involves defendants who either exercise a public function or engage in a commercial enterprise (such as the owner of a bar) that includes implied responsibilities to the public at large: *Childs* at paras. 35–37. The Court emphasized the common element, and explained how the analysis might apply in each case, as follows:

[38] Running through all of these situations is the defendant’s material implication in the creation of risk or his or her control of a risk to which others have been invited. The operator of a dangerous sporting competition creates or enhances the risk by inviting and enabling people to participate in an inherently risky activity. It follows that the operator must take special steps to protect against the risk materializing. In the example of the parent or teacher who has assumed control of a vulnerable person, the vulnerability of the person and its subjection to the control of the defendant creates a situation where the latter has an enhanced responsibility to safeguard against risk. The public provider of services undertakes a public service, and must do so in a way that appropriately minimizes associated risks to the public.

The Court emphasized that these are not strict legal categories, but, rather, illustrations of the types of factors that may give rise to a positive duty to act.

*John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John’s*, 2020 NLCA 27, was a claim by former residents of the Mount Cashel orphanage for damages resulting from sexual abuse by several brothers of a lay religious order of teachers. The Newfoundland Court of Appeal upheld the trial judge’s finding of vicarious liability on the part of the Archdiocese for the abuse by the brothers, as it had provided them “with the power, environment and tools to carry out their wrongdoing virtually undetected”. It also considered whether a duty of care was owed by the school chaplain, who did not himself commit any abuse, but to whom some of the boys reported the abuse. The plaintiffs claimed that the chaplain did nothing in response to the reports of abuse.

The Court of Appeal referenced *Childs*, and specifically the second situation identified as finding a positive duty to act: paternalistic relationships of supervision and control. It rejected the trial judge’s finding that the chaplain needed to be in a position of authority over the children, and perhaps the brothers, for any knowledge to have triggered a duty of care.

It found that although he was not involved in the day-to-day governance of Mount Cashel, he did have responsibilities for the boys' overall well-being. Further, the Court found that the specific context of the interactions with the boys and the disclosures of abuse they made to him was significant in the analysis of whether sufficient proximity was created. In all the circumstances, proximity was established.

In contrast, in another case involving an orphanage (*Broome v. Prince Edward Island*, 2010 SCC 11), the Province was found not to owe a duty of care to the children living there in relation to abuse committed against them. The home was privately run, and the Province was not involved in its administration. The Supreme Court reviewed the statutory child welfare scheme at the time, noting that there were two streams – public (run by children's aid societies, and subject to statutory standards and obligations) and private – and that the home in question was part of the latter. The province did provide some funding to the home, but the Court found that this could not establish the requisite proximity, as the funding was given with no restrictions or accountability requirements. It also found the statutory scheme was clearly insufficient to create proximity as the province owed no statutory duty to residents of the home.

## **2. Standard of Care**

To avoid liability, a defendant must “exercise the standard of care expected that would be of an ordinary, reasonable and prudent person in the same circumstances” (*Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201 at para. 28 (“*Ryan*”). Relevant factors include whether the risk of injury was reasonably foreseeable, the likelihood of damage, and the availability and cost of preventative measures. A reasonable person “takes precautions against risks which are reasonably likely to happen”: *Nelson (City) v. Marchi*, 2021 SCC 41 (“*Marchi*”) at para. 91.

In measuring what is reasonable, the court may also look to external indicators of reasonable conduct, such as industry practice, guidelines, or more formal statutory or regulatory standards: *Ryan* at para. 28. However, external standards of conduct, even those reflected in legislation (such as a statutory duty), are relevant to the standard of care but are not determinative – there is no tort of statutory breach: *Saskatchewan Wheat Pool v. Canada*, [1983] 1 S.C.R. 205 (“*Wheat Pool*”). For example, provincial and territorial child and family services legislation sets out a number of statutory duties owed by different categories of persons. While breach of these may attract a criminal penalty or administrative review by the courts, there is no automatic civil liability. However, breach of a statutory duty will generally serve as evidence of breach of the common law standard of care: *Wheat Pool*.

The standard of care expected of professionals is elevated compared to a member of the public, as members of a profession undertake to carry out their professional duties with a reasonable degree of care and skill. The standard of care expected of a professional is the degree of skill displayed by other reasonably competent members of that profession. The standard of care for a social worker is generally that of a reasonable social worker in similar circumstances. However, when a child is removed from the custody of his or her parent(s), the standard of care is elevated to that of a “careful parent”, which imposes a “heightened degree of attentiveness” on social workers. More specifically, “the careful parent test imposes the standard of a prudent parent solicitous for the welfare of his or her child”: *J.P. v. British Columbia (Children and Family Development)*, 2017 BCCA 308 (“*J.P.*”) at para. 364.

The extent of the discretion exercised by professionals in carrying out their duties is an important consideration in assessing whether the standard of care has been breached. In *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, the Supreme Court of Canada stated the following in relation to the standard of care expected of police officers:

[73]...The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made – circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results. Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care...

These comments were cited in *J.P.* in the child protection context. The Court of Appeal also quoted from one of its prior decisions, *D.(B.) v. British Columbia* (1997), 30 B.C.L.R. (3d) 201 (B.C.C.A.), as follows:

[40] ...Decisions have to be made about care when the outcome is unpredictable. It is too easy to say when things turn out badly that it was the fault of the person who made the judgment. Social workers should not be so afraid of making a mistake that they cannot do their job properly.

Similarly, in *M.(B.) (Litigation guardian of) v. M.(R.)*, 2009 BCCA 413, the Court referred to the “difficult, sensitive and conflicting task of a social worker” and noted that the degree of professional discretion in a particular case, and the opportunity for genuine disagreement on the wisdom of any particular course of action, will be important in determining the standard of care (at para. 57).

While there will be some leeway given to professionals in the exercise of discretion in the carrying out of their powers and duties, particularly in exigent circumstances, the standard of care expected of a reasonably competent social worker will not be satisfied merely because the social worker acted in good faith. The presence or absence of good faith may, however, be relevant to whether the standard of care has been breached: *J.P.* at para. 365.

In contexts where a non-professional is performing tasks that a professional would or might normally perform, the standard of care may be lower. For example, the courts have found that volunteer firefighters are not subject to the same standard of care as trained, full-time, paid firefighters. In *Killip’s Television Service Ltd. v. Stony Plain (Town)*, 2000 ABQB 79, the Alberta Court of Queen’s bench found that the standard of care expected of volunteer firefighters was that of a reasonable volunteer fire department in like circumstances with like resources, and that the firefighters need only have “done their best” to put out the fire provided it is not a substantial departure from the basic principles of firefighting. The Court cited a prior decision of the Newfoundland Court of Appeal in *Hammond v. Wabana (Town)*, 1998 CarswellNfld 331, in which it was considered that a volunteer firefighter is unpaid and is acting outside his or her normal area of work, training, or experience, and that volunteer fire departments provide an ongoing source of assurance for residents of the community. The Court said:

...[O]ne must keep in mind, not just the fact they are volunteers, but also the difference in circumstances, conditions and resources available. The standard of care must be expressed in terms that make it appropriate to volunteer firefighters who have very little training, experience, and [are] obliged to rely on imperfect equipment and a dubious water supply.

...

It is a standard of care that for reasons of "weightier competing policies,"...may tolerate a measure of subjectivity. Policy considerations dictate that the standard of care for volunteer firefighters be that they "do their best to put the fire out," employing as far as possible, the acknowledged principles and techniques of firefighting while trusting their own judgment, reason and common sense, it being accepted that safety will always be a primary consideration. In this case the "competing policy" is the public interest of ensuring the survival and continuation of an intelligent, dedicated and conscientious group of citizens, prepared to accept the often thankless and risky task of volunteer firefighter. The standard of care must not be such that its demands and accountability jeopardize the department's existence.

As will be further discussed below, similar policy considerations may have application in a case where a First Nation employs members of its community to deliver some prevention services, and those employees are not social workers and do not have similar training.

### **3. Causation**

A defendant is not liable in negligence unless their breach of the standard of care caused the loss. The causation analysis involves two aspects: factual and legal causation. Factual causation is generally determined in accordance with the "but for" test; that is, the plaintiff must prove on a balance of probabilities that the harm would not have occurred but for the defendant's negligent act: *Marchi* at para. 96; *Clements v. Clements*, 2012 SCC 32 at paras. 8 and 13. The defendant's breach must also be a legal cause of the plaintiff's loss, in that the loss is not too remote. The remoteness inquiry asks whether the specific injury suffered by the plaintiff was a reasonably foreseeable consequence of the defendant's breach, such that the defendant may be fairly held responsible for it: *Marchi* at paras. 97–99.

*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, is an example of the distinction between factual and legal causation. The plaintiff saw a fly in a water bottle and subsequently developed a significant psychiatric disorder. There was no question that factual causation was met, as it was accepted that the plaintiff would not have been suffering from the disorder had he not seen the fly. However, the Supreme Court held that it was not foreseeable on an objective analysis that a customer of ordinary fortitude would develop such a disorder from seeing a fly in a bottle. The loss was thus too remote to hold the defendant liable.

### **4. Damages**

The basic principle is that damages must seek to put the plaintiff in the position he or she would have been in but for the tort committed by the defendant: *Blackwater v. Plint*, 2005 SCC 58 ("*Blackwater*"). Even though there may be several tortious and non-tortious causes

of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been, as the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey v. Leonati*, [1996] 3 S.C.R. 458.

In *Blackwater*, the Supreme Court upheld the trial judge's reduction in damage to take into consideration that the plaintiff Mr. Barney had experienced significant disadvantage and violence in his home prior to being sexually abused at the Alberni Indian Residential School ("AIRS"). The judge found that these earlier experiences (as well as physical assaults at AIRS which could not be compensated as they were time-barred) had themselves caused psychological injury and limited his vocational opportunities, which Mr. Barney would have suffered even in the absence of the sexual assaults. He was awarded \$165,000 in compensation for the sexual assaults. The awards made to the other five claimants ranged between \$12,000 and \$150,000. With inflation, these awards correspond to approximately \$19,000 to \$260,000 in present dollars.

Non-pecuniary damages will be significant in cases of serious physical or psychological injury, but are capped at approximately \$430,000 in present dollars (this cap increases with inflation). Awards at or near that level are generally reserved for the most severe cases (typically quadriplegia or a severe brain injury). In these types of cases, the award for cost of future care will also be high, as the plaintiff will often need some level of assistance with daily living (and in particularly severe cases, 24-hour care). Future care awards of this nature are in the millions.

If the plaintiff's injuries render them unable to work (or reduce their ability to work and/or limit the types of employment available to them), awards for loss of earning capacity may also be very significant. This depends on the age of the plaintiff (higher awards will be awarded where the plaintiff is younger and has more years of their working life remaining), as well as whether there are other factors which might have been expected to limit the plaintiff's career options and/or earnings even if the injuries had not occurred. For example, in *Blackwater*, the court found the plaintiff Mr. Barney was disabled from work largely for other reasons.

For these reasons, awards associated with serious physical or psychological injury can be very high.

## **5. Vicarious Liability**

Corporations and other organizations act through their employees. Employees may be held personally liable for negligence in relation to their employment, but the employer is usually held vicariously liable for tortious acts or omissions committed by employees in their employment. Vicarious liability refers to situations in which the law holds one person, who themselves has not committed fault, responsible for the fault of another (*Nova Scotia (Attorney General) v. G. (B.M.)*, 2007 CarswellNS 552 (N.S.C.A.), at paragraph 57). For example, a person who drives a vehicle for their employment may be found personally liable for negligent conduct causing an accident, but the employer will usually be vicariously liable and in practice will be the one paying any damages.

Organizations can also be held directly liable to third parties in negligence where, for example, they negligently implement policies (such as inspection systems or practice

guidelines), fail to properly train their employees, have knowledge (or ought to have been aware) that an employee is not qualified to perform the job, etc.

The question of whether vicarious liability will be imposed is approached in three steps:

1. First, the court determines whether the issue has been unambiguously determined by prior cases.
2. If not, a further two-part analysis is used to determine if vicarious liability should be imposed in light of its broader policy rationales. At this stage, the plaintiff must show:
  - that the relationship between the tortfeasor and the person against whom liability is sought is sufficiently close; and
  - that the wrongful act is sufficiently connected to the conduct authorized by the party against whom liability is sought.

The object of the analysis is to determine whether imposition of vicarious liability in a particular case will serve the goals of doing so: imposing liability for risks which the enterprise creates or to which it contributes, encouraging reduction of risk, and providing fair and effective compensation: *Fallowka v. Royal Oak Ventures Inc.*, 2010 SCC 5 at para. 142.

Vicarious liability is generally appropriate where there is a significant connection between the party who creates or contributes to a risk and the wrong that flows from it: *Broome v. Prince Edward Island*, 2010 SCC 11. The Supreme Court in *Broome* noted that legislative authority is “of course” not enough to impose vicarious liability – if it were, a government would be vicariously liable for every act committed within a field within its legislative authority.

Where an employee has been negligent in the course and scope of his or her employment but has acted in good faith, the issue is usually not controversial – the employer will generally be vicariously liable. Where the employee acts outside the scope of their employment, and particularly if they commit intentional acts (such as a teacher sexually assaulting a student), vicarious liability is less likely to be imposed on the employer. The court will consider the relationship between the employee and the employer and whether the employer’s enterprise created the risk of harm by the employee. For example, cases have found no vicarious liability on a school board where a teacher has used their position to strike up a relationship with a student that they then pursued off school property, as the teacher’s employment with the school board is not sufficiently connected to the wrongful conduct. On the other hand, where the opportunity for abuse has been created by the administrators of a school (as in *John Doe (G.E.B. #25)* discussed above), vicarious liability is much more likely to be imposed.

In the child and family services context in BC, the Crown will generally be vicariously liable for the negligent actions of social workers employed by MCFD: *M.(B.) (Litigation guardian of) v. M. (R.)*, 2009 BCSC 214 at para. 49. Similarly, in Ontario, children’s aid societies will generally be vicariously liable for the negligence of their employees. We are not aware of any cases that have considered vicarious liability of the government or an agency in the child and family services context where the conduct of the employee was in bad faith. Given the wide range of conduct that appears to plausibly lead to a finding of bad faith (this will be

discussed further in the next section), it seems unlikely that the line for vicarious liability is drawn between good faith and bad faith. The question would likely require an analysis of the employee's conduct and surrounding circumstances on a case-by-case basis.

**6. Immunity for Good Faith Conduct in the Exercise of Powers and Duties under Child and Family Services Legislation**

Most provincial and territorial child and family services legislation contains a general immunity provision stating that no proceeding may be brought against, and/or no liability may be imposed on, a person acting in good faith. We will provide a separate memo attached to this opinion that contains each of these provisions along with hyperlinks to the legislation for ease of reference.

The wording of each of these provisions differs somewhat, and it is necessary to review them carefully to determine who they apply to and in what circumstances. Generally, they apply to:

- A “person”;
- Acts or omissions that are done in good faith (or with an absence of bad faith – the precise language differs by statute); and
- Exercise of, or intended exercise of, powers under the legislation, and performance or intended performance of duties under the legislation

In some cases, the persons to whom the immunity applies are listed in more detail: e.g., social workers, directors, ministers, a “service provider”, or any other person.

Not all provinces have this type of general immunity provision. Manitoba, for example, has provisions dealing with certain more specific conduct by various persons (e.g., giving access to records).

In all provinces and territories except Saskatchewan, the immunity provisions do not include the Crown. Two provinces (Ontario and BC) make the lack of immunity available to the Crown even clearer, by expressly stating that the immunity provision does not absolve the Crown of liability to which it would otherwise be subject – i.e.: vicarious liability at common law.

The BC legislation – the *Child, Family and Community Service Act* (“CFCSA”) – has recently been amended in response to C-92. This includes amendment to its immunity provision – s. 101 – to include that immunity will not be extended to Indigenous governing bodies:

Immunity from legal proceedings

101 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a person because of anything done or omitted

(a) in the exercise or intended exercise of a power under this Act, or

(b) in the performance or intended performance of a duty under this Act.



(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.

(3) Subsection (1) does not absolve the government or an Indigenous governing body from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government or the Indigenous governing body would be vicariously liable if this section were not in force.

[Emphasis added.]

“Indigenous governing body” is given the same definition as in C-92 – “a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.” This definition does not relate specifically to the exercise of jurisdiction or the provision of services in relation to child and family services.

The following definitions are also relevant:

“Indigenous authority” means a body or entity, including an Indigenous governing body, that is authorized by an Indigenous governing body to provide Indigenous child and family services under Indigenous law”;

"Indigenous child and family services" means services provided by an Indigenous authority to support Indigenous children and families, including prevention services, early intervention services and child protection services;

"Indigenous law" means a law in relation to Indigenous child and family services that is made in respect of Indigenous children and families by an Indigenous governing body in accordance with the law-making authority of the Indigenous governing body;

The reference to “Indigenous law” in the definition of “Indigenous authority” indicates that the latter definition applies to an authority providing child and family services in First Nations where a law made by the First Nation is in place. It does not appear that First Nations who simply take on prevention funding and deliver prevention services other than under a law made by the First Nation will be considered to be “providing Indigenous child and family services under Indigenous law”. In that case, they would not be an “Indigenous authority”. However, given the more general definition of “Indigenous governing body”, these First Nations would likely fall within that definition. This is important because, as discussed, the immunity provision is expressly inapplicable to an “Indigenous governing body”.

At this time, only BC has amended its statutory immunity provision to expressly exclude its applicability to Indigenous governing bodies.

**(a) When will conduct be found to be in “good faith”?**

As set out above in *M.(B.) (Litigation guardian of) v. M.(R.)*, the “difficult, sensitive and conflicting task of a social worker” will be relevant to whether the good faith requirement is met in this context. However, to meet the requirement of good faith (or an absence of bad faith) is not sufficient that a child protection worker have acted without malice, or even that they had an honest belief as to the appropriateness of their actions. In general, courts have

held that the concept of bad faith not only encompasses intentional fault, but should be given a broader meaning that encompasses “serious carelessness or recklessness”: *Finney v. Barreau du Quebec*, [2004] 2 S.C.R. 217 at para. 39.

In many cases, the court does not make a determination as to whether a child protection worker acted in bad faith, as the employee is often not named as a defendant and the Crown will likely be vicariously liable for their conduct whether done in good faith or not. However, in *H.(C.) v. British Columbia*, 2004 BCCA 385, a social worker was found to have acted in bad faith by placing a child with her biological father (after having apprehended her from her mother’s care) and then withdrawn from the protection proceeding without explanation and without any supervision in place. The child brought a claim for damages suffered from physical and sexual abuse by the father. The Court found that the social worker failed to apprise herself of the information necessary to determine whether it was safe for the Ministry to withdraw, and that there was “ample evidence” that placing the child with her father might be unsuitable. She was aware of several potential problems with the child residing with the father, and did not sufficiently inform herself of the information necessary to make an honest, good faith decision as to the suitability of the placement. In upholding the trial judge’s decision, the Court of Appeal noted that “[t]he finding of an absence of good faith was not about [the social worker] being wrong, but about her not properly turning her mind to a question she had a duty to answer” (at para. 49).

Another case in which bad faith was found was *B.(D.) v. Children’s Aid Society of Durham (Region)*, 1996 CarswellOnt 2351 (Ont. C.A.), in which the social worker had approached her statutory duties toward the children’s father with a biased attitude toward him – she had immediately formed an opinion that he was guilty of sexual abuse, and had closed her mind to any other possibility. She filed a false and misleading affidavit in support of the application for an interim protection order, ensured that the father was not notified of the proceeding, and refrained from properly following up with the policy or the family doctor, among other things. The Court found that the investigation was tainted by bias and lack of good faith culminating in a course of conduct akin to malicious prosecution.

**(b) Relevance of powers or duties under child and family services legislation**

The immunity provisions in child and family services legislation generally contain language stating that the immunity will apply to good faith conduct done or not done in the performance of the person’s duties or in the exercise of their powers and/or functions under the statute, or a specific Part or section(s) of the statute. For example, PEI’s statute, the *Child Protection Act*, RSPEI 2000, c. C-5.1 (s. 57), states that the immunity applies to persons “acting under the authority” of the Act, while Yukon’s refers to a power, function, or duty “conferred by or under” its Act (the *Child and Family Services Act*, S.Y. 2008, c. 1, s. 181).

In order to benefit from the statutory immunity, then, a person or service provider must be acting in furtherance of a duty, power, or function set out in the legislation – they must be authorized or required by the legislation to do the things they are doing. In the absence of an agreement between the First Nation and the applicable province/territory, employees acting under the direction of a First Nation to deliver prevention services would likely not be exercising powers, duties, or functions under the legislation for the purposes of most of their activities. With the exception of the duty to report a child in need of protection, the BC

CFCSA requires, and authorizes, “the director” (or a person to whom the director delegates their powers, duties, or functions, under s. 92) to do a number of things. Alberta’s legislation similarly confers powers and duties on a director and the Minister, Saskatchewan’s on the director or an agency, Ontario’s on a service provider or an agency (which are defined terms) or the Minister, etc. The legislation does not impose these duties on, or grant these powers or functions to, anyone other than the categories of persons or service providers expressly set out therein.

One exception to this may be conduct in relation to reporting a child in need of protection. The duty to report is, in some provinces, a duty imposed on all persons, not only those who work with children as part of their employment. Persons who report are protected by specific immunities from civil liability for reporting, provided they did not knowingly make a false report (e.g., BC CFCSA, s. 14(5)). However, where they do not report and, as a result, a child is harmed, this type of immunity would not apply and they would be left to try to rely on the general immunity provision if found to have been negligent. The general immunity would likely apply to any person, including members of the general public who are not engaging in the delivery of child and family services under the Act, provided the failure to report was in good faith.

However, as noted, the BC immunity expressly excludes vicarious liability of Indigenous governing bodies. If a First Nation directs employees to provide prevention services, and the employees are negligent in failing to report, given the general nature of the definition of Indigenous governing body, they could be vicariously liable for the employees’ conduct even though they are not providing child and family services under Indigenous law.

### **III. CORE POLICY IMMUNITY**

As set out in our September 2022 opinion, the Supreme Court has defined “core policy decision” as follows: “decisions as to a course or principle of action that are based on public policy considerations, such as economic, social and political factors, provided they are neither irrational nor taken in bad faith”. They set out four factors that inform the analysis of whether a decision qualifies as core policy: 1) the level of responsibility of the decision-maker; 2) the process by which the decision was made; 3) the nature and extent of budgetary considerations; and 4) the extent to which the decision was based on objective criteria. Decisions that fall closer to the core competencies of the legislative or executive branch, where the decision-maker is more closely related to a democratically-accountable official, and where the decision is based on the balancing of public policy considerations including budgetary constraints and the making of value judgments, are more likely to be found to be core policy decisions.

In our September 2022 opinion, we opined that a high-level decision made in respect of how to allocate funds between programs, groups, or similar would almost certainly be considered a “core policy decision” that will confer immunity in negligence claims to Indigenous governing bodies who have assumed jurisdiction over child and family services either under C-92 or under s. 35. There are three parts to our present opinion on this issue. First, we consider whether a First Nation who is not assuming jurisdiction but is simply taking on funding and delivering some or all prevention services would likely receive the benefit of immunity to negligence claims involving core policy decisions. Second, we provide additional comments and case law regarding the distinction between core policy decisions and other types of decisions that will not confer immunity. Third, we consider

whether a core policy defence may be raised where the impugned conduct is the subject of a statutory duty.

### **1. Extension of Core Policy Immunity to First Nations not Exercising Jurisdiction**

Policy immunity is available only to government bodies/public authorities. In our view, it is likely that core policy immunity would be extended to negligence claims against First Nations not exercising their jurisdiction over child and family services under C-92 or s. 35. This opinion is based on some of our comments in our September 2022 opinion: first, the reasoning of the Quebec Court of Appeal in *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 (“QCCA Reference”); second, the rationale for core policy immunity; and third, the decision of the BC Supreme Court in *Blueberry River First Nation v. Laird*, 2020 BCSC 1615.

#### **(a) Comments of Quebec Court of Appeal in QCCA Reference**

In the *QCCA Reference*, the Court found that Indigenous peoples have a right of self-governance protected by s. 35. This right of self-governance extended to child and family services, but was clearly broader than this. Thus, whether a First Nation has expressly assumed jurisdiction under C-92 or s. 35, if they are delivering child and family services themselves, or making decisions as to how funding should be allocated to an agency who is delivering the services, they are likely to be considered a governmental entity or public authority for the purposes of a negligence claim.

Further, as discussed, the definition of Indigenous governing body in the BC legislation (which is the definition in C-92) is not limited to a body that is exercising jurisdiction over child and family services – rather, it requires only that the body be representing s. 35 rights-holders and be acting according to the authority of those rights-holders. The use of the term “Indigenous governing body” also suggests an intention on the part of Canada (and BC, which adopted the term and its definition) to recognize that an entity that meets this definition is for all intents and purposes a government.

#### **(b) The Rationale for Core Policy Immunity**

In our September 2022 opinion, we referred to the rationale for core policy immunity as set out by the Supreme Court *Marchi*, which is to maintain the separation of powers. The courts should not be second-guessing the decisions of democratically-elected government officials and substituting their own opinions.

We opined that this rationale supported extending core policy immunity to First Nations exercising their jurisdiction over child and family services under C-92 or s. 35. First, the type of broad decisions made in relation to child and family services authorized by C-92 are not the types of decisions on which courts should be weighing in. Second, the same concern regarding the possibility of a chilling effect that is relevant to claims against public authorities would apply if Indigenous governing bodies had to worry about the possibility of negligence claims when making funding and other policy decisions.

In our view, these same concerns apply to a First Nation that is not exercising its jurisdiction but is simply taking on funding to deliver prevention services directly. The Nation will be determining how to distribute the funding, which involves making decisions regarding the

use of funds and how they can best serve the needs of their members, as well as priorities for action within their communities.

**(c) Blueberry River First Nation v. Laird**

In *Blueberry River First Nation v. Laird*, 2020 BCSC 1615, the court considered a claim for negligent governance brought by several members of a First Nation against former members of its band council relating to the alleged mismanagement of funds. Although the court did not expressly consider whether the management of the funds was a core policy decision, it found no duty of care on other grounds. The judge observed that the defendants were “elected members of a government”, and that there could be no duty of care owed as they were members of a governing body exercising public law duties, which were distinct from a private law duty of care relevant to a negligence claim. The court stated that the Council's exercise of balancing priorities and needs was at the core of its public law duty to the Band, as the governing body, and did not give rise to a private law duty of care.

The court also relied on another of the residual policy considerations that can negate a *prima facie* duty of care – indeterminate liability – reasoning that if a private duty of care was recognized as between chief and council and a band generally, band councils across Canada would be subject to potential liability for every decision they make. The judge noted that the remedies for disagreements between band councils and their members “are the same as for any other government in Canada – judicial review of specific decisions is sometimes available, but more often the appropriate remedy is the ballot box” (at para. 286).

This case is an example of a First Nation being treated analogously to any other government in the context of a negligence claim. It is particularly helpful in the context of the current opinion as it does not involve the right to exercise jurisdiction over child and family services under either C-92 or s. 35. Rather, it deals with governance by a First Nation generally.

**(d) Conclusion regarding extension of policy immunity to First Nations not exercising jurisdiction over child and family services under Act or s. 35**

For the above reasons, it is our opinion that the courts would likely consider a First Nation who has taken on funding from Canada and is providing prevention services directly, or is deciding on how funding should be distributed to an agency who will provide the services, to be sufficiently governmental in nature that core policy immunity would be extended to them in a tort claim.

**2. Good Faith and Rationality Requirements and the Need for Consideration/Deliberation in making Policy Decisions**

As also indicated in our September 2022 opinion, bad faith and irrationality in the context of policy decisions are not limited only to subjective bad faith on the part of an individual public official. Rather, it has been held to include inaction for no reason, inaction for an improper reason, or where the decision is so irrational or unreasonable that it constitutes an improper exercise of government discretion: *Nielsen v. Kamloops (City)*, [1984] 2 S.C.R. 2 at p. 24, *Brown v. British Columbia (Minister of Transportation and Highways)*, [1994] 1 S.C.R. 420 at para. 23. *Nielsen* is an example of a case where non-action was found not to be in good faith. In that case, the City decided not to enforce a stop-work order on the construction of a

home that was not being built to code, which the Court inferred was likely because the father of the property owner was an alderman. The decision was found to have been for an improper purpose, as it was based on not proper policy considerations but on the relationship of the property owner to the alderman.

Importantly, there must also be some consideration and deliberation by the decision-maker in arriving at the policy decision. Absent this, the good faith and/or rationality requirement may not be met, or, alternatively, the decision may simply not be considered a core policy decision because it does not bear the hallmarks of such a decision – e.g., it does not involve the prioritization and balancing of social, economic, and/or political considerations.

In *Marchi*, there was no allegation of bad faith or irrationality, but the Court found that the policy immunity defence failed on the basis of a lack of consideration. The City of Nelson had a written policy regarding snow removal, under which it had priority routes for plowing and sanding. However, it also prioritized the clearing certain parking spaces in the downtown core. This created a large snowbank, which the City did not remove until after all streets were plowed. The plaintiff stepped into the snowbank and was injured. The evidence was that the City had never really considered the decision to plow the parking spaces and not remove the snowbank right away and whether there might be an alternative, such as clearing a pathway in the snowbank. The court found that there was no suggestion that the “policy” resulted from a deliberative decision involving any balancing of competing objectives and policy goals; rather, it had simply always been done that way.

Factors that a court would likely consider relevant in the context of a First Nation’s decision-making as to funding allocation for prevention include: perceived need for specific levels of prevention services (primary vs secondary vs tertiary), and/or specific types of programs/services; expectation of benefit (for example, if there is research that a particular type of prevention program is effective at reducing the number of children in need of protection and/or research that other types of programs have no benefit or may be harmful, or if research is not available, what community leaders/members or agencies have conveyed regarding the types of programs that they feel would make a difference in the community); equity in distribution of services and not favouring certain individuals or groups over others for improper reasons (for example, if one of the Band Council members owns a hockey school, and the decision to provide enrollment in the school for at-risk children in the community is based on creating business for the school, rather than any particular expected benefit to the children); and, clearly, the amount of funding available.

We have also been asked to consider whether, assuming a First Nation decided on an initial funding allocation for prevention programming, there would be any legal obligation on it to re-evaluate this based on outcomes. For example, if the First Nation decided to spend all of its prevention funding on primary prevention, with the result that no secondary or tertiary prevention services were being delivered and more children were being taken into care as a result, or if children were experiencing greater harm in the home because such services were not delivered, would the First Nation lose the benefit of core policy immunity if they failed to reconsider their funding approach?

In such a circumstance, core policy immunity may be found not to apply in the first place because it seems questionable whether the requirement of rationality (and possibly also the good faith and consideration requirements) would have been met. Assuming it was found to apply to the initial decision, we are not aware of any case law where a service provider was

expected to re-evaluate an initial policy and make changes based on outcomes. However, in our view it is possible that it would be considered to be bad faith or irrational to fail to make a policy change in the face of known adverse outcomes associated with the present policy, or the consideration requirement may be found to be lacking.

### **3. Case Law regarding Core Policy Immunity**

In order to assist First Nations in determining whether a particular type of decision will likely be considered a core policy decision, we have provided some additional case examples. These involve a variety of factual circumstances, including several decisions involving challenges to government social programs on the basis that they are inadequately funded or that resources are otherwise insufficient.

#### **(a) General case law**

The first decision of the Supreme Court of Canada where the policy/operational distinction was considered in detail was *Just v. British Columbia*, [1989] 2 S.C.R. 1228, in which a rock came loose from the slopes above Highway 99 and hit the plaintiff's car, injuring him and killing his daughter. The plaintiff challenged the province's system of inspection of the rock cuts on the highway, including the frequency or infrequency and how and when the trees above the rock cut in question should have been inspected, and the manner in which cutting and scaling operations should have been carried out. The Court concluded that these were not policy decisions, but, rather, "the product of administrative direction, expert or professional opinion, technical standards or general standards of reasonableness" (at para. 31).

In our view, the application of the law to the facts in *Just* is not particularly helpful as there is little information as to the reasons for the establishment of the particular inspection system used (and particularly the role of any budgetary constraints), or what precisely the plaintiff complained about in relation to the carrying out of the inspection. However, the Court does provide some helpful hypothetical examples of core policy decisions:

[22] For example, at a high level there may be a policy decision made concerning the inspection of lighthouses. If the policy decision is made that there is such a pressing need to maintain air safety by the construction of additional airport facilities with the result that no funds can be made available for lighthouse inspection, then this would constitute a bona fide exercise of discretion that would be unassailable. Should then a lighthouse beacon be extinguished as a result of the lack of inspection and a shipwreck ensue, no liability can be placed upon the government agency. The result would be the same if a policy decision were made to increase the funds for job retraining and reduce the funds for lighthouse inspection so that a beacon could only be inspected every second year and as a result the light was extinguished. Once again, this would constitute a bona fide exercise of discretion. Thus a decision either not to inspect at all or to reduce the number of inspections may be an unassailable policy decision. This is so provided it constitutes a reasonable exercise of bona fide discretion based, for example, upon the availability of funds.

[24] At a lower level, government aircraft inspectors checking on the quality of manufactured aircraft parts at a factory may make a policy decision to

make a spot check of manufactured items throughout the day as opposed to checking every item manufactured in the course of one hour of the day. Such a choice as to how the inspection was to be undertaken could well be necessitated by the lack of both trained personnel and funds to provide such inspection personnel. In those circumstances the policy decision that a spot check inspection would be made could not be attacked...

In *Brown v. British Columbia (Minister of Transportation & Highways)*, [1994] 1 S.C.R. 420, the plaintiff lost control of his car on ice on a highway near Gold River, a small village on Vancouver Island, on a Friday morning in November. Three accidents had already occurred that morning on the same stretch of highway, and police had called for a sanding truck. The highway department was still on its summer maintenance schedule, which was an on-call system from Friday to Sunday, and only one shift the other days. The winter schedule, which had three shifts per day, was set to begin the following week. The timing of the winter schedule was for budgetary reasons, and could not be easily implemented earlier than planned because the collective agreement between the department and its employees required that the winter schedule would be posted two weeks in advance so that employees would have the opportunity to bid on shifts. The on-call employee went out with a sanding truck, but reached the location of the plaintiff's accident after it had already occurred.

The Supreme Court found that the decision to maintain a summer schedule was a policy decision involving classic policy considerations of financial resources, personnel, and union negotiations. It concluded that it "was truly a governmental decision involving social, political and economic factors". It also found that the Gold River detachment was not required to operate in the same manner as the nearby Campbell River detachment, which served a larger region and had a worker in the office every day rather than an on-call system.

In *Swinamer v. Nova Scotia (Attorney General)*, [1994] 1 S.C.R. 445, the plaintiff was seriously injured when a dead tree at the side of the road fell on his vehicle. The tree appeared to be in good health. However, the department had received other complaints about dead trees along the sides of roads. The divisional engineer did not have funds in his maintenance budget to remove them – to do so would have required cuts to other highway maintenance activities. Instead, he assigned a foreman (who had some experience with trees but was not a forestry expert) and a survey technician to identify and count the trees that were dead and an obvious hazard. They counted over 200 trees. On the basis of their report, the divisional engineer made a funding request for the removal of the trees. Funding was approved approximately three months later to remove only 66 of the trees. Further funding was requested and approved in subsequent years.

The court found that the choice of a limited policy to identify obviously dead and dangerous trees in order to apply for funds to remove them was a classic example of a policy decision, as the divisional engineer was setting priorities for the allocation of available funds. The Court rejected the trial judge's finding that money could have been found or that the needed inspection could be made at little cost, noting that the fact that budgetary considerations were questions of policy "is not changed by the fact that the cost of the measures sought may be small".

*George v. Newfoundland*, 2016 NLCA 24, involved a class action on behalf of persons either injured or killed in motor vehicle accidents involving collisions with moose. Moose-vehicle collisions (MVCs) were a significant problem in Newfoundland due to the "hyper-



abundant” moose population. After conducting research as to possible solutions, the province invested approximately \$5 million in a series of initiatives, including pilot projects involving fencing in specific areas, detection systems, increasing the number of moose-hunting licenses along the Trans-Canada Highway, the enhancement of ongoing brush clearing, and public awareness efforts. Among these, the “philosophy” was that moose awareness was the best method for mitigating. The research had also shown that fencing to prevent the movement of moose was ineffective.

The plaintiff argued that the province ought to have done more to mitigate against MVCs, and in particular ought to have installed a significant amount of additional fencing. To do would have cost well in excess of \$75 million. At the time, the Province’s financial situation was “dire”, running budget deficits in the range of \$600-\$900 million, and it was “focused on playing catch-up to maintain the safety and integrity of bridges, crossing structures...and other general road conditions”. In concluding that the province’s decisions as to how to attempt to minimize MVCs were core policy decisions, the majority stated, “[t]o those who would have this Court direct government to expend more money on moose fencing, it should be noted that the money spent on further risk mitigation will be money not available for health care, education and other areas of governmental responsibility” (at para. 107).

**(b) Case law challenging government funding of social programs**

The first four cases in this section were discussed above in the section on proximity. In *Mitchell Estate*, the plaintiffs claimed that their infant daughter did not receive proper treatment quickly enough, due to reductions in hospital funding and restructuring decisions implemented by a prior provincial government. Even if proximity had been met, the Court also concluded that the decisions were core policy decisions. The court noted that Ontario did not make decisions with respect to the operation of hospitals, and that, rather, in matters concerning health care funding and hospital restructuring, the Minister and government must make complex and difficult policy decisions based on a variety of considerations.

In *Wareham*, the Court found that even if proximity were established, the duty of care would be negated as what was challenged were core policy decisions. It noted that decisions with respect to the design of the ODSP, and the resources that were to be allocated to its operation were matters of policy. It was not the role of the court to adjudicate on the wisdom or adequacy of governmental measures that reflect complex and difficult policy decisions based on a variety of considerations. This was particularly the case where the details of the ODSP were contained in legislation.

In *Leroux*, the majority of the Court found that the choice to provide different benefits programs aimed at children and adults, and the allocation of scarce resources among competing eligible developmentally disabled adults, were policy choices: “devising, implementing and administering a benefits program is a core policy decision of government”. It found that the government owed no private law duty of competent public administration to individual benefits claimants; rather, its responsibility was to voters.

*Cirillo* involved a challenge to the adequacy and allocation of resources in respect of Ontario’s bail system. The Court held that the government’s decisions in this regard were “wide-ranging” policy decisions that were non-justiciable.

*Phaneuf v. Ontario*, 2009 CarswellOnt 9308 (Div. Ct.), involved a claim that individuals were unlawfully held in detention centres pending psychiatric assessments ordered under the

*Criminal Code*. The plaintiff claimed that a bed in one of the 11 hospitals in the province that performed these assessments was required to be immediately made available once the assessment was ordered by the court. Essentially, the claim was that the number of such forensic beds was insufficient. The court found that the provision of forensic beds was a policy decision, noting that the decision on how to generally best provide mental health services is complex and involves prioritization and the weighing of many factors.

*Bowman v. Ontario*, 2022 ONCA 477, involved a challenge to the Ontario government's decision to terminate a three-year basic or minimum income pilot program prior to the end of the three years. The decision to cancel the program was found to be a core policy decision. It was made by democratically-accountable persons with a high level of authority (the provincial cabinet) concerned budgetary allotments for government departments, and involved fundamental, value-judgment-infused public policy choices about the means by which to provide social assistance benefits to a large group of persons, which were hallmarks of a core policy decision. The Court noted that immunity from liability in respect of core policy decisions made by public authorities recognizes that such decisions may cause harm to private parties, but that the principle of protecting the legislative and executive branch's core institutional roles and competencies meant the remedies for these decisions must be through the ballot box instead of the courts.

An example of a case where the decisions at issue were found not to be core policy decisions was *Francis v. Ontario*, in which the plaintiffs challenged the system of administrative segregation in Ontario's correctional institutions. The Court noted that the decision to permit administrative segregation was a policy decision, but that the way it had been implemented by prison superintendents, including its use for mentally ill inmates and for long periods of time, involved operational decisions.

Another example of a case involving an operational decision, in the context of child and family services, was *Yelle v. Children's Aid Society of Ottawa-Carleton*, 2002 CarswellOnt 2848 (Sup. Ct. Jus.), in which the neighbour of a foster parent claimed against the CAS and the foster parent for damages resulting from arson committed by a minor residing in the foster parent's home. The claim alleged that the CAS was negligent in placing the minor in the foster home with no psychiatric treatment available to him despite having previously made significant gains in a residential treatment setting, and a history of significant behavioural problems, including "pyromaniac tendencies", in several foster homes after being discharged from the treatment centre. The new foster parent was a new applicant for foster parenting who had not taken the basic courses provided by the Society, and she had not been told anything about his prior behavioural problems. The CAS also knew that he required a supervised and structured environment. The Court said the following in finding that the Society's impugned decisions were operational, rather than policy:

[74]...There is no suggestion in this case that the Society's decision to place Martin in the foster home of the defendant Della Robillard and to provide absolutely no psychiatric or psychological counseling or treatment to Martin for a full year prior to the subject occurrence, had anything to do with "financial, economic, social or political factors or constraints"... The decision to place Martin in the Robillard home and the failure to provide him with professional counseling and treatment was..."action or inaction that is merely the product of administrative direction, expert or professional opinion, technical standards or general standards of care"...[T]hey were not decisions

that could be designated as policy decisions rather they were manifestations of the implementation of the functions assigned to the Society by the Act.

As can be seen from these cases, where the decision relates to funding at a high level, it will be considered a core policy decision provided it is not irrational or made in bad faith, and it is arrived at through some level of consideration and deliberation. In some of these cases, the court also found that there was insufficient proximity to satisfy the first stage of the duty of care analysis, particularly where the government was making decisions with respect to the funding of health and social programs.

One difference between many of these cases and the FNCFS context is that in the latter, the highest-level funding decision is being made not by the First Nations, but by Canada. The decisions made by First Nations will be limited to how the funding provided should be allocated as between aspects of the FNCFS program. However, these decisions still involve balancing of interests, prioritization, and the consideration of social and economic factors, and in our view are not unlike a government department making decisions as to how the funds in its budget should be best used. Consequently, provided they meet the criteria of good faith, rationality, and consideration (and, of course, that the funding dedicated to the FNCFS program is being used for child and family services and not for other purposes), they will almost certainly be considered policy decisions.

In contrast, if the First Nation itself is doing more than making funding allocation decisions, and is directly providing the services, or directing/supervising an agency's provision of the services, the decisions it makes as to how the services are being provided are less likely to be considered core policy decisions. It will depend on the specific decision and to what degree the indicia set out by the Supreme Court in *Marchi* are present.

#### **4. Is Core Policy Immunity Available where a Statutory Duty is Owed?**

Horsman & Morley state that “[a]lthough the law is somewhat unsettled in this respect, some courts have suggested that a policy defence is not available in the face of a positive statutory duty.”

The leading case on this issue, at least in Ontario, is the decision of the Ontario Court of Appeal in *Kennedy v. Waterloo County Board of Education* (1999), 174 D.L.R. (4<sup>th</sup>) 106, in which a high school student was seriously injured when he lost control of his motorcycle and hit his head on a bollard on school property. The school had erected 22 bollards as a barrier to stop vehicles from driving on the school track and other property. They had been joined with chains, but the chains were removed when a student was injured on one of them.

The claim was brought on under the Ontario *Occupiers' Liability Act*. The Court found that a core policy defence was not available where the relevant statute imposed both a statutory duty and civil liability for breach of that duty. It distinguished this from a statute that provides either a criminal penalty or no specific consequence for breach of the statutory duty in question, where a policy defence would remain available. This is because where the statute does not provide for civil liability, there is, as discussed above, no tort of statutory breach; rather, the breach will be treated as evidence of negligence.

The Court found that the *Occupiers' Liability Act* imposed both a duty and civil liability for breach of that duty. Section 2 stated that an occupier “owes a duty to take such care as in

all the circumstances of the case is reasonable” to ensure that persons are reasonably safe while on the premises, while s. 3 provided that the Act “applies in place of the rules of the common law that determine the care that the occupier of premises at common law is required to show for the purpose of determining the occupier’s liability in law”. The Court thus found that the School Board could not have made a policy decision which would either oblige or allow it to avoid compliance with its statutory obligation to take reasonable care for the safety of persons on its premises. The Court did not consider the failure to remove the bollards to have been a policy decision in any event, but that even if it was, it could not immunize the Board against liability.

*Kennedy* has been cited in other Ontario cases, most of which are also brought under the *Occupiers’ Liability Act*. It has been distinguished and, to some degree, questioned, by a series of BC decisions. One of these, *Josephson v. Merritt (City)*, 2003 BCSC 1505, distinguished between statutes that impose specific positive duties on the entities they govern, and statute which embody and may extend common law principles, suggesting that the reason in *Kennedy* should not apply in the latter circumstance. In the Court’s view, the BC *Occupiers Liability Act* was an example of the latter type of statute. However, it is not clear that the defendant in that case claimed core policy immunity, and the judge appears to have decided the case on the basis that the defendant met the requisite standard of care.

*Fox v. Vancouver (City)*, 2003 BCSC 1492, distinguished *Kennedy* on the basis that there was evidence before the Court on which it could be concluded that the decision at issue was a policy decision; that is, there was evidence that it was a *bona fide* exercise of discretion based upon social, political, and economic factors. In our view, this is a questionable basis on which to distinguish *Kennedy*. However, at least one BC judge in a subsequent case (*Knodell v. New Westminster*, 2005 BCSC 1316) felt bound to follow *Fox*, due to the principle of horizontal *stare decisis*.

In contrast, the Yukon Territory Supreme Court followed *Kennedy* in *Fuller v. Schaff*, 2009 YKSC 22, with the judge expressly disagreeing with the BC decisions that there was any basis to distinguish it.

In *Marchi*, the Supreme Court stated that the City had suggested in argument that its duty of care was grounded in the BC *Occupiers Liability Act*, and no submissions were made as to whether the plaintiff’s fall had occurred on a public road or public highway, which were exempted from the application of that legislation. The Court noted that the trial judge had noted that it made no practical difference whether the legislation applied, and for the purposes of its reasons, assumed it did not. It stated that “[b]oth parties agreed that core policy immunity must be addressed in any event”. Consequently, while the Supreme Court did not consider the issue and did not cite *Kennedy*, it is arguable that its comments could be viewed as accepting that policy immunity was presumptively available even where occupiers’ liability legislation applied.

Consequently, the law is somewhat unsettled with respect to whether a policy defence will not be available in the case of a statutory duty where the statute also provides for civil liability for breach of the duty. However, in our view, this does not apply to provincial/territorial child and family services legislation. In some cases, these statutes provide for criminal penalties. However, they do not include provisions imposing civil liability for a breach of duties thereunder. In contrast, most of the statutes contain immunity provisions preventing proceedings from being brought, or liability being found, against a

person who in good faith exercises a power or performs a duty under the act. While certain statutes expressly state that the immunity provisions do not absolve the Crown (or in BC, the “government or an Indigenous governing body”) of liability (or in BC, “vicarious liability”) they would have in the absence of the statutory immunity, in our view this would not be considered to be a provision for civil liability. In contrast, it simply indicates that the statute does not provide immunity against liability which may be found under the common law.

Consequently, in our view, if a First Nation has not exercised jurisdiction over child and family services under s. 35 or C-92 and provincial legislation continues to apply, the core policy defence will presumptively be available to it. This being said, as discussed above, there are very limited statutory duties that would apply to a First Nation providing prevention services outside of an agreement with a province or territory, so this issue would likely have limited application.

#### **IV. APPLICATION OF NEGLIGENCE ANALYSIS TO THE PROVISION OF PREVENTION SERVICES BY FIRST NATIONS**

In this section, we provide an analysis of whether a First Nation is likely to owe a duty of care in the direct provision of prevention services, as well as in respect of funding decisions for prevention services. We also provide a brief discussion of standard of care and ways in which First Nations can minimize the liability risk if they decide to provide prevention services directly.

##### **1. Direct provision of Prevention Services**

In considering whether a duty of care would likely be owed by First Nations and their employees in providing prevention services, it is important to consider the types of potential claims that could be brought and who would bring them. We anticipate the claims could be brought on behalf of children, as well as by parents, and that they could be in two general areas: the provision of prevention services (either that services were provided negligently, were not provided at all when they should have been), or that in their role in providing prevention services, the employee breached their statutory duty to report a child in need of protection. For example, a parent might claim that if they had been provided with an alcohol treatment program, their child would likely not have been apprehended. The child could bring a similar claim. Or one parent might bring a claim on their own behalf and/or on behalf of the child that concerns regarding the behaviour of the other parent should have been reported, and if they had been, the child would have avoided injury or other maltreatment caused by the parent.

As discussed, social workers providing child and family services pursuant to provincial or territorial legislative schemes owe a duty of care to children who are or may be in need of protection. This is well-established in the case law and so it is not necessary to conduct an *Anns/Cooper* analysis. If it was necessary to conduct such an analysis, proximity would likely be found to be based on some combination of the statutory duties of these workers and agencies, as well as their interactions with children and families. The statutory scheme would likely be of predominant importance, as the duty of care clearly arises before any interactions have actually occurred, once a social worker receives a report about a child possibly in need of protection. Importantly, there is no conflict between social workers’ statutory duties and recognizing a common law duty of care to children – rather, they are entirely consistent with each other.

The matter of First Nations and their employees owing a duty of care (and to whom it is owed) is less clear, given that, in the absence of an agreement with a province or territory, they would not be exercising powers or performing duties under the legislation (other than the duty to report). This being said, at least some of the services being provided, particularly tertiary (and possibly to a lesser extent, secondary) prevention services, are essentially the same services that are provided by social workers employed by an agency or the province, or, at least, could be provided under the legislation. For example, under the Ontario *Child, Youth and Family Service Act, 2017*, S.O. 2017, c. 14, “service” is defined as including “a service for a child or the child’s family that is in the nature of support or prevention and that is provided in the community”. Under the BC *CFCSA*, s. 93 gives the director the power to provide preventive and support services for families to promote the purposes of the Act. The main difference between these prevention services provided under the legislation and similar services provided by a First Nation would appear to be that they are being provided on a voluntary basis (both from the perspective of the family and the First Nation), rather than pursuant to an agreement made with the family under the legislation. To the extent a First Nation attempted to enter into such an agreement with a family, it would likely be found to be without authority.

Even without the statutory scheme being directly applicable to the actions of First Nations providing prevention services, some of the factors relevant to the finding of a duty of care through a statutory scheme may be relevant here. As set out above, these include: whether the purpose of the statute is to protect the interests of an identifiable class of individuals of whom the plaintiff is a member; whether the statutory powers at issue involve the provision of a service as opposed to the reduction of a risk through regulation; the vulnerability of the plaintiff class to the risk of harm that materialized; and whether the defendant had specific knowledge of the plaintiff’s vulnerability. The statutory scheme, which includes prevention services, clearly has a purpose of protecting children, who are a vulnerable group. Provision of a service is also more likely to ground a private law duty of care in the context of a governmental authority, as compared to an alleged failure to regulate.

In our view, a court would likely find sufficient proximity to support a duty of care owed to children in respect of the provision of secondary and tertiary prevention services. The purpose of providing these services to families is to reduce risk to children who are or may be at risk of harm, and hopefully allow them to remain in the home, recognizing the rationale for the requirement for services provided under the legislation to employ least disruptive measures and the goal of keeping children with their families if it can be done safely. Our understanding of secondary and tertiary prevention services is that they are provided through one-on-one interaction with the family – the employee would obtain information about the family’s circumstances and attempt to tailor prevention services to those circumstances. Further, we understand that the line between tertiary prevention services and child protection is not always clear. For these reasons, this is a relationship that may well be found by a court to be sufficiently close and direct as to constitute the type of proximity necessary to ground a duty of care.

On the issue of whether there may also be a duty of care owed to parents, the appellate authorities are settled that the reasoning in *Syl Apps* applies at both the investigation stage and proceeding stage. The Court in *J.B.* emphasized that the statutory duties of a CAS are to investigate allegations that children may be in need of protection, and to protect children where necessary. These duties would not be owed by First Nations providing prevention

services outside provincial and territorial legislation or Indigenous law. Further, if the purpose of providing targeted prevention services is to assist the parents with challenges that could eventually lead to child protection concerns, it could perhaps be said that there is no conflict between the interests of parents and the interests of children at that stage. However, the better view may be that the ultimate purpose of prevention services is to keep the family together because that is what is best for the child, not to satisfy the wishes of the parents, and that, as a result, no duty should be owed to parents even before any child protection concerns arise.

Once child protection concerns arise, in our view there is little doubt that a duty would not be owed to parents, as the reporting duty is incompatible with such a duty. However, as indicated, the failure to report could potentially result in a claim by a child.

It is also not clear whether a First Nation and their employees providing prevention services would owe a duty of care in respect of both acts (providing a prevention service in a negligent manner) and omissions (failing to provide a prevention service). As discussed, it is more difficult to establish a positive duty to act. A plaintiff might bring a claim alleging that a First Nation is liable for failing to provide a service where the family or child would or might benefit from it in the sense that the child's risk of needing protection is reduced, and thus their ability to remain with their family is increased. The circumstances could potentially fall under either of the second or third categories identified by the Supreme Court in *Childs* – a paternalistic relationship of supervision or control, or exercising a public function that includes implied responsibilities to the public at large. However, these categories, particularly the third, are not well-developed in the case law.

The rationale underlying the finding of a positive duty is also arguably not present in this case, as the First Nation and its employees providing prevention services do not create or control the risk to the plaintiff. Rather, they are trying to remedy risk caused by external factors. On the other hand, if a First Nation decides to use the prevention funding to provide services directly rather than direct it to an agency, they may arguably be found to have undertaken to provide such services at least to some degree, which could create reasonable expectations on recipients that services will be provided and thus support a duty of care.

As this is a novel context, it is unfortunately not possible to provide a more definitive opinion on this issue. However, we would rely most heavily on the well-established duty of care owed by child protection workers to children as being at least somewhat analogous to the provision of secondary and tertiary prevention services, as this could be found to be a sufficiently analogous category such that an *Anns/Cooper* analysis of foreseeability and proximity would not be required. First Nations should be aware of the risk that by providing these services they may owe a duty of care to children and potentially also to their parents/families, depending on the circumstances and the precise nature of the claim.

If the First Nation is providing only primary prevention services, it is difficult to see how a duty of care could be owed, as these services are being provided at the community level, or to particular groups, and not targeted at individuals. It is unlikely that providing programs such as parenting information sessions or activities for children could place the First Nation or its employees into a sufficiently close and direct relationship with individual parents, children, or families to justify imposing a private law duty of care.

## **2. Funding Decisions regarding Prevention Services**

If the First Nation's only role with respect to prevention services is directing the funding provided by Canada to an agency who provides the services, or deciding how much money should be used to fund different types or levels of prevention, it is very unlikely it would owe a private law duty of care. There is almost certainly insufficient proximity, and it would also be found to be a core policy decision, provided the requirements for such a decision are met (based on social, economic, or political factors; made in good faith; not irrational; appropriate factors were considered in deciding on amounts to be spent and services to be provided – e.g., perceived need, expected benefit, etc).

For example, a decision to fund only primary prevention may be considered irrational, particularly if there were a documented need for other forms of prevention and there were some evidence these would be effective at reducing the number of children in need of care. Similarly, a policy to train or direct employees providing prevention services not to report child protection concerns in order to avoid children being taken into care would also be irrational and in bad faith, as it is contrary to the statutory duty to report and does not prioritize the best interests of the child which is the overarching goal of providing child and family services. On the other hand, core policy immunity would likely apply to a decision not to provide a specific high-cost prevention service such as residential alcohol or drug treatment programs due to insufficient funding, a need to prioritize other programs, etc.

Even if the law were clear that a policy defence is not available in the case of a statutory duty, for the reasons discussed above, any duties owed by First Nations who have not entered into agreements with a province or territory under child and family services legislation would be those owed by any member of the public (or person working with children, depending on the province), which are limited – namely, reporting a child in need of protection. It is difficult to conceive of a rational, good faith policy defence to a failure to report.

## **3. Standard of Care**

As discussed above, where a First Nation employs members of its community to deliver prevention services, and those employees are not trained social workers, in devising a standard of care the court may take this into consideration. Relevant factors would likely include whether the First Nation was unable to find trained social workers to do the work, that the work would or may not be done if not by the First Nation itself, the availability of training and other resources for the employees, and the benefit of the community of the services provided. They would likely not apply the standard of care expected of a trained social worker.

This being said, there will be some expectations placed on prevention services workers in the carrying out of their role. At a minimum, they would be expected to be able to identify at least obvious child protection concerns, as this is a duty placed on the general public in some provinces, or, at least, those who work with children – one is not required to be a social worker. We also expect they would be required to understand the importance of identifying these concerns and acting on them to ensure children's safety. Without experience in the provision of child and family services, it is difficult for us to opine on what other training they might be expected to have, or other key expectations that would constitute reasonable care in this context. However, a court would likely expect that the



employees would have received training that the First Nation could reasonably deliver in the circumstances, keeping in mind factors such as employees' aptitude and the resources (human and otherwise) available to the First Nation.

Further, given that the line between tertiary prevention services and child protection is not always clear, there may be an expectation for First Nations providing prevention services to work collaboratively with an agency providing child protection services in the community. For example, there might be a policy setting out specific circumstances where the First Nations employee would be expected to involve a social worker.

As discussed above, the First Nation will be vicariously liable for an employee's negligence where the employee's conduct was either authorized by, or sufficiently connected to conduct authorized by, the First Nation. The First Nation could also be found directly negligent for conduct such as failing to properly train its employees or implementing inappropriate policies.

Employees themselves will have immunity under most provincial and territorial child and family services statutes where they are performing a duty or function, or exercising a power, conferred by the statute and act in good faith. However, as discussed, the statutory immunity provisions would provide limited benefits to First Nations voluntarily providing prevention services. Further, the immunity may not apply to First Nations in BC at all, given the express exclusion of Indigenous governing bodies.

## **V. POTENTIAL LIABILITY OF FIRST NATIONS IN HUMAN RIGHTS LAW**

You have requested an opinion regarding the potential liability of First Nations under human rights law, as core policy immunity does not apply in this context. You would like us to address in particular the possibility of liability where the First Nation is not able to provide a particular service because of insufficient funding from Canada, and whether the First Nation would be considered the service provider and be liable for the failure to provide the service.

### **1. Test for Discrimination in the Provision of a Service**

Section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 ("CHRA"), provides:

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
  - (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
  - (b) to differentiate adversely in relation to any individual,
 on a prohibited ground of discrimination.

The complainant must demonstrate that 1) they have one or more characteristics protected from discrimination listed in s. 3 of the CHRA; 2) they are denied services, or adversely impacted by the provision of services by the service provider; and 3) the protected characteristic(s) are a factor in the adverse impact or denial (*Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33; *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 ("*Caring Society 2016*") at para. 22).

If the complainant meets this burden of establishing *prima facie* discrimination, the burden shifts to the respondent to establish that there is a *bona fide* justification for the denial or differentiation: *CHRA* s. 15(1)(g). To be a *bona fide* justification, the respondent must establish that it could not have accommodated the complainant in the provision of the service without undue hardship, considering specifically health, safety, and cost: s. 15(2).

**2. Is the provision of Prevention Services, and/or the Allocation of Funding in relation to Prevention Services, by First Nations a “Service” held out to the “Public”?**

**(a) “Service”**

The Tribunal must first determine whether it is dealing with a "service" within the meaning of the *CHRA* – it must define and analyze the very substance of the act, action, or activity being challenged. A "service" is something advantageous or of benefit that is offered or made available to the public: *Canada (Attorney General) v. Watkin*, 2008 FCA 170 at paras. 31 and 33; *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4 at paras. 196-197 (“*Pekuakamiulnuatsh*”).

In *Caring Society 2016* and in *Pekuakamiulnuatsh*, the Tribunal considered whether the funding of programs by Canada on First Nations reserves (child and family services and policing) could constitute a “service”. In both cases, the Tribunal found the answer was yes.

In *Caring Society 2016*, the Tribunal found that Canada’s involvement in the provision of child and family services on First Nations reserves was “something more than funding” – the benefit or assistance provided through the FNCFS Program and related provincial/territorial agreements was “to “ensure”, “arrange”, “support” and/or “make available” child and family services to First Nations children” (at para. 59). The “essential nature” of the FNCFS Program was to “ensure” First Nations families on reserve and in the Yukon received culturally appropriate child and family services that were reasonably comparable to the services provided to other provincial residents in similar circumstances (at para. 60). It also found that AANDC provided policy oversight, working as a partner with the FNCFS Agencies and provinces/territory to deliver child and family services. It was not a “passive player” whereby it only provided funding.

However, the Tribunal rejected the argument that even if its involvement had been limited to funding, it was not sufficient to constitute a “service”. It cited two prior cases in support of this proposition: *Bitonti et al. v. College of Physicians & Surgeons of British Columbia et al.*, (1999) 36 CHRR D/263 (BCHRT), and *Kelso v. The Queen*, [1981] 1 S.C.R. 199. In *Bitonti*, the BC Human Rights Tribunal rejected the argument that government funding decisions are immune from review for compliance with human rights legislation. Similarly, in *Kelso*, the Supreme Court concluded that the government’s right to allocate resources cannot override a statute such as the *CHRA*.

The Tribunal in *Caring Society 2016* reasoned as follows in rejecting Canada’s argument that funding could not constitute a “service”:

[44] ...[T]here is no indication in the *CHRA* or otherwise that Parliament intended to exclude funding from scrutiny under the Act, subject of course to the funding being determined to be a service. In line with *Kelso*, where the Government of Canada is

involved in the provision of a service, including where the service involves the allocation of funding, that service and the way resources are allocated pursuant to that service must respect human rights principles.

[Emphasis added.]

In *Pekuakamiulnuatsh*, a First Nation alleged discrimination by Public Safety Canada resulting from the implementation of the First Nations Policing Program (“FNPP”). It argued that the program was inadequately funded and, as a result, the level of police services that it could offer to the community was subpar. Like the FNCFS Program, funding was provided to the First Nation as part of a tripartite arrangement with the provinces/territories. The evidence was that the Pekuakamiulnuatsh First Nation had for years attempted to provide quality police services, but consistently ran operating deficits and was forced to top up the government contributions in order to be able to hire enough officers. It had attempted to negotiate additional funding, but had been told there was simply no more government money.

In considering whether the FNPP was a “service”, the Tribunal found that Public Safety Canada’s role “consists largely of funding or the provision of financial contributions”, but also included other actions taken by it, such as reporting, negotiating, and providing related assistance. While it was not directly providing police services, all of this together constituted the offering of advantages or benefits to the First Nations who were part of the program. Like in *Caring Society 2016*, it found the funding was “intrinsically linked” to the level of police services the First Nation could provide (at para. 238), and that the funding was based on what was in the funding envelope rather than the real needs of Indigenous communities. If it wanted its own Indigenous police force that provided a service adapted to the needs, customs, and traditions of the community, the Pekuakamiulnuatsh was forced to accept low funding from Canada under the FNPP, which was not a choice that had to be made by the non-Indigenous public. The Tribunal concluded that the FNPP and its implementation perpetuated systemic discrimination against the Pekuakamiulnuatsh and other First Nations.

An obvious difference between *Caring Society 2016* and *Pekuakamiulnuatsh* and other cases is that Canada was the ultimate holder of the purse strings. It determined how much funding should be provided to First Nations for the FNCFS Program and FNPP, and, by extension, the quality of the services that could be provided using the funding. In the case of prevention services, if the First Nation is not providing the services directly through its employees, its role could be administrative in the sense of deciding what services should be provided and how much funding there is available in what it receives from Canada to provide different types of services. Alternatively, there could be some sort of application system where the First Nation considers requests for services on a case-by-case basis to determine whether the requested services will be funded. Or, it may simply be acting as an intermediary for the funds to flow through – simply funneling them to agencies, with the agencies deciding what types of services should be provided and then providing those services. In all of these scenarios, however, they are working with what Canada gives them. Given this, can they be found to be a service provider?

In *MacNutt v. Shubencadie Indian Band* (1995), 29 C.H.R.R. D/114 (C.H.R.T.) and *Polhill v. Keeseekoowenin First Nation*, 2019 CHRT 42, First Nations were found to be providing a

service within the meaning of s. 5 by administering a federal program to residents of reserves. In *MacNutt*, the complainants were non-Indigenous spouses of Band members living on reserve. They argued they were subject to discrimination on the basis of either race or marital status because they were denied federal social assistance benefits. One of the complainants sought such benefits through the Band, which denied them because she was non-Indigenous. The other two complainants had previously been paid such benefits but after some time they were no longer approved by the Band. The Band argued that the “supplier” of the “service” was DIAND, not the Band, as it funded the program. The Tribunal disagreed, noting that the social assistance program on reserve was not statutorily-based but flowed from the terms of an agreement entered into between DIAND and the Band. Under this agreement, responsibility for funding, delivery, and administration of the program was divided or apportioned between the two parties. The supplier was the Band, not DIAND. The Tribunal also found that the limited discretion the Band could exercise in the administration or delivery of the social assistance program did not take away from its characterization as a service customarily available to the public.

*Polhill* was similarly a claim of discrimination in the provision of social assistance benefits. The Tribunal followed *MacNutt* in finding that the First Nation offered a service within the meaning of s. 5 in administering the on-reserve federal income assistance program.

In our view, it is clear that a First Nation would be a service provider for the purposes of s. 5 of the *CHRA* if it is directly providing any level of prevention services to children and families: primary, secondary, or tertiary. What does providing services mean in this context? In our view, it would include offering the services themselves (for example, having employees of the First Nation run parenting workshops), acting in a facilitation role where they refer children and families for services provided by others or otherwise arrange for the services to be provided, and making decisions on whether to grant requests from families for specific services. In such circumstances, there is little doubt that the First Nation is offering or providing “assistance” or a “benefit” to the general public or a subset thereof.

Whether making decisions solely with respect to funding of prevention services (e.g., how funds will be divided between primary, secondary, and tertiary prevention, how much will or can be spent on specific types of services) constitutes the provision of a service is a more difficult question. The more specific the decisions, the more likely they would be to constitute a “service”. If they are very general and high-level in nature, they may not be – for example, if the only decision made by the First Nation were how much of the prevention budget would be spent on each of primary, secondary, and tertiary prevention, and all the decisions as to what services are provided and to whom are made by an agency, it is more difficult to see how this could be considered a “service”.

An argument might be made that the First Nation’s role in that situation is analogous to Canada’s in the *Caring Society* complaint, in that its decisions as to how much should be allocated even at a high level will affect what services can be provided under each level of prevention. This could also potentially be viewed analogously to the First Nations’ administration of Canada’s social assistance program on reserve in *MacNutt* and *Polhill*. However, these decisions are highly constrained by the amount of funding provided by Canada, and are at a very high level rather than at a level where it is decided which individuals or groups get certain benefits. We would not rule out entirely a finding that the First Nation could be a service provider in this context, but in our view it is unlikely. Further,

even if it were, it is also difficult to see how a complainant could establish a connection between a decision at such a high level of generality and a protected ground.

If the First Nation is simply acting as an intermediary for the prevention funds and transferring them to agencies without making *any* decisions as to how they are to be used, this is unlikely to constitute provision of a service. Its role would not be analogous to Canada's in *Caring Society 2016* because as noted, Canada was the ultimate holder of the purse strings and determined how much funding should be provided for the FNCFS Program.

**(b) “Public”**

The service must be one that is customarily available to the “public”. The Tribunal must therefore determine whether the service creates a public relationship between the service provider and the service user. The “public” to whom the service is being offered does not need to be the entire public – clients of a particular service could be a very large or small segment of the public: *Caring Society 2016* at para. 31. In our view, there is no question that the direct provision of prevention services by a First Nation, or the making of decisions in respect of those services, would be considered a service that is provided to the “public”.

As above, if the only decisions being made were very general decisions as to how the funding should be split as between levels of prevention, there would be less likely to be a public relationship between the First Nation and its members for the provision of prevention services.

**3. Test for *Prima Facie* Discrimination**

**(a) Protected characteristic**

The prohibited grounds of discrimination set out in s. 3 of the *CHRA* include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, and disability. It is easy to see how prevention services could be provided in a manner that denies a service or differentiates adversely on a number of these grounds – for example, if parenting courses were only offered to women or were not offered to same-sex couples, respite was only offered to parents of children with physical disabilities and not mental health conditions, treatment for alcohol, but not drug, addiction was provided, or certain families were given preferential services over others because they had a family member on the Band council.

In addition to prohibited grounds that could differ between members of the First Nation such as family status or disability, complaints might also be brought in relation to race or national or ethnic origin – for example, if there were evidence that a particular prevention service was provided off-reserve but not on-reserve, or in a neighbouring First Nation, this could potentially form the basis of a complaint. This would likely be quite difficult to establish, however, given that the particular First Nation would not be providing services off-reserve or to neighbouring Nations – this would more likely be grounds for a claim against Canada that funding continues to be insufficient in at least some Nations to provide services based on need.

A complaint could also be brought simply for adverse impact against an individual on the basis of their status as an Indigenous person, without any evidence of differential treatment

as compared to another Indigenous person or group, or a non-Indigenous person or group. This is because the law is clear that a comparator group need no longer be established by a complainant in a human rights claim. In *R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 6)*, 2022 BCHRT 116 (“*R.R.*”), an afro-Indigenous mother residing in an urban centre brought a complaint against a First Nations child and family services agency that she had been subject to adverse treatment through separation from her children who had been taken into care, and restrictions in her access to them. She claimed that her protected characteristics of race, colour, ancestry, and mental disability were a factor in this adverse impact, in two ways: directly, by the operation of anti-Indigenous stereotype and prejudice, and indirectly, by failing to account for her needs as an Indigenous parent interacting with the child welfare system.

The Tribunal rejected the agency’s argument that there was no evidence of any differential treatment towards the complainant compared to any other parent whose child was in care with the society. It stated that “evidence of differential treatment is not necessary because “equality is not about sameness”, citing *Withler v. Canada (Attorney General)*, 2011 SCC 12 at para. 31. In *Withler*, the Supreme Court noted that “[a] formal equality analysis based on mirror comparator groups can be detrimental to the analysis” (at para. 2).

The Federal Court (2012 FC 445 – “*Caring Society FC*”) and Federal Court of Appeal (2013 FCA 75) also rejected the need for a comparator group on judicial review of the Tribunal’s initial decision striking the Caring Society’s complaint on the basis that they could not point to a similarly-situated group, such as another group receiving the same assistance programs from Canada. In *Caring Society 2016*, the Tribunal noted that while comparative evidence may be useful in analyzing a claim of discrimination, “it is not determinative of the issue”, and that, as the Court noted in *Withler*, “finding a mirror group may be impossible, as the essence of an individual’s or group’s equality claim may be that, in light of their distinct needs and circumstances, no one is like them for the purposes of comparison” (at para. 59 of *Withler*, para. 325 of *Caring Society 2016*).

This was echoed in *Pekuakamiulnuatsh*, in which the Tribunal said that it found it “difficult, if not impossible in practice, to compare First Nations with each other or with other groups in Canada because of their unique position in Canada”. It noted that the Court in *Caring Society FC* had “recognized this exceptional and incomparable status of First Nations” (at para. 318). In *Caring Society FC*, the Court accepted “the *sui generis* status of First Nations” and recognized “that different approaches to assessing claims may be necessary depending on the social context of the claim” (at para. 340).

#### **(b) Adverse or differential treatment**

The complainant must establish that they have been denied services or adversely impacted in the provision of the service at issue: *Caring Society 2016* at para. 24. For the reasons discussed, it is not necessary to point to a comparator group in order to establish that s. 5(1)(b) of the *CHRA* has been satisfied. This element of the test is usually not particularly difficult for a complainant to meet, as the harm or impact will usually be clear. The more difficult question is whether the protected characteristic is a factor in the adverse or differential treatment.

**(c) Protected characteristic a factor in the adverse or differential treatment**

The complainant is not required to adduce direct evidence of discrimination or prove that the service provider intentionally discriminated against them, because “human rights law rests on an ‘effects-based model which critically examines systems, structures, and their impact on disadvantaged groups’” (*R.R.* at para. 299; *Caring Society 2016* at para. 26).

The complainant is also not required to prove that the protected characteristic was the only factor, or even the main factor. It must simply be one factor in the adverse impact suffered: *R.R.* at para. 298.

In *Moore*, discussed in detail below, the complainant’s learning disability was clearly a factor in the adverse treatment he experienced, as his school district failed to provide him with the intensive remediation he required to be able to have equal access to the public education system. In *Caring Society 2016* and *Pekuakamiulnuatsh*, the complainants’ status as Indigenous persons living on reserve was the reason for the poorer quality of child and family services and policing they experienced due to insufficient funding by Canada for these programs. In *MacNutt*, non-Indigenous spouses of Indigenous persons living on reserve were denied social assistance benefits because of their race and/or ethnic origin.

In *R.R.*, the Tribunal found that the requisite connection was met on the basis that the agency assumed the complainant was not fit to parent because of her trauma, child welfare history, and conflict with social workers, which assumption was based on stereotype and prejudice connected to her mental health and Indigeneity. It is easy to see how this type of assumption could and likely frequently does creep into the interactions between child protection workers and Indigenous parents suffering similar disadvantage and past trauma, even where the service provider is an Indigenous agency with predominantly Indigenous employees, as was the case in *R.R.* The Tribunal indeed concluded that the discrimination faced by *R.R.* was “the effect of a wider web of laws, policies, and practices which interact to create a system stacked against Indigenous families, especially single mothers living in poverty, with disabilities, and with children with disabilities” (at para. 307).

It rejected the agency’s argument that *R.R.*’s protected characteristics themselves impaired her ability to safely care for the children, finding that the children were not in need of protection. If this were to be established in a different case, however, the Tribunal noted that “a child protection agency acting in good faith to protect a child may justify adverse impacts on the parent so long as it takes all reasonable and practical steps to accommodate their *Code*-related needs” (at para. 302).

In cases where the service provider demonstrates that the conduct leading to the adverse impact was for other reasons entirely unrelated to the protected characteristic, or there is simply no evidence (even a “subtle scent”) that the protected characteristic was a factor in the adverse impact, *prima facie* discrimination will not be substantiated.

For example, in *Hasek v. BC Ministry of Health (No. 2)*, 2018 BCHRT 187, the complainant claimed that older age was a factor in the refusal of the Ministry of Health to fund a vaccine for shingles, where it funded a vaccine for chicken pox (which is caused by the same virus) for children. The Tribunal noted that, having decided to provide a publicly-funded immunization program, the Ministry was under an obligation to do so in a non-discriminatory manner. However, it found that age was not a factor in declining to fund the shingles vaccine. Rather, the Ministry considered the issue in detail according to its analytical

framework for assessment of new vaccines, and had decided to fund other vaccines in priority. The reasons for this were that 1) the other vaccines were more effective at preventing the relevant health condition; 2) the health conditions they prevented caused more severe symptoms than shingles, including death; and 3) the conditions they prevented were communicable, whereas shingles was not. The Tribunal also rejected the allegation that there was a disproportionate effect on older people because of the decision to fund the chicken pox vaccine and not the shingles vaccine, as the chicken pox vaccine provides benefits at all ages even though it is received in childhood.

Similarly, in *Hoffman v. British Columbia (Ministry of Social Development)*, 2012 BCHRT 187, the respondent Community Living British Columbia established that differences in supports and services provided to the complainant as compared to others with similar disabilities were due to the fact that the latter group had become eligible for services at an earlier date and had entered into individual support agreements with CLBC, prior to the implementation of a guide regarding resource allocation that had impacted the manner in which persons were assessed for services.

#### **4. Bona Fide Justification/Undue Hardship**

In *Moore*, the Supreme Court noted that at the justification stage, it must be shown that alternative approaches were investigated, and the prima facie discriminatory conduct must also be "reasonably necessary in order to accomplish a broader goal". In other words, an employer or service provider must show "that it could not have done anything else reasonable or practical to avoid the negative impact on the individual" (*Moore* at para. 49; *VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2007 SCC 15 at para. 130).

*VIA Rail* dealt with a complaint that VIA had not appropriately modified used train cars it had purchased. Specifically, they did not accommodate passengers' own wheelchairs. The Supreme Court noted that the concept of undue hardship "implies that there may necessarily be some hardship in accommodating someone's disability" – it is only where it rises to the level of an undue burden, where only unreasonable or impracticable options for accommodation remain, that accommodation will not be required (at paras. 122 and 130). "Undue" was defined as meaning "disproportionate, improper, inordinate, excessive or oppressive, and expresses a notion of seriousness or significance" (at para. 140).

It is clear that as a general proposition, cost will not lightly be found to justify conduct that has been found to be *prima facie* discriminatory. While the majority in *VIA Rail* noted that cost is a legitimate factor to consider, it cautioned that tribunals "must be wary of putting too low a value on accommodating the disabled", and that "it will always seem demonstrably cheaper to maintain the status quo and not eliminate a discriminatory barrier" (at paras. 128 and 225). The majority provided the following guidance for determining when cost may be sufficient to constitute undue hardship:

[131]...[A]ssessing whether the estimated cost of remedying a discriminatory physical barrier will cause undue hardship falls to be determined on the facts of each case and the guiding principles that emerge from the jurisprudence. A service provider's refusal to spend a small proportion of the total funds available to it in order to remedy a barrier to access will tend to undermine a claim of undue hardship (*Eldridge*, at para. 87). The size of a service provider's enterprise and the economic conditions confronting it are relevant



(*Chambly*, at p. 546). Substantial interference with a service provider's business enterprise may constitute undue hardship, but some interference is an acceptable price to be paid for the realization of human rights (*Central Okanagan School District No. 23*, at p. 984). A service provider's capacity to shift and recover costs throughout its operation will lessen the likelihood that undue hardship will be established: *Howard v. University of British Columbia* (1993), 18 C.H.R.R. D/353 (B.C. Human Rights Council).

[132] Other relevant factors include the impact and availability of external funding, including tax deductions (*Brock (Litigation Guardian of) v. Tarrant Film Factory Ltd.* (2000), 37 C.H.R.R. D/305 (Ont. Bd. of Inquiry)); the likelihood that bearing the net cost would threaten the survival of the enterprise or alter its essential character (*Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 (Ont. Bd. of Inquiry)); and whether new barriers were erected when affordable, accessibility-enhancing alternatives were available...

On the facts, the Court upheld the finding of the Canadian Transportation Agency that, based on a proper estimate of the cost to modify the cars (which were being substantially refurbished in any event), it was a relatively insignificant sum when viewed in the context of VIA's entire capital expenditure, the fact that it had a substantial contingency fund for unforeseen events, and the fact that it was in the midst of favourable economic conditions. The cost could be shifted throughout VIA's operations, and the impact on its business could also be lessened by planning for the modifications to occur over time.

*Moore* involved a challenge by the parents of an elementary school student, Jeffrey Moore, who was unable to be accommodated in his local public school due to a severe learning disability. The only way he could receive the intensive remediation he needed was through the District Diagnostic Centre, a program which provided such assistance to students with severe learning disabilities, but which was being closed for cost reasons. As a result, his parents enrolled him in private school.

The District received funding from the Province, under a block funding approach. The Province capped funding for certain categories of disabilities in order to control the increasing number of students qualifying for supplementary funding. As a result, if the number of students requiring the funding was above the cap, a district would be forced to draw on the general provincial allocation to fund the services for these students.

The BC HRT held that the failure of the public school system to give Jeffrey the support he needed to have meaningful access to the educational opportunities offered by the Board amounted to discrimination, which was upheld by the Supreme Court. The Court agreed there was no doubt the District was facing "serious financial constraints" at the relevant time, and that this was a relevant consideration. It stated, "[i]t is undoubtedly difficult for administrators to implement education policy in the face of severe fiscal limitations, but accommodation is not a question of 'mere efficiency'" (at para. 50). However, the Tribunal found that cuts were disproportionately made to special needs programs. For example, the District retained some discretionary programs, such as an "Outdoor School", which had roughly the same operating cost as the Diagnostic Centre. The Court endorsed the view of Justice Rowles in dissent at the Court of Appeal that specialized, discretionary initiatives

“cannot be compared with the accommodations necessary in order to make the core curriculum accessible to severely learning disabled students”.

More significant, however, was the fact that the District undertook no assessment, financial or otherwise, of what alternatives could be reasonably available to accommodate special need students if the Diagnostic Centre were closed. The failure to consider financial alternatives “completely undermine[d]” the District’s argument that it was justified in providing no meaningful access to an education for Jeffrey because it had no economic choice: “[i]n order to decide that it had no other choice, it had at least to consider what those other choices were” (at para. 52).

The Province, which provided funding to the District, had also been found liable by the Tribunal. The Supreme Court set this finding aside, noting that although the District’s budgetary crisis had been created, at least in part, by the Province’s funding shortfalls, it was the District which failed to properly consider the consequences of closing the Diagnostic Centre or how to accommodate affected students.

*Howard v. University of British Columbia* (1993), 18 C.H.R.R. D/353 (B.C. Human Rights Commission), was another case where cost was found to be insufficient to constitute undue hardship. The complainant was a Deaf student who alleged that the University had failed to accommodate him in declining to providing an ASL interpreter. The Commission accepted that to do so was a considerable cost - \$40,000 per year (in 1993) for the complainant alone, and there might be other students who would require interpretive services. However, it noted that the University’s annual budget was approximately \$700,000,000, and that there was no evidence that its operations would be seriously affected if it provided the complainant with an interpreter – there was in fact “no evidence at all about the potential economic impact of the requested accommodation” (at para. 50).

*Dunkley v. UBC*, 2015 BCHRT 100, was similarly a complaint involving a request for ASL interpretation, this time by a Deaf physician in a dermatology residency program. The University and her employer (“PHC”) argued the cost to provide this service over the course of her residency would have been between \$2.5 and \$3 million, which it claimed was undue hardship. However, the Tribunal found two major problems with the respondents’ argument. First, the estimate was unreasonably high as it represented a “worst case scenario” approach (based on a “freelance” rate for interpreters); the respondents had not considered other alternatives such as salaried interpreters. Second, there was no evidence that between UBC and PHC they could not have accommodated the cost. As in *Howard*, UBC had adduced no evidence of the effect on its operations. While PHC had adduced evidence of its budget, neither respondent explored the possibility of cost-sharing between them or with other entities, such as the Ministry of Health (which funded residency positions) and Vancouver Coastal Health, under which PHC operated and which had an annual budget of over \$3 billion.

Clearly, not all respondents will have a similar level of resources as universities and health authorities. In *Egurney v. British Columbia Housing Management Commission*, 2006 BCHRT 561, undue hardship was established in a case of a request for ASL interpretation. The respondent was a garden club, which was made up of volunteers. The complainants argued that they were not able to communicate during club meetings due lack of interpretation. The Tribunal found that, with only \$220 in the club’s bank account, interpretive services were “clearly well outside its budgetary capabilities” (at para. 49).

An example of a case where alternative funding sources were considered was *Ledoux v. Gambler First Nation*, 2018 CHRT 26. Gordon Ledoux used a wheelchair and required a ramp to access his home. His brother, David Ledoux, who was the Chief of the Gambler First Nation, initially built him a makeshift skidoo ramp, but this was not sufficiently functional. He made a request for a proper ramp, but funds were not immediately available as Gambler was in a deficit and new funding would only be available after March 31 when the new fiscal year began. The Tribunal stated:

It is easy to look at Gambler's financial statements in hindsight and say that there was money available in its budget during the relevant period to fund building the wheelchair ramp. But at the time of the request, building a wheelchair ramp at Gordon's house was unfunded and money needed to be found...

David attempted to secure another funding source, first contacting a CMHC program and ultimately finding some money earmarked for a wheelchair ramp at the band office that he used to construct a ramp at Gordon's home instead. Despite this, Gordon brought a complaint alleging discrimination on the basis that there had been a delay in its construction. The Tribunal found there was a *bona fide* justification for the delay in finding funds, as to have gone into deficit to pay for it earlier would have been undue hardship.

It is obvious from these decisions that a service provider will be expected to incur some hardship in respect of accommodating protected characteristics, including with respect to cost, and that there is an expectation that reasonable alternatives will be considered both in terms of the service itself, as well as methods to pay for it. *Moore* is particularly instructive, as the District administered and managed its programs based on government funding. Although it was experiencing severe financial constraints resulting in part from the level of government funding, its position on undue hardship ultimately failed because it had failed to *consider* any alternative to shutting down the Diagnostic Centre, such as cutting discretionary programs, offering an alternative program for severely learning disabled students, or attempting to find funding elsewhere.

There is a line, however, where the cost to accommodate becomes undue. Where that line lies will be obvious in some cases, but less so in others. Considerations for First Nations providing prevention services will be discussed in the next section.

## **5. Human Rights Considerations for First Nations providing Prevention Services**

### **(a) Cost**

Based on the case law, if a First Nation were to rely on financial hardship as a reason to deny a particular prevention service, the types of things it would likely need to establish include:

- That it had considered whether there was a cheaper alternative to the specific service requested, or whether the service could at least be partially provided;
- There was insufficient prevention funding to fund the service, in light of other priorities for the use of that funding;
- There was insufficient funding elsewhere in the FNCFS program, in light of other priorities for the use of that funding;

- There was insufficient funding elsewhere in its budget, having regard to other community priorities and important public services for its members; and
- It had explored other funding sources, such as the FNCFS Program emergency fund, or, alternatively, other government programs or funding that might be available to it.

If the First Nation sufficiently considered alternative services and funding, and made reasonable efforts to find money to pay for the service but was not successful, the failure to provide it due to legitimate budgetary constraints would likely be considered a *bona fide* justification. It would not be sufficient, in our view, for the First Nation to simply conclude that the funding from Canada was insufficient to pay for the service, without exploring any alternatives.

**(b) Other considerations**

Depending on the type of complaint, cost may not be the reason for the failure to provide the service (or provide it differentially) and would therefore not be a possible justification. For example, in *R.R.*, the complaint related not to the absence of services, but the manner in which the agency and its social workers treated the complainant in their dealings with her, and their decision to remove her children and restrict her access to them as a result of assumptions based on stereotypes and prejudice. This type of complaint demonstrates the importance for service providers of making decisions in an objective manner based on families' needs and circumstances, and not based on personal characteristics that are not relevant to the parent's ability to care for the child.

The cases also demonstrate the importance of consideration and documentation in making decisions as to whether to provide a service. If a First Nation decides not to provide a certain prevention service, or provide a service to some parents/families but not others, the reasons for this should be objective and based on clear criteria. In addition to cost, these criteria could include things like need, expected effectiveness/benefit of the service, and urgency.

**6. Remedies**

The remedies available to the CHRT are broad, and include the following:

- cease the discriminatory practice and take measures to prevent the practice from occurring in the future;
- make available to the victim the rights, opportunities or privileges that were denied;
- compensate the victim for any lost wages as a result of the discrimination;
- compensate the victim for the additional costs of obtaining alternative goods, services, facilities or accommodation as a result of the discrimination;
- compensate the victim up to \$20,000 for any pain and suffering that the victim experienced as a result of the discrimination;

- compensate the victim up to an additional \$20,000 if the discrimination was wilful or reckless; and,
- award interest on an order to pay financial compensation.

These amounts of financial compensation are lower than the usual range of damages in a negligence claim. However, where there are multiple complainants, the total award could be significant.

## SUMMARY

Whether First Nations providing prevention services outside of an agreement with provinces/territories owe a duty of care to the recipients of those services is a novel question. They do not owe the same statutory duties as agencies and their employees who are providing services under provincial/territorial legislation, other than the duty to report children in need of protection. However, in our view, a court would likely find sufficient proximity to support a duty of care owed to children, but likely not to parents or other family members, in respect of the provision of secondary and tertiary prevention services. As with child protection, the purpose of providing these services to families is to reduce risk to children who are or may be at risk of harm, and secondary and tertiary prevention services are provided on an individual basis involving close interactions with families. However, it is less clear that there would be a positive duty to provide specific services, as opposed to as a duty to provide services in a non-negligent way.

If the First Nation is providing only primary prevention services, it is difficult to see how a duty of care could be owed, as these services are being provided at the community level, or to particular groups, and not targeted at individuals. It seems unlikely that this could place the First Nation into a sufficiently close and direct relationship with individual parents, children, or families to justify imposing a private law duty of care.

First Nations who have not exercised their jurisdiction over child and family services under C-92 or under s. 35 would likely still be considered sufficiently governmental in nature to benefit from core policy immunity as a defence to a finding of a *prima facie* duty of care. For core policy immunity to apply, the decision must be a considered one that is based on social, economic, or political factors; is made in good faith; and is not irrational.

The standard of care applicable to First Nations employees, without social work training, in the provision of prevention services would likely be lower than that expected of trained social workers in the child protection context. However, if a duty of care has been found and the employee has breached this standard of care, the First Nation will likely be vicariously liable. The employee also likely would not have immunity against personal liability (except potentially with respect to the duty to report) as the statutory immunity applies to the exercise of powers and duties under the legislation.

In respect of a First Nation's liability in human rights law, the Nation will almost certainly be considered to be providing a "service" to the "public" where it is directly providing prevention services, and likely also if it is making decisions regarding which prevention services will be provided and/or to whom, even if those services are ultimately being delivered by an agency. However, making very high-level and general decisions – for example, how much funding will be available for each of primary, secondary, and tertiary prevention – is less likely to constitute a "service" offered to the "public".

If a complainant has established *prima facie* discrimination in the provision of prevention services, undue hardship based on cost may be established. However, the First Nation will likely be expected to have considered reasonable alternative services as well as whether funding can be obtained from elsewhere to pay for the service. To avoid discrimination claims, First Nations should also ensure they are providing prevention services based on objective factors and criteria such as need, urgency, and the expected benefit of the service, rather than in a manner that could be considered arbitrary, based on irrelevant personal characteristics, or based on stereotypes or prejudice.

Thank you for the opportunity to provide this opinion. We look forward to discussing any questions you may have at your convenience.

Yours truly,

**ALEXANDER HOLBURN BEAUDIN + LANG LLP**

Per:

A handwritten signature in cursive script, appearing to read "Kathryn McGoldrick".

Kathryn McGoldrick  
/KAM

## **Appendix B – Outreach materials and questionnaire**

## Information for First Nations not served by a FNCFS agency

The Institute of Fiscal Studies and Democracy (IFSD) is pleased to continue working with the Assembly of First Nations (AFN), the Caring Society (Dr. Cindy Blackstock), and the National Advisory Committee (NAC) to support the long-term reform for First Nations child and family services (FNCFS).

*IFSD is grateful and humbled by the commitment, trust, and generosity shown to us by FNCFS agencies and First Nations over the past four years. Together, we proposed a well-being focused vision of child and family services.*

In January 2022, the parties to the Canadian Human Rights Tribunal (CHRT) proceedings on FNCFS announced an agreement in principle, which included compensation for past harms of the FNCFS system, and a commitment to long-term reform. *This commitment to long-term reform presents an opportunity to reset the FNCFS system with a focus on well-being and the needs of First Nations.*

First Nations take care of their children and families in different ways. First Nations not served by a FNCFS agency will have different resource needs (funding, personnel, capital, etc.) to deliver services to support the well-being of children and families.

First Nations not served by a FNCFS agency have an opportunity to share their vision and needs for service delivery in their communities through this needs-assessment.

### **Our ask to you**

We need First Nations to share their needs, experiences, and visions in child and family services in **one of two ways**:

#### **1) Complete a questionnaire:**

- a. Complete the questionnaire transmitted with this email.
- b. Return it to [helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca) by **June 30, 2022**.
- c. Upon completion, receive one \$300 gift certificate to a selected vendor for your First Nation (Amazon, Tim Hortons, Walmart, or Shoppers Drug Mart).

**OR**

#### **2) Serve as 1 of 10 First Nations collaborators:**

- a. Invite IFSD to visit your First Nation for 1 to 2 days.
- b. Share time, experiences and more detailed financial data and programming plans, as well as capital needs.
- c. Research collaborators will serve as models in this work and will have profiles developed (for their review and approval) to share their wise practices.



- d. If you are interested in serving as a collaborator, contact [helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca) | (613) 983-8461.

### **Why participate?**

- This work is about First Nations control and care of delivery.
- Real data and experiences make this work relevant.
- IFSD needs your perspective to cost approaches and identify resource gaps.
- You can share your vision and propose a new approach for supporting child and family services activities in First Nations.

### **Sharing findings**

As is its usual practice, IFSD will update stakeholders monthly on the project's progress. Updates will be released via email and posted to the project website ([www.ifsd.ca/fncfs](http://www.ifsd.ca/fncfs)).

IFSD welcomes your ongoing feedback and suggestions ([helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca)).

### **How will shared data be used?**

Any data shared will only be used for the purposes of this project. Participants can withdraw at any time and any data they shared will be destroyed.

***Any information that is disseminated publicly will be aggregated and/or anonymized to protect the privacy of research collaborators.***

All data from questionnaires will be aggregated, and no individual participants will be identifiable in any publicly shared reports, updates, or briefings to stakeholders.

First Nations serving as research collaborators will be asked to review and approve any anonymized profiles built based on their work and experience prior to public dissemination.

### **How will my data and privacy be respected and protected?**

Hosted at the University of Ottawa, IFSD is guided by ethical research guidelines respecting Indigenous Peoples. IFSD requested that FNIGC provide a technical review of its tools and materials.

All data shared by First Nations will be held on password protected cloud-storage system (OneDrive). All servers associated to IFSD's cloud-storage system are resident in Canada. Data shared will be accessible only to IFSD staff directly engaged in the project.

Any locally held data will be stored on IFSD research laptops only. Any physical copies of data or data shared on USB keys will be kept in a locked cabinet in a locked office at IFSD's office.



Research collaborators can withdraw at any time. Any data shared with IFSD will be destroyed.

The research protocols of individual First Nations will be followed.

**About IFSD**

IFSD is a research institute that uses money as a tool to analyze and solve public policy challenges. It is gratefully located on the traditional territory of the Algonquin People. Led by Canada’s first Parliamentary Budget Officer, Kevin Page, IFSD works in Canada and abroad to lend decision-support to governments, the broader public and private sectors. Since 2018, IFSD has been collaborating with First Nations and First Nations child and family services agencies on the costing, design and delivery of child and family services. IFSD is pleased to continue its work in this area, collaborating with and learning from those serving children and families.

## **Case study overview for research collaborators: First Nations not served by a FNCFS agency**

First Nation research collaborators will be asked to share their needs in child and family services, as well as their existing approaches to service delivery, perceived successes, challenges, and data on programming/services, and related expenditures.

As contributors and partners in this work, First Nations collaborators will be asked to share their insight on the delivery of child and family services, resource allocations, and considerations for the future, including capital needs.

The information shared by First Nations research collaborators will be used to define a baseline of existing services and to capture and cost needs to deliver child and family services in First Nations not served by a First Nations child and family services (FNCFS) agency.

**IFSD's standard practice is to anonymize all information shared by research collaborators, unless they wish to be identified by name and provide written permission to do so.**

IFSD recognizes the importance of your work and the demands on your time and is committed to working with your availability. ***IFSD depends on your insight and contributions to ensure representation and validity of its work.***

IFSD will work with you to schedule an in-person visit in your community, in accordance with public health guidelines. If a virtual meeting is necessary, IFSD will schedule a session via MS Teams, Zoom, by phone, or using your preferred platform.

Guiding questions and themes for the exchange include:

- 1) Context:
  - a. Tell us about your community and the people you serve.
  - b. Tell us about your community's geography/location/remoteness considerations.
  - c. Tell us about what child and family services focused services and programming work well and which work less well.
  - d. Are there children in your community in care?
  - e. What do you think your community needs to be better meet the needs of children and families?
- 2) Band Council overview:
  - a. Tell us about your governance structure.
  - b. Are there one or more organizations involved with children and families?
  - c. How do organizations work together?

- d. Could coordination between service providers be improved to support holistic care for children and families?
- 3) Programming overview:
  - a. Tell us about the programs and services provided by your community.
  - b. Tell us about the child and family services and/or prevention services provided by your community.
  - c. How do you align resources (human, financial, infrastructure) to your programming priorities?
  - d. Are there program gaps or future directions/considerations for programs and services?
- 4) Tell us about legal costs associated to child and family services. Do you have sufficient funding to cover them? What are your sources of funding?
- 5) Tell us about travel expenses. Do you have the resources required for travel expenses? What are the sources?
- 6) Do you have existing sources for programming design and delivery, data analysis, and operational supports?
  - a. Please describe those sources of support, e.g., regional organizations, communities of practice, etc. Can they be improved to better support your needs?
- 7) Are there functions a First Nations-led child and family services secretariat could fulfill to support you, e.g., programming design and delivery, data analysis, operational supports, etc.?
- 8) Resources and allocation:
  - a. Do you have the resources (human, financial, infrastructure) necessary to provide programming for child and family services?
    - i. Tell us about any challenges in attracting or retaining staff, e.g., housing, salary, etc.
  - b. Do you have the relevant technology to design and deliver programming, e.g., hardware, software, broadband, etc.?
  - c. What is your annual budget for child and family services and/or prevention programming?
    - i. What are your budget sources, e.g., federal, provincial, own-source revenues, other?
  - d. Has your community requested CHRT-mandated funding for prevention or other programming?
    - i. If yes, was it received?
    - ii. If not, why?
- 9) Do you have First Nation or Indigenous social workers or other staff to design and deliver your prevention programming? Do you have wise practices to share on providing culturally-informed training to your staff?
- 10) Capital needs assessment:
  - a. What prevention services do you want/plan to provide in the next 5 years, 10 years, 15 years, and 20 years that you are not providing now?

- b. What types of assets will you need to deliver on those services, e.g., building, vehicle, culture supports, etc.?
  - i. If applicable, specify any set-up or functional requirements that go above and beyond standard office and meeting space.
- c. What assets do you have?
- d. What assets are missing/needed?
- e. How will the needed assets be used? For how long?

<b>Capital asset attributes</b>
<b>Condition:</b> The actual physical and technical state of the asset.
<b>Capacity:</b> The ability of the asset to accommodate the First Nations children, families, and communities served for protection and/or prevention purposes.
<b>Function:</b> The ability of the asset to meet the needs of protection and/ prevention services.
<b>Cultural:</b> The ability of the asset to respect and meet cultural norms and traditions of First Nations served.

11) Data and performance:

- a. How does your community make programming decisions?
- b. How does your community determine what programming works?
- c. Does your First Nation capture its own information on the well-being of children and families in community, e.g., health, languages spoken, community engagement, and participation in cultural activities, etc.?

12) Other considerations:

- a. Challenges/obstacles faced or overcome by your community.
- b. Wise practices, programs, services to share.

## QUESTIONNAIRE FOR FIRST NATIONS NOT SERVED BY A FNCFS AGENCY

You are invited to complete this questionnaire on behalf of your First Nation. The information and practices you share will help to identify needs and estimate the costs to support the design and delivery of child and family services in First Nations not served by a First Nations child and family services (FNCFS) agency.

Your participation in this questionnaire is voluntary. If at any time you wish to withdraw your participation, contact [helaina.gaspard@ifsd.ca](mailto:helaina.gaspard@ifsd.ca) and your data will be destroyed.

### Definitions

**Child and family services:** programs, resources, tools or supports that support the healthy social development of children and families, with a focus on building resiliency.

**Prevention services:** programs, resources, tools, or supports that aim to limit exposure or re-exposure to the child protection system.

**Protection services:** services to promote child safety, often by removing the child and placing them in care.

**Child in care:** a child of the First Nation that is in protective services, whether they are in care in the First Nation or outside of the community.

**Fiscal year 2021–22:** the period from April 1, 2021 to March 31, 2022.

**First Nations-led secretariat:** proposed national organization with regional connections to support data analysis and programming for First Nations by First Nations.

**Post-majority supports:** programs and services for youth ageing out of the care system.

**Customary care and kinship adoptions:** placement and/or adoption of children in care with family members.

**Full-time equivalent (FTE):** the number of employees that work a full-time work schedule.

**Part-time equivalent (PTE):** the number of employees that work less than a full-time work schedule.

First Nation:  Province or territory:

Total population (include all persons residing on First Nation territory):

Geographic zone:

Contact name:

E-mail:  Phone:

## Existing programs and services provided by your First Nation

1. Does your First Nation offer child and family and/or prevention programs and services?

Yes  No

a. If **yes**, select all that apply:

Child and family services

Prevention services

Other (please specify):

2. Select the programs and services offered from the list below.

Family violence prevention

Healthy child development

Maternal-child health and development

After school programming and supports

Poverty alleviation

Family preservation

Parenting supports and resources

Healthy eating

Healthy active lifestyle

Land-based programming for children, youth, and families

Safe homes for transition

Group homes for youth

Community housing or transition housing

Respite services

Mental health services

Early learning and childhood development

Special needs services

None

Other (please describe):

3. Do you offer post-majority care programs and/or services?

Yes  No

a. If **yes**, tell us about your programs and/or services.

b. Are there any changes or additions you would like to make to this program/service area?

4. Do you have policies or practices in place for customary adoption and kinship care?

Yes  No

a. If **yes**, tell us about your policies or practices.

b. Are there any changes or additions you would like to make to this program/service area?

5. Would you like to share examples of initiatives, programs, or tools developed or used in your First Nation to support children and families?

6. Are children from your First Nation in care (protection services)?

Yes  No

a. If **yes**, how many children are in care?

## Administration and staffing

7. Who is responsible for coordinating your programs and/or services? Select all that apply.

- Prevention services office or coordinator
- Child and family services office or coordinator
- Health services office or coordinator
- Elementary school administration
- Other (please specify):



8. How many full-time equivalent staff do you have to deliver services?

a. What are their titles?

9. How many part-time equivalent staff do you have to deliver services?

a. What are their titles?

10. Do you have any difficulty attracting qualified staff?

Yes  No

a. If **yes**, what are some reasons why?

11. Do you have any difficulty retaining qualified staff?

Yes  No

a. If **yes**, what are some reasons why?

12. Do you collaborate with other offices or services in the First Nation to deliver programs and services?

Yes  No

a. If **yes**, select all that apply:

- Prevention services office or coordinator
- Child and family services office or coordinator
- Health services office or coordinator
- Elementary school administration
- Other (please specify):

## Financial information

13. Do you have existing resources for programming design and delivery, data analysis, and operational supports?

Yes  No

a. If **yes**, please describe those sources of support, e.g., regional organization, community of practice, etc.

14. How could a national First Nations-led secretariat for First Nations child and family services support your First Nation? Select all that apply.

Program design and delivery

Data collection

Data analysis

Operational supports

Other (please specify):

15. What is your annual budget for the services described in question #2 (fiscal year 2021-22)?

\$

16. What is/are the sources of your budget? Select all that apply.

Band

Treaty First Nation  Own source revenue

Federal government

Provincial government

Other (please describe):

17. What is the source of most of your funding? Select one.

Band

Federal government

Provincial government

Own-source revenues

Other (please describe):

## Capital assets and technology

18. Where do you host your programming? Select all that apply.

- First Nation's community centre
- First Nation's gymnasium
- First Nation's school
- First Nation's health centre
- First Nation's social services centre
- Other (please describe):

19. Do you have the space you need to deliver your programming?

- Yes    No

a. If **no**, what programming space is needed?

20. Do your programming spaces meet applicable building codes (e.g., technical specifications or regulations that help to ensure building safety and accessibility)?

- Yes    No

21. Could your programming space be improved?

- Yes    No

a. If **yes**, how could the programming space be improved?

22. Do you have the office space you need for your staff?

- Yes    No

a. If **no**, what office space is needed?

23. Does your office space meet applicable building codes (e.g., technical specifications or regulations that help to ensure building safety and accessibility)?

- Yes    No

24. Could your office space be improved?

- Yes  No

a. If **yes**, how could your office space be improved?

25. Do you have the necessary technology to do your work?

- Yes  No

a. If **no**, what technologies do you require?

- Faster internet connection  
 Updated computer  
 Additional software  
 Tablet  
 Mobile phone  
 Data collection tools  
 Data analysis tools  
 Other (please specify):

26. Do you have assets (other than technology)? (An item is considered an asset when it is intended for use on a continued basis and is typically repaired, not replaced when damaged, and typically, has a useful life of more than one year).

- Yes  No

a. If **no**, what assets do you need? Select all that apply.

- Vehicles  
 Cultural and language programming tools  
 Canoes, kayaks, paddle boards  
 Other (please specify):

## Desired services

27. Does your First Nation have the child and family services and prevention services they want and need?

Yes  No

a. If **no**, what is missing or what would you like to see included? Please specify.

28. Are there programs or services you would like to offer but cannot?

Yes  No

a. If **yes**, what are the limitations? Select all that apply.

Funding

Staff

Programming space or tools

Limited time for planning

Funding or authority rests with another department or entity in the First Nation, e.g., education, health

Program design

Program implementation/delivery

Program evaluation

Other (please describe):

29. If you were to deliver your desired set of services for your First Nation, what would you estimate it would cost for one year? Consider for instance, the costs of personnel (salaries and benefits), program development, capital expenditures, etc. You can think of this as an estimated total budget for one fiscal year.

\$

## Community well-being

30. How would you express your First Nation's vision of holistic well-being?

31. Does your First Nation capture its own information on the well-being of children and families in community?

Yes  No

a. If **yes**, what information is captured?

- Number of children in care
- Rates of family reunification
- Number of children accessing services
- Number of families accessing services
- Outcomes for children in care
- Outcomes for children accessing services
- Outcomes for families accessing services
- Community health outcomes
- Family violence incidents
- Languages spoken in your First Nation
- Community engagement in community-based activities
- Community participation in cultural activities
- Other (please specify):

32. What data would be required to help advance your mandate?

33. Do you have the capacity to collect data necessary for:

Program design:  Yes  No

Budgeting:  Yes  No

Assessing well-being:  Yes  No

Long-term planning:  Yes  No

a. If you answered **no**, what are your capacity challenges or needs?

Funding

Technical expertise to analyze data

Data governance policy

OCAP policies

Other (please specify):

34. Are there other considerations about child and family services and/or prevention that you wish to share with IFSD?

35. May IFSD contact you to follow-up on this questionnaire?

Yes  No

**Thank you for your participation**

Completed questionnaires can be sent to **helaina.gaspard@ifsd.ca**

## **Appendix C – Regional workshop summaries**





May 19, 2023

Dear collaborators,

We write to you humbly to share the findings from our collaborative efforts.

IFSD recognizes the contributions of over 75 First Nations not affiliated to a First Nations child and family services (FNCFS) agency that shared their experiences and defined needs in child and family services from May 2022 to November 2022. National participation in the questionnaire (with the population adjustment for Quebec) was 46% (n=160).

We recognize that the data analysis process took significantly longer than initially planned. The varied nature of the data made analysis a much slower process than usual. We are pleased to be able to share our findings with you now.

First Nations not affiliated to a FNCFS agency have significantly different starting points and needs that should be reflected in future funding approaches. The table below summarizes IFSD’s mandate and responses from engagement with First Nations and their representatives in this work (this includes both questionnaires and workshop engagement).

*IFSD’s Mandate and Responses to Questions*

Mandate	Responses
Assess needs in First Nations not served by a First Nations child and family services (FNCFS) agency for the delivery of prevention and other child and family related services.	<ul style="list-style-type: none"> <li>• Diverse and inconsistent starting points among First Nations</li> <li>• A clearly defined starting point and plan are critical to mapping a way forward</li> <li>• There is no baseline understanding of the resources, capacities, and needs of First Nations not affiliated to a FNCFS agency</li> </ul>
Quantify a structure and a range of costed approaches for the delivery of child and family services focused activities on-reserve.	<ul style="list-style-type: none"> <li>• Questionnaire data and collaborative efforts with First Nations yielded highly varied data</li> <li>• Defining one approach to cost analysis was not possible given the range of starting points, e.g., current services offered, no services offered, remote, rural, etc.</li> <li>• Lack of clarity around current budgets may suggest that those delivering services do not control regular funding (it is also possible that participants did not want to share the information)</li> </ul>
Consider capital, programming, and operational	<ul style="list-style-type: none"> <li>• Gaps reported in technology (e.g., hardware and internet connectivity)</li> </ul>

requirements (e.g., staff, IT, etc.) in the analysis	<ul style="list-style-type: none"><li>• Significant gaps reported for staff and programming spaces</li><li>• Challenges attracting and retaining staff</li><li>• Capacity gaps for data collection and evidence generation</li></ul>
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IFSD has prepared a national summary of findings, as well as regional portraits. These summaries are appended to the transmittal email.

*IFSD's Next Steps*

- 1) Build examples of funding models (with consideration of different starting points) based on findings;
- 2) Request regional review meetings of the models to ensure they capture different needs;
- 3) Prepare a final report for December 2023 with a summary of findings.

Should a presentation and discussion of findings be desired, kindly contact Tianna Tischbein – [tianna.tischbein@ifsd.ca](mailto:tianna.tischbein@ifsd.ca) – by June 9, 2023, to organize a date/time for a regional session.

We are grateful for your time and effort spent collaborating with us to understand the opportunities and challenges before us. We look forward continuing this important work with you.

Sincerely,

Helaina Gaspard, Ph.D.  
Director, Governance & Institutions

## **Workshop Summary – First Nations not-affiliated with a FNCFS agency**

**Date: May 9, 2022**

**Location: Vancouver, British Columbia**

**Participants: 15 participants representing 10 First Nations**

On May 9, 2022, IFSD hosted a workshop with First Nations not affiliated to a First Nations child and Family Services (FNCFS) agency in Vancouver, British Columbia.

During the one-day session, IFSD heard concerns that regional forums were not being adequately consulted on reform, especially, given the short timelines then planned to implement the changes. Participants voiced concerns about the speed of change, and the time needed to develop capacity within their communities to manage changes. In addition, questions, and concerns about the alignment of funding to reform were raised.

There were three principal themes that emerged from the discussion that followed the Chatham House Rule:

- different starting points and contexts among communities;
- service delivery and funding; and,
- approaches to defining and acting to foster well-being.

### ***Different starting points and contexts among communities***

The points of departure among First Nations vary, and there are important differences in scale, capacity, and operational sophistication among them. Participants highlighted aspects of a community that should be considered when planning for delivery of child and family services:

- location of the services (e.g., in-community or off-reserve; rural/urban),
- size of the community;
- remoteness; and,
- stakeholders involved.

Remote communities, in particular, face unique challenges. Accessing outside supports, services or funding for service delivery can be difficult, especially if the community is also small. Minimal infrastructure and a lack of housing can present added barriers to development in the community.

While additional resources are welcome, increased funding will not immediately address capacity issues. Participants highlighted an issue with distributing funding based on population size. Smaller nations still require funds to deliver services, but their funding is limited by population and is not connected to need. There is a fixed cost to delivering programs and services and not all First Nations have that foundation.

### ***Service delivery and funding issues***

Participants highlighted a disconnect between existing funding levels and needs within the community. This problem is compounded by communication issues between community-based social workers and MCFD staff. Participants highlighted that MCFD can overstep, and take over the work of social workers in First Nations communities. MCFD staff do not use culturally appropriate language and do not consider the diversity of traumas that may have been experienced by the families they are interacting with. Participants discussed their desire to transition to culturally-based programs that employ community members who understand local culture, trauma, traditions, and needs.

Participants identified several measures that could enhance child and family services:

- increased training for employees;
- building internal (First Nation) capacity;
- increased flexibility for spending decisions;
- associating with a delegated agency; and,
- partnering with the Ministry (for larger communities)

Participants also highlighted issues with children living off-reserve and their lack of connection to the community. There is a dichotomy between what can be done for children on-reserve versus off-reserve.

Participants discussed the importance of prevention services which can limit the need for intervention later. Isolated communities reported that they “fall through the cracks” and do not receive the resources required to deliver prevention.

Participants suggested adopting a holistic, lifestyle approach could be helpful for prevention. This would involve the entire community, not just one child or family.

Participants discussed challenges with shifting the approach of all services and programs to align with the goal of prevention. Staff have to be creative when providing services as they must follow many rules. After funding is received, flexibility in spending is minimal. For instance, respite homes have been helpful in delivering prevention services and avoiding the unnecessary re-location of children.

### ***Approaches to well-being***

Participants highlighted various visions of well-being, including:

- managing their own child and family matters;
- looking inward rather than outward to re-build communities;
- greater collaboration within First Nation agencies and departments;
- housing is adequate and allows community members a place to thrive;
- to be united, proud, and confident in our culture and taking care of our land and resources; and,
- being healthy, self-reliant, and prospering.

Participants emphasized the importance of a holistic, community-based approach to well-being. Participants discussed the idea of “wrapping our ways around the child.” This could involve a circle of a care team working with multiple parties to create a cultural plan for the child. It could also involve collaborating with other organizations and First Nations.

Child and family services should be understood horizontally. Participants discussed addressing the root causes of issues in the community such as housing, water, and food insecurity. Approaches to addressing these issues will vary based on the community’s unique context.

Participants also emphasized decolonization and healing from intergenerational trauma.

Participants suggested several elements as critical to this process:

- reconnecting youth with culture through elders, language, and laws;
- building partnerships with chief and council;
- hiring community workers;
- increasing training for staff; and,
- building unity within the nation.

## **Workshop Summary – First Nations not-affiliated with a FNCFS agency**

**Date: May 10, 2022**

**Location: Vancouver, British Columbia**

**Participants: 18 participants representing 12 First Nations**

On May 10, 2022, IFSD hosted a workshop with First Nations not affiliated to a First Nations child and Family Services (FNCFS) agency in Vancouver, British Columbia.

During the one-day session, that followed the Chatham House Rule, participants focused their discussion on four themes:

- Service types offered to children and families and the approach to service delivery;
- Issues or challenges in delivering these services;
- Defining well-being in different communities; and,
- Requirements/needs to meet the vision of well-being.

**Participants shared their uncertainty about reform.** They were clear that consideration should be given to existing models and how they have failed First Nations. For reform to have meaning, it must recognize and meet the diverse needs of First Nations.

**Reform will take time, especially to recruit needed staff.** Increased funding will be helpful, but is not an immediate solution. It is unclear how new funding and new laws will change the current system. Participants suggested the need for more study (including support from lawyers, communications experts, and policy analysts), and a working group to evaluate the process on an ongoing basis.

Developing capacity, and implementing reform, will take time. **Change is happening quickly, but this is just the beginning of a long journey.** Participants suggested that first Nations should meet to provide technical support and advice to each other.

### ***Service delivery***

Developing and delivering services tailored to the unique needs of a community is a critical and time-intensive exercise. A community that can design and deliver its own services looks after itself, without the involvement of outsiders. Participants highlighted that holistic, wrap-around services work well for their communities. This approach to service delivery considers the person and their relations to their family, community, and environment. Working from a prevention mindset is important to supporting communities in their healing journeys.

### ***Issues affecting service delivery***

Challenges in communities are horizontal and interconnected. Participants discussed how a problem in one area can have negative effects on another, because people and communities are not siloed. Their existence, just like their well-being, is holistic.

When it comes to the design and delivery of child and family services, participants highlighted several issues that affect service delivery:

- Housing – lack of adequate housing is common in communities
- Infrastructure – there is a need for more programming and operations space
- Addictions – greater space and funding is needed to treat addictions
- Colonization – the inter-generational impacts of colonization influence service delivery approaches
- Trauma – communities have unique traumas that cannot be treated uniformly
- Capacity – recruitment and retainment of staff is challenging

### ***Well-being***

There was general agreement that well-being should be understood holistically, and that its details would differ among First Nations. During the discussion, the following components of an understanding of well-being were identified:

- Well-being should be understood holistically
- Families should be treated together, instead of separating children and parents
- Indigenous languages and values should be prioritized
- Healing needs to occur for reform to be a reality, especially for those who attended residential schools
- Healing means going back to the land, culture, and learning things like ancestors did
- Services should be culturally appropriate
- Urban centres are culturally integrated with communities

### ***What is needed***

Participants suggested several approaches and needed steps to move toward their visions of well-being:

- Implementing a specific department for child well-being/child and family services
- Increasing collaboration between departments within First Nations
- Integrating levels of governance (i.e., including elders, chief and council, and community)
- Increasing transparency in decision-making
- Exercising right to develop policies unique to the community
- Increasing access to cultural activities
- Providing adequate housing
- Prevention is prioritized over intervention

## **Workshop Summary – First Nations not-affiliated with a FNCFS agency**

**Date: May 12, 2022**

**Location: Prince George, BC**

**Participants: 9 Participants representing 6 First Nations**

On May 12, 2022, IFSD participated in a meeting of First Nations not-affiliated with a FNCFS agency. Participant discussion centred on four areas:

- what and how services are offered for children and families;
- issues affecting service delivery; and,
- moving forward with reform.

### ***Service delivery***

Embracing cultural practices has been a success. Implementing culturally appropriate programs like a women's group and a parenting program, has been helpful. Some participants provide ceremonies for each child at birth, which helps support the child's identity and provide a link to their family.

The MCFD approach is not culturally sensitive and has been harmful. Children are not receiving culturally appropriate care with MCFD staff. First Nations staff are forced to manage MCFD workers to ensure children are receiving appropriate care.

### ***Issues affecting service delivery***

Challenges in the community are horizontal and linked, and participants discussed how a problem in one area can have negative effects on another. Participants highlighted several issues that affect service delivery:

- Loss of culture – children are disconnected from their traditions and culture
- Intergenerational trauma – government practices (e.g., residential schools, sixties scoop) have been extremely harmful. Transparency of trauma has been helpful for community members to reflect and share experiences
- Lack of support for family systems – re-establishing the matriarchal system of support will take time. Teaching parents traditional skills has been helpful, especially through women's groups
- Addictions – support services are needed. Community members want help, but don't know how to access supports. MCFD is not supporting the process of breaking cycles
- Lack of services for children aging out of care – individuals cannot access services or housing on-reserve
- Lack of funding for cultural activities – some funding is accessible through grants, but more is needed to sustain these services over a longer time-period, especially given staffing issues
- Capacity – recruiting and retaining qualified staff is an ongoing issue



## ***Reform***

Cycles of trauma need to be broken to avoid perpetuating the colonial system. Bringing back customs and traditions, especially through teaching children the languages, about territories, and beliefs is important. Indigenous customs, beliefs, and laws should supersede any colonial system of policies, laws, and procedures. This is a challenge as residential schools destroyed many cultural traditions and customs. One participant stated, “now we are reversing assimilation, colonization, and intergenerational trauma from residential schools.”

New legislation has been helpful, but there are still problems. MCFD is now forced to follow protocols, although some of the ministry workers are still harmful. Cultural practices can help break this cycle, but collaboration among stakeholders is needed to make this happen. Departments should work together as people are navigating multiple systems with similar issues. Community members should be involved in developing the approach service delivery, so that it reflects the needs of the community.

High turnover at MCFD needs to be addressed. The turnover creates more work for First Nations staff to teach them appropriate protocols. It would be helpful to have a committee of elders and other community members to sit on an advisory board for service delivery. Gradually service delivery should be run completely through the First Nation. To get to this stage, communities need greater resources, capacity, and support.

## **Workshop Summary – First Nations not-affiliated with a FNCFS agency**

**Date: May 16, 2022**

**Location: Whitehorse, YT**

**Participants: 19 participants representing 11 First Nations**

Child welfare challenges do not stem from a single issue, but multiple issues that transcend generations, e.g., poverty, unemployment, access to health and mental health services, parenting skills, food security, housing shortages, etc. Addressing the root causes of challenges is necessary for long-term change. A culturally informed whole of community approach – children, families, elders, youth – is required to support grieving and healing.

***“The legacy of systemic issues is being transferred throughout generations.”***

Changing the approach to CFS will take time and resources. CFS crosses generations with root causes in poverty, housing, food security, trauma, violence, etc. Prevention supports and programming should address these core issues.

To date, CFS has been a government-led activity. This means that everything from front-line supports, services, and staff, to ‘back office’ functions in finance and governance will need to be built, transitioned, and improved over time. Attempting to design and plan in an uncertain environment is a challenge. The opportunity for change is encouraging and positive but requires clarity to maximize benefit for First Nations.

On May 16, 2022, IFSD participated in a meeting of First Nations not-affiliated with a First Nations child and family services (FNCFS) agency.

Four themes emerged from the discussion that followed the Chatham House Rule:

- service delivery in a changing environment;
- issues in delivering these services, notably, differences between Whitehorse and communities;
- expressing and developing well-being in communities.

### ***Service delivery***

CHRT money has helped build capacity through hiring support workers, service workers, and addiction counsellors. Prevention services are now being considered, as well as AIS for data collection, and a peace management system.

Service delivery needs to be culturally appropriate. To build capacity, it has been helpful to have new staff have community engagements with Elders to support training and self-care. Training is important, especially capturing the culture and language, and building a way to transfer knowledge from Elders to community members.

Building an approach to prevention is important, but it is difficult given staff capacity issues. There's pressure from the community, and from leadership, to deliver prevention services, but staff do not have the time or resources. Crisis response continues to take precedence over planning prevention services.

Funding mandated by the Canadian Human Rights Tribunal (CHRT) rulings at actuals has been a source of change. It has supported internal capacity building, the hiring of staff, and program delivery. The challenge, however, is what happens beyond year 5, i.e., after the prevention funding is set to end. Sustainability and consistency of funding is unclear and as one participating expressed, it's like trying to work "with imaginary numbers."

### ***Issues affecting service delivery***

There is a significant gap in the availability and accessibility of services in Whitehorse and other places outside of the city. This includes accessing health and mental health services, post-care supports, transition support for youth, etc. Transportation to even access Whitehorse can be limited, compounding these challenges.

In communities, issues are horizontal and interconnected. Participants discussed how a problem in one area can negatively impact another. There were several issues that were raised as issues affecting service delivery:

- Staff are overwhelmed, overworked, and burnt out
- There is a lack of infrastructure for community events, daycare, and cultural activities
- It is difficult to recruit and retain staff given low wages and housing issues. Participants want to hire more local community members
- Income-based and employment-based poverty are issues. Social assistance for families does not match inflation
- Data collection is an issue. Communities operate on different systems, some of which are inefficient
- Transportation can be a challenge, especially outside of Whitehorse
- Police involvement after-hours can be harmful
- Planning operations through Jordan's Principle can be contentious and may only alleviate short term issues.

### ***Expressing and developing well-being***

When it comes to expressing and executing a vision of well-being, participants expressed a mix of operational and capital requirements to support changes in their communities:

- a bigger centre that includes domestic violence support, playrooms for kids, crafts, and rooms for families
- programs that teach parenting skills

- moving out of crisis mode
- community events like meals at the longhouse to connect
- space for holistic health and wellness
- a casual space for multiple generations to interact

There are different points of departure, with variability in the capacity, program/service delivery, and infrastructure of the participating First Nations.

Infrastructure for program delivery is limited. There are needs for space and tools for programs/services, as well as for staff offices/work areas. Reliable Internet connectivity (with adequate speed) is a challenge for many First Nations.

Capacity for service delivery can be limited. There are shortages of qualified staff and training community members takes time and resources. Attracting and retaining staff in communities can be difficult with housing shortages and low wages. Those working in child and family services often burn-out, being overwhelmed and overworked.

There was an openness expressed for data collection, but available resources and capacity among participants varied. Some were actively collecting and using their own data, while others were dependent on paper records.

## Workshop Summary

### First Nations not-affiliated with a First Nations child and family services (FNCFS) agency

**Date: May 18, 2022**

**Location: Edmonton, Alberta**

**Participants: 19 participants representing 5 First Nations**

On May 18, 2022, IFSD participated in a meeting of Alberta First Nations not-affiliated to a FNCFS agency.

During the discussion, participants discussed reform in child and family services. Reform was happening quickly, from the perspective of participants, with limited clarity on what shape changes would take. With the many moving parts, there were concerns about ‘missing out’ on new funding opportunities, as well as the sustainability of funding after the five-year commitment.

As participants shared their First Nations’ contexts, they emphasized the need for a baseline understanding of different starting points. Data collected by First Nations for First Nations would be support control of their own information and narrative. Analysis of the information could support funding requests and track changes in First Nations over time.

Reactions to reform through jurisdiction were mixed. When it comes to the *Act respecting First Nations, Inuit and Métis children, youth and families*, some participants expressed that a government cannot give another nation the right to make their own law, e.g., “Why is Canada trying to give us permission to watch our own kids when we already have our own laws?” There were concerns about undermining First Nations sovereignty and autonomy with the law. Additional challenges come from the province’s lack of recognition of sovereignty and action on reconciliation, even though it must follow the federal Act.

Four themes emerged in the discussion that followed the Chatham House Rule:

- what and how services are offered to children and families;
- issues/challenges in delivering these services;
- what well-being means to various communities and what is needed to achieve it.

### ***Service delivery***

The province can do a better job of collaborating with First Nations and acting in a way consistent with the principles of substantive equality and the best interests of the child. For instance, some participants suggested that a band designate should be the first point of contact for any protection-related concern of a First Nations child.

Children who are placed in foster homes off-reserve are not receiving culturally appropriate care. These children are not exposed adequately to their language, culture, and heritage. This can add significant downstream costs. When children are not taken care of, they are more likely to experience homelessness, addiction, and a lack of education.

Participants emphasized that prevention is just as important as intervention.

### ***Issues affecting service delivery***

Challenges in communities are horizontally linked, and participants discussed how a problem in one area can have negative effects on another.

Participants highlighted several issues that affect service delivery:

- Data gaps - there is minimal data availability and interpretation
- Parental supports - parents do not know what their rights are
- Aging out of care – lack of transitional supports
- Housing – often overcrowded or inadequate
- Kinship placements are not permitted
- Addictions – treatment and supports are needed
- Frontline workers are not included at the table to share their experiences

The service delivery challenges highlighted intersect with the province, especially, as they relate to the handling of protection concerns. As noted earlier, matters of data are issues of care and control for First Nations that merit closer attention in the context of child and family services.

### ***Well-being***

Participants emphasized several aspects of well-being during the discussions:

- Supports for addictions, mental health issues, parenting
- Providing wraparound services
- Support for social programs, infrastructure, and housing
- Support for expectant mothers
- Support to deal with intergenerational trauma
- Improved communication services
- Improved broadband services
- Widely available cultural activities
- Wellness centre for children

The emphasis on a whole-of-community approach was crucial to providing prevention services and rebuilding resiliency in First Nations. The different needs and starting

points of First Nations must be recognized, because they will each have their own approach to caring for children and families.

Participants highlighted the need for collaboration between stakeholders, including the creation of a working group. The working group would support the creation of a data system for service delivery and serve as a way to gather ideas and people on child and family services.

## **Workshop Summary – First Nations not-affiliated with a FNCFS agency**

**Date: June 1, 2022**

**Location: Ottawa, ON**

**Participants: 13 participants representing 9 First Nations**

On May June 1, 2022, IFSD hosted a meeting of First Nations not-affiliated to a First Nations child and family services (FNCFS) agency. Participants shared personal challenges and experiences with the child and family services system. The discussion that followed the Chatham House Rule focused on three themes:

- the need for a holistic approach to well-being;
- realities and challenges of service delivery;
- needs for improving service delivery.

### ***Well-being***

A holistic approach to well-being should be implemented, from the perspective of participants. The current funding approach is not conducive to holistic service delivery or analysis of outcomes. A holistic approach should include spiritual, cultural, mental, and physical aspects to well-being. It includes families that are healthy, strong, and culturally connected. Land-based healing and community care should be prioritized.

A holistic approach should promote unity among the regions and focus on what various communities have in common. Needs and starting points are diverse, but communities can still work together.

There needs to be action that follows discussions and roundtables.

### ***Service delivery***

Participants highlighted several issues that affect service delivery:

- Staff capacity – there is high turnover. Recruitment and retainment are issues;
- Increased training is needed, including cultural training;
- Funding is often too low and lacks flexibility;
- Decision-making through chief and council can be inefficient;
- Remoteness and isolation make it difficult to deliver services;
- Servicing families who live off-reserve is challenging, as funding is based on on-reserve population;
- Basic housing needs are not met;
- Food insecurity is common

There are a variety of interconnected issues impacting the design and delivery of child and family services. Often, existing services are not sufficient to meet needs. If First Nations leave their communities for support, they are often not culturally appropriate.

Canadian Human Rights Tribunal (CHRT) mandated funding has helped, but capacity needs to be built. Through CHRT funding, some programs and services have been expanded (e.g., a community house for emergencies, salary increases). However, there need to be people in



positions to leverage resources and delivery programs and services for children and families. Staff capacity needs to increase before being in a position to apply increased funding.

The current lack of staff capacity means that communities are falling behind on jurisdictional issues. It would be helpful to have access to resources to prepare for the development and application of new laws.

***What is needed***

Participants suggested several approaches and needed steps to move toward their visions of well-being:

- Increased collaboration and communication between the community and mainstream service providers
- Front-line workers need to be at the forefront of reform
- Qualitative outputs could better demonstrate what is happening – a mixed methods approach could be better when collecting and presenting data
- Increased collaboration between communities to learn from each other
- Increased cultural activities, including elders providing traditional teachings
- Increased support for addictions
- Building of a wellbeing centre with space for training and community involvement

## **Workshop Summary**

### **First Nations not-affiliated to a First Nations Child and Family Services (FNCFS) agency**

**Date: June 2, 2022**

**Location: Ottawa, ON**

**Participants: 10 participants representing 6 First Nations**

On June 2, 2022, IFSD hosted a meeting of First Nations not-affiliated to a FNCFS agency. The discussion centred on matters of practice and service delivery.

The discussion, that followed the Chatham House Rule, had three themes:

- realities of service delivery;
- issues impacting service delivery;
- considerations for a way forward.

#### ***Service delivery***

There is often a tension between communities and provincial child welfare works. Participants noted that services from the provincial ministry are not culturally appropriate. Parents are often bullied by child welfare workers from outside the community. The ministry does not investigate issues when reported by the community, perpetuating the cycles and challenges of children in care.

With the service delivery challenges, some participants noted areas of success. A youth council was established in a First Nation to support the development of young people. It has a positive impact as youth take part in the council, have their voices heard and learn to be effective leaders.

Other participants expressed success with a rehabilitation program and a respite home for emergency services. In both instances, the First Nation stepped in to fill a gap in a service area. Supporting community members in their rehabilitation journey and in times of crisis were highlighted to demonstrate the positive impact of programming for First Nations by First Nations.

#### ***Issues impacting service delivery***

First Nations are different. Their realities, opportunities, and challenges are reflective of their unique histories and contexts. When discussing challenges, participants highlighted their interconnectedness of issues in communities and the overall structure of service delivery (including funding):

- Capacity
  - Recruitment and retainment of staff are challenging due to low salaries
  - There is high turnover among staff

- New staff are not well-equipped and require training
- Communication
  - Government and First Nations are misaligned on goals, priorities, and approaches
  - Services are described and defined differently
- Ageing out
  - There is a lack of transitional supports for education, housing, and health
  - Financial assistance varies
- Funding
  - Is often inflexible and inadequate
  - Block funding would be preferable
- Community faces numerous other issues
  - Mental health, addictions, human trafficking, child abuse

### ***Considerations for a way forward***

Participants suggested several approaches and needed steps to move toward their visions of well-being:

- Using least-disruptive measures (e.g., prevention) to support families
- Recognizing intergenerational trauma
- Breaking the cycle of poverty and addictions
  - Women and families should be empowered to make decisions
- Staff should work on cases they are related to
  - “We have a vested interest, not a conflict of interest.”
- Participants expressed concern about reform. New laws are not followed by the ministry, and investigations rarely occur

Participants emphasized several aspects of well-being in the discussions that extend beyond child and family services:

- Adequate housing
- Language instruction
- Teaching of cultural heritage
- Front-line workers are taking care of themselves
- People are connected to the land and water
- Wellness plans are developed and implemented for children
- Community healing from intergenerational trauma through elders and tradition

Reform is happening quickly, but communities need time to build capacity and approaches. Communities need to be engaged to ensure that their voices are being heard.

## **Workshop Summary**

### **First Nations not-affiliated to a First Nations child and family services (FNCFS) agency**

**Date: June 13, 2022**

**Location: Virtual (Quebec)**

**Participants: 11 participants representing 8 First Nations**

On June 13, 2022, IFSD participated in a meeting of First Nations not-affiliated to a First Nations child and family services (FNCFS) agency. Participant discussion centred on four areas:

- accessing services;
- building a culturally-informed vision of well-being;
- applying resources to solve problems

#### ***Accessing services***

First Nations in Quebec use a variety of Indigenous languages, as well as French and English. Participants explained that many communities want access to services in Ontario because services in Quebec are less culturally sound, and often only available in French. Being able to access needed services in a language that you understand is important in an area as sensitive as child and family services.

Beyond language of service, there are challenges in communities that influence the design and delivery of child and family services. These challenges are often horizontal in nature, impacting communities across service areas. Mental health, addictions, chronic disease, and housing, were highlighted as core issues that not only influence child and family services but communities more generally.

#### ***Well-being***

Participants emphasized that revitalization of culture and languages are critical to well-being.

Participants suggested several approaches and needed steps to move toward their visions of well-being:

- Increased training and capacity building in communities
- Offering of land-based cultural activities
- Increased investment in infrastructure (i.e., there is a need for more community spaces)
- Increased availability of treatment options for addictions and mental health
- Increased investment in housing

The discussion highlighted that children and families must be understood within the context of their communities. This means addressing root causes of challenges, e.g., housing, access to services, etc., in order to support the well-being of children and families.

Leading with community-based capacity, culture, and approaches to fostering resiliency, participants defined considerations for well-being.

***Applying resources to solve problems***

Participants indicated that funding increases are welcome but remain uncertain about how long it will last and how funding amounts will be defined. Often, funding is limited or specific. For example, a community cannot allocate its funding for a community event space (e.g., skate park, basketball court) because this counts as infrastructure. This type of spending is needed as it gives youth something to do. Fixed funding limits the ability of the community to address needs as they arise.

It is unclear how new funding and reform will work over the long-term. Capacity will take time to develop, even with increased funding. Better communication among First Nations and with the federal government can help increase the availability of information and build capacity.

## **Appendix D – Summary of the November 2023 national gathering**

## **First Nations not affiliated to a First Nations child and family services (FNCFS) agency *Workshop Summary: Setting next steps together***

*The Institute of Fiscal Studies and Democracy (IFSD) is pleased to provide you with an update for the months of November and December on its research to support reform of child and family services in First Nations (FNCFS).*

### **Context**

The Institute of Fiscal Studies and Democracy (IFSD) is continuing its work with the Assembly of First Nations (AFN), the Caring Society (Dr. Cindy Blackstock), and the National Advisory Committee (NAC) to support the long-term reform of the FNCFS program.

Of the First Nations population on-reserve 17% is not affiliated to an FNCFS agency, 3% of the population on-reserve has passed their own law and is exercising jurisdiction, and 80% are served by an FNCFS agency.<sup>1</sup>

In the last five years, there has been significant focus on FNCFS agencies and more recently, First Nations exercising or contemplating jurisdiction. There is, however, limited understanding of CFS-related needs and activities in First Nations not affiliated to an FNCFS agency.

To help to fill this gap, IFSD was mandated to deliver a needs assessment and cost analysis of a range of approaches to designing and delivering CFS among First Nations not affiliated to an FNCFS agency.

This work has been undertaken with the invaluable contributions of First Nations. IFSD extends its gratitude to First Nations which, in the last year and a half, through a questionnaire (48% national participation), 9 regional gatherings (with 70 First Nations represented by 125 participants), and several case study collaborators, have helped to define different starting points, identify successes, challenges, and needs.

What we learned, working together through the questionnaire, case studies, and regional gatherings:

There is significant operational, financial, and organizational variability in how First Nations not affiliated to an FNCFS agency deliver CFS and related programming. While most First Nations currently offer some child and family and/or related services, the current mix of services offered does not meet the needs of these communities. There exist multiple paths forward in terms of approaches to funding and approaches to service delivery.

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<sup>1</sup> Note: There is a population of 103,929 First Nations on-reserve currently served by an FNCFS agency and not affiliated to an FNCFS agency that have declared their intent to exercise jurisdiction or that are engaged in the coordination agreement process.

Before drafting its final report, IFSD gathered with First Nations not affiliated to an FNCFS agency on November 2, 2023, in Ottawa.

The gathering was an opportunity to confirm the context and experiences of First Nations not affiliated to an FNCFS agency were captured appropriately; to define the range of options and tools for supporting the design and delivery of CFS; and to capture anticipated challenges moving forward.

The working session was attended by over 65 First Nations (50% of First Nations excluding Northwest Territories<sup>2</sup>, those without land bases/populations on landbases, and ten First Nations in Quebec (under modern treaty, most of which are served by the Cree Board of Health and Social Services)), who gathered in person or joined virtually via Zoom. The significant participation rate was representative of different geographies, regions, approaches to service delivery and populations sizes.

Dr. Cindy Blackstock delivered the keynote address before participants engaged and deliberated in groups on various themes and questions.

Learnings from Dr. Blackstock's address:

Among many important messages, there were three principal takeaways:

- 1) Supporting children and families means addressing the key drivers of child maltreatment, e.g., poverty, poor housing, addictions, etc.
- 2) Prevention and protection services are linked and should be coordinated to meet the needs of families.
- 3) Prevention activities in child and family services can be primary, secondary, or tertiary in nature. Secondary and tertiary prevention services are technical and intensive to support children and families in crisis or at high-risk. These services are different than primary prevention services which have lower barriers for access and can be passive in nature and accessed voluntarily (akin to public health campaigns). Given the complexity and human impact associated to providing these services, First Nations should consult their lawyers and insurers on liability for the provision of different types of prevention services.

Participants shared back their main takeaways from their discussions in plenary. The session followed the Chatham House Rule. A summary of the discussion is included below.

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<sup>2</sup> First Nations in the Northwest Territories are not covered by CHRT rulings on child and family services. First Nations in the territory have a different starting point than those in the provinces and Yukon.



IFSD is grateful to those who shared their time, knowledge, and dedication during the gathering. Your contributions, captured below, will inform cost analysis and recommendations for next steps.

### Summary of proceedings

First Nations not affiliated to an FNCFS agency comprise a diverse group that represents a variety of different contexts, starting points, and approaches to delivering CFS. The following summary captures takeaways from the plenary sharing session, organized thematically by questions proposed to participants.

*The work of CFS is sacred. The importance of working from the spirit guided by empathy and kindness was echoed throughout the discussion.*

To facilitate discussion, IFSD proposed five questions to participants:

- 1) Defining community context. What is impacting CFS?
- 2) What is our starting point for CFS, (i.e., staff currently employed, open positions), programming (i.e., current activities and services), structures (i.e., department, agency, etc.), etc.?
- 3) What tools do you have to fulfil your mandate? What tools do you need? Consider, for instance, program development, planning, assessing community needs, data gathering approaches and analysis, etc.
- 4) What are some challenges/considerations as you move forward?
- 5) What type of funding-related matters, e.g., amount, terms and conditions, etc., best support your First Nation's vision of CFS?

At the close of the discussion, **seven recommendations** were confirmed with the group:

- 1) Access to shared resources in CFS for strategic planning, programming, and staff supports are needed.
- 2) There must be a respect for the time and space needed to reflect, engage with, and support children and families. This does not happen quickly or easily.
- 3) Total membership (irrespective of residency) should be modelled in all cost analysis.
- 4) Remoteness should be considered in all cost analysis.
- 5) Funding must be clear, sustainable, and on-going. Block and multi-year approaches to funding should be explored.
- 6) Consider the different starting points for First Nations not affiliated to an FNCFS agency that will impact their transition to future/desired states.
- 7) A **call for another in-person** gathering to spend more time exchanging and sharing ideas over two full days.

The summary below is organized by question theme.

NOTE: One virtual participant raised their displeasure at the coordination of the November 2, 2023 gathering, and indicated that the questions asked to participants were irrelevant to their context. The participant indicated that their region was different and is not represented by the consensus of the majority in this summary.

### **Context impacting CFS**

There is motivation and hope with a drive to do more for children and families. While approaches and starting points differ across First Nations, there are three broad themes and issues that emerged that impact the design and delivery of CFS.

*Contextual factors* are influencing starting points, needs, and shaping how CFS is designed and delivered. The most commonly mentioned issues impacting CFS included housing and related infrastructure, poverty/deprivation, addictions, and intergenerational trauma and healing. Compounding these issues are limited, inadequate, or unavailable services near communities.

*Staffing challenges*, i.e., attracting and retaining staff was universally defined as an operating challenge. Finding staff takes time (especially challenging in rural and remote places), keeping them means competing with salaries and work environments that are often more competitive with the province. There is a desire to invest in community members who will live and work and contribute to their community. Training them, however, can be a multi-year exercise, especially for technical positions. Different types of skills and positions are needed to support CFS. There is a difference between support roles for which staff can be developed with basic training, and other more technical positions, e.g., for prevention services that require more technical training.

*Trust and governance* were highlighted as considerations that actively or tacitly influence efforts. In some First Nations, there are negative perceptions of CFS and trust has to be built. Other First Nations struggle with tensions between political leadership and CFS practitioners who may see needs and responses differently. There is also the overlay of provincial jurisdiction and for some, the exercise (or contemplation) of jurisdiction. These matters influence CFS operations and staff.

### **Starting point for CFS**

For many assembled, work in CFS is being undertaken in crisis management response mode. Staff are limited and often overworked. In some First Nations, trust is limited in CFS, in the province or related agencies and needs time to be developed. There are limited opportunities for planning because information about the First Nation's own children is limited and resources for access are constrained. An approach to data gathering, secure maintenance, and evidence generation are needed. Several participants emphasized the importance and need for genealogical supports and tools to connect children with their roots and history.

A whole of community approach that includes culture, language, and members throughout the life cycle (children, youth, elders, etc.), is desired by many to support planning and service delivery. *Money alone does not solve all problems. Without people and plans, you cannot execute no matter how much money you have.*

### **Tools available/needed**

There were ideas and promising practices to share among those assembled. When asked to define needed tools, participants agreed that supports and resources for programming, job profiles, and crucially, strategic planning, should be made accessible through a central repository. Some regions, e.g., British Columbia, Quebec, have active support organizations while others are seeking them out.

It was noted that the Kids Help Phone offers training for volunteers with expert supports. In addition, the [Mi'kmaq Maliseet Bachelor of Social Work](#) program at St. Thomas University was highlighted as a community-developed opportunity for training for social workers. For those seeking models to develop their own training, they may wish to review it.

Participants highlighted their First Nation as a source of inspiration, direction, and potential pool of talent. Building skills and capacity as many First Nations continue on their healing journeys will take time.

Concerns were raised by some about access to resources for capital (despite CHRT orders) and related processes, although some successes were noted too. Office and programming spaces remain in short supply in many First Nations.

### **Challenges/considerations moving forward**

"It's like we're being setup to fail."

"We're moving too quickly."

Participants shared the pressure and concerns of the current environment. They are being told to move quickly before money disappears. Creating constructive or sustainable change cannot happen without capacity, staff, and clear medium- or long-term plans.

This is a major concern. Resources have been allocated to end to discrimination and ensure it does reoccur. How are First Nations not affiliated to an FNCFS agency expected to execute in short time frames without the benefits of planning, time, people, and an existing baseline?

There is a clear call for a whole of community approach. This means recognizing and working to address existing gaps in First Nations, e.g., housing, deprivation, and in CFS, e.g., training their own social workers, developing support homes, etc.

Planning and development need to be built by the First Nation for the First Nation. Not all First Nations are starting from the same place, with the same capacities, or are seeking to deliver CFS in the same way. Sovereignty is about building evidence from the community's stories and experiences and charting a way forward together.

### **Funding matters**

Clear, consistent and reliable funding is necessary to meaningfully plan and support community, retain staff, and function normally as a service provider. The crisis mode management is in part attributable to "never knowing what next year will bring." Funding questions and concerns abound, e.g., what happens in year 6?

Funding inconsistency and unreliability contribute to staff turnover and an inability to plan. Resources for CFS are available now but do not cover root causes of need, e.g., deprivation.

A whole of community approach to CFS means considering the full membership of the First Nation, and ending a false differentiation between membership based on residency for service access.

IFSD extends its gratitude for the invaluable contributions made to this work by First Nations not affiliated to an FNCFS agency. Their willingness to share their time, knowledge, and experiences makes this work possible. Should you have any questions or comments, please do not hesitate to get in touch at [info@ifsd.ca](mailto:info@ifsd.ca).

In its next steps, IFSD will:

- 1) Produce national cost estimates, (i.e., estimates of total cost), based on the different funding approaches discussed;
- 2) Prepare case studies of First Nation-level models of service delivery (with consent from First Nations collaborators); and
- 3) Share considerations for the different funding approaches and cost estimates for consideration in December 2023.

**Appendix E – Independent staffing needs analysis, Engage First Management Consultants Inc.**

# FIRST NATIONS CHILD AND FAMILY SERVICES

## Workload Assessment And Estimate of Resource Requirement

**Final Report**

**December 10, 2023**



- Introduction 4
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## Table of Content

# Disclaimer

This report has been produced independently by EngageFirst Management Consultants for the Institute of Fiscal Studies and Democracy (IFSD), Ottawa. This report contains projections for future operations. We relied on data from publicly available sources to reflect the realities of First Nations Child and Family Services (FNCFS) programs and operations. While care has been taken to confirm the reasonableness of the assumptions and information that lead to the findings and conclusions, we did not perform any independent audit or verification. This report or any part thereof may not be reproduced without the express permission of IFSD.

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# Introduction



# Background

- Some First Nations (FN) in Canada are set to acquire full jurisdiction over their child and family services (CFS).
- EngageFirst Management Consultants was appointed by IFSD to conduct an independent estimation of the workload and staffing needs for providing Prevention and Post Majority Support Services (PMSS) in a representative group of FN communities.
- This report contains our findings based on an objective analysis of the available information and statistical modeling.
- The work leverages lessons from assessments undertaken for similar programs including a First Nation exercising jurisdiction.
- No direct data gathering was conducted for this analysis. Effort has been made to reflect reality, however the analysis and findings are for illustrative purposes.



# Objectives and Scope

- The objective of this engagement is to conduct an assessment of the workload and estimate the staffing needed to deliver CFS within three representative FN communities with no existing services.
- The following CFS programs were in scope:
  - Prevention and Family Enhancement (Prevention)
  - Post Majority Support Services (PMSS)
- Resources needed in the following roles are in scope:
  - Case Worker
  - Supervisor
  - Administrative Support

# Our Approach - Work Assessment Model<sup>©</sup>

- We applied a shortened version of our Work Assessment Methodology (WAM<sup>©</sup>) to assess the workload and to estimate the human resource requirements for three representative FN CFS operations.
- WAM<sup>©</sup> is a robust and reliable approach that applies statistical methods to estimate the total work and related human resource requirements (Full Time Equivalent positions) to achieve desirable outcomes for children and families.
- The model has been designed to reflect the realities of delivering CFS programs and services by and for FN communities with band affiliated children and families living on and off reserve.
- The models are for three population sizes representing small (~500), medium (~1200) and large (~5000) FN communities.
- The Prevention and PMSS programs are designed to provide wrap-around services, not including child protection, to band members who live on-reserve and off-reserve.
- The practice models for Prevention and PMSS programs were derived by studying similar programs in a provincial jurisdiction, consultation with an FNCFS organization, and by reviewing frameworks, guidelines and toolkits published by Indigenous Services Canada (ISC).
- The modeling assumptions and parameters are reflective of a specific CFS policy and practice model, human resource policies, and expectations of program success. The input parameters are representative, no direct data gathering was conducted with an FNCFS.



# Our Approach...

- The assumptions and parameters driving the resource estimates were designed to allow the FNCFS sufficient resources to deliver the desired level of services, while facilitating access to services for their community members.
- The estimates of staffing requirement support best practice execution of casework, implying sufficient time for performing casework as required by policy, including client facing work, record keeping, completing administrative duties, training, and meeting all other job expectations.
- The WAM<sup>®</sup> model uses estimates of time for casework, based on survey data for similar activities in a provincial CFS program and verified by an FNCFS organization. Where comparable data was not available we applied reasonable assumptions for the data.
- The final estimates of workload and human resource needs are based on a consensus among different approaches and through Monte Carlo simulation.
- The estimates of staffing are for front-line service delivery roles in the program, and are calculated as a range of estimates (low-med-high) for full time equivalent (FTE) positions.
- The estimates do not include staffing needs for management positions, outsourced services, or for the crisis line to support Prevention and PMSS.
- The estimates do not include the staffing needs for activities such as program design, training, certification, and other such activities that would be regarded as capacity building towards establishing a new program.

# FN Community Profile (illustrative)

	Small Community	Medium Community	Large Community
<b>Current Population</b>	500	1200	5500
<b>Services to Band Members Off-Reserve</b>	Yes	Yes	Yes
<b>% Pop. Under 24 yrs. age</b>	30%	55%	50%
<b>Area (sq.km)</b>	2	60	80

# Assumptions

- FN policies will facilitate children and families to access the services they need, when and where they need it.
- The need for services reflects the impact of removing barriers to access, and increased awareness among band members about the services available within their community.
- The CFS program will use a Generalist model for frontline roles, meaning the caseworker will perform all duties related to casework from intake to the final closure of the file, as well as work required with the community as a whole.
- We applied a case mix (low-medium-high complexity) weighted towards high complexity due to the higher occurrence of drug abuse, addiction, mental health and inter-generational trauma among Indigenous populations.
- A family receiving secondary or tertiary prevention services, as defined later in this report, or a youth/young adult receiving post majority services is expected to stay on a caseworkers caseload (that is, the file remains open and is being actively managed by caseworker) for the majority of a full year.
- Supervisors and administrative support staff will not carry caseload.

# Assumptions...

- The estimates are based on accepted practice in supervision ratio for child protection services similar to Alberta but adapted to reflect realities of prevention services, varying between 1:5 and 1:8. In practice the ratio depends on the nature of the program and specific expectations of the supervisor role.
- The estimates are based on generally accepted practice in administrative support ratio varying between 1:6 and 1:10 depending on the nature of the program and specific expectations of the role.
- Allowance has been made for time spent by every caseworker in non-casework activities such as general administration (email, meetings, supervision, data tracking), training, travel and other miscellaneous activities.
- Allowance has been made for statutory holidays, vacation entitlement, and contracted working hours.
- FNCFS will employ staff with varying degrees of competency and seniority, resulting in a range of employment related entitlements. The staffing estimates are based on the typical staff entitled to 15 days of statutory holidays, 16 days of earned vacation, and 10 days of sick leave.
- The normal working day comprises of net 7 working hours after allowance for lunch and two coffee breaks.
- The base case model (Scenario-1) compensates the staffing estimate for an annual vacancy rate of 5%. An alternate (Scenario-2) compensates for a higher vacancy rate as well as for lost efficiency due to any structural factors.



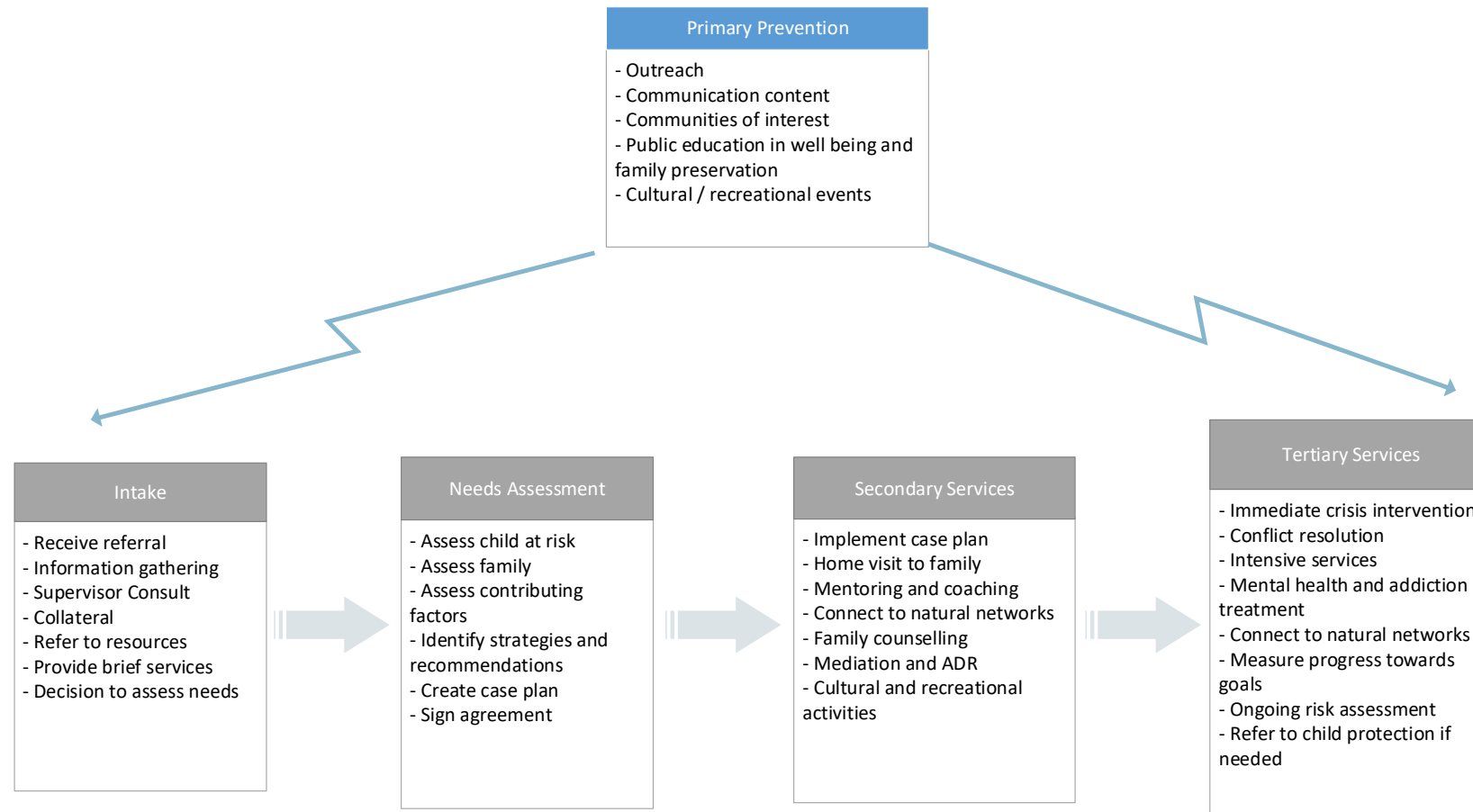
# Assumptions...

- Ongoing training and competency development of program delivery staff will be outsourced and are not included in the staffing estimate.
- Professional services for children, youth/young adults and families in need (e.g. addiction, family violence, psychological counselling, employment counselling) will be outsourced. CFS caseworkers have a service coordination role.



# Findings and Analysis

# Prevention and Family Enhancement - Practice Model



# Prevention and Family Enhancement

<b>Program Metrics</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Total number of FN families	185	353	1486
% of families at Intake <sup>1</sup>	75%	60%	50%
% of families receiving Secondary Services <sup>1</sup>	55%	45%	38%
% of families receiving Tertiary Services <sup>1</sup>	20%	15%	12%
% of families achieving desired outcome <sup>1</sup>	37%	30%	25%

Note 1: As percentage of total FN families. Based on subjective assumption of potential service delivery targets.

# Prevention and Family Enhancement – FTE Scenario-1

- Prevention and Family Enhancement includes services for strengthening family relations, parenting capacity, and preventing them from requiring any form of intervention.
- The estimate does not include staffing for a crisis line.
- The casework required under this program are:
  - Primary Prevention Services (community oriented)
  - Intake for Secondary and Tertiary services
  - Prevention Needs Assessment
  - Case Management for Secondary Services
  - Case Management for Tertiary services (intense)
- Supervision and Administrative Support are based on the average staffing estimate for the caseworker role.
- A caseload is a family receiving secondary or tertiary services. The benchmark is the recommended caseload ( $\pm 10\%$ ) for a Generalist caseworker while also performing intake, assessment and primary prevention work as required.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
<b>Case Worker<sup>1</sup></b>	4.7–4.9–5.1	6.8–7.0–7.4	23.6–24.6–25.7
<b>Supervision</b>	1.0	1.0	4.0
<b>Admin. Support</b>	1.0	1.0	4.0
<b>Total (FTE)</b>	<b>6.9</b>	<b>9.0</b>	<b>32.6</b>
<b>Caseload per FTE</b>	<b>21</b>	<b>22</b>	<b>23</b>

Note 1: The estimate shows a range from low to high forecast of Full Time Equivalent (FTE). The middle number is the most likely estimate of FTEs required for delivering the service.

# Prevention and Family Enhancement – FTE Scenario-1 by Type of Prevention

- This table shows the allocation of staffing to Primary, Secondary and Tertiary prevention services for the most likely estimate.
- Primary Prevention Services is community oriented work, for example public education and awareness raising through workshops and outreach, hosting cultural and recreational events.
- Secondary services is prevention and support services at the family level, including direct contact, referrals to supports and professionals, community and cultural connections, natural supports, respite and dispute resolution.
- Tertiary services include secondary prevention and support services of higher intensity for families having more acute needs.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
Primary	0.5	0.7	1.1
Secondary	3.0	4.3	16.0
Tertiary	1.4	2.0	7.5
<b>Total</b>	<b>4.9</b>	<b>7.0</b>	<b>24.6</b>
<b>Supervision</b>	1.0	1.0	4.0
<b>Admin. Support</b>	1.0	1.0	4.0
<b>Total (FTE)</b>	<b>6.9</b>	<b>9.0</b>	<b>32.6</b>

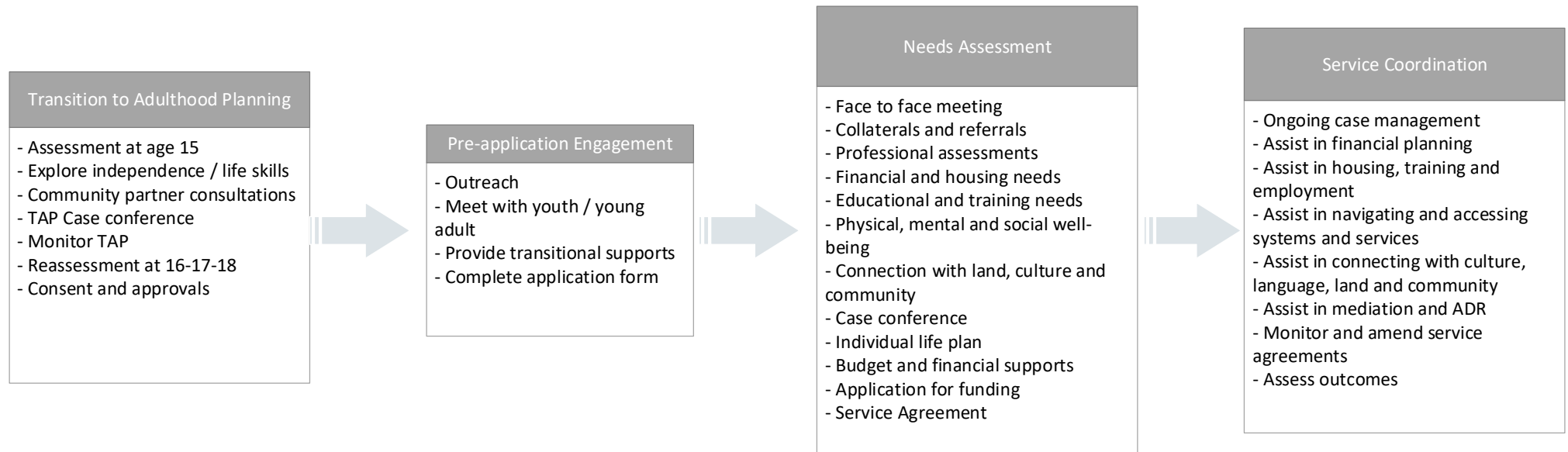
# Prevention and Family Enhancement – FTE Scenario-2

- The estimate of FTE in this scenario is based on a presumed vacancy level of 10% and an adjustment for lost efficiency due to structural factors.
- All other assumptions and scope of services remain the same as in Scenario-1.
- The estimates show a small increase in the FTE requirement and a corresponding decrease in the caseload per FTE.
- A caseload is a family receiving secondary or tertiary services. The benchmark is the recommended caseload ( $\pm 10\%$ ) for a Generalist caseworker while also performing intake, assessment and primary prevention work as required.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
<b>Case Worker<sup>1</sup></b>	5.0-5.2-5.4	7.3-7.6-7.9	25.3-26.3-27.4
<b>Supervision</b>	1.0	1.0	4.0
<b>Admin. Support</b>	1.0	1.0	4.0
<b>Total (FTE)</b>	<b>7.2</b>	<b>9.6</b>	<b>34.7</b>
<b>Caseload per FTE</b>	<b>20</b>	<b>22</b>	<b>22</b>

Note 1: The estimate shows a range from low to high forecast of Full Time Equivalent (FTE). The middle number is the most likely estimate of FTEs required for delivering the service.

# Post Majority Supports – Practice Model





# Post Majority Supports

<b>Program Metrics</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Total FN Population	500	1200	5500
Number of transitions to post majority age	6	14	61
Number of applications and eligibility review	25	60	260
Number of applications for funding	12	28	124
Number of youth/young adults receiving services	25	60	260

Note: Metrics are based on subjective assumption of potential service delivery targets.

# Post Majority Supports – FTE Scenario-1

- Post Majority Support Services are available to youth who will be leaving care, or young adults who have already left care to support their successful transition into adulthood.
- The casework required under this program are:
  - Transition to Adulthood Planning
  - Pre-Application Engagement
  - Initial Application Review
  - Needs Assessment
  - Application for Funding
  - Service Delivery Coordination
  - Outreach Services
- Supervision and Administrative Support are based on the average staffing estimate for the caseworker role.
- A caseload is a youth/young adult receiving post majority services. The benchmark is the recommended caseload ( $\pm 10\%$ ) for a Generalist caseworker while also performing intake, application processing, and outreach work as required.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
<b>Case Worker<sup>1</sup></b>	0.9–1.0–1.1	2.2–2.3 –2.4	9.5–9.9–10.3
<b>Supervision</b>	0.25	0.5	2.0
<b>Admin. Support</b>	0	0.5	2.0
<b>Total (FTE)</b>	<b>1.25</b>	<b>3.3</b>	<b>13.9</b>
<b>Caseload per FTE</b>	<b>25</b>	<b>26</b>	<b>26</b>

Note 1: The estimate shows a range from low to high forecast of Full Time Equivalent (FTE). The middle number is the most likely estimate of FTEs required for delivering the service.

# Post Majority Supports – FTE Scenario-2

- The estimate of FTE in this scenario is based on a presumed vacancy level of 10% and an adjustment for lost efficiency due to structural factors.
- All other assumptions and scope of services remain the same as in Scenario-1.
- The estimates show a small increase in the FTE requirement and a corresponding decrease in the caseload per FTE.
- A caseload is a youth/young adult receiving post majority services. The benchmark is the recommended caseload ( $\pm 10\%$ ) for a Generalist caseworker while also performing intake, application processing, and outreach work as required.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
<b>Case Worker<sup>1</sup></b>	0.93-1.0-1.1	2.4-2.5-2.6	10.1-10.5-10.9
<b>Supervision</b>	0.25	0.5	2.0
<b>Admin. Support</b>	0	0.5	2.0
<b>Total (FTE)</b>	<b>1.25</b>	<b>3.5</b>	<b>14.5</b>
<b>Caseload per FTE</b>	<b>25</b>	<b>24</b>	<b>25</b>

Note 1: The estimate shows a range from low to high forecast of Full Time Equivalent (FTE). The middle number is the most likely estimate of FTEs required for delivering the service.



# Summary

# Summary and Conclusion

- Managing the workload on frontline staff who deliver services to children and families is extremely important. Research indicates a correlation between workload and quality of outcomes.
- Having the right number of staff (caseworkers, supervisors and support) is important for the success of any organization delivering services to children and families.
- In developing the resource estimates we applied our WAM<sup>®</sup> methodology with assumptions and parameters reflective of a specific CFS policy and practice model, human resource policies and expectations of program success. These assumptions and design parameters may not apply across the country.
- No direct data gathering was conducted for this analysis. Effort has been made to reflect reality, however the analysis and findings are for illustrative purposes.
- FN communities across Canada differ from each other in their demographics, service capacity, program expectations and in their unique needs for services. FNs interested in estimating their resource needs should exercise judgement.
- The estimates indicate that depending on the population served, a CFS organization offering Prevention and PMSS based on the modeled policies and practices would require 7.9 FTE for small, 12.3 FTE for medium, and 46.5 FTEs for large communities in casework, supervision and administrative roles.
- Communities much smaller than 500 population may face challenges to operate as a standalone CFS organization. Strategies for sharing services with a neighboring large community, or clustering with other small communities to create a sustainable size should be explored.

# CFS Program - FTE

- This table summarizes the estimate of FTEs required for each service by role for the base case (Scenario-1).
- Supervisor and Administrative support FTEs have been adjusted to reflect a joint Prevention and PMSS operation.

Full Time Equivalent	Small FN Community	Medium FN Community	Large FN Community
<b>Prevention Caseworker</b>	4.9	7.0	24.6
<b>PMSS Case Worker</b>	1.0	2.3	9.9
<b>Supervision</b>	1.0	1.5	6.0
<b>Admin. Support</b>	1.0	1.5	6.0
<b>Total (FTE)</b>	<b>7.9</b>	<b>12.3</b>	<b>46.5</b>





# Appendix

# Workload Benchmarking with WAM<sup>©</sup>

*Achieving better balance between work and resource capacity is a system goal.*



Workload Assessment Model<sup>©</sup>



# WAM<sup>©</sup> Applications



**Human Resource Estimation**

**Workload Benchmarking**

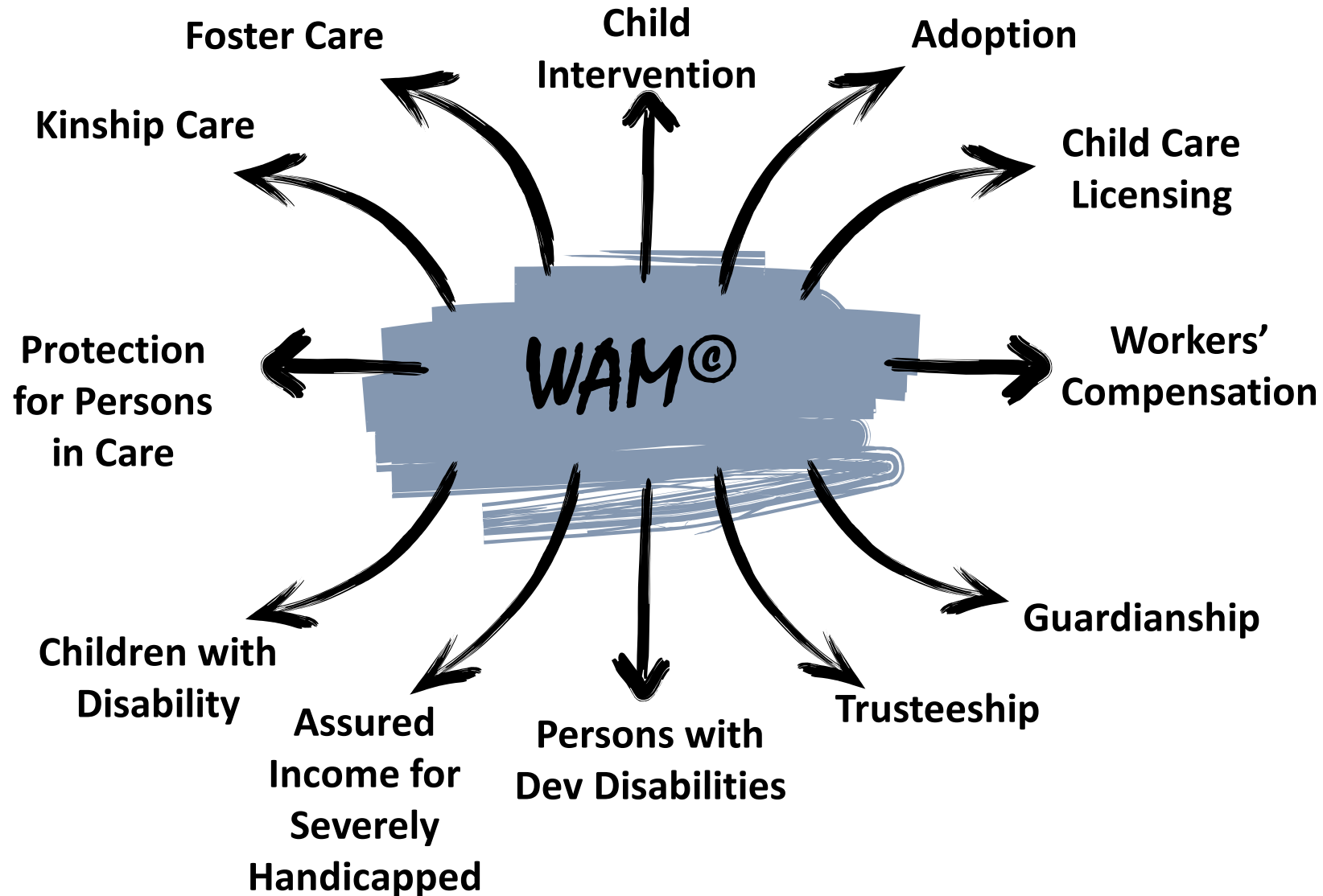
**Organizational Alignment**

**Policy-Practice Alignment**

**Productivity Improvement**

**Program Costing**

# Government Programs using WAM<sup>©</sup>



# Engage First Management Consultants

- EngageFirst is a professional management consulting firm specializing in Child and Family Services (CFS), Health and Human Services.
- Our team consists of practitioners and experts with a combined experience of more than 60 years in CFS program delivery, policy and legislation; including direct experience with Indigenous communities.
- Our Work Assessment Model (WAM<sup>©</sup>) is the leading methodology for designing, assessing and benchmarking casework practices in CFS, Health and Human Services.
- We have unique qualifications and experience in program design, program review, performance management, and business transformation in the public sector.
- We are also a leading provider of expertise in data science and advanced analytics for applications in CFS, Health and Human Services.
- We put our clients first and are committed to your success in every engagement.

For Further  
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Management Consultants  
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## **Appendix F – Summary of the February 2024 national gathering**

## **First Nations not affiliated to a First Nations child and family services (FNCFS) agency: Setting next steps together**

### **Second national gathering, February 12, 2024**

During a meeting of First Nations not affiliated to a First Nations child and family services (FNCFS) agency held in Ottawa on November 2, 2023, delegates asked for a second meeting to hear findings and share reflections to inform the final report. IFSD convened the second gathering on February 12, 2024, in Vancouver, attended (in-person and virtually) by 47 individuals, representing 30 First Nations.

IFSD extends its gratitude for the invaluable contributions made to this work by First Nations not affiliated to an FNCFS agency. Their contributions through a national questionnaire, regional and national gatherings, and in-depth analyses, have been vital for this work. The generosity in sharing time and knowledge, and the honesty of their contributions, have helped to define the complexity of their different starting points.

IFSD's mandate is to deliver a needs assessment and cost analysis of a range of approaches to designing and delivering child and family services (CFS) among First Nations not affiliated to an FNCFS agency. This work is being undertaken pursuant to a Canadian Human Rights Tribunal (CHRT) order (2022 CHRT 8) and at the request of the Caring Society (Dr. Cindy Blackstock), the Assembly of First Nations (AFN), and the National Advisory Committee (NAC) to support the long-term reform of the FNCFS program.

Principal takeaways from the gathering (which followed the Chatham House Rule) are captured in the summary below.

#### **Complex service environments**

First Nations not affiliated to an FNCFS agency were never asked if they wanted to design and deliver all forms of prevention services (primary, secondary, tertiary). For the assembled participants, however, taking care of their children and families is a sacred duty. While their capacity to deliver prevention services varies considerably, everyone wants to ensure their children, youth and families can access the prevention services they need in a culturally appropriate manner. This is particularly important when provincial/territorial services can be inadequate and discriminatory.

As the service agreements between the federal and provincial/territorial governments on FNCFS are opaque and undisclosed (other than with Yukon), there is no way of assessing what services Canada is funding, nor the completeness of provincial/territorial service delivery.

First Nations are often left advocating to the province/territory to ensure their children receive the supports and services they require. Challenges with service delivery are constant, making advocacy a constant task. Drawing the line between

provincial/territorial service delivery and First Nation service delivery is challenging. It's a fine line, often blurred by a lack of coordination and integration in service delivery with the province.

Regional dynamics differ between First Nations not affiliated to an FNCFS agency and their provincial/territorial service providers. Some First Nations have memorandums of understanding (MOUs) with their province for service delivery, while others have tense relationships leaving First Nations unable to obtain basic information about their children and services.

First Nations not affiliated to an FNCFS agency have not had sustainable funding to build a consistent program offering in CFS. This has contributed to the variances in current levels of service delivery.

Clarity on the expectations for service delivery is required, as are the desired services in First Nations. There are questions that need to be answered:

- 1) What are the service needs of the First Nation? What does the First Nation want to deliver? What are they able to deliver now?
- 2) What prevention services (primary, secondary, and tertiary) are being offered in the First Nation? By whom? To what standard?
- 3) Is service integration between the provincial/territorial government and the First Nation ensured? How?

There must be specificity around service obligations between the First Nation and provincial/territorial government. Precisely what is required by whom and with what funding is essential to ensure needed services are being provided consistently and in alignment to *An Act respecting First Nations, Inuit and Métis children, youth and families*.

### **Support and capacity**

There were several calls for continued engagement and gatherings to share knowledge and experiences with regional and national roundtables. These gatherings are opportunities for resource sharing, local engagement with First Nations, and peer support. Space and time are needed to plan, define needs, and develop approaches that align to community needs.

Needs in communities are significant and are impacted by structural drivers that contribute to the over-representation of First Nations children in protective services. Structural drivers such as addictions, housing, poverty, etc., will not be addressed by CFS alone. The drivers, however, shape service delivery. Often, needs are complex stemming from intergenerational trauma.

Specialized services are needed in First Nations but staffing these positions and retaining personnel is challenging. Compounding staffing needs are service providers



within a First Nation competing for the same staff. Coordinating and integrating service delivery within the First Nation can help to ensure a continuum of needs are met.

**Steps to reform**

The CHRT ordered Canada to end discrimination and ensure it does not reoccur. To uphold the rulings, CFS needs must be addressed for all impacted by the FNCFS Program. This includes First Nations not affiliated to an FNCFS agency and the provincial and Yukon governments. Given the complexity of service provision for First Nations not affiliated to an FNCFS agency with the integration and coordination (often lacking) with the provincial/territorial governments, who is best placed to ensure discrimination against children ends and does not reoccur through service delivery must be established.

Based on the knowledge and information shared by First Nations not affiliated to an FNCFS agency, IFSD proposed funding approaches (i.e., mechanisms to transfer funding) and produced funding estimates (Table 1, see Appendix A for a summary of the draft final report). There was support for a regionally/territorially focused funding approach where First Nations in their territories define an approach that best suits them. Others preferred continued bilateral agreements between the First Nation and the federal government. A national pool of funds was proposed to ensure First Nations not affiliated to an FNCFS agency could access additional funds for different activities, e.g., community engagement and consultation, during this period. Irrespective of the funding approach, participants indicated that **a steady state for service delivery has not yet been defined and that funding levels and approaches were subject to change.**

Table 1

Option	Description	Change from current state
1) Status quo	Fixed contribution approach.	None. Likely revision to terms and conditions.
1a) Status quo plus	Apply block contribution approach.	First Nations have greater flexibility in how funds are used for CFS in communities. Must work with a fixed amount of funding.
2) Regional support model	Trusted regional organizations would serve as the funding allocator and capacity support provider for First Nations not affiliated to an FNCFS agency.	Variation in regional allocation models. Localized capacity support for CFS.
3) First Nations needs assessments	Funding held in trust by regional organizations until First Nation is prepared to accept the funding for use (within approx. 1-5 years), following consultation with community on their own timeline.	Resources accessed based on readiness of First Nation.

**The assembled participants emphasized that any decisions related to funding and structure are a starting point.** These changes do not represent a reformed approach to CFS delivery in First Nations not affiliated to an FNCFS agency. **It will take time to**



**clarify required activities and their resource requirements. It will also take time to build capacity to deliver desired services.**

It is imperative to clarify required activities in prevention (which includes primary, secondary, and tertiary services). There is limited (if any) information available from the provinces, inconsistency in the starting points of First Nations, and no history of service delivery with sustained funding. First Nations not affiliated to an FNCFS agency are only beginning to develop their approaches to the delivery of prevention services.

### **Principal takeaways and recommendations**

- 1) First Nations view CFS as a sacred duty. No one asked about their readiness for prevention service delivery (primary, secondary, tertiary), but they will do it.
- 2) First Nations not affiliated to an FNCFS agency have not had the opportunity to consistently plan or design their prevention service delivery approach. This means that activities are in development and will evolve. Funding is only a starting point. Funding needs are expected to change as service provision stabilizes.
- 3) Funding approach options defined during the gathering included:
  - a. Maintaining separate bilateral agreements between First Nations and the federal government (no national approach)
  - b. First Nations work together regionally/territorially to define the funding approach that best suits their needs
  - c. Maintaining a national pool to access funding for supplemental activities (outside of service provision), e.g., community engagement
- 4) A call for more gatherings:
  - a. Resources for local and regional gatherings to consider approaches
  - b. National gatherings to share experiences, practices, and knowledge

IFSD is grateful to First Nations not affiliated to an FNCFS agency for the time, knowledge, and experiences that they have shared. Their contributions have made this work possible. IFSD anticipates its final report to be published in mid-March 2024.

**Appendix A - First Nations not affiliated to an FNCFS agency final report findings  
(DRAFT - For discussion only)**



# **First Nations not affiliated to an FNCFS agency Final report findings**

**Second national gathering**

**DRAFT – FOR DISCUSSION ONLY**

**February 12, 2024**

## Today's goals

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- 1) Confirm your context and experiences are captured appropriately.
- 2) Define the range of options and tools for supporting the design and delivery of child and family services.
- 3) Capture anticipated challenges moving forward.

## Discussion questions for breakout sessions

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- How can the amount, terms and conditions of federal funding best support your First Nation to deliver child and family services?
- Are there other service providers with which service delivery should be coordinated?
- What types of supports (e.g., capacity-building, capital, technical assistance) would assist my First Nation with designing, planning, and executing service delivery?



**Draft final report summary**

## IFSD's mandate

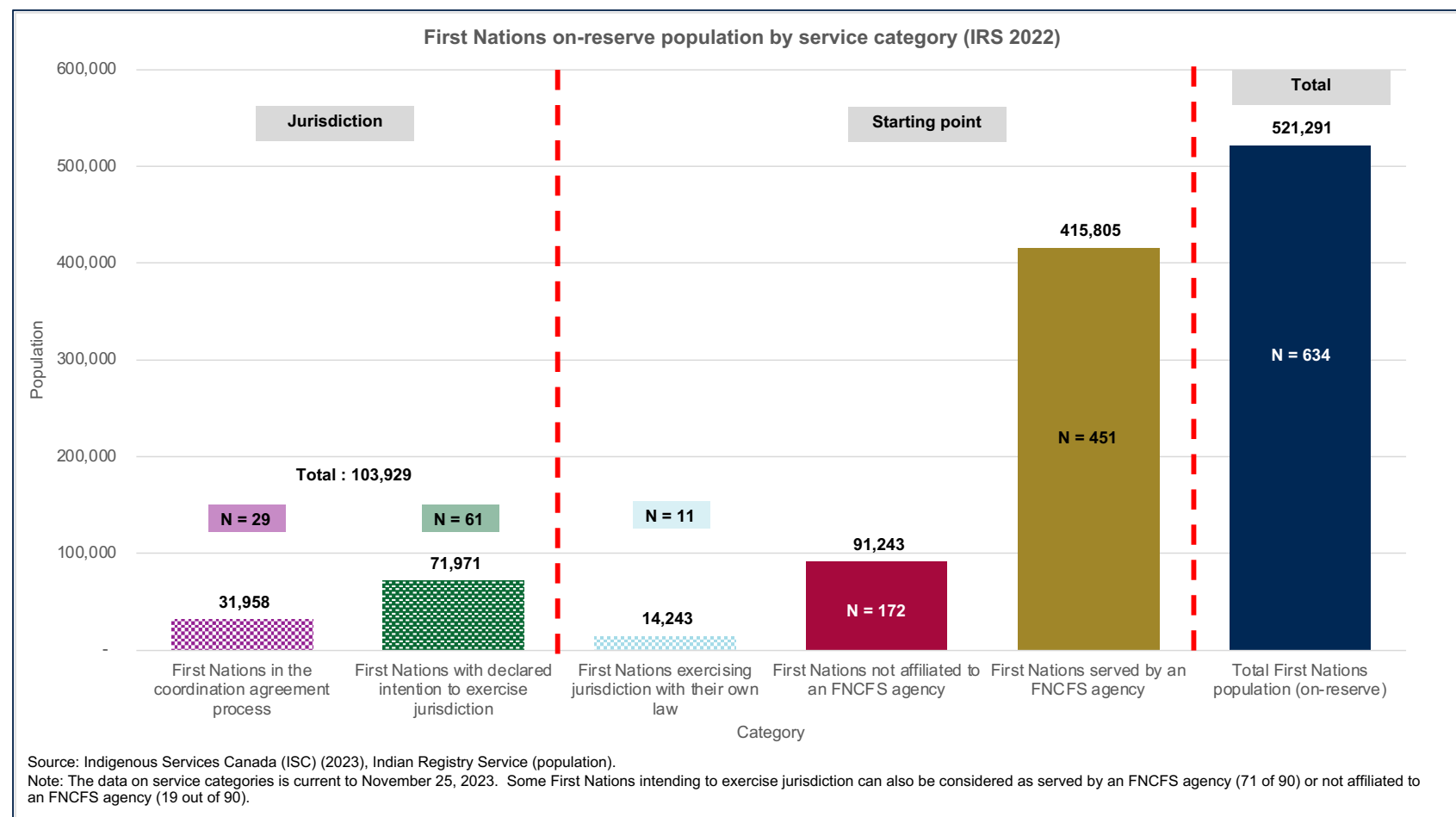
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- 1) Undertake a child and family services (CFS) needs assessment regarding First Nations not affiliated to an FNCFS agency.
- 2) Produce a cost analysis of approaches for designing and delivering CFS among First Nations not affiliated to an FNCFS agency.

## Context: Population by service provider

- A significant majority of First Nations are served by an FNCFS agency.
- First Nations not affiliated to an FNCFS agency represent a significant group, but one left largely unconsidered for long-term reform.





## The FNCFS Program

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- The [description of the FNCFS Program through InfoBase](#) (the Government of Canada's public facing reporting on its programs) includes *supporting safety and well-being for First Nations children ordinarily resident on-reserve*.
- Funds through the program are allocated to FNCFS agencies, provinces delivering services, First Nations Bands, and Tribal Councils. This means that the FNCFS Program is funding FNCFS agencies, First Nations, transfers to provinces, and jurisdiction.
- The contributions of FNCFS agencies to this work have helped to define a starting point, resource requirements, and implementation considerations in child and family services.

## Child and family services in First Nations not affiliated to an FNCFS agency

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- Ways First Nations not affiliated to an FNCFS agency receive CFS:
  - Protection and guardianship services are requirements in provincial/territorial law. These services are delivered by the province/territory and paid by Canada on-reserve and in the Yukon.
  - Secondary and tertiary prevention services should be delivered. It is unclear who is delivering these services, e.g., the province/territory and/or First Nations, other providers.
- Service providers should be operating consistent with *An Act Respecting First Nations, Inuit and Métis children, youth and families*, with consideration of the best interests of the child, a culturally-informed approach, and least disruptive measures.
- To end discrimination and ensure discrimination does not reoccur, the different parts of the system, i.e., protection, prevention, service providers, must work together.

## Complex operating environments

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- Structural drivers that promote contact with protective services exist across communities. Addressing or mitigating the effects of those structural drivers can be done through a combination of protection and prevention services that should be integrated.
- **Protection services:** typically provided by the province/territory, with funding from the federal government for services on-reserve.
- **Prevention services:** may be offered by the province/territory, the First Nation, a nearby delegated agency, or other service providers.
- Ensuring the coordination of protection and prevention services is essential for keeping children out of care. Such coordination requires protocols, agreements, and working relationships between the First Nation, provincial, and federal governments, as well as with service providers (including those within the First Nation).

Where a First Nation served by an agency may work with their service provider, it is the provider that typically ensures coordination of protection and prevention services. For First Nations not affiliated to an FNCFS agency, the service landscape is more complex.

**Protection** services promote child safety to ensure children are free from harm, abuse, and neglect.

*Services should be integrated*

**Prevention** services are to stop a child's interaction with protective services.

3 types of prevention:

**Primary:** Directed to the community as a whole, akin to public health measures, to build awareness and education.

**Secondary:** Aimed to support a child who may be at risk of harm or maltreatment, e.g., home visit programs for parents, addictions treatment for parents, etc.

**Tertiary:** Used when a child has been identified as at risk of harm of child maltreatment, e.g., immediate crisis intervention.

**Structural drivers**

in communities drive contact with protective services, e.g., poverty, intimate partner violence, addictions, etc.

*Structural drivers are linked to intergenerational trauma and the effects of colonialism. They need to be addressed to reduce children's contact with protective services.*

Services typically provided by the provincial or territorial government

**First Nation not affiliated to an FNCFS agency**

Provincial or Territorial CFS legislation

Federal legislation  
(An Act Respecting First Nations, Inuit, Métis children, youth and families)

- Least disruptive measures
- Best interests of the child
- Culturally informed approach

Services typically provided by:

- First Nation
- Provincial or territorial government
- Other service provider, e.g., FNCFS agency
- Some combination thereof

Related service areas within the First Nation, e.g., health, education, housing, etc.

**Possible disconnects:**

- Integration of protection and prevention services
- Interaction of and integration between protection and prevention service providers to ensure needs of children and families are being met
- Protocols, agreements, relationships between province and First Nation

Federal \$ **Prevention** (on-reserve)

Federal \$ **Protection** (on-reserve)

Provincial/ Territorial \$

## Different starting points

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- 46% national participation in a questionnaire (2022); 9 regional workshops (75 participating First Nations); 2 national gatherings (November 2023 and February 2024); 5 in-depth analyses.
- Consider the different starting points for First Nations not affiliated to an FNCFS agency that will impact their transition to future/desired states.
- Time and space needed to reflect, engage with, and support children and families. This does not happen quickly or easily.
- Funding must be clear, sustainable, and on-going.

## Funding

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- At November 25, 2023, there were two funding amounts confirmed for First Nations not affiliated to an FNCFS agency (pursuant to the CHRT's rulings):
  - 1) \$283/person on-reserve for the First Nations Representative Service;
  - 2) \$2,500/person on-reserve for prevention services.
- The two funding amounts are for fiscal year 2024-25. Future funding amounts and structures are subject to the ongoing negotiations on FNCFS Program reform.

## Funding foundations

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- These funding options should not be considered final. They are works in progress that will need to be reviewed and reassessed as capacity is developed, mandates are defined, and services provided.
- As part of a First Nation, the design and delivery of CFS is not happening in a vacuum. There are existing services, people, and resources that should be leveraged to move forward in CFS.
- With each funding scenario, there are differences in the principles to generate the allocations and their total amounts.
  - **Estimates in this presentation are for on-reserve population only.** Total population models are included in the final report.
- For the different approaches to structure, there are trade-offs in flexibility in the use of funds, the source of funding allocation, and the prioritization of regional v. national approaches.

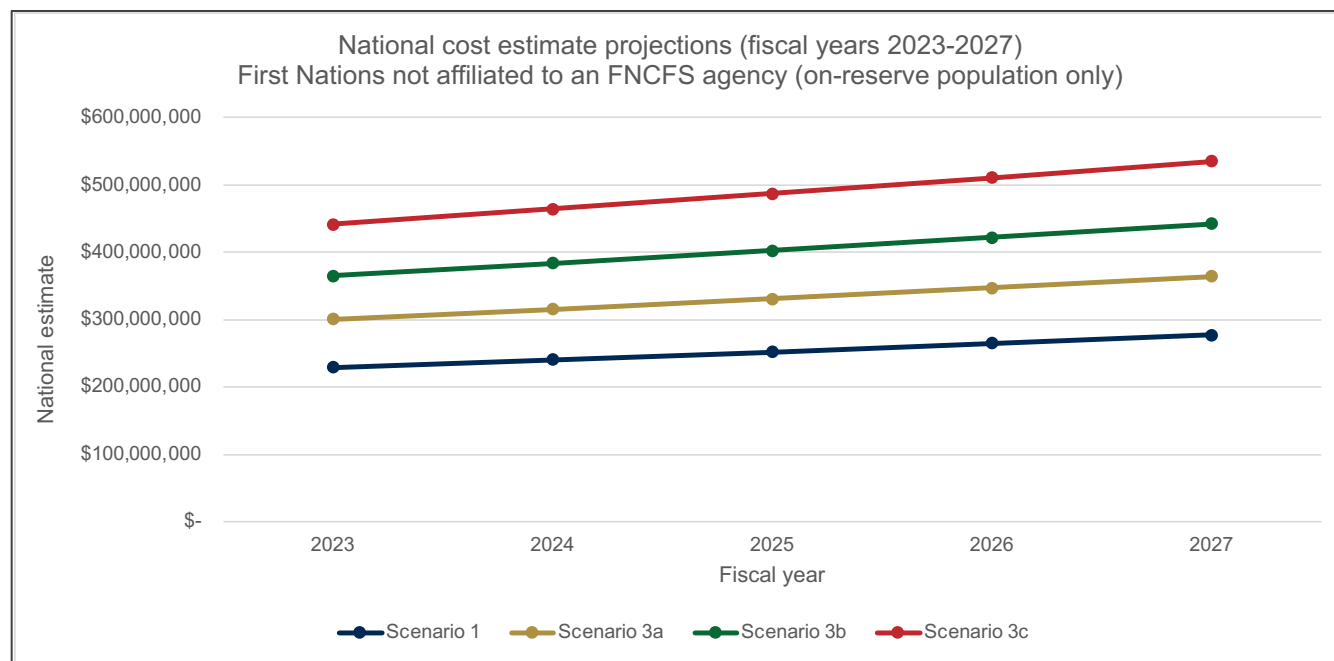
## Cost estimation scenarios

Scenario	Description
1) Base scenario	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Projections grown by population + inflation</li> </ul>
3a) Base scenario (\$2,500+ \$283) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$2,500 and \$283</li> <li>- Remoteness (baseline and top-ups) (applied to all First Nations)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
3b) Base scenario (\$3,123 questionnaire) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)</li> <li>- Band Representative Service, \$283 per capita</li> <li>- Remoteness (baseline and top-ups) (applied to all First Nations)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>
3c) Base scenario (\$3,859 integrated provider) + some FNCFS agency funding approach top-ups	<ul style="list-style-type: none"> <li>- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)</li> <li>- Band Representative Service, \$283 per capita</li> <li>- Remoteness (baseline and top-ups) (applied to all First Nations)</li> <li>- Poverty 7% (of difference)</li> <li>- Results 5% (baseline)</li> <li>- IT 6% (baseline)</li> <li>- Projections grown by population + inflation</li> </ul>



## Scenarios compared

- Scenario 1 produces the lowest national estimate over five years for the population on-reserve (\$1.63B).
- The three scenarios augment a baseline with one or more top-ups that are linked to different contexts and the costs of service delivery.
- Scenario 3a is the lowest and 3c provides the highest allocation relative to the selected options, as its per capita allocation is **the highest**.



## Scenario 3a – Regional breakdown

Scenario 3a						
Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 85,326,022	\$ 89,783,768	\$ 94,364,114	\$ 99,173,141	\$ 104,045,191	\$ 472,692,235
Alberta	\$ 47,250,593	\$ 49,632,947	\$ 52,005,248	\$ 54,490,879	\$ 57,047,774	\$ 260,427,441
Saskatchewan	\$ 16,330,725	\$ 17,293,170	\$ 18,317,943	\$ 19,380,454	\$ 20,474,252	\$ 91,796,544
Manitoba	*	*	*	*	*	*
Ontario	\$ 37,063,125	\$ 38,782,349	\$ 40,587,035	\$ 42,449,072	\$ 44,394,066	\$ 203,275,646
Quebec	\$ 83,063,524	\$ 86,892,340	\$ 90,821,597	\$ 94,978,434	\$ 99,263,554	\$ 455,019,448
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 14,725,629	\$ 15,634,474	\$ 16,564,230	\$ 17,535,188	\$ 18,554,141	\$ 83,013,662
Yukon	\$ 15,922,589	\$ 16,661,012	\$ 17,498,194	\$ 18,240,280	\$ 19,094,732	\$ 87,416,807
<b>TOTAL</b>	<b>\$ 300,474,295</b>	<b>\$ 315,517,447</b>	<b>\$ 331,046,790</b>	<b>\$ 347,185,377</b>	<b>\$ 363,863,309</b>	<b>\$ 1,658,087,217</b>

\* Estimates for provinces with only one First Nation not affiliated to an FNCFS agency were suppressed for privacy.

## Scenario 3b – Regional breakdown

Scenario 3b						
Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 103,458,595	\$ 108,863,528	\$ 114,417,076	\$ 120,247,556	\$ 126,155,939	\$ 573,142,693
Alberta	\$ 57,473,675	\$ 60,371,453	\$ 63,257,060	\$ 66,280,456	\$ 69,390,540	\$ 316,773,184
Saskatchewan	\$ 19,732,087	\$ 20,894,997	\$ 22,133,156	\$ 23,417,007	\$ 24,738,595	\$ 110,915,843
Manitoba	*	*	*	*	*	*
Ontario	\$ 44,712,885	\$ 46,786,897	\$ 48,964,069	\$ 51,210,452	\$ 53,556,956	\$ 245,231,261
Quebec	\$ 101,640,618	\$ 106,325,744	\$ 111,133,782	\$ 116,220,295	\$ 121,463,773	\$ 556,784,212
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 18,022,095	\$ 19,134,394	\$ 20,272,284	\$ 21,460,601	\$ 22,707,655	\$ 101,597,030
Yukon	\$ 19,184,780	\$ 20,074,509	\$ 21,083,184	\$ 21,977,321	\$ 23,006,823	\$ 105,326,617
<b>TOTAL</b>	<b>\$ 365,194,140</b>	<b>\$ 383,476,367</b>	<b>\$ 402,347,924</b>	<b>\$ 421,961,580</b>	<b>\$ 442,231,412</b>	<b>\$ 2,015,211,423</b>

\* Estimates for provinces with only one First Nation not affiliated to an FNCFS agency were suppressed for privacy.

## Scenario 3c – Regional breakdown

Scenario 3c						
Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 124,880,061	\$ 131,403,983	\$ 138,107,252	\$ 145,144,458	\$ 152,277,143	\$ 691,812,897
Alberta	\$ 69,551,024	\$ 73,057,713	\$ 76,549,730	\$ 80,208,433	\$ 83,972,043	\$ 383,338,942
Saskatchewan	\$ 23,750,390	\$ 25,150,125	\$ 26,640,374	\$ 28,185,712	\$ 29,776,407	\$ 133,503,007
Manitoba	*	*	*	*	*	*
Ontario	\$ 53,750,162	\$ 56,243,314	\$ 58,860,534	\$ 61,560,975	\$ 64,381,816	\$ 294,796,802
Quebec	\$ 123,587,233	\$ 129,283,988	\$ 135,130,201	\$ 141,315,013	\$ 147,690,676	\$ 677,007,110
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 21,916,477	\$ 23,269,131	\$ 24,652,907	\$ 26,098,006	\$ 27,614,535	\$ 123,551,056
Yukon	\$ 23,038,668	\$ 24,107,148	\$ 25,318,421	\$ 26,392,187	\$ 27,628,492	\$ 126,484,915
<b>TOTAL</b>	<b>\$ 441,652,898</b>	<b>\$ 463,761,704</b>	<b>\$ 486,581,687</b>	<b>\$ 510,300,723</b>	<b>\$ 534,813,954</b>	<b>\$ 2,437,110,966</b>

\* Estimates for provinces with only one First Nation not affiliated to an FNCFS agency were suppressed for privacy.

## Structure: Approaches to allocation

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Option	Description	Change from current state
1) Status quo	Fixed contribution approach.	None. Likely revision to terms and conditions.
1a) Status quo plus	Apply block contribution approach.	First Nations have greater flexibility in how funds are used for CFS in communities. Must work with a fixed amount of funding.
2) Regional support model	Trusted regional organizations would serve as the funding allocator and capacity support provider for First Nations not affiliated to an FNCFS agency.	Variation in regional allocation models. Localized capacity support for CFS.
3) First Nations needs assessments	Funding held in trust by regional organizations until First Nation is prepared to accept the funding for use (within approx. 1-5 years), following consultation with community on their own timeline.	Resources accessed based on readiness of First Nation.

## Next steps

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- Second national gathering, February 12, 2024 (Vancouver).
- Update final report:
  - ISC expenditure data
  - Feedback from First Nations not affiliated to an FNCFS agency

## Get in touch

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## **Appendix G – National cost estimates for the 11 scenarios**



## National cost estimate scenarios

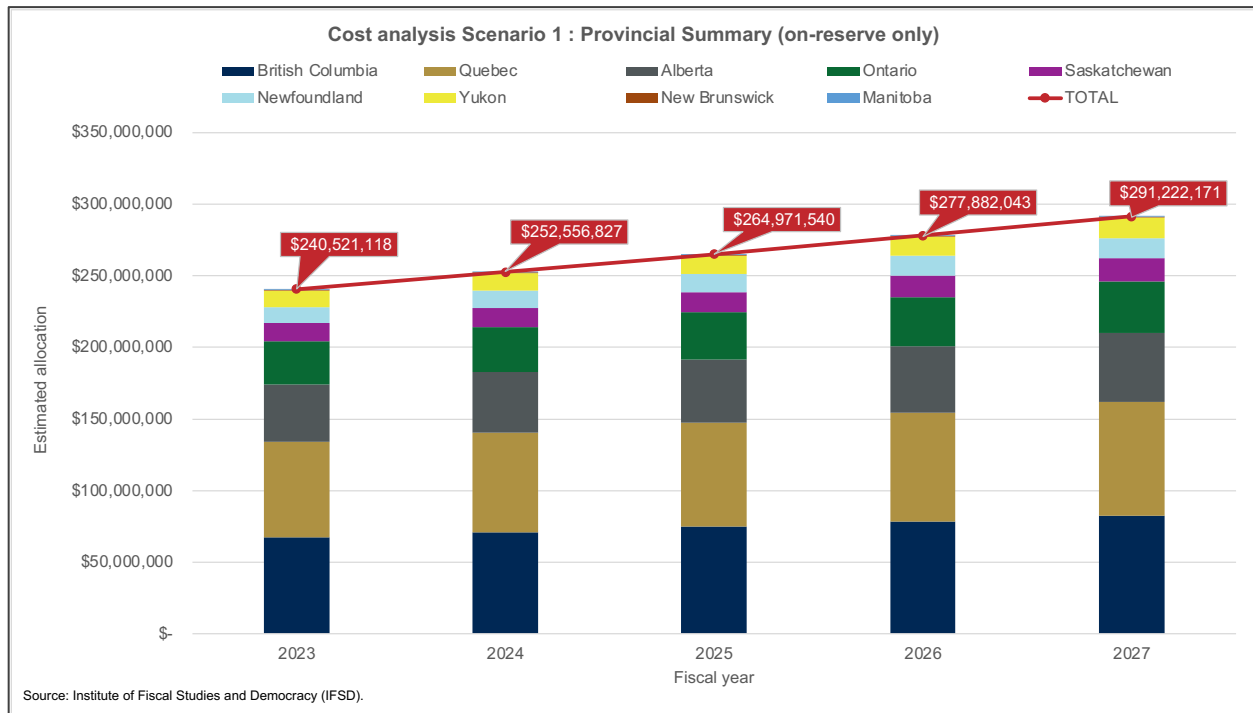
### Scenario 1 (on-reserve)

- Per capita allocations of \$2,500 and \$283
- Projections grown by population + inflation

Table 1

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 67,651,939	\$ 71,186,806	\$ 74,818,348	\$ 78,629,278	\$ 82,494,714	\$ 374,781,085
Alberta	\$ 40,255,776	\$ 42,285,333	\$ 44,306,807	\$ 46,424,335	\$ 48,602,443	\$ 221,874,693
Saskatchewan	\$ 12,696,832	\$ 13,445,114	\$ 14,241,793	\$ 15,067,940	\$ 15,918,292	\$ 71,369,971
Manitoba	*	*	*	*	*	*
Ontario	\$ 30,000,642	\$ 31,391,408	\$ 32,852,117	\$ 34,359,865	\$ 35,934,601	\$ 164,538,632
Quebec	\$ 66,303,630	\$ 69,359,717	\$ 72,495,796	\$ 75,814,240	\$ 79,234,870	\$ 363,208,253
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 11,302,453	\$ 12,000,093	\$ 12,713,453	\$ 13,459,087	\$ 14,241,083	\$ 63,716,169
Yukon	\$ 11,646,441	\$ 12,186,985	\$ 12,799,110	\$ 13,341,695	\$ 13,967,257	\$ 63,941,488
<b>TOTAL</b>	<b>\$ 240,521,118</b>	<b>\$ 252,556,827</b>	<b>\$ 264,971,540</b>	<b>\$ 277,882,043</b>	<b>\$ 291,222,171</b>	<b>\$ 1,327,153,699</b>

Figure 1

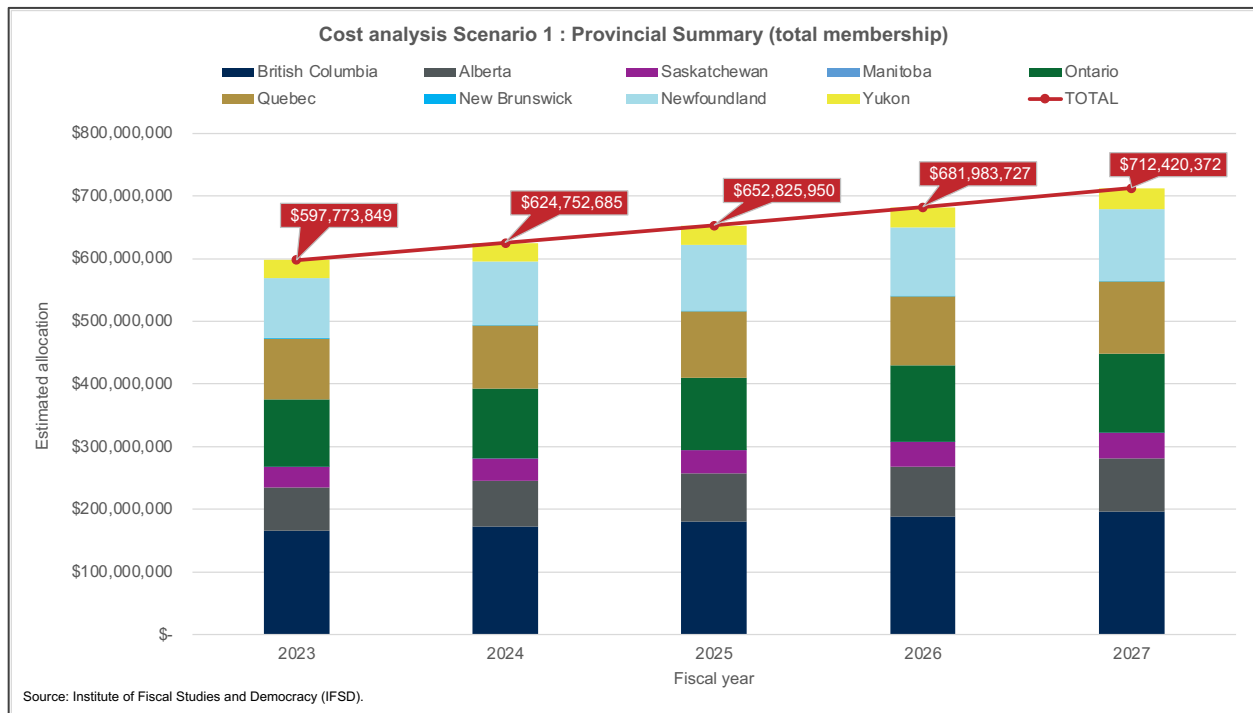


## Scenario 1 (total membership)

Table 2

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 165,728,362	\$ 173,140,358	\$ 180,813,773	\$ 188,739,214	\$ 196,980,220	\$ 905,401,927
Alberta	\$ 69,396,448	\$ 72,782,360	\$ 76,293,203	\$ 79,975,248	\$ 83,853,510	\$ 382,300,769
Saskatchewan	\$ 33,207,099	\$ 35,016,247	\$ 36,925,810	\$ 38,918,322	\$ 41,003,861	\$ 185,071,339
Manitoba	*	*	*	*	*	*
Ontario	\$ 106,700,686	\$ 111,270,652	\$ 116,082,554	\$ 121,082,893	\$ 126,292,949	\$ 581,429,734
Quebec	\$ 96,678,973	\$ 101,006,616	\$ 105,471,623	\$ 110,147,130	\$ 114,998,399	\$ 528,302,740
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 96,113,851	\$ 100,440,616	\$ 104,953,570	\$ 109,616,328	\$ 114,509,762	\$ 525,634,127
Yukon	\$ 28,372,843	\$ 29,448,578	\$ 30,563,605	\$ 31,701,998	\$ 32,898,332	\$ 152,985,356
<b>TOTAL</b>	<b>\$ 597,773,849</b>	<b>\$ 624,752,685</b>	<b>\$ 652,825,950</b>	<b>\$ 681,983,727</b>	<b>\$ 712,420,372</b>	<b>\$ 3,269,756,584</b>

Figure 2



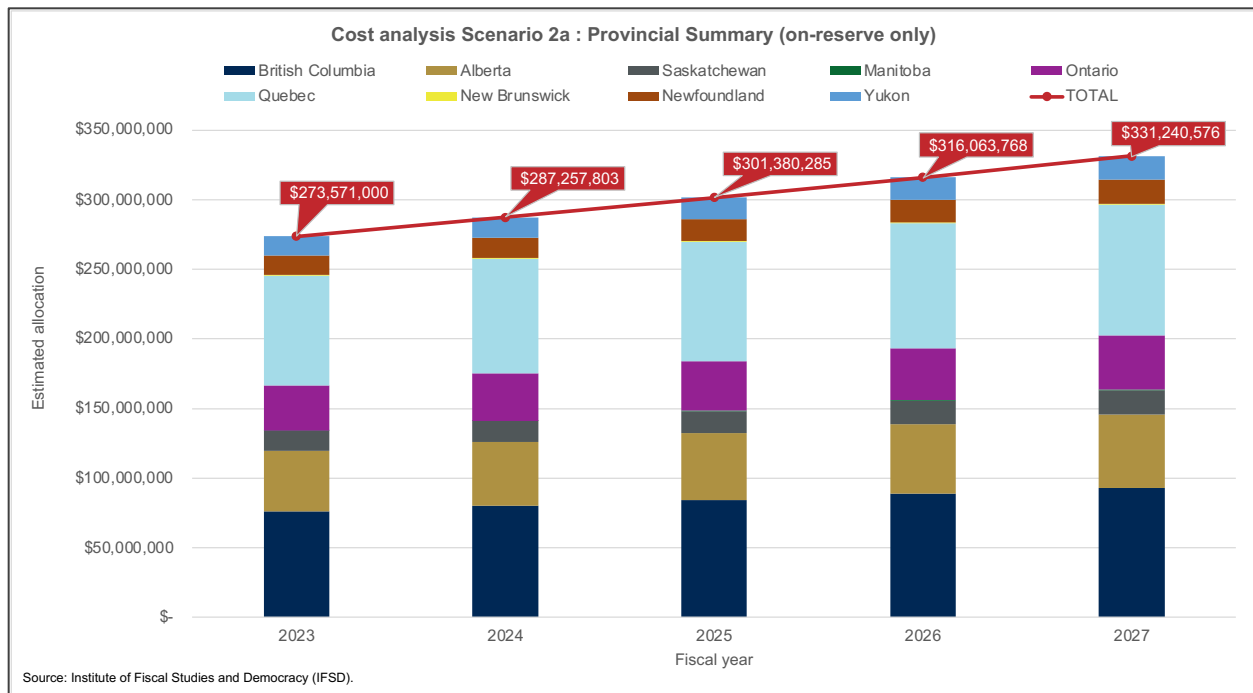
### Scenario 2a (on-reserve)

- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Projections grown by population + inflation

Table 3

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 76,397,891	\$ 80,388,860	\$ 84,489,347	\$ 88,793,350	\$ 93,159,275	\$ 423,228,722
Alberta	\$ 43,314,164	\$ 45,497,964	\$ 47,672,790	\$ 49,951,251	\$ 52,295,054	\$ 238,731,223
Saskatchewan	\$ 14,235,122	\$ 15,074,094	\$ 15,967,141	\$ 16,893,477	\$ 17,846,806	\$ 80,016,640
Manitoba	*	*	*	*	*	*
Ontario	\$ 32,444,874	\$ 33,949,777	\$ 35,529,595	\$ 37,159,702	\$ 38,862,591	\$ 177,946,539
Quebec	\$ 78,742,057	\$ 82,371,649	\$ 86,096,482	\$ 90,037,199	\$ 94,099,327	\$ 431,346,714
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 13,791,570	\$ 14,642,830	\$ 15,513,559	\$ 16,422,999	\$ 17,377,263	\$ 77,748,220
Yukon	\$ 13,900,921	\$ 14,545,683	\$ 15,276,450	\$ 15,924,379	\$ 16,670,320	\$ 76,317,753
TOTAL	\$ 273,571,000	\$ 287,257,803	\$ 301,380,285	\$ 316,063,768	\$ 331,240,576	\$ 1,509,513,432

Figure 3

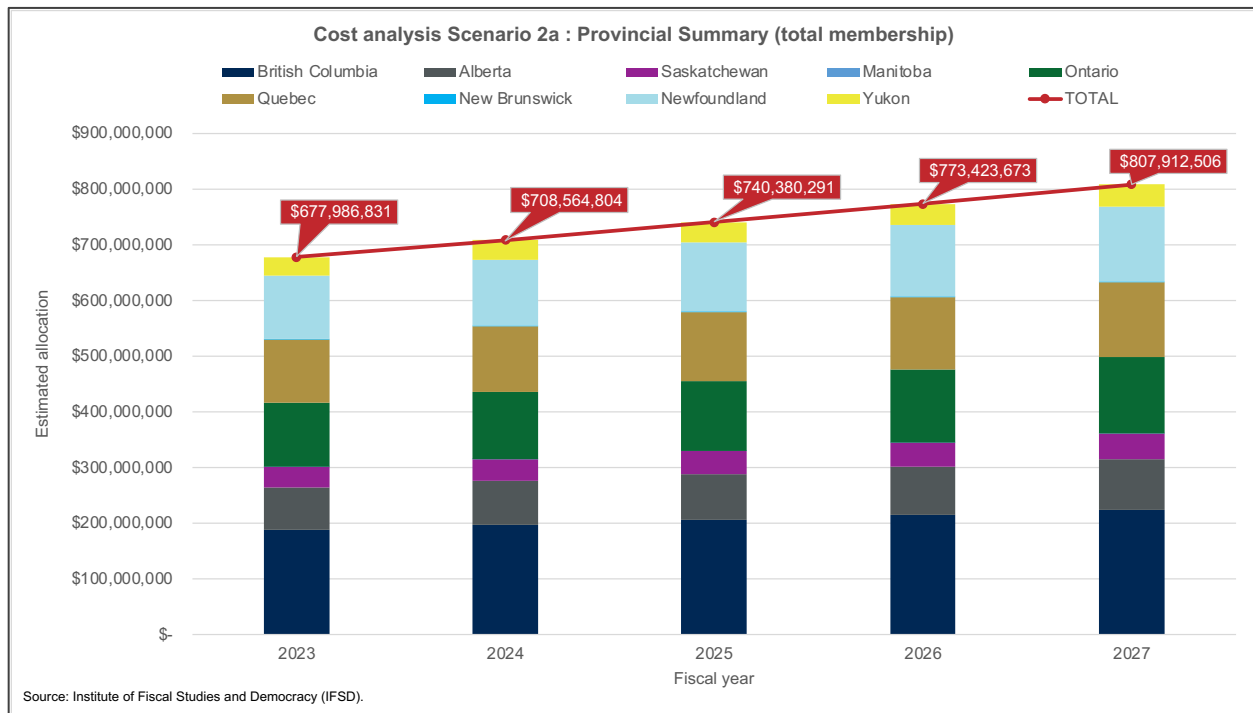


## Scenario 2a (total membership)

Table 4

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 188,660,084	\$ 197,095,918	\$ 205,830,562	\$ 214,853,580	\$ 224,232,923	\$ 1,030,673,067
Alberta	\$ 75,137,717	\$ 78,803,698	\$ 82,604,814	\$ 86,591,584	\$ 90,790,533	\$ 413,928,346
Saskatchewan	\$ 37,131,286	\$ 39,154,182	\$ 41,289,378	\$ 43,517,449	\$ 45,849,311	\$ 206,941,605
Manitoba	*	*	*	*	*	*
Ontario	\$ 115,464,106	\$ 120,409,257	\$ 125,616,444	\$ 131,027,747	\$ 136,665,233	\$ 629,182,788
Quebec	\$ 113,119,342	\$ 118,183,351	\$ 123,407,114	\$ 128,877,886	\$ 134,554,645	\$ 618,142,339
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 112,872,508	\$ 117,954,001	\$ 123,254,025	\$ 128,729,481	\$ 134,476,238	\$ 617,286,254
Yukon	\$ 33,833,771	\$ 35,115,866	\$ 36,445,774	\$ 37,803,051	\$ 39,230,019	\$ 182,428,481
<b>TOTAL</b>	<b>\$ 677,986,831</b>	<b>\$ 708,564,804</b>	<b>\$ 740,380,291</b>	<b>\$ 773,423,673</b>	<b>\$ 807,912,506</b>	<b>\$ 3,708,268,106</b>

Figure 4



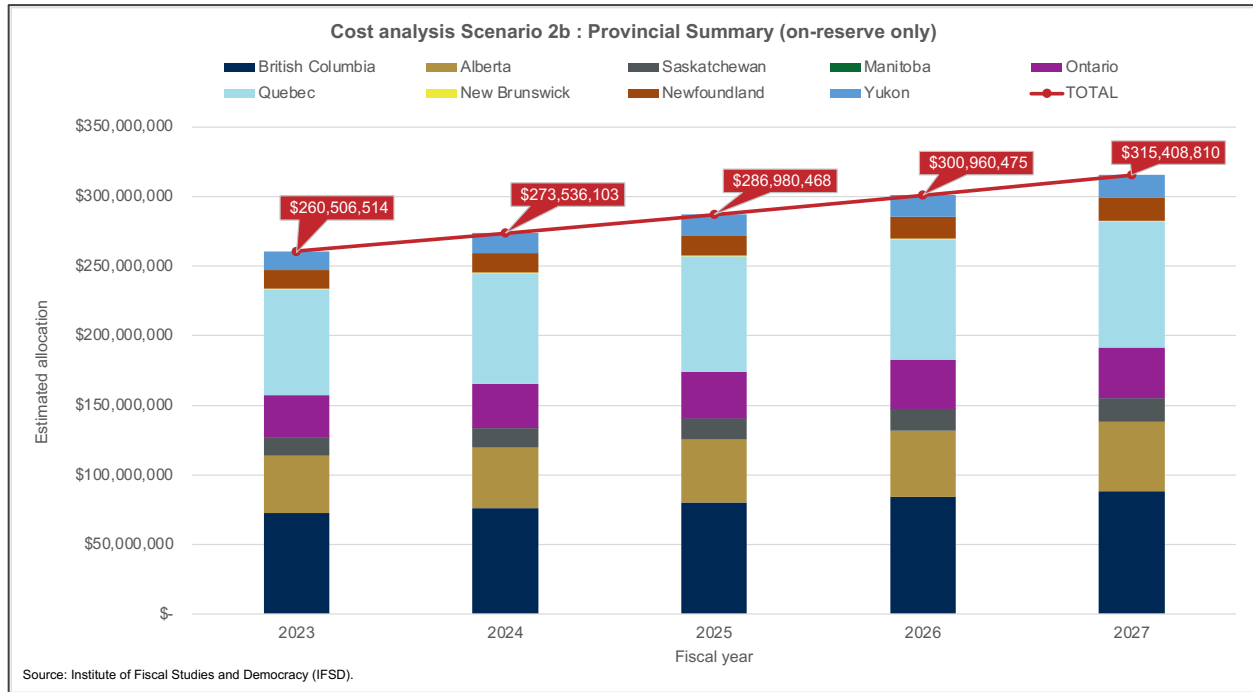
### Scenario 2b (on-reserve)

- Per capita allocations of \$2,500 and \$283
- Remoteness (**applied to First Nations with a remoteness index of 0.4 or higher**)
- Projections grown by population + inflation

Table 5

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 72,646,378	\$ 76,440,590	\$ 80,339,483	\$ 84,433,083	\$ 88,583,978	\$ 402,443,512
Alberta	\$ 40,916,974	\$ 42,979,971	\$ 45,034,346	\$ 47,186,794	\$ 49,400,873	\$ 225,518,957
Saskatchewan	\$ 13,383,202	\$ 14,172,008	\$ 15,011,342	\$ 15,882,393	\$ 16,778,604	\$ 75,227,549
Manitoba	*	*	*	*	*	*
Ontario	\$ 30,407,235	\$ 31,817,871	\$ 33,298,431	\$ 34,826,220	\$ 36,421,942	\$ 166,771,699
Quebec	\$ 75,838,611	\$ 79,334,329	\$ 82,921,738	\$ 86,717,213	\$ 90,629,556	\$ 415,441,447
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 13,234,472	\$ 14,051,350	\$ 14,886,857	\$ 15,759,635	\$ 16,675,343	\$ 74,607,657
Yukon	\$ 13,396,338	\$ 14,017,775	\$ 14,721,988	\$ 15,346,339	\$ 16,065,338	\$ 73,547,777
TOTAL	\$ 260,506,514	\$ 273,536,103	\$ 286,980,468	\$ 300,960,475	\$ 315,408,810	\$ 1,437,392,369

Figure 5

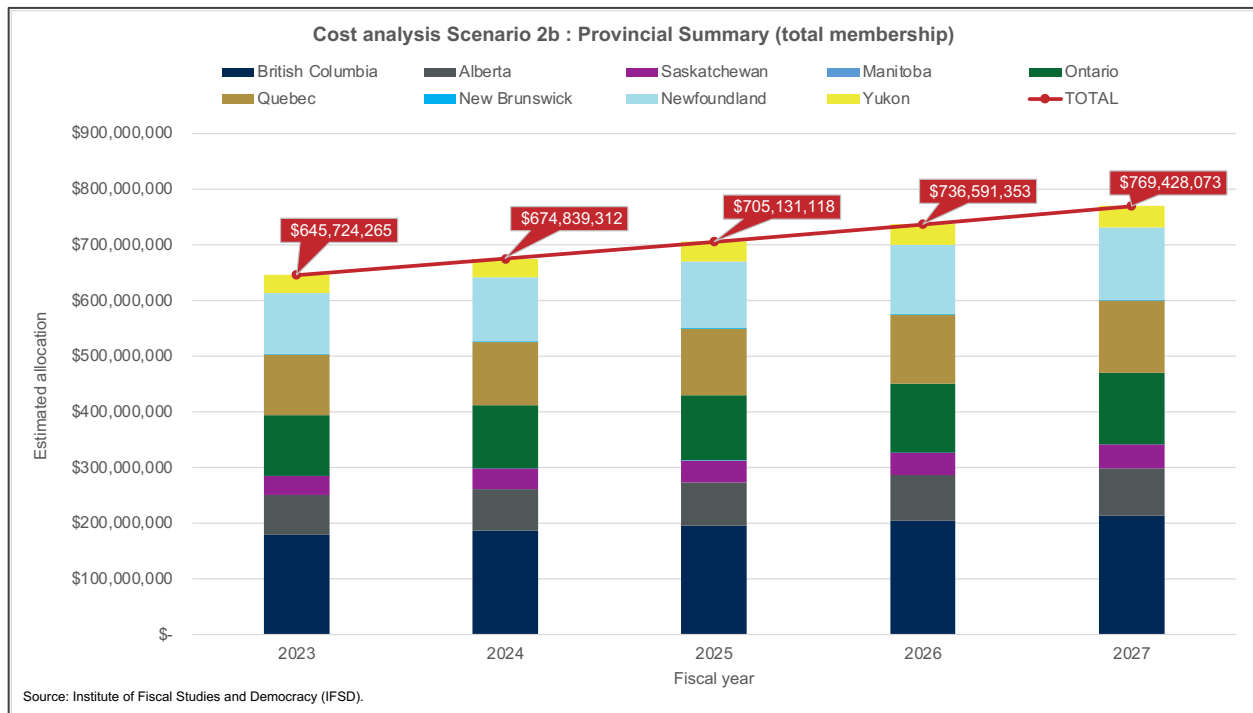


## Scenario 2b (total membership)

Table 6

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 179,432,897	\$ 187,455,706	\$ 195,762,738	\$ 204,344,199	\$ 213,265,155	\$ 980,260,695
Alberta	\$ 70,959,236	\$ 74,421,355	\$ 78,011,190	\$ 81,776,181	\$ 85,741,629	\$ 390,909,591
Saskatchewan	\$ 34,703,468	\$ 36,594,030	\$ 38,589,576	\$ 40,672,148	\$ 42,851,304	\$ 193,410,527
Manitoba	*	*	*	*	*	*
Ontario	\$ 108,083,642	\$ 112,712,628	\$ 117,587,235	\$ 122,652,527	\$ 127,929,580	\$ 588,965,613
Quebec	\$ 109,188,720	\$ 114,076,670	\$ 119,119,009	\$ 124,399,628	\$ 129,879,087	\$ 596,663,114
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 109,121,694	\$ 114,034,269	\$ 119,158,135	\$ 124,451,698	\$ 130,007,470	\$ 596,773,266
Yukon	\$ 32,611,541	\$ 33,847,450	\$ 35,129,265	\$ 36,437,552	\$ 37,812,901	\$ 175,838,711
<b>TOTAL</b>	<b>\$ 645,724,265</b>	<b>\$ 674,839,312</b>	<b>\$ 705,131,118</b>	<b>\$ 736,591,353</b>	<b>\$ 769,428,073</b>	<b>\$ 3,531,714,121</b>

Figure 6



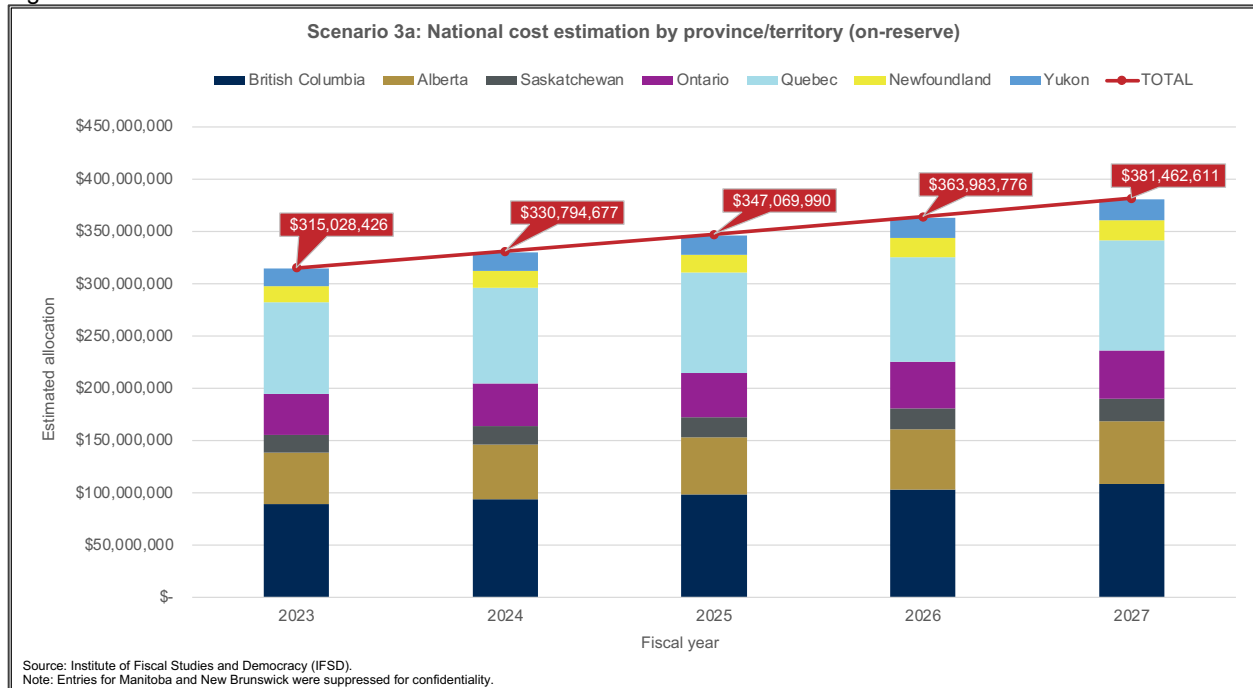
### Scenario 3a (on-reserve)

- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 89,127,760	\$ 93,784,307	\$ 98,568,811	\$ 103,592,350	\$ 108,681,180	\$ 493,754,408
Alberta	\$ 49,661,840	\$ 52,165,765	\$ 54,659,137	\$ 57,271,607	\$ 59,958,978	\$ 273,717,328
Saskatchewan	\$ 16,937,503	\$ 17,935,712	\$ 18,998,552	\$ 20,100,549	\$ 21,234,981	\$ 95,207,297
Manitoba	*	*	*	*	*	*
Ontario	\$ 38,904,732	\$ 40,709,525	\$ 42,603,877	\$ 44,558,426	\$ 46,600,042	\$ 213,376,602
Quebec	\$ 87,481,568	\$ 91,514,011	\$ 95,652,236	\$ 100,030,321	\$ 104,543,330	\$ 479,221,465
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 15,308,643	\$ 16,253,541	\$ 17,220,050	\$ 18,229,529	\$ 19,288,762	\$ 86,300,525
Yukon	\$ 16,780,095	\$ 17,558,306	\$ 18,440,564	\$ 19,222,627	\$ 20,123,105	\$ 92,124,696
<b>TOTAL</b>	<b>\$ 315,028,426</b>	<b>\$ 330,794,677</b>	<b>\$ 347,069,990</b>	<b>\$ 363,983,776</b>	<b>\$ 381,462,611</b>	<b>\$ 1,738,339,479</b>

Table 7

Figure 7

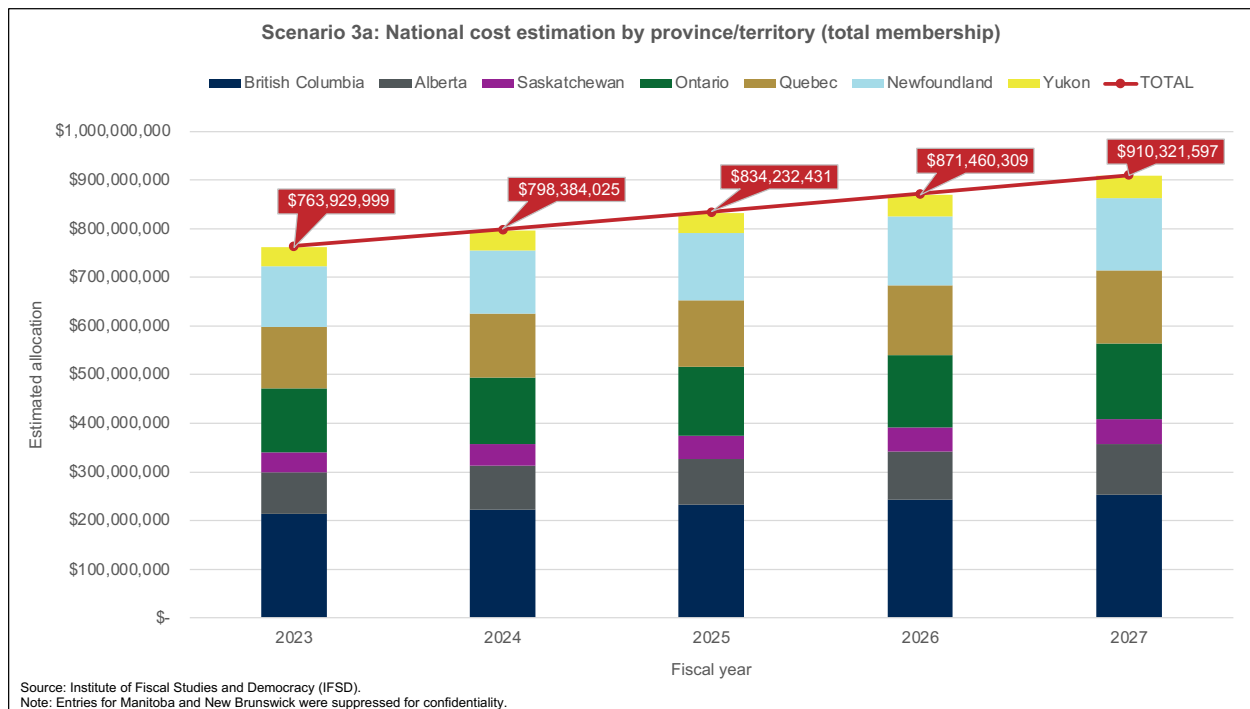


## Scenario 3a (total membership)

Table 8

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 213,738,794	\$ 223,297,119	\$ 233,193,831	\$ 243,413,367	\$ 254,040,873	\$ 1,167,683,984
Alberta	\$ 84,985,984	\$ 89,132,462	\$ 93,431,678	\$ 97,941,037	\$ 102,690,302	\$ 468,181,464
Saskatchewan	\$ 42,352,245	\$ 44,659,601	\$ 47,095,034	\$ 49,636,357	\$ 52,296,149	\$ 236,039,387
Manitoba	*	*	*	*	*	*
Ontario	\$ 131,056,080	\$ 136,669,192	\$ 142,579,310	\$ 148,721,448	\$ 155,120,497	\$ 714,146,528
Quebec	\$ 125,640,354	\$ 131,264,892	\$ 137,066,864	\$ 143,143,191	\$ 149,448,294	\$ 686,563,596
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 125,288,484	\$ 130,928,942	\$ 136,811,968	\$ 142,889,724	\$ 149,268,625	\$ 685,187,742
Yukon	\$ 38,905,559	\$ 40,379,947	\$ 41,909,026	\$ 43,469,769	\$ 45,110,756	\$ 209,775,058
<b>TOTAL</b>	<b>\$ 763,929,999</b>	<b>\$ 798,384,025</b>	<b>\$ 834,232,431</b>	<b>\$ 871,460,309</b>	<b>\$ 910,321,597</b>	<b>\$ 4,178,328,361</b>

Figure 8





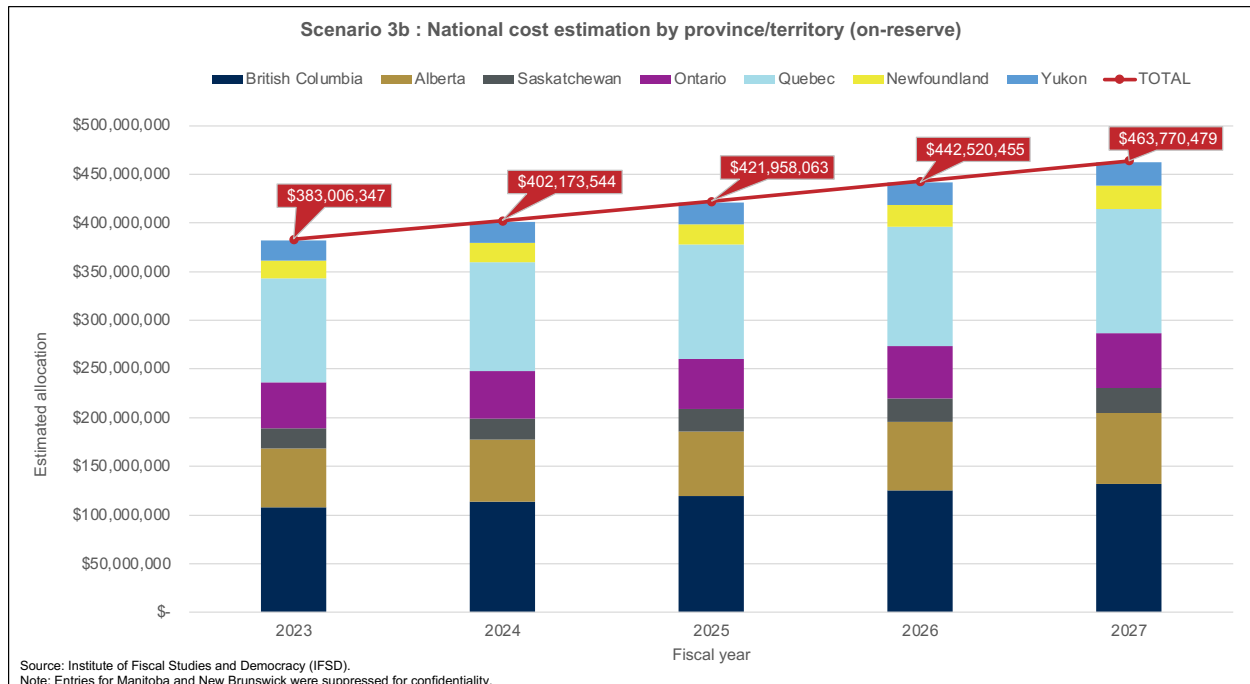
### Scenario 3b (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)
- Band Representative Service, \$283 per capita
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 9

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 108,111,387	\$ 113,759,624	\$ 119,563,032	\$ 125,656,046	\$ 131,829,737	\$ 598,919,826
Alberta	\$ 60,424,702	\$ 63,471,266	\$ 66,505,046	\$ 69,683,677	\$ 72,953,444	\$ 333,038,134
Saskatchewan	\$ 20,474,698	\$ 21,681,378	\$ 22,966,126	\$ 24,298,302	\$ 25,669,620	\$ 115,090,124
Manitoba	*	*	*	*	*	*
Ontario	\$ 46,966,753	\$ 49,145,489	\$ 51,432,400	\$ 53,792,005	\$ 56,256,760	\$ 257,593,408
Quebec	\$ 107,047,682	\$ 111,982,019	\$ 117,045,804	\$ 122,403,093	\$ 127,925,474	\$ 586,404,072
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 18,735,622	\$ 19,892,045	\$ 21,074,916	\$ 22,310,375	\$ 23,606,728	\$ 105,619,686
Yukon	\$ 20,234,247	\$ 21,172,670	\$ 22,236,512	\$ 23,179,575	\$ 24,265,407	\$ 111,088,410
TOTAL	\$ 383,006,347	\$ 402,173,544	\$ 421,958,063	\$ 442,520,455	\$ 463,770,479	\$ 2,113,428,888

Figure 9

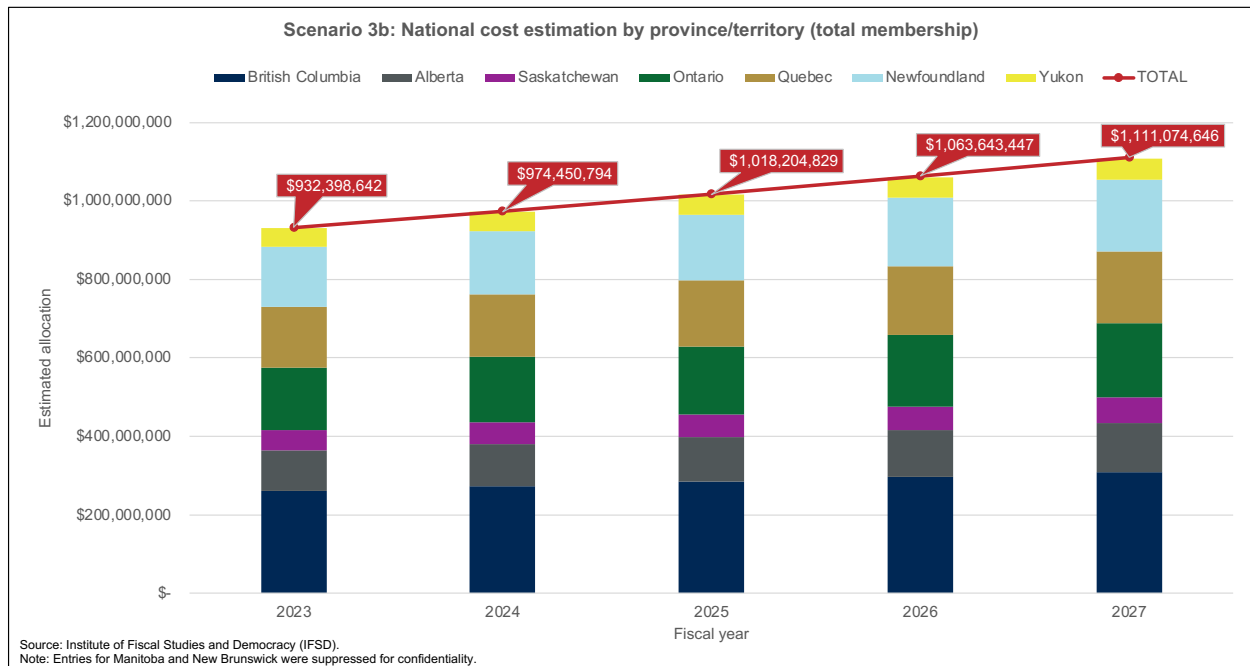


## Scenario 3b (total membership)

Table 10

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 260,617,740	\$ 272,272,232	\$ 284,339,360	\$ 296,800,969	\$ 309,759,089	\$ 1,423,789,390
Alberta	\$ 103,656,479	\$ 108,713,893	\$ 113,957,624	\$ 119,457,630	\$ 125,250,266	\$ 571,035,891
Saskatchewan	\$ 51,578,763	\$ 54,388,775	\$ 57,354,770	\$ 60,449,732	\$ 63,688,953	\$ 287,460,993
Manitoba	*	*	*	*	*	*
Ontario	\$ 159,747,023	\$ 166,588,924	\$ 173,792,943	\$ 181,279,702	\$ 189,079,573	\$ 870,488,164
Quebec	\$ 153,748,662	\$ 160,631,523	\$ 167,731,514	\$ 175,167,239	\$ 182,882,924	\$ 840,161,861
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 153,335,457	\$ 160,238,582	\$ 167,438,578	\$ 174,876,895	\$ 182,683,771	\$ 838,573,284
Yukon	\$ 47,312,698	\$ 49,105,666	\$ 50,965,205	\$ 52,863,209	\$ 54,858,774	\$ 255,105,552
<b>TOTAL</b>	<b>\$932,398,642</b>	<b>\$974,450,794</b>	<b>\$ 1,018,204,829</b>	<b>\$ 1,063,643,447</b>	<b>\$ 1,111,074,646</b>	<b>\$ 5,099,772,358</b>

Figure 10



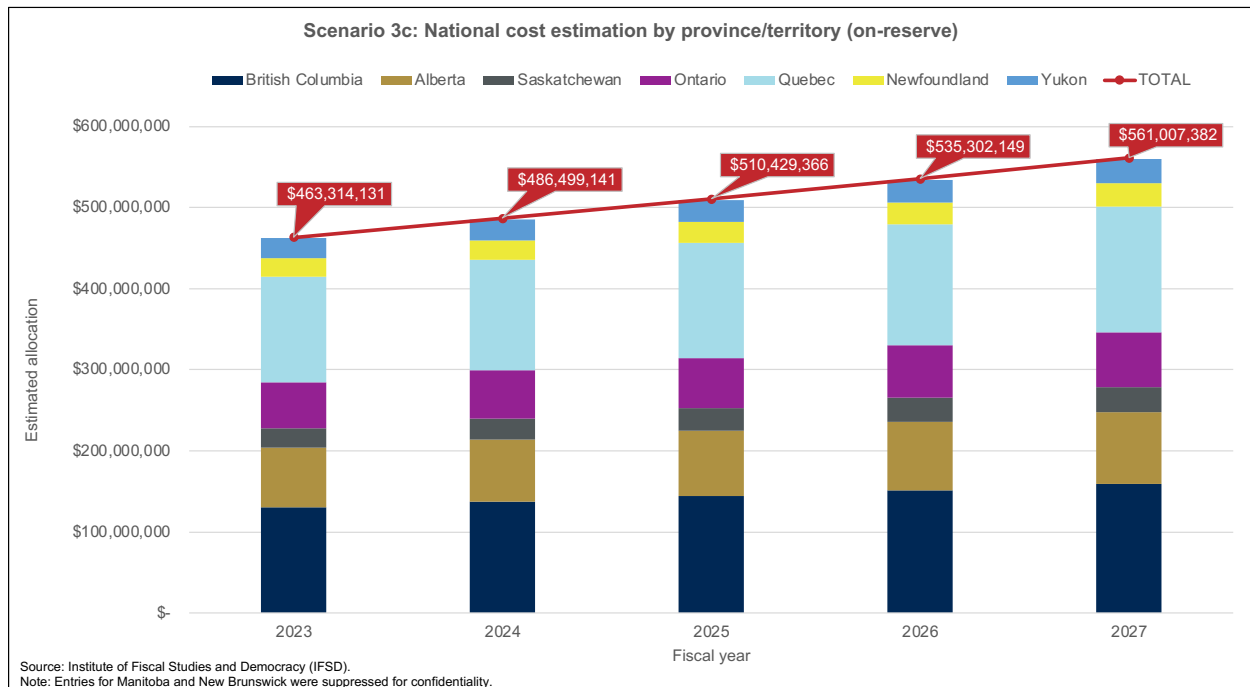
### Scenario 3c (on-reserve)

- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)
- Band Representative Service, \$283 per capita
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 11

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 130,538,272	\$ 137,358,073	\$ 144,365,194	\$ 151,721,664	\$ 159,176,988	\$ 723,160,191
Alberta	\$ 73,139,736	\$ 76,827,362	\$ 80,499,571	\$ 84,347,052	\$ 88,304,852	\$ 403,118,573
Saskatchewan	\$ 24,653,472	\$ 26,106,435	\$ 27,653,339	\$ 29,257,444	\$ 30,908,616	\$ 138,579,307
Manitoba	*	*	*	*	*	*
Ontario	\$ 56,491,066	\$ 59,111,573	\$ 61,862,245	\$ 64,700,373	\$ 67,665,019	\$ 309,830,276
Quebec	\$ 130,162,705	\$ 136,162,523	\$ 142,319,747	\$ 148,833,847	\$ 155,548,682	\$ 713,027,504
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 22,784,189	\$ 24,190,502	\$ 25,628,979	\$ 27,131,408	\$ 28,707,888	\$ 128,442,966
Yukon	\$ 24,314,914	\$ 25,442,610	\$ 26,720,971	\$ 27,854,235	\$ 29,159,041	\$ 133,491,770
<b>TOTAL</b>	<b>\$ 463,314,131</b>	<b>\$ 486,499,141</b>	<b>\$ 510,429,366</b>	<b>\$ 535,302,149</b>	<b>\$ 561,007,382</b>	<b>\$ 2,556,552,170</b>

Figure 11

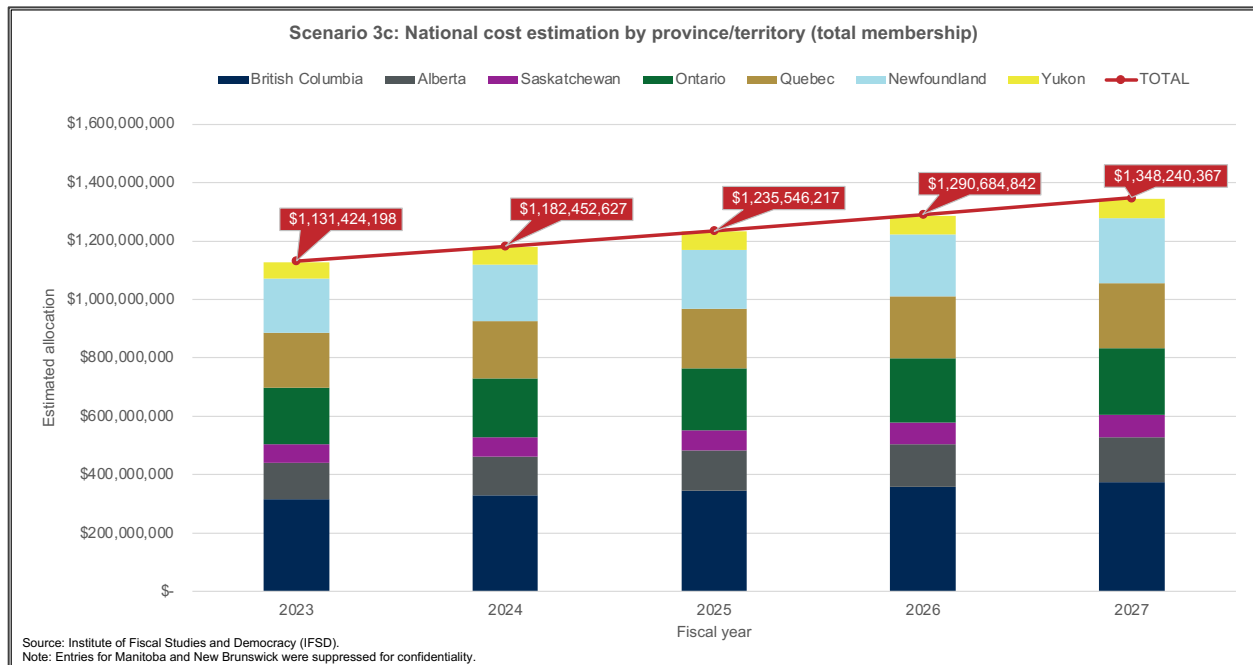


## Scenario 3c (total membership)

Table 12

Province/Territory	2023	2024	2025	2026	2027	5-year total
British Columbia	\$ 315,999,610	\$ 330,130,472	\$ 344,761,687	\$ 359,872,037	\$ 375,583,497	\$ 1,726,347,302
Alberta	\$ 125,713,435	\$ 131,847,011	\$ 138,206,574	\$ 144,876,912	\$ 151,902,164	\$ 692,546,096
Saskatchewan	\$ 62,478,790	\$ 65,882,631	\$ 69,475,420	\$ 73,224,441	\$ 77,148,189	\$ 348,209,470
Manitoba	*	*	*	*	*	*
Ontario	\$ 193,641,941	\$ 201,935,509	\$ 210,668,117	\$ 219,743,384	\$ 229,198,161	\$ 1,055,187,112
Quebec	\$ 186,955,265	\$ 195,324,685	\$ 203,958,131	\$ 212,999,822	\$ 222,381,940	\$ 1,021,619,843
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 186,469,601	\$ 194,864,418	\$ 203,620,255	\$ 212,665,913	\$ 222,159,771	\$ 1,019,779,959
Yukon	\$ 57,244,727	\$ 59,414,059	\$ 61,663,998	\$ 63,960,435	\$ 66,374,892	\$ 308,658,111
<b>TOTAL</b>	<b>\$ 1,131,424,198</b>	<b>\$ 1,182,452,627</b>	<b>\$ 1,235,546,217</b>	<b>\$ 1,290,684,842</b>	<b>\$ 1,348,240,367</b>	<b>\$ 6,188,348,252</b>

Figure 12



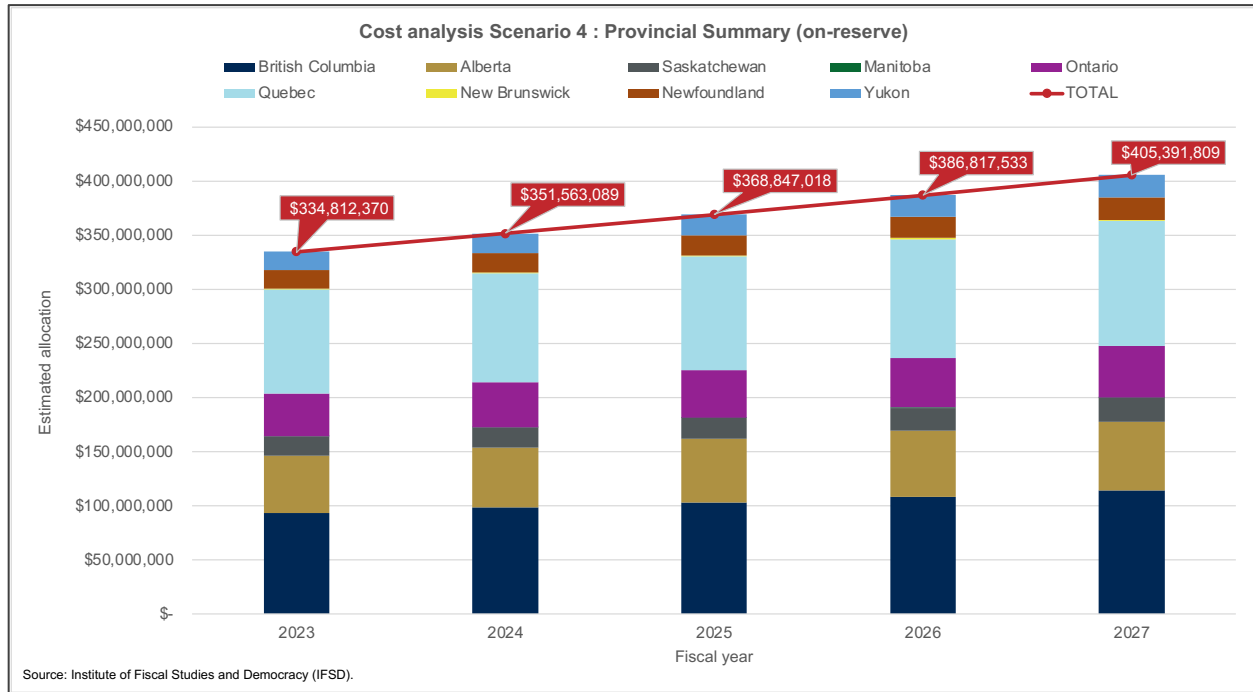
### Scenario 4 (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data) + \$283
- Remoteness (baseline and top-ups) **(applied to all First Nations)**
- Projections grown by population + inflation

Table 13

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 93,500,257	\$ 98,384,641	\$ 103,403,060	\$ 108,670,554	\$ 114,013,830	\$ 517,972,342
Alberta	\$ 53,010,436	\$ 55,683,099	\$ 58,344,780	\$ 61,133,296	\$ 64,001,780	\$ 292,173,391
Saskatchewan	\$ 17,421,785	\$ 18,448,568	\$ 19,541,531	\$ 20,675,236	\$ 21,841,976	\$ 97,929,097
Manitoba	*	*	*	*	*	*
Ontario	\$ 39,707,956	\$ 41,549,745	\$ 43,483,219	\$ 45,478,241	\$ 47,562,338	\$ 217,781,499
Quebec	\$ 96,369,186	\$ 100,811,296	\$ 105,369,967	\$ 110,192,849	\$ 115,164,322	\$ 527,907,621
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 16,878,939	\$ 17,920,761	\$ 18,986,411	\$ 20,099,437	\$ 21,267,322	\$ 95,152,871
Yukon	\$ 17,012,769	\$ 17,801,867	\$ 18,696,223	\$ 19,489,196	\$ 20,402,124	\$ 93,402,180
TOTAL	\$ 334,812,370	\$ 351,563,089	\$ 368,847,018	\$ 386,817,533	\$ 405,391,809	\$ 1,847,431,818

Figure 13

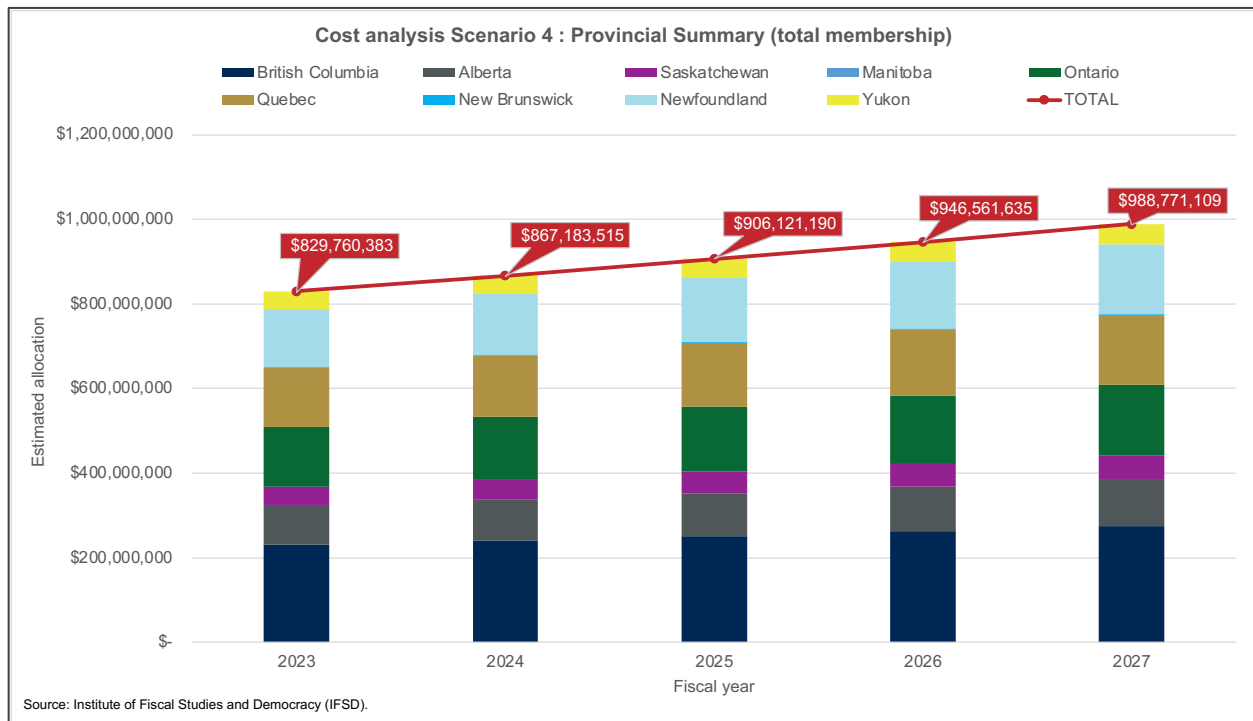


## Scenario 4 (total membership)

Table 14

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 230,893,369	\$ 241,217,642	\$ 251,907,616	\$ 262,950,518	\$ 274,429,513	\$ 1,261,398,658
Alberta	\$ 91,957,982	\$ 96,444,626	\$ 101,096,657	\$ 105,975,902	\$ 111,114,824	\$ 506,589,991
Saskatchewan	\$ 45,443,464	\$ 47,919,203	\$ 50,532,383	\$ 53,259,228	\$ 56,113,098	\$ 253,267,376
Manitoba	*	*	*	*	*	*
Ontario	\$ 141,311,803	\$ 147,363,970	\$ 153,736,833	\$ 160,359,507	\$ 167,258,995	\$ 770,031,108
Quebec	\$ 138,442,141	\$ 144,639,775	\$ 151,032,925	\$ 157,728,380	\$ 164,675,933	\$ 756,519,154
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 138,140,051	\$ 144,359,083	\$ 150,845,566	\$ 157,546,752	\$ 164,579,974	\$ 755,471,427
Yukon	\$ 41,407,770	\$ 42,976,874	\$ 44,604,494	\$ 46,265,609	\$ 48,012,017	\$ 223,266,764
<b>TOTAL</b>	<b>\$ 829,760,383</b>	<b>\$ 867,183,515</b>	<b>\$ 906,121,190</b>	<b>\$ 946,561,635</b>	<b>\$ 988,771,109</b>	<b>\$ 4,538,397,832</b>

Figure 14



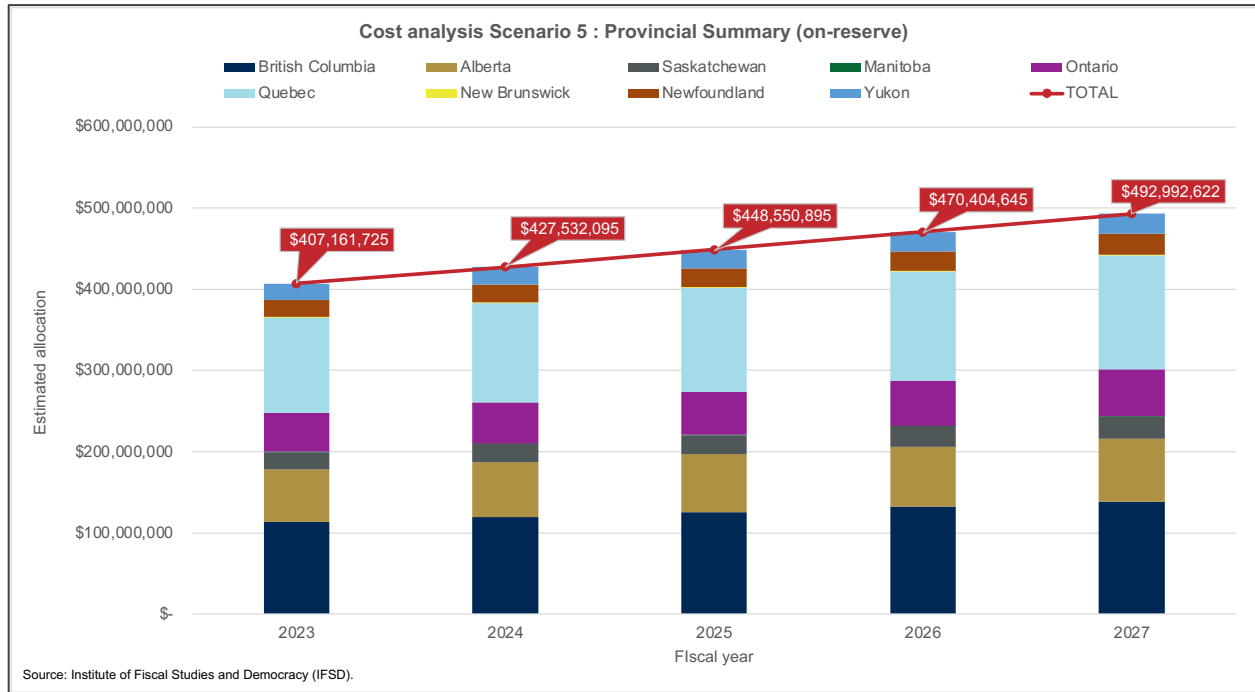
### Scenario 5 (on-reserve)

- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data) + \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Projections grown by population + inflation

Table 15

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 113,704,658	\$ 119,644,505	\$ 125,747,350	\$ 132,153,093	\$ 138,650,994	\$ 629,900,599
Alberta	\$ 64,465,421	\$ 67,715,619	\$ 70,952,461	\$ 74,343,544	\$ 77,831,877	\$ 355,308,921
Saskatchewan	\$ 21,186,445	\$ 22,435,106	\$ 23,764,246	\$ 25,142,932	\$ 26,561,793	\$ 119,090,522
Manitoba	*	*	*	*	*	*
Ontario	\$ 48,288,418	\$ 50,528,199	\$ 52,879,476	\$ 55,305,600	\$ 57,840,048	\$ 264,841,741
Quebec	\$ 117,193,532	\$ 122,595,534	\$ 128,139,285	\$ 134,004,340	\$ 140,050,095	\$ 641,982,785
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 20,526,296	\$ 21,793,245	\$ 23,089,170	\$ 24,442,710	\$ 25,862,962	\$ 115,714,383
Yukon	\$ 20,689,045	\$ 21,648,659	\$ 22,736,276	\$ 23,700,602	\$ 24,810,804	\$ 113,585,387
TOTAL	\$ 407,161,725	\$ 427,532,095	\$ 448,550,895	\$ 470,404,645	\$ 492,992,622	\$ 2,246,641,981

Figure 15

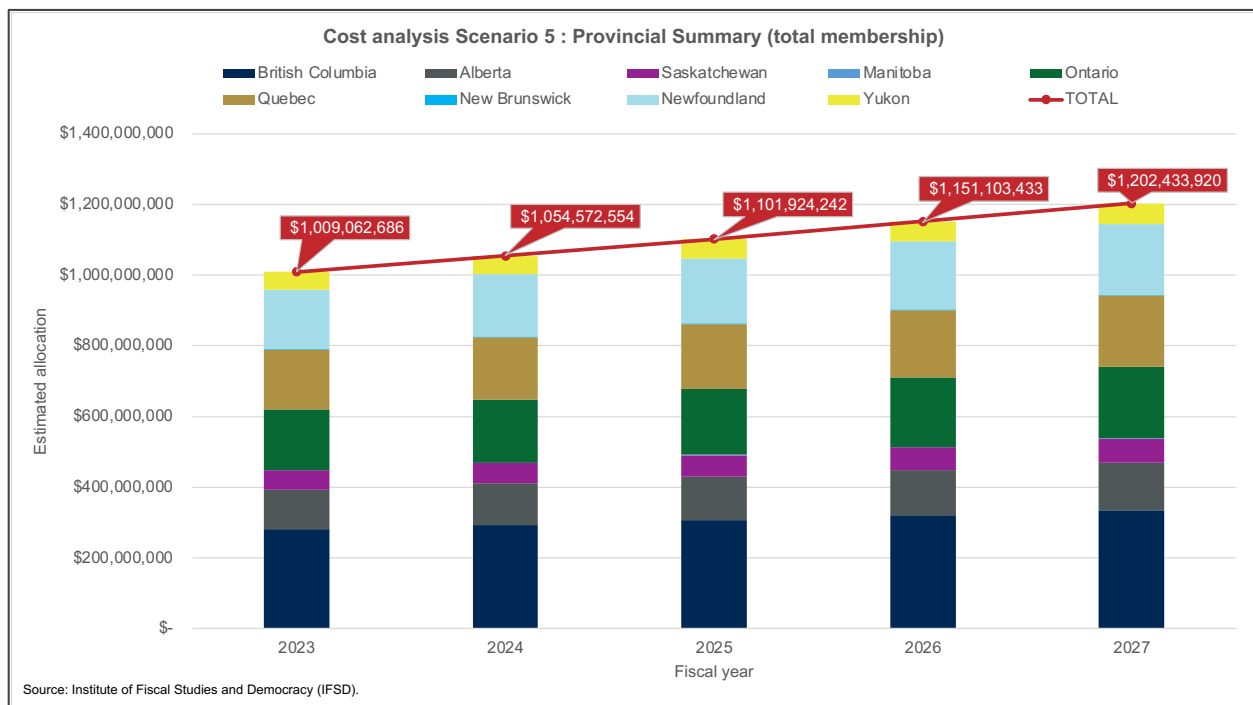


## Scenario 5 (total membership)

Table 16

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 280,786,945	\$ 293,342,182	\$ 306,342,145	\$ 319,771,300	\$ 333,730,782	\$ 1,533,973,353
Alberta	\$ 111,829,114	\$ 117,285,274	\$ 122,942,558	\$ 128,876,155	\$ 135,125,543	\$ 616,058,645
Saskatchewan	\$ 55,263,308	\$ 58,274,028	\$ 61,451,888	\$ 64,767,974	\$ 68,238,536	\$ 307,995,734
Manitoba	*	*	*	*	*	*
Ontario	\$ 171,847,765	\$ 179,207,741	\$ 186,957,711	\$ 195,011,473	\$ 203,401,867	\$ 936,426,556
Quebec	\$ 168,358,000	\$ 175,894,876	\$ 183,669,517	\$ 191,811,787	\$ 200,260,633	\$ 919,994,814
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 167,990,632	\$ 175,553,530	\$ 183,441,671	\$ 191,590,913	\$ 200,143,938	\$ 918,720,684
Yukon	\$ 50,355,544	\$ 52,263,714	\$ 54,243,046	\$ 56,263,110	\$ 58,386,898	\$ 271,512,313
<b>TOTAL</b>	<b>\$ 1,009,062,686</b>	<b>\$ 1,054,572,554</b>	<b>\$ 1,101,924,242</b>	<b>\$ 1,151,103,433</b>	<b>\$ 1,202,433,920</b>	<b>\$ 5,519,096,836</b>

Figure 16





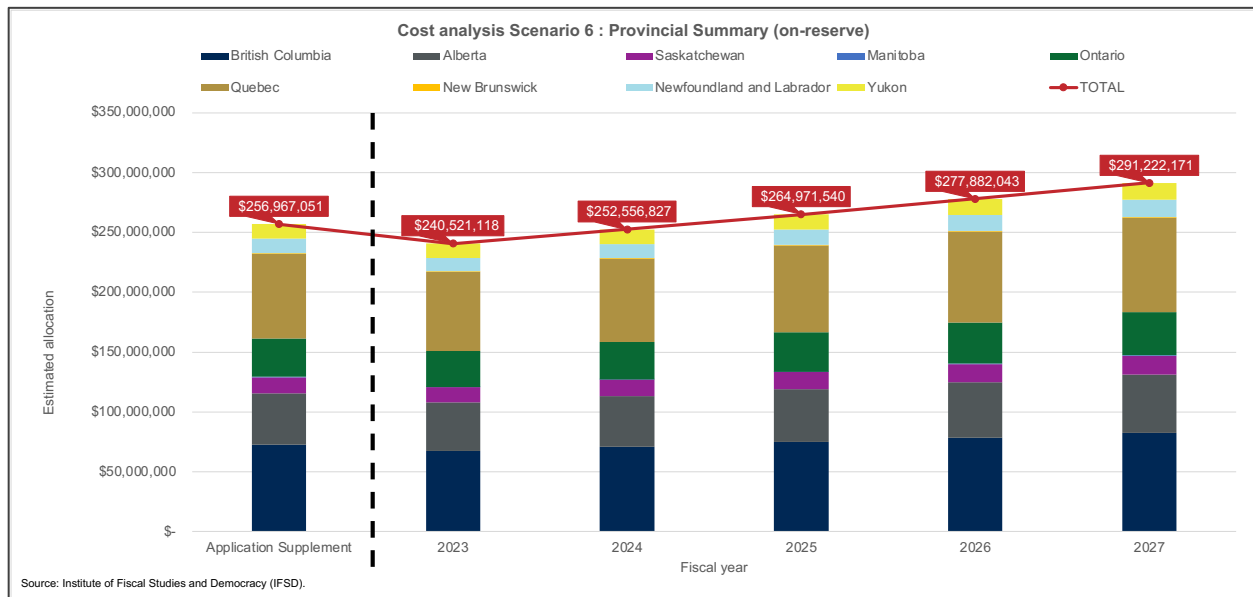
### Scenario 6 (on-reserve)

- Per capita allocations of \$2,500 and \$283
- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data) allocated to a fund for application-based access to resources
- Projections grown by population + inflation

Table 17

Province/Territory	Application Supplement	2023	2024	2025	2026	2027	Total
British Columbia	\$ 72,514,054	\$ 67,651,939	\$ 71,186,806	\$ 74,818,348	\$ 78,629,278	\$ 82,494,714	\$ 374,781,085
Alberta	\$ 42,908,137	\$ 40,255,776	\$ 42,285,333	\$ 44,306,807	\$ 46,424,335	\$ 48,602,443	\$ 221,874,693
Saskatchewan	\$ 13,700,844	\$ 12,696,832	\$ 13,445,114	\$ 14,241,793	\$ 15,067,940	\$ 15,918,292	\$ 71,369,971
Manitoba	*	*	*	*	*	*	*
Ontario	\$ 31,944,857	\$ 30,000,642	\$ 31,391,408	\$ 32,852,117	\$ 34,359,865	\$ 35,934,601	\$ 164,538,632
Quebec	\$ 70,642,945	\$ 66,303,630	\$ 69,359,717	\$ 72,495,796	\$ 75,814,240	\$ 79,234,870	\$ 363,208,253
New Brunswick	*	*	*	*	*	*	*
Newfoundland and Labrador	\$ 12,200,206	\$ 11,302,453	\$ 12,000,093	\$ 12,713,453	\$ 13,459,087	\$ 14,241,083	\$ 63,716,169
Yukon	\$ 12,342,310	\$ 11,646,441	\$ 12,186,985	\$ 12,799,110	\$ 13,341,695	\$ 13,967,257	\$ 63,941,488
<b>TOTAL</b>	<b>\$256,967,051</b>	<b>\$240,521,118</b>	<b>\$252,556,827</b>	<b>\$264,971,540</b>	<b>\$277,882,043</b>	<b>\$291,222,171</b>	<b>\$ 1,327,153,699</b>

Figure 17

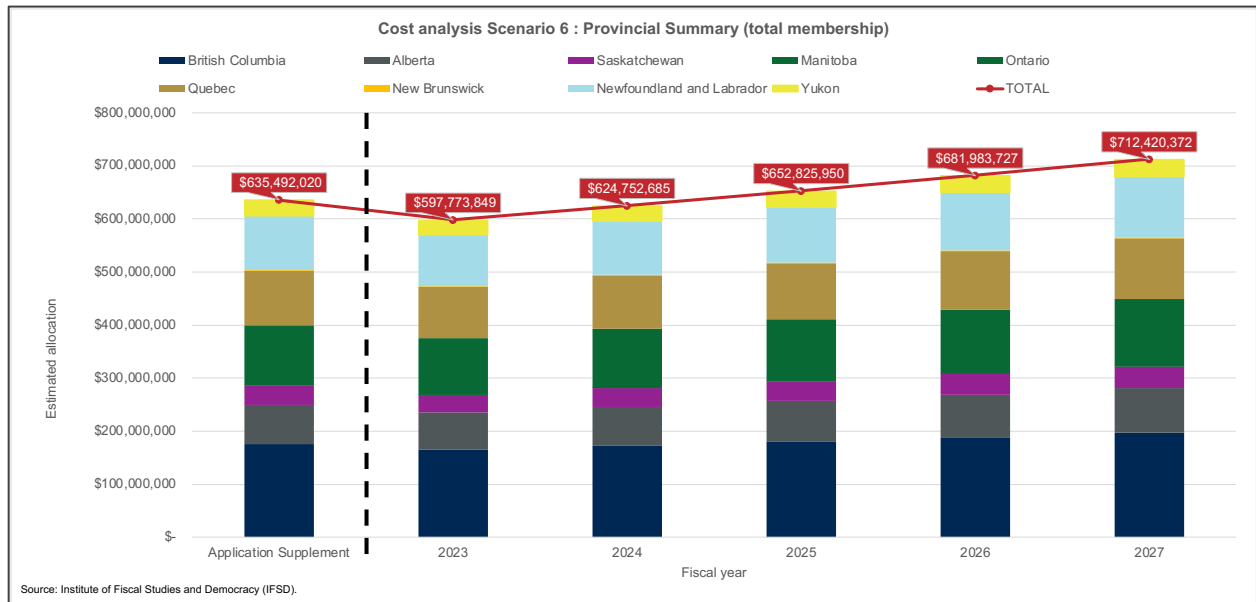


## Scenario 6 (total membership)

Table 18

Province/Territory	Application Supplement	2023	2024	2025	2026	2027	Total
British Columbia	\$ 176,125,076	\$ 165,728,362	\$ 173,140,358	\$ 180,813,773	\$ 188,739,214	\$ 196,980,220	\$ 905,401,927
Alberta	\$ 73,976,363	\$ 69,396,448	\$ 72,782,360	\$ 76,293,203	\$ 79,975,248	\$ 83,853,510	\$ 382,300,769
Saskatchewan	\$ 35,612,685	\$ 33,207,099	\$ 35,016,247	\$ 36,925,810	\$ 38,918,322	\$ 41,003,861	\$ 185,071,339
Manitoba	*	*	*	*	*	*	*
Ontario	\$ 113,245,870	\$ 106,700,686	\$ 111,270,652	\$ 116,082,554	\$ 121,082,893	\$ 126,292,949	\$ 581,429,734
Quebec	\$ 102,755,944	\$ 96,678,973	\$ 101,006,616	\$ 105,471,623	\$ 110,147,130	\$ 114,998,399	\$ 528,302,740
New Brunswick	*	*	*	*	*	*	*
Newfoundland and Labrador	\$ 102,125,483	\$ 96,113,851	\$ 100,440,616	\$ 104,953,570	\$ 109,616,328	\$ 114,509,762	\$ 525,634,127
Yukon	\$ 29,972,028	\$ 28,372,843	\$ 29,448,578	\$ 30,563,605	\$ 31,701,998	\$ 32,898,332	\$ 152,985,356
<b>TOTAL</b>	<b>\$ 635,492,020</b>	<b>\$ 597,773,849</b>	<b>\$ 624,752,685</b>	<b>\$ 652,825,950</b>	<b>\$ 681,983,727</b>	<b>\$ 712,420,372</b>	<b>\$ 3,269,756,584</b>

Figure 18



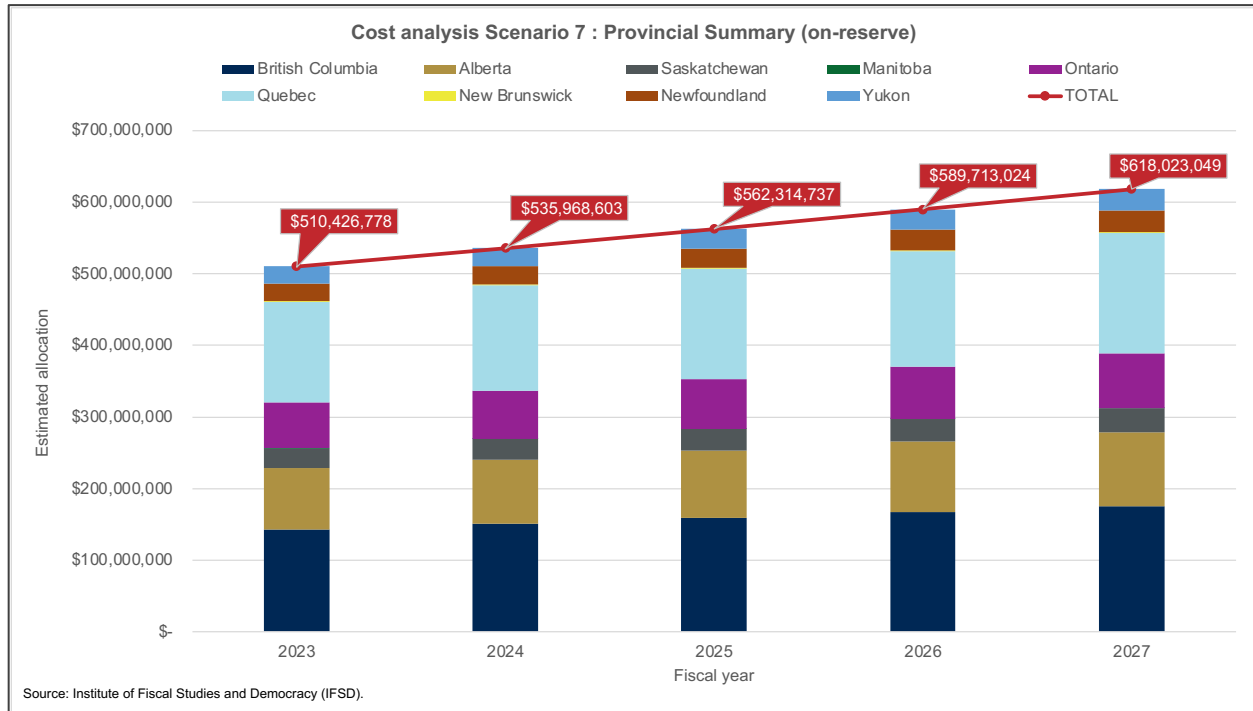
### Scenario 7 (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)
- Per capita allocations of \$2,500 and \$283
- Projections grown by population + inflation

Table 19

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 143,568,937	\$ 151,070,526	\$ 158,777,278	\$ 166,864,719	\$ 175,067,833	\$ 795,349,294
Alberta	\$ 85,429,612	\$ 89,736,678	\$ 94,026,590	\$ 98,520,346	\$ 103,142,661	\$ 470,855,888
Saskatchewan	\$ 26,944,840	\$ 28,532,822	\$ 30,223,511	\$ 31,976,735	\$ 33,781,327	\$ 151,459,235
Manitoba	*	*	*	*	*	*
Ontario	\$ 63,666,472	\$ 66,617,914	\$ 69,717,787	\$ 72,917,485	\$ 76,259,344	\$ 349,179,002
Quebec	\$ 140,707,596	\$ 147,193,132	\$ 153,848,427	\$ 160,890,731	\$ 168,149,889	\$ 770,789,775
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 23,985,731	\$ 25,466,241	\$ 26,980,113	\$ 28,562,474	\$ 30,222,004	\$ 135,216,563
Yukon	\$ 24,715,731	\$ 25,862,858	\$ 27,161,892	\$ 28,313,349	\$ 29,640,898	\$ 135,694,729
TOTAL	\$ 510,426,778	\$ 535,968,603	\$ 562,314,737	\$ 589,713,024	\$ 618,023,049	\$ 2,816,446,190

Figure 19

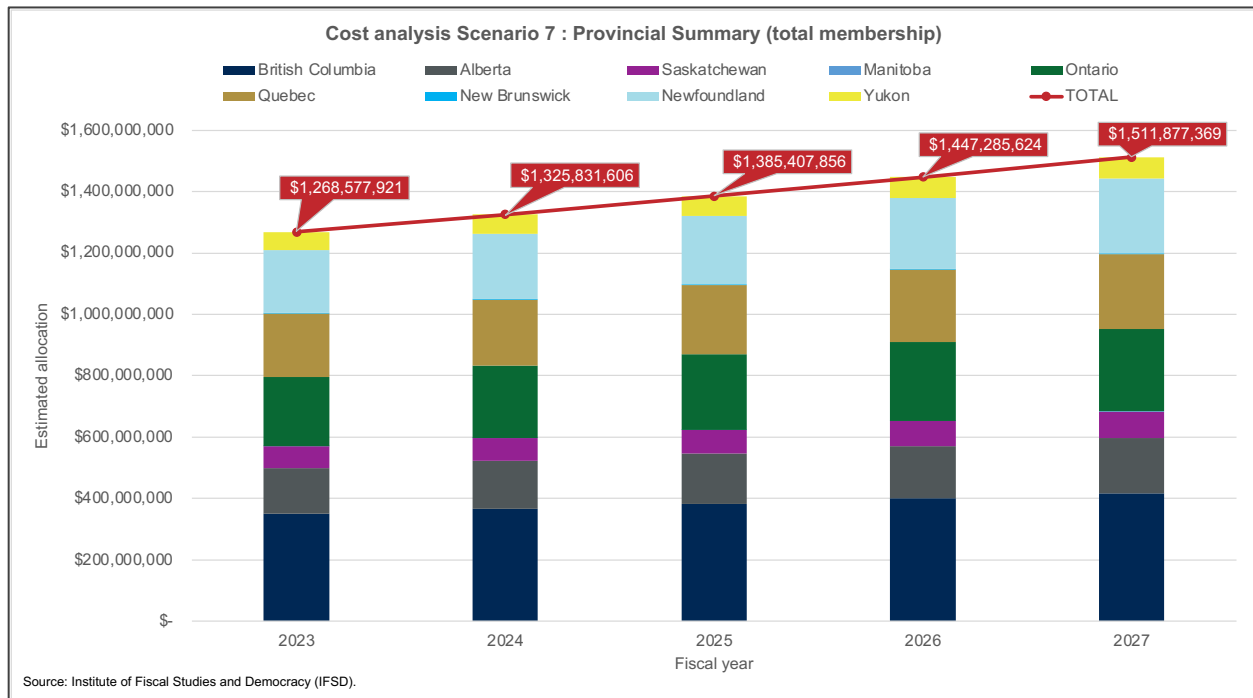


## Scenario 7 (total membership)

Table 20

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 351,703,812	\$ 367,433,329	\$ 383,717,623	\$ 400,536,758	\$ 418,025,576	\$ 1,921,417,098
Alberta	\$ 147,271,083	\$ 154,456,563	\$ 161,907,172	\$ 169,721,098	\$ 177,951,430	\$ 811,307,346
Saskatchewan	\$ 70,471,120	\$ 74,310,440	\$ 78,362,858	\$ 82,591,309	\$ 87,017,177	\$ 392,752,903
Manitoba	*	*	*	*	*	*
Ontario	\$ 226,437,030	\$ 236,135,276	\$ 246,346,950	\$ 256,958,521	\$ 268,015,148	\$ 1,233,892,924
Quebec	\$ 205,169,247	\$ 214,353,242	\$ 223,828,747	\$ 233,750,970	\$ 244,046,188	\$ 1,121,148,395
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 203,969,961	\$ 213,152,094	\$ 222,729,352	\$ 232,624,518	\$ 243,009,218	\$ 1,115,485,143
Yukon	\$ 60,212,005	\$ 62,494,898	\$ 64,861,175	\$ 67,277,039	\$ 69,815,865	\$ 324,660,982
TOTAL	\$ 1,268,577,921	\$ 1,325,831,606	\$ 1,385,407,856	\$ 1,447,285,624	\$ 1,511,877,369	\$ 6,938,980,376

Figure 20



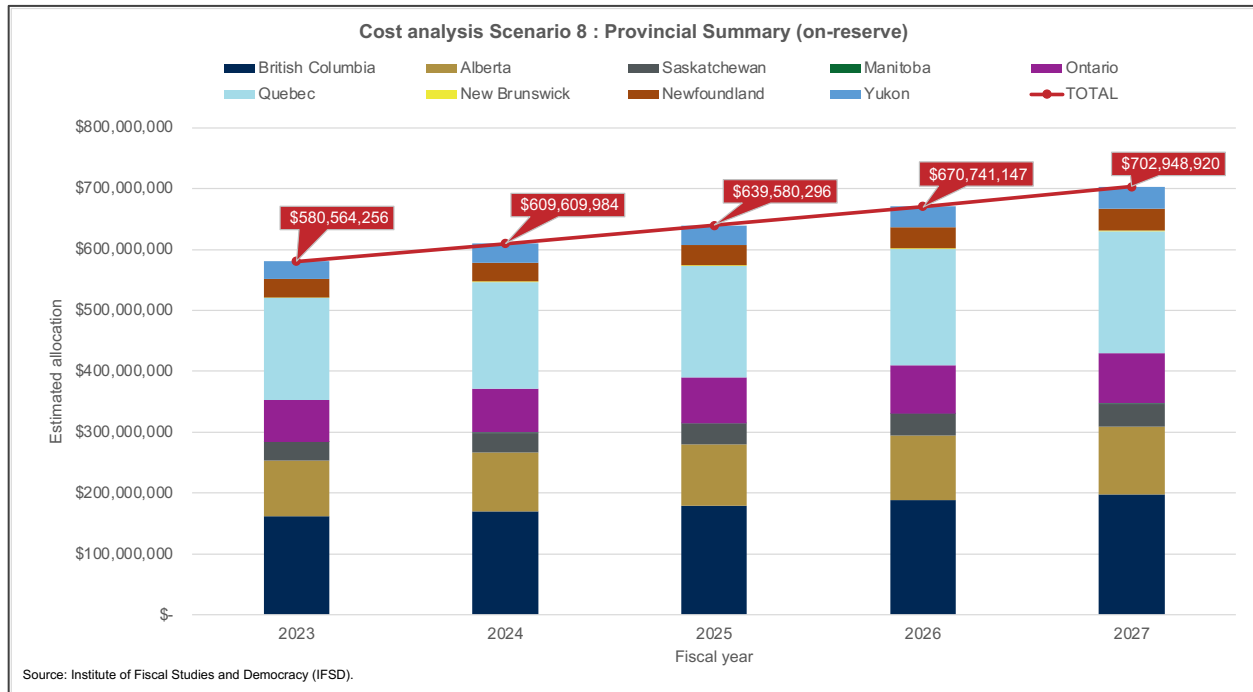
### Scenario 8 (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)
- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Projections grown by population + inflation

Table 21

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 162,129,337	\$ 170,598,852	\$ 179,300,784	\$ 188,434,613	\$ 197,699,848	\$ 898,163,432
Alberta	\$ 91,920,033	\$ 96,554,429	\$ 101,169,781	\$ 106,005,063	\$ 110,979,011	\$ 506,628,317
Saskatchewan	\$ 30,209,354	\$ 31,989,796	\$ 33,884,992	\$ 35,850,835	\$ 37,873,961	\$ 169,808,939
Manitoba	*	*	*	*	*	*
Ontario	\$ 68,853,548	\$ 72,047,210	\$ 75,399,851	\$ 78,859,216	\$ 82,473,038	\$ 377,632,863
Quebec	\$ 167,104,056	\$ 174,806,669	\$ 182,711,400	\$ 191,074,271	\$ 199,694,799	\$ 915,391,195
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 29,268,060	\$ 31,074,579	\$ 32,922,414	\$ 34,852,401	\$ 36,877,512	\$ 164,994,966
Yukon	\$ 29,500,121	\$ 30,868,417	\$ 32,419,229	\$ 33,794,244	\$ 35,377,259	\$ 161,959,270
<b>TOTAL</b>	<b>\$ 580,564,256</b>	<b>\$ 609,609,984</b>	<b>\$ 639,580,296</b>	<b>\$ 670,741,147</b>	<b>\$ 702,948,920</b>	<b>\$ 3,203,444,602</b>

Figure 21

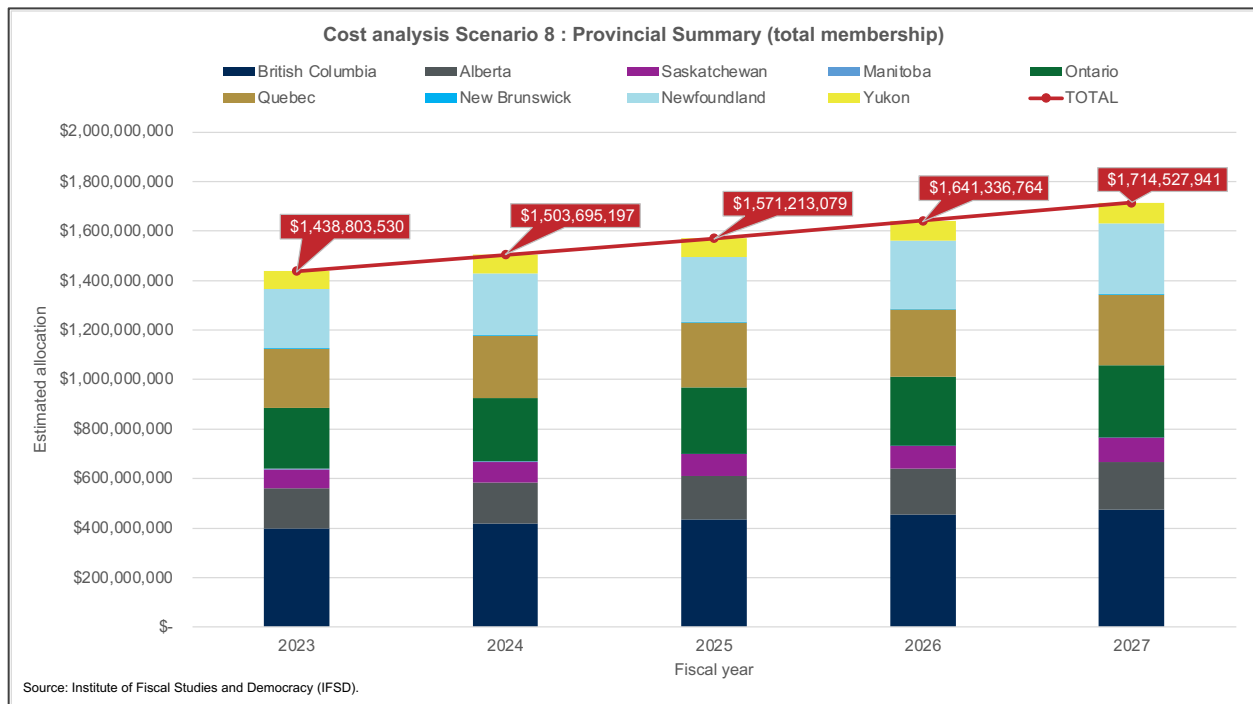


## Scenario 8 (total membership)

Table 22

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 400,368,831	\$ 418,271,107	\$ 436,807,510	\$ 455,955,890	\$ 475,860,453	\$ 2,187,263,791
Alberta	\$ 159,455,033	\$ 167,234,869	\$ 175,301,485	\$ 183,762,089	\$ 192,672,974	\$ 878,426,450
Saskatchewan	\$ 78,798,913	\$ 83,091,842	\$ 87,623,093	\$ 92,351,438	\$ 97,300,046	\$ 439,165,332
Manitoba	*	*	*	*	*	*
Ontario	\$ 245,034,500	\$ 255,528,951	\$ 266,579,488	\$ 278,063,197	\$ 290,026,902	\$ 1,335,233,038
Quebec	\$ 240,058,510	\$ 250,805,200	\$ 261,890,914	\$ 273,500,825	\$ 285,547,875	\$ 1,311,803,324
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 239,534,687	\$ 250,318,481	\$ 261,566,034	\$ 273,185,884	\$ 285,381,482	\$ 1,309,986,567
Yukon	\$ 71,801,025	\$ 74,521,848	\$ 77,344,140	\$ 80,224,512	\$ 83,252,781	\$ 387,144,307
<b>TOTAL</b>	<b>\$ 1,438,803,530</b>	<b>\$ 1,503,695,197</b>	<b>\$ 1,571,213,079</b>	<b>\$ 1,641,336,764</b>	<b>\$ 1,714,527,941</b>	<b>\$ 7,869,576,512</b>

Figure 22



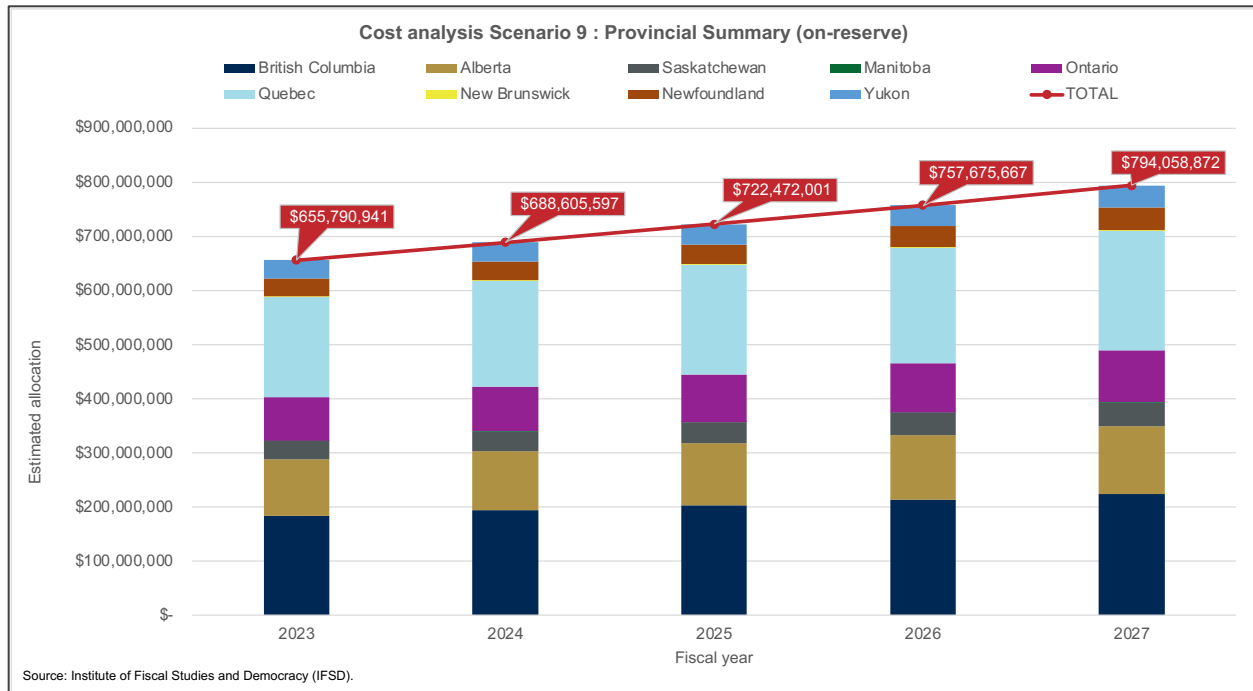
### Scenario 9 (on-reserve)

- Per capita allocations of \$3,123 (average per capita expenditure from questionnaire data)
- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Poverty 7% (of difference)
- Results 5% (baseline)
- IT 6% (baseline)
- Projections grown by population + inflation

Table 23

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 184,289,664	\$ 193,917,399	\$ 203,809,506	\$ 214,194,151	\$ 224,721,216	\$ 1,020,931,936
Alberta	\$ 103,614,355	\$ 108,838,441	\$ 114,040,796	\$ 119,491,338	\$ 125,098,171	\$ 571,083,102
Saskatchewan	\$ 34,668,901	\$ 36,712,141	\$ 38,887,367	\$ 41,143,216	\$ 43,465,124	\$ 194,876,749
Manitoba	*	*	*	*	*	*
Ontario	\$ 79,318,361	\$ 82,997,675	\$ 86,859,862	\$ 90,844,887	\$ 95,007,637	\$ 435,028,422
Quebec	\$ 185,563,387	\$ 194,116,883	\$ 202,894,794	\$ 212,181,471	\$ 221,754,304	\$ 1,016,510,839
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 32,487,547	\$ 34,492,783	\$ 36,543,880	\$ 38,686,165	\$ 40,934,038	\$ 183,144,412
Yukon	\$ 34,095,208	\$ 35,676,540	\$ 37,469,049	\$ 39,058,177	\$ 40,887,807	\$ 187,186,780
TOTAL	\$ 655,790,941	\$ 688,605,597	\$ 722,472,001	\$ 757,675,667	\$ 794,058,872	\$ 3,618,603,079

Figure 23

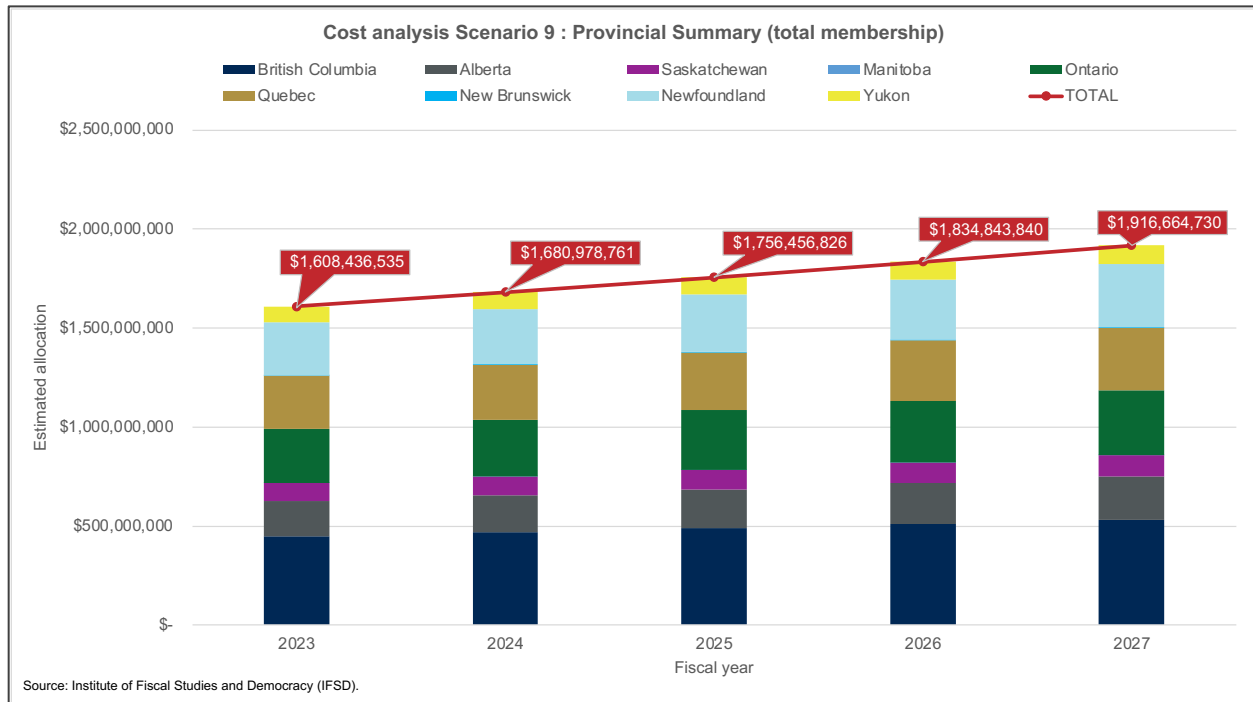


## Scenario 9 (total membership)

Table 24

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 448,735,503	\$ 468,801,579	\$ 489,578,243	\$ 511,036,932	\$ 533,347,432	\$ 2,451,499,689
Alberta	\$ 178,578,205	\$ 187,291,062	\$ 196,324,982	\$ 205,800,298	\$ 215,779,812	\$ 983,774,360
Saskatchewan	\$ 88,603,311	\$ 93,430,404	\$ 98,525,457	\$ 103,842,086	\$ 109,406,466	\$ 493,807,724
Manitoba	*	*	*	*	*	*
Ontario	\$ 274,879,217	\$ 286,652,053	\$ 299,048,290	\$ 311,930,797	\$ 325,351,949	\$ 1,497,862,306
Quebec	\$ 266,542,831	\$ 278,475,145	\$ 290,783,883	\$ 303,674,653	\$ 317,050,779	\$ 1,456,527,290
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 265,883,502	\$ 277,853,514	\$ 290,338,297	\$ 303,236,331	\$ 316,773,445	\$ 1,454,085,089
Yukon	\$ 81,049,211	\$ 84,120,588	\$ 87,306,213	\$ 90,557,591	\$ 93,976,022	\$ 437,009,625
<b>TOTAL</b>	<b>\$ 1,608,436,535</b>	<b>\$ 1,680,978,761</b>	<b>\$ 1,756,456,826</b>	<b>\$ 1,834,843,840</b>	<b>\$ 1,916,664,730</b>	<b>\$ 8,797,380,692</b>

Figure 24





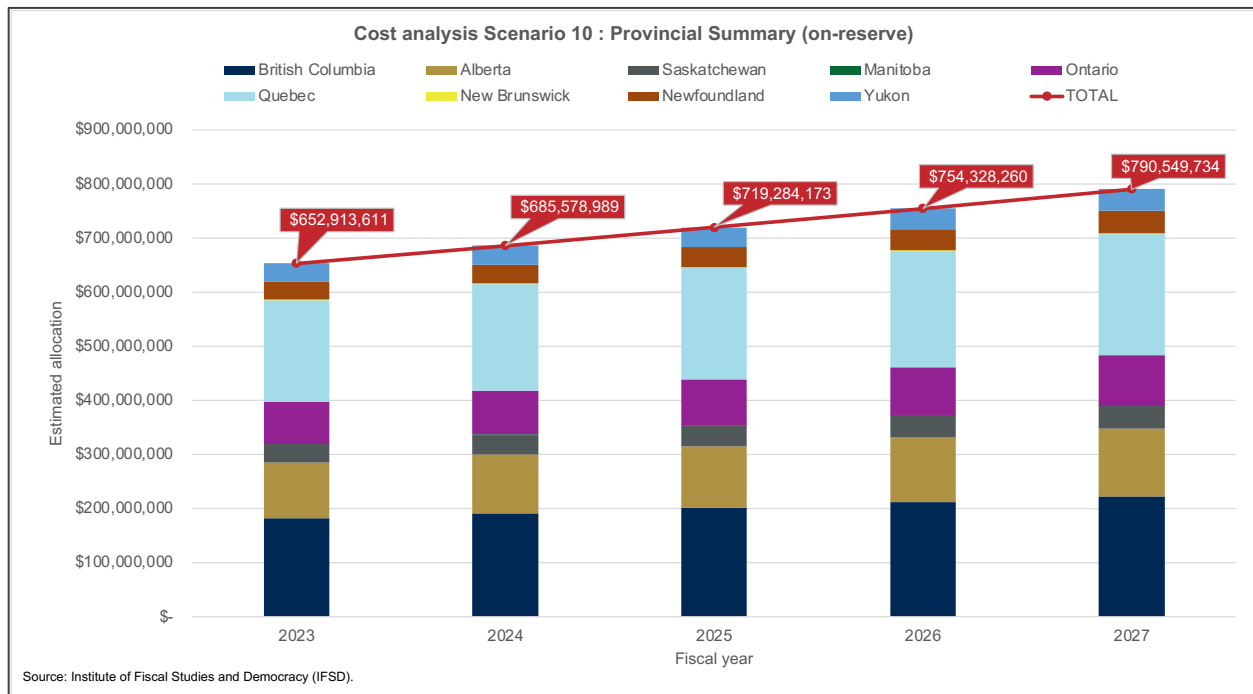
### Scenario 10 (on-reserve)

- Per capita allocations of \$3,859 (average per capita expenditure of integrated service providers in Quebec from questionnaire data)
- Per capita allocations of \$2,500 and \$283
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Projections grown by population + inflation

Table 25

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 182,333,737	\$ 191,858,715	\$ 201,645,074	\$ 211,917,151	\$ 222,337,011	\$ 1,010,091,690
Alberta	\$ 103,375,019	\$ 108,586,948	\$ 113,777,461	\$ 119,215,311	\$ 124,809,108	\$ 569,763,847
Saskatchewan	\$ 33,974,015	\$ 35,976,333	\$ 38,107,707	\$ 40,318,531	\$ 42,593,778	\$ 190,970,364
Manitoba	*	*	*	*	*	*
Ontario	\$ 77,434,011	\$ 81,025,663	\$ 84,796,108	\$ 88,686,575	\$ 92,750,748	\$ 424,693,105
Quebec	\$ 187,928,401	\$ 196,590,907	\$ 205,480,717	\$ 214,885,761	\$ 224,580,572	\$ 1,029,466,359
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 32,915,418	\$ 34,947,063	\$ 37,025,174	\$ 39,195,673	\$ 41,473,151	\$ 185,556,479
Yukon	\$ 33,176,398	\$ 34,715,209	\$ 36,459,282	\$ 38,005,650	\$ 39,785,939	\$ 182,142,477
TOTAL	\$ 652,913,611	\$ 685,578,989	\$ 719,284,173	\$ 754,328,260	\$ 790,549,734	\$ 3,602,654,766

Figure 25

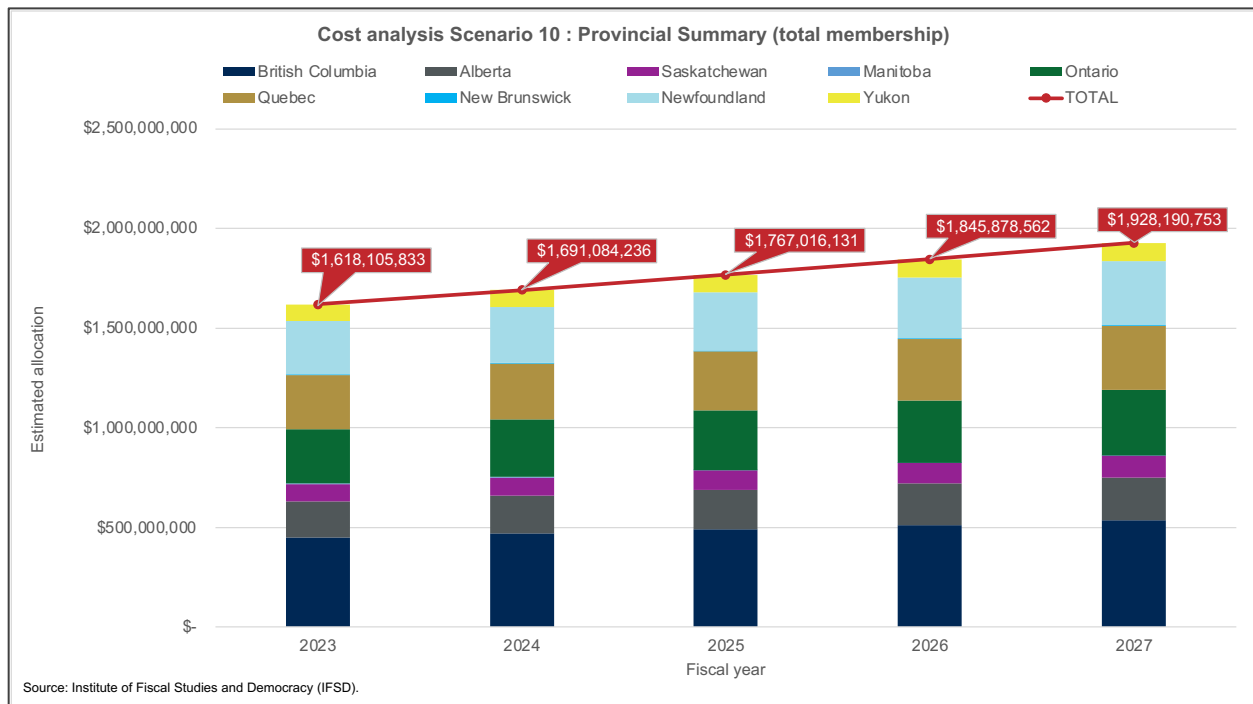


## Scenario 10 (total membership)

Table 26

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 450,262,407	\$ 470,395,648	\$ 491,242,039	\$ 512,776,672	\$ 535,161,722	\$ 2,459,838,487
Alberta	\$ 179,326,165	\$ 188,075,516	\$ 197,147,386	\$ 206,662,343	\$ 216,683,693	\$ 987,895,103
Saskatchewan	\$ 88,618,758	\$ 93,446,667	\$ 98,542,597	\$ 103,860,185	\$ 109,425,484	\$ 493,893,691
Manitoba	*	*	*	*	*	*
Ontario	\$ 275,570,462	\$ 287,372,722	\$ 299,800,366	\$ 312,715,163	\$ 326,169,773	\$ 1,501,628,486
Quebec	\$ 269,974,369	\$ 282,060,302	\$ 294,527,507	\$ 307,584,233	\$ 321,132,574	\$ 1,475,278,984
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 269,385,267	\$ 281,512,928	\$ 294,162,139	\$ 307,230,044	\$ 320,945,446	\$ 1,473,235,824
Yukon	\$ 80,748,799	\$ 83,808,689	\$ 86,982,692	\$ 90,222,013	\$ 93,627,662	\$ 435,389,856
<b>TOTAL</b>	<b>\$ 1,618,105,833</b>	<b>\$ 1,691,084,236</b>	<b>\$ 1,767,016,131</b>	<b>\$ 1,845,878,562</b>	<b>\$ 1,928,190,753</b>	<b>\$ 8,850,275,515</b>

Figure 26



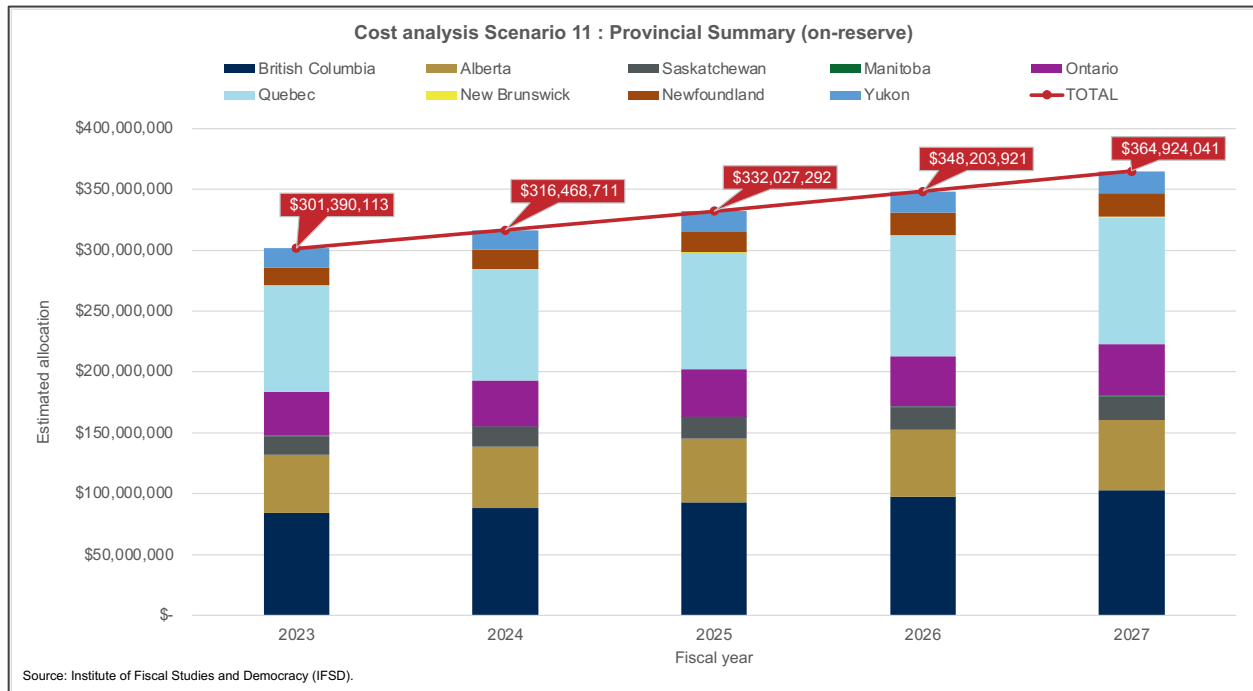
### Scenario 11 (on-reserve)

- Per capita allocations of \$2,500 and \$566 (i.e., 2 x \$283)
- Remoteness (baseline and top-ups) (**applied to all First Nations**)
- Projections grown by population + inflation

Table 27

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 84,166,703	\$ 88,563,508	\$ 93,080,969	\$ 97,822,642	\$ 102,632,532	\$ 466,266,354
Alberta	\$ 47,718,730	\$ 50,124,599	\$ 52,520,580	\$ 55,030,735	\$ 57,612,876	\$ 263,007,521
Saskatchewan	\$ 15,682,675	\$ 16,606,961	\$ 17,590,820	\$ 18,611,355	\$ 19,661,626	\$ 88,153,438
Manitoba	*	*	*	*	*	*
Ontario	\$ 35,744,155	\$ 37,402,090	\$ 39,142,557	\$ 40,938,428	\$ 42,814,483	\$ 196,041,713
Quebec	\$ 86,749,244	\$ 90,747,925	\$ 94,851,533	\$ 99,192,976	\$ 103,668,177	\$ 475,209,855
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 15,194,018	\$ 16,131,842	\$ 17,091,114	\$ 18,093,034	\$ 19,144,336	\$ 85,654,346
Yukon	\$ 15,314,489	\$ 16,024,816	\$ 16,829,894	\$ 17,543,710	\$ 18,365,506	\$ 84,078,415
TOTAL	\$ 301,390,113	\$ 316,468,711	\$ 332,027,292	\$ 348,203,921	\$ 364,924,041	\$ 1,663,014,079

Figure 27



## Scenario 11 (total membership)

Table 28

Province/Territory	2023	2024	2025	2026	2027	Total
British Columbia	\$ 207,844,706	\$ 217,138,370	\$ 226,761,230	\$ 236,701,788	\$ 247,034,905	\$ 1,135,481,000
Alberta	\$ 82,778,383	\$ 86,817,153	\$ 91,004,801	\$ 95,396,980	\$ 100,022,915	\$ 456,020,233
Saskatchewan	\$ 40,907,123	\$ 43,135,724	\$ 45,488,046	\$ 47,942,687	\$ 50,511,673	\$ 227,985,254
Manitoba	*	*	*	*	*	*
Ontario	\$ 127,205,516	\$ 132,653,533	\$ 138,390,232	\$ 144,351,805	\$ 150,562,560	\$ 693,163,646
Quebec	\$ 124,622,315	\$ 130,201,277	\$ 135,956,238	\$ 141,983,327	\$ 148,237,349	\$ 681,000,507
New Brunswick	*	*	*	*	*	*
Newfoundland	\$ 124,350,381	\$ 129,948,605	\$ 135,787,582	\$ 141,819,831	\$ 148,150,969	\$ 680,057,368
Yukon	\$ 37,274,288	\$ 38,686,757	\$ 40,151,902	\$ 41,647,198	\$ 43,219,273	\$ 200,979,418
<b>TOTAL</b>	<b>\$ 746,930,515</b>	<b>\$ 780,617,926</b>	<b>\$ 815,668,693</b>	<b>\$ 852,072,218</b>	<b>\$ 890,068,179</b>	<b>\$ 4,085,357,532</b>

Figure 28

