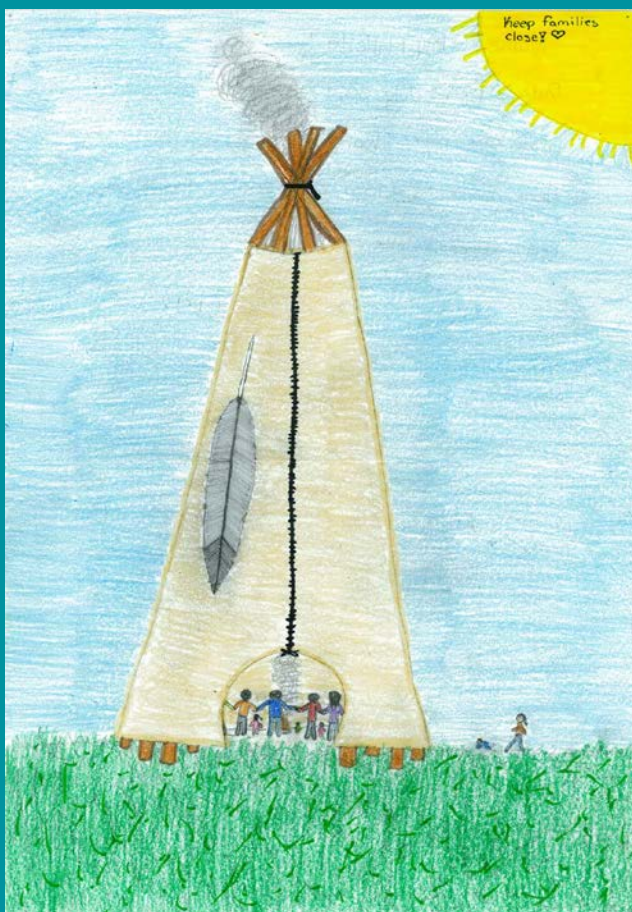


# Formal Customary Care

A Practice Guide to Principles, Processes and Best Practices



In accordance with the *Ontario Permanency Funding Policy Guidelines* (2006) and the *Child and Family Services Act*



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# Formal Customary Care Practice Guide Project Team

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## Disclaimers

- Nothing in this document should be construed as legal advice. Readers are advised to obtain independent legal counsel when necessary.
- This document is a resource only and does not have the force and effect of ministry legislation, regulations or policies.
- References concerning specific policies and legislation are current as of the publication date and are subject to change.
- References to resource and reference materials, Internet sites and organizations are included for information only.
- The Ministry of Children and Youth Services (MCYS) and the Ministry of Community and Social Services (MCSS) are not responsible for the quality of the content on non-ministry Internet sites or for ensuring that the content of the material on non-ministry Internet sites listed is up to date. The linked websites may not be available in French, unless otherwise stated.

## Artwork

The artwork that appears on the cover and in the Art Gallery (see Appendix G) was submitted by First Nation youth between the ages of 12 and 16 as part of a contest in which youth were invited to create artwork reflecting the theme, "This is what customary care means to me". Entry information was sent to both Aboriginal children's aid societies and Aboriginal Child and Family Services Agencies in Ontario. The submissions were rated by members of the Formal Customary Care Practice Guide Project Steering Committee.

- Cover Page and winner of first prize: July, age 14, Wahgoshig First Nation
- Winner of second prize: Alishia, age 13, Wahgoshig First Nation
- Winner of third prize: Emily, age 14, Oneida First Nation

Honorable Mentions were awarded to the following youth:

- Desire, age 13, Wahgoshig First Nation
- Farah, age 10, Wahgoshig First Nation
- Caitlyn, age 13, Wahgoshig First Nation
- Chassity, age 12, Wahgoshig First Nation
- Warren, age 13, Eabametoong First Nation

- Merlin, age 13, Pikangikum First Nation
- Cheyenne, age 14, Serpent River First Nation
- Kira, age 14, Wikwemikong First Nation

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- Child welfare professionals from Aboriginal and non-Aboriginal children’s aid societies;
- Family support, resource and prevention workers from Aboriginal child and family services organizations;
- Lawyers representing children’s aid societies;
- Lawyers representing First Nation children and families;
- Representatives from First Nations (more commonly known as “Band Reps”);
- Chiefs and Council members;
- Elders and other natural helpers;
- Ontario Office of the Children’s Lawyer; and
- Family Court Judiciary.

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Members of the Project Steering Committee:

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- Ernest Beck, Tikinagan Child and Family Services
- Jim Baraniuk, Children's Aid Society of Algoma
- Colette Prevost, Children's Aid Society of the Districts of Sudbury and Manitoulin
- Andy Koster, Children's Aid Society of Brant
- Stan Cloud, Chiefs of Ontario Social Services Coordination Unit
- Adrienne Pelletier, Chiefs of Ontario Social Services Coordination Unit
- Jerry Goldhar, Legal Counsel (retired)
- Karen Hill, Ontario Association of Children's Aid Societies

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It has been our privilege to work with the above individuals in developing this Practice Guide.

Deb Cantrell, Project Lead  
Marion Roberts, Associate Consultant  
David Barnes, President, LBCG

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# Preamble

Since 1985 the *Child and Family Services Act* has recognized that “*customary care means the care and supervision of an Indian or native child by a person who is not the child’s parent according to the custom of the child’s band or native community*” and has recognized that “*where a band or native community declares that an Indian or native child is being cared for under customary care, a [children’s aid] society or agency may grant a subsidy to the person caring for the child.*”

MCYS has set out rules as to when a subsidy may be given to a customary care provider. These rules are contained in the 2006 Ontario Permanency Funding Policy Guidelines (see Appendix F) under the heading “Formal Customary Care”. This guide provides information only on Formal Customary Care within the confines of the *Child and Family Services Act*.

**This guide recognizes that each First Nation defines what customary care is for its own community. This guide does not intend to make any comment on how each First Nation defines its own customs.**

The purpose of this Practice Guide is to familiarize readers with the concept behind and the practice of Formal Customary Care. Emphasis is placed on helping readers understand how to use Formal Customary Care as an alternative to court-related processes and court-ordered care so that First Nation children and youth are protected and remain strongly connected to their culture and communities.

Throughout the guide, readers are challenged to consider how history has influenced family and community life as it is experienced by many First Nations people, and how the reframing of ethnocentric world views can contribute to a more culturally respectful future for First Nation children who come in contact with child protection authorities.<sup>1</sup>

## Success Indicator

An increase in the use of Formal Customary Care arrangements and a concurrent decrease in the number of First Nation children in the care of children’s aid societies pursuant to temporary care agreements and court-ordered care (Society wardship and Crown wardship) will indicate that the primary goal of this Practice Guide has been achieved.

## Scope of the Guide

The focus of this Practice Guide is on Formal Customary Care arrangements entered into by First Nations and children’s aid societies when a child who is a member of a First Nation, or who may

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<sup>1</sup> **Ethnocentrism** is judging another culture solely by the values and standards of one’s own culture (Omohundro, 2008).

be eligible for membership with a First Nation, is believed to be in need of protection and in need of placement with an alternative caregiver.

It is beyond the scope of this guide to address the operationalization of Formal Customary Care with native populations that are not affiliated with a First Nation through membership or membership eligibility as determined by individual First Nations.

## Clarification of Terms Used in this Practice Guide

This Practice Guide is written in easy-to-understand language. Definitions of commonly used terms are indicated below. Where reference is made to a term or concept that is not common in everyday use, a definition is provided in a footnote.

**Aboriginal:** The term Aboriginal is “*a collective name for the original peoples of North America and their descendants. The Canadian constitution recognizes three groups of Aboriginal people: Indians (commonly referred to as First Nations), Métis and Inuit. These are three distinct peoples with unique histories, languages, cultural practices and spiritual beliefs. More than one million people in Canada identify themselves as an Aboriginal person, according to the 2006 Census.*”<sup>2</sup>

**Aboriginal Child and Family Services Agencies:** Aboriginal Child and Family Services Agencies in Ontario have varying mandates: several are designated children’s aid societies; several are licensed to provide foster care in addition to prevention and supportive services; and others are funded to provide prevention services. Some but not all of the non-designated agencies are seeking to become designated children’s aid societies. Please see Appendix A for a list of Aboriginal Child and Family Services Agencies.

**Act:** The term “the Act” refers to the *Child and Family Services Act* (CFSA).

**Agencies Seeking Designation:** Agencies seeking designation refers to Aboriginal child and family services agencies that are seeking designation as a children’s aid society. Presently, these agencies are funded to provide prevention and supportive interventions and some are licensed to recruit and approve foster homes. Agencies seeking designation are not designated to provide child protection services; these services are provided by a designated children’s aid society.

**Alternative Dispute Resolution (ADR):** This is a strategy to streamline court processes and encourage alternatives to court. It focuses on a more strength-based, inclusive and collaborative approach to resolving child protection disputes, and encourages the involvement and support of the family, extended family and the community in planning and decision-making for children.<sup>3</sup>

**Band and Indian Band:** The terms Band and Indian Band refer to the First Nation community with which a child is registered or with whom the child is eligible for registration. These terms

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<sup>2</sup> <http://www.aadnc-aandc.gc.ca/eng/1100100013785/1304467449155>

<sup>3</sup> Source: Ontario Association of Family Mediation website: <http://www.oafm-cpmed.ca/Code/index.html#ADR>

are used throughout the *Child and Family Services Act* and appear in this guide in their original form where legislation is referenced.

**Band Council:** A Band Council is the governing body of a First Nation. It usually consists of a Chief and Councillors, who are elected for two- or three-year terms (under the *Indian Act* or according to First Nation custom) to carry out First Nation business.

**Band Council Resolution:** The term Band Council Resolution (BCR) refers to a written decision made by a Band Council or First Nation. The decision is made during a council meeting and must have the support of the majority of council members.

**Chief:** The leader of a First Nation community or council is the Chief who is elected by members of the First Nation, by the Councillors according to the *Indian Act*, or through custom elections.

**Child Welfare Legislation:** The term child welfare legislation refers to parts of the *Child and Family Services Act* (CFSA).

**Crown Ward:** This term refers to a child who has been placed in the permanent care of a children's aid society. The Crown is the child's legal parent but the children's aid society has the responsibility to care for the child.

**Customary Laws:** This term refers to the evolving expression of cultural norms and social interactions that actively interpret what is regarded as tradition or custom into active, day-to-day accepted rules of behaviour. Customary law is by definition culture-specific, context-specific, and time-specific.<sup>4</sup>

**Designated Agency:** The term designated agency refers to a children's aid society designated as set out in Section 15(2) of the CFSA to perform specific functions as set out in Section 15(3) of the CFSA.

**Extended Care and Maintenance (ECM):** Extended Care and Maintenance refers to the provision of service and financial support to eligible youth beyond their 18<sup>th</sup> birthday and up to 21 years of age.

**Family Services Committee:** Several First Nation communities have established Family Services Committees that are made up of community members who are appointed and/or authorized by Chief and Council to fulfil any number of roles and responsibilities related to children and families. Roles include standing in as the First Nation's Representative when families are involved with a children's aid society, providing support and guidance to First Nation Family Service Workers, and being a liaison between Chief and Council, First Nation Family Service Workers, a children's aid society and other external service agencies.

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<sup>4</sup> Source: <http://www.aboriginalaffairs.gov.on.ca/english/faq/glossary.asp>

**First Nation:** The term First Nation refers to an Indian Band or native community that is recognized under the *Indian Act*.

**First Nation Child:** The term First Nation child refers to children who are registered members of an Indian Band (referred to within as a First Nation community) or children who may be eligible for registration. Please refer to the Web Resources section of this guide for information on how to determine whether a child may be eligible for membership.

**First Nation Council Resolution (FNCR):** This term is increasingly being used instead of the term “Band Council Resolution”.

**Indian or Native:** The terms Indian and native appear in this guide only where legislation in which these terms are used is referenced.

**Kinship Care:** The term Kinship Care refers to the care of children considered to be in need of protection by relatives of family members or others described as family by a child’s immediate family members.

**Native Community:** The term native community appears in this guide only where legislation in which this term is used is referenced. For the purposes of this guide, the term native community refers to First Nation communities designated by the Minister under Section 209 of the CFSA.

**Off-Reserve:** The term off-reserve is used to refer to members of a First Nation who reside outside of their affiliate-First Nation, usually but not exclusively in urban centres.

**Representative of the Band:** A Representative of the Band refers to “a person chosen by a child’s Band or native community” to make representations respecting a child who is a member of the First Nation or a child who may be eligible for membership. The term “Band Rep” is the more familiar term used by First Nations and many child welfare workers.

**Reserve:** The term reserve refers to a tract of land, the legal title to which is held by the federal government, set apart for the use and benefit of an Indian Band or First Nation.

**Resiliency:** This term describes “the process by which people manage not only to endure hardships but also to create and sustain lives that have meaning and contribute to those around them” (Van Hook, 2008, p. 3).

**Society Ward:** A Society Ward refers to a child who has been placed in the temporary care of a children’s aid society. There is a maximum amount of time that a child can be a Society Ward: 12 months for children under six years of age, and 24 months for children six years of age or older (the amount of time in care as a Society Ward is cumulative).

**Subsidy:** The term subsidy refers to a payment made to an approved caregiver to offset the expenses associated with the care of a child in a Formal Customary Care arrangement. The amount of the subsidy provided in Formal Customary Care arrangements is equal to that paid in foster care arrangements.

***Supervision:*** This term refers to the oversight of a child in his or her home or in the home of an alternative caregiver. A court order for supervision of a child pursuant to terms and conditions is a less intrusive alternative to a court order that makes the child a Society Ward or Crown Ward.

***Temporary Care Agreement (TCA):*** A Temporary Care Agreement refers to an agreement entered into voluntarily between a person having custody of a child (usually the parent) and a children's aid society.

## Acronyms Used in this Practice Guide

A number of acronyms are used throughout this guide for purposes of brevity and simplicity. These include:

***ADR*** refers to Alternative Dispute Resolution

***BCR*** refers to Band Council Resolution

***CAS*** refers to designated children's aid society

***FCCA*** refers to Formal Customary Care Agreement

***CFSA*** refers to the *Child and Family Services Act*

***FN*** refers to a First Nation

***FN Child*** refers to a First Nation child or children

***TCA*** refers to a Temporary Care Agreement

# PART A: UNDERSTANDING FORMAL CUSTOMARY CARE

## Background

Historically, communal systems of care have underpinned family and community life for First Nation children. These traditional extended family systems included family members related by blood on both sides of the family as well as those who were closely associated with the family in some way. The extended family provided a continuous supportive network where entire families took part in the raising of children; learning was ongoing and spanned a lifetime. Young First Nation parents, like young parents everywhere, learned how to raise their children from their own parents, by example. Parents also drew upon the practices and wisdom of their extended family system, which included but was not limited to their grandparents, uncles, aunts and siblings.

The establishment of the residential school system in Canada between 1838 and the 1940s and the introduction of legislation that made it law for all First Nation children to attend residential school disrupted this system of care for many First Nation children, families and communities, and resulted in more than 50 per cent of First Nation children spending their most formative years being raised away from their families and communities. The consequent disruption in healthy parenting and child rearing practices that had been passed along from one generation to the next is still being felt in many First Nation communities today. By the time the Canadian government began to abandon the residential school policy in the 1960s, several generations of children had been raised without benefit of the extended family circle of care that had been the backbone of First Nation family and community life. The last residential school in Canada was closed in 1996.<sup>5</sup>

Today, approximately 60 per cent of First Nation people reside off-reserve as a consequence of challenging economic and social conditions in their home communities. Nevertheless, linkages to family, community and culture remain strong for many First Nation people and are reinforced by extended family members who remain First Nation-based. Strengthening the linkages between families living on- and off-reserve helps to ensure that the circle of care for First Nation children remains a constant in their lives, regardless of where they may live.

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<sup>5</sup> In Duck Lake, Saskatchewan

# The *Child and Family Services Act* (CFSA)

In 1985, the Ontario government proclaimed legislation that for the first time recognized “Indian and native people” are entitled “*to provide, whenever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family*” (*Child and Family Services Act*, 1985).<sup>6</sup>

Extended family is defined in the CFSA as “*persons to whom a child is related by blood, through a spousal relationship or through adoption and, in the case of a child who is an Indian or native person, includes any member of the child’s band or native community*” (S.3(1)).

In recognizing that any member of a child’s “*band or native community*” may be defined as extended family, the CFSA acknowledges the traditional communal system of care that has historically underpinned family and community life for First Nation children.

In addition to recognizing “*the uniqueness of Indian and native culture, heritage and traditions*” and the importance of preserving a First Nation child’s cultural identity, recognition of First Nations’ right to have a voice in child welfare matters has been reinforced in provincial child welfare legislation since 1985. Specifically, legislation provides for Bands and Indian and native communities to:

- Have representation on Residential Placement Advisory Committees, and be advised of recommendations made by residential placement advisory committees;
- Participate in residential placement hearings;
- Have status as a party in child protection proceedings that includes advance notice of all court proceedings;
- Apply for access orders and receive notice of such applications from a CAS;
- Apply for restraining orders;
- Receive a copy of assessment reports before these are presented at a court hearing;
- Apply for a review of a child’s status and receive notice of applications from CASs; and
- Be consulted by CASs about the provision of services, the exercise of powers, and about matters affecting First Nation children.

The inclusion in the 1985 legislation of a new Part X pertaining specifically to “Indian and Native Child and Family Services” is especially relevant for it is in this part that “customary care” appears for the first time.

Amendments to the CFSA in 2006 broadened and strengthened the CFSA to support First Nation peoples’ involvement in all aspects of planning for First Nation children. These include:

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<sup>6</sup> This proclamation opened the door to the establishment of Aboriginal child and family services agencies throughout the province (a list of Aboriginal child and family services agencies appears in Appendix A).



- Recognition of the role and relationship that significant others have in the life of children and therefore inclusion of these individuals, where appropriate, in planning and decision-making;
- Clear timelines within which Bands and native communities must be consulted and the additional provision that a CAS must consult with the Band / native community whenever the CAS proposes to provide specific services to a First Nation child;
- A strategy for recognizing and preserving a First Nation child's heritage, traditions and culture in plans of care;
- Receiving written notice of a CAS's intent to begin planning for the adoption of a First Nation child; and
- A review of the manner in which CASs fulfil their obligations to First Nation people every time the CFSA undergoes review (every five years).

The inclusion in the Act of “*a representative of the child's band or native community,*” commonly referred to as a Band Rep, at critical decision-making junctures, and recognition of the Representative of the First Nation as a party to any legal proceedings undertaken pursuant to the CFSA, further reinforces the importance of First Nation involvement in all child welfare matters that involve First Nation children.

## 2010 Review of the *Child and Family Services Act*

A review of CAS compliance with ‘Indian and native’ provisions of the CFSA was undertaken between December 2009 and February 2010.<sup>7</sup> The review revealed the need for more training and clarity around what specific provisions of the Act mean in practice and how these can be effectively operationalized. For example, participants in the review “suggested that all groups would benefit from more precise information about the meaning of consultation, greater clarity about its expected outcomes and a concise explanation of what consultation should look like” (p. 8).

When examining the extent to which Formal Customary Care is utilized as an alternative to more intrusive, court-ordered interventions when children require out-of-home placement due to child protection concerns, the review found that non-Aboriginal CASs were much more likely to use kinship care because they are more familiar with the kinship care model. In addition to an expressed need for greater understanding of Formal Customary Care, its intent and how to operationalize it, many non-Aboriginal CASs identified the need for practice guidelines and tools that would enhance their overall understanding of how Formal Customary Care benefits First Nation children and their families.

The compliance review reinforced the importance of relationship-building between First Nations and CASs, staff training in cultural sensitivity, and developing culturally responsive and flexible approaches and tools.

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<sup>7</sup> A review of CAS compliance with Indian and native provisions of the CFSA became mandatory in 2006 and is required every five years. The first review occurred between December 2009 and February 2010.

# Tripartite Technical Table on Child Welfare

In January 2011, the Tripartite Technical Table on Child Welfare<sup>8</sup> hosted a meeting that focused on identifying challenges and opportunities associated with the promotion and utilization of Formal Customary Care, including lessons learned by agencies using Formal Customary Care. The meeting was attended by child welfare practitioners (and others) from throughout the province. A predominant theme expressed throughout the meeting was the need to increase awareness and understanding about Formal Customary Care and the provision of factual information to dispel widespread myths and misperceptions about what Formal Customary Care is and is not. One of many suggestions for increasing understanding and ultimately utilization of Formal Customary Care was that a Practice Guide be developed to build capacity and to assist CASs and First Nations in developing trusting, mutually beneficial relationships.

## Methodology

Information obtained from province wide discussions and consultations that occurred between December 2011 and June 2012 were pivotal to the development of this Practice Guide. One of the primary questions explored with key informants was: ***“What do you need to know in order to make Customary Care the placement of choice for First Nation children who are believed to be in need of protection and in need of placement with alternative caregivers?”***

Information was sought from the following informant groups:

- Aboriginal and non-Aboriginal CASs;
- Aboriginal child and family services agencies seeking to become designated CASs;
- Aboriginal child and family services agencies providing primarily prevention and family support services and not seeking to become designated;
- First Nation child and family services workers;
- Representatives from First Nations (commonly referred to as Band Reps);
- First Nation Chiefs and Council members;
- The Office of the Children’s Lawyer;
- Members of the Family Court Judiciary;
- Family Court Lawyers;
- Native Friendship Centres;
- The Ontario Native Women’s Association;
- Ontario Association of Children’s Aid Societies (OACAS);
- CAS Senior Counsel Network;
- CAS Services Directors;
- Ontario Association of Native Child and Family Services Agencies of Ontario;

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<sup>8</sup> The Tripartite Technical Table on Child Welfare comprises representatives from Ontario First Nations; the Social Services Coordination Unit of the Chiefs of Ontario; the Association of Native Child and Family Services Agencies of Ontario; the Ministry of Children and Youth Services; the Ministry of Aboriginal Affairs; the Ontario Association of Children’s Aid Societies; and Aboriginal Affairs and Northern Development Canada.

- Barrie Area Native Advisory Council;
- Tripartite Technical Table on Child Welfare;
- Chiefs of Ontario, Social Services Coordination Unit;
- MCYS Program Supervisors; and
- Commission to Promote Sustainable Child Welfare.

Between February and April 2012, questionnaires were distributed to the following groups:

- All First Nations in Ontario;
- Directors of Services in all CASs;
- Legal Counsel in all CASs; and
- Aboriginal agencies seeing to become designated CASs.

These questionnaires are available from MCYS upon request.

Information gathering from informant groups and individuals was preceded by a comprehensive literature review and an environmental scan. The environmental scan sought to determine:

- The number of Aboriginal children reported to be in care;
- The number of CASs reporting utilization of Formal Customary Care Agreements;
- The number of approved foster homes situated in First Nation communities;
- The level of awareness about Part X of the CFSA;
- The level of understanding about customary care in general; and
- The extent to which respondents believed a Formal Customary Care Practice Guide could be a helpful resource to CASs and First Nations.

The development of this Practice Guide signifies the commitment of MCYS to increase knowledge and understanding of Formal Customary Care and support CASs and First Nations in developing more trusting, collaborative relationships that will result in greater use of Formal Customary Care in Ontario.

## Understanding Customary Care

Customary care has historically been practised and continues to be practised in many First Nation communities today. It is all-encompassing and not something that occurs only when a child has been neglected or maltreated by his or her caregivers. It occurs, for example, when a child is orphaned and needs a family, or when a child is “gifted” to a family who has lost a child, or when a couple is unable to have children of their own. Children going to live with grandparents to receive instructions about life and living, or to lend a helping hand to elderly grandparents needing assistance with day-to-day chores, are also examples of customary care. Regardless of the circumstances, the child’s biological parents (unless they are deceased) continue to have an active role in the child’s life.

An underlying principle of customary care is that the responsibility for the care and safety of children is a collective responsibility that extends beyond the immediate and extended family to the community as a whole.

Since 1985, the CFSA has recognized that “*customary care means the care and supervision of an Indian or native child by a person who is not the child’s parent according to the custom of the child’s band or native community*” (Section 208 in Part X of the CFSA). Implicit in this meaning is that each First Nation defines and practises customary care in a way that is uniquely its own and according to its traditional values, principles and customs. Each community also has its own practices. For example, the role that Elders play in the lives of children and community life varies in different communities.

The CFSA also recognizes that “*where a band or native community declares that an Indian or native child is being cared for under customary care, a [children’s aid] society or agency may grant a subsidy to the person caring for the child.*” MCYS has set out rules relating to when a subsidy can be provided to a customary care provider. These rules are contained in the 2006 Ontario Permanency Funding Policy Guidelines (see Appendix F) under the heading “Formal Customary Care.”

This Practice Guide provides information only on “Formal Customary Care” within the confines of the CFSA. The term is used to describe the placement of a child considered to be in need of protection with alternative caregivers, pursuant to a First Nation Band Council Resolution (BCR) and a Formal Customary Care Agreement that has been entered into by a First Nation and a CAS. The BCR conveys First Nation authority and is an official declaration about specific matters, for example, that a First Nation child is believed to be in need of protection and needs placement with an alternative caregiver. BCRs give authority to Formal Customary Care Agreements and are therefore an essential requirement for CASs entering into Formal Customary Care arrangements with First Nation communities.

Formal Customary Care is facilitated through a Formal Customary Care Agreement (FCCA). Signatories to the agreement include:

- a representative of the First Nation with whom the child is registered or eligible for membership;
- the child’s biological parents (where one or both are available);
- the caregivers with whom the child will reside;
- a representative of the CAS that will be providing a subsidy to the caregiver; and
- the child, where the child is older than 12 years of age.

Additional signatories may include members of the child’s extended family and other community members.

A fundamental component of the FCCA is a plan for the care of the child that preserves the child’s heritage, cultural traditions and cultural identity. An example of a Band Council Resolution and a Formal Customary Care Agreement are contained in Appendices B and C, respectively.

Caregivers in FCC arrangements receive, from a CAS, a subsidy equivalent to that received by a foster parent. Formal Customary Care arrangements are supervised by the CAS; supervision is often carried out by a First Nation Family Services worker in collaboration with the CAS.

To summarize, the following are five Ministry requirements for Formal Customary Care:

1. A child is believed to be in need of protection and requires placement with alternative caregivers in order to be safe;
2. The First Nation issues a BCR declaring that the child will be cared for pursuant to the custom of the First Nation and as specified in a Formal Customary Care Agreement;
3. A subsidy is paid to the child's caregivers by the CAS;
4. The placement is supervised by the CAS or a CAS designate; and
5. Customary caregivers who are in receipt of a subsidy from a CAS must meet the same licensing standards as a foster home.

## Why Use Formal Customary Care

Formal Customary Care provides benefits for First Nation children, their families and their communities as it:

- Reinforces the value of community systems of care;
- Connects First Nation children to language, land and culture, and provides opportunities to acquire traditional and community knowledge through interaction with Elders and other keepers of ancestral knowledge;
- Acknowledges the First Nation's central role in matters related to children and families;
- Gives a stronger sense of value and belonging for First Nation children; and
- Promotes a positive cultural identity for First Nation children.

Customary care has been a viable permanency option for First Nation children since 1985. Child Welfare Transformation between 2005 and 2006, including amendments to child welfare legislation in 2006, emphasized permanency planning for every child involved in the child welfare system. It included Formal Customary Care as a viable permanency option for First Nation children.

Section 63.1 of the CFSA sets out a CAS's obligation to a Crown ward, specifically: "*Where a child is made a Crown ward, the Society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:*

1. *An adoption,*
2. *A legal custody order, or,*
3. *In the case of a child who is an Indian or native person, a plan for customary care as defined in Part X."*

Research indicates that children raised in stable, nurturing environments that allow for continuity of care and the development of lifelong relationships with at least one healthy adult have better outcomes as adults. Critical to the development of lifelong relationships is healthy identity development and formation. For First Nation children, the development of a positive identity is intertwined with a sense of connectedness, belonging and cultural safety found within their communities and extended family circle of care.

The Ontario Permanency Funding Policy Guidelines provide a framework for the provision of financial assistance for the purposes of facilitating each of six permanency options including: admission prevention, kinship service, kinship care, customary care, legal custody, foster care and adoption. The criteria for each of seven components to be considered for Formal Customary Care are outlined in Appendix F.

Formal Customary Care is also seen as less adversarial, and focused on building community strength rather than passing judgement on individual faults or weaknesses.

CASs also benefit from using Formal Customary Care as it can:

- Strengthen partnerships with First Nation communities;
- Decrease litigation and adversarial decision-making and increase collaborative practices;
- Enhance CASs' cultural competence; and
- Provide an opportunity to reconnect First Nation children who are in the care of CASs with their extended family system, culture and community.

## Community and Cultural Linkages

First Nation people believe that raising children with a strong sense of community and positive cultural identity is key to healing historical wounds in their communities and to the survival of their culture. In addition, when a child feels a sense of belonging to family, community and peers, he or she is better able to deal with adversity and is more resilient.

When First Nation children are placed outside of their communities and without a plan that sustains their linkage to family, culture, language and land, they may experience a loss of connection and belonging that in turn results in a loss of purpose, pride and identity.

Formal Customary Care allows children to be cared for within their circle of connectedness and thus experience the spirit of belonging that is integral to the development of a healthy cultural identity. When children live with customary caregivers within their First Nation community, they develop and maintain an identity that encourages them to see themselves as related to everyone in the community. When children must be cared for according to the custom of their First Nation but outside of the First Nation, strong linkages to community and culture are critical.

## Lifelong Healing

The CFSA places restrictions on the amount of time that children can be in the care of a CAS before the CAS has to discharge the child from care, or seek to have the child made a ward of the Crown. Children under six years of age are restricted to a maximum of 12 months and children six years of age and older to a maximum of 24 months. Time in care within each age group is cumulative, and pertains to court-ordered care as well as time in care through temporary care agreements.

The primary objective of placing limits on the amount of accumulated time a child can be in the care of a CAS is to allow for children to achieve permanency within a safe, stable and nurturing

family as early as possible. The time limitations are also intended to reduce the trauma children experience from the disruption that results from repeated admissions and discharges.

From the perspective of many Aboriginal people, healing is a lifelong journey that cannot be achieved within defined timelines. These time limitations can create challenges for many First Nations families seeking to resume care of their children, in particular those experiencing multiple issues that span generations, and those with limited access to supports and resources in their communities. An additional challenge stems from the experiences over time of First Nations people (e.g., in the residential school system) that have led to a mistrust of child welfare authorities that continues to this day.

Children placed in Formal Customary Care arrangements are not subject to the same time constraints because they are not legally “in care”. This absence of time constraints allows for children to remain connected to their parents while the parents embark upon healing journeys that may exceed 12 or 24 months.

# Dispelling Myths

Over the past three decades a number of myths have emerged that have prevented many CASs and First Nations from considering Formal Customary Care as the placement of choice for First Nation children requiring both short-term and permanent care.

Readers are encouraged to consider how these myths have influenced their own thinking about Formal Customary Care, the organizational culture in which decision-making involving First Nation children and their families is undertaken, and how CAS-First Nation relationships have been shaped as a consequence.

***Myth # 1: Formal Customary Care is no different than Kinship Care.***

***Fact:*** Kinship Care and Formal Customary Care share some similarities; however, there are several key differences between the two. Paramount is recognition of the importance of First Nations having a voice in how they want their children to be cared for, how long, and with whom. The following chart highlights other key differences between Formal Customary Care and Kinship Care.

<b>Kinship Care</b>	<b>Formal Customary Care</b>
<ul style="list-style-type: none"> <li>Authority to care for the child is bestowed by the parents through a Temporary Care Agreement (TCA), or by a court order making the child a ward of the Society or a ward of the Crown.</li> </ul>	<ul style="list-style-type: none"> <li>The First Nation Band Council declares the child is being cared for under customary care.</li> </ul>
<ul style="list-style-type: none"> <li>The child is in the legal care of the CAS.</li> </ul>	<ul style="list-style-type: none"> <li>The Formal Customary Care Agreement (FCCA) sets out who has the legal authority for the child. The child is not legally “a child in care” of a CAS.</li> </ul>
<ul style="list-style-type: none"> <li>Prescribed timelines place a limit on the amount of time a child can be cared for pursuant to a TCA and as a Society ward.</li> </ul>	<ul style="list-style-type: none"> <li>There are no time limits around the length of time a child can be cared for in a FCC arrangement.</li> </ul>
<ul style="list-style-type: none"> <li>Parental change and mitigation of circumstances that placed children in need of protection must occur within prescribed timelines.</li> </ul>	<ul style="list-style-type: none"> <li>Healing and change is ongoing and cannot be prescribed within defined timelines. Customary care embodies a philosophy of life and living through which the “spiritual and cultural transmission of traditional values” occurs across the lifespan and therefore cannot be contained to a specific timeframe.</li> </ul>



***Myth # 2: A Formal Customary Care Agreement does not require the consent of a child's biological parents.***

***Fact:*** A Formal Customary Care Agreement is entered into voluntarily and requires the consent of the following parties: the biological parents if one or both are available, a representative of the First Nation (the Band Rep), the proposed caregivers (often referred to as alternative caregivers or customary caregivers), the child, if the child is 12 years of age or older, and a representative of the CAS. Other individuals may also be signatories to the agreement.

***Myth # 3: Only Aboriginal CASs can enter into Formal Customary Care Agreements with First Nation communities.***

***Fact:*** A First Nation community can enter into a Formal Customary Care Agreement with any CAS.

***Myth # 4: In order for a CAS to pay a subsidy to a caregiver with whom a Formal Customary Care Agreement has been entered into, a court must find that the child is in need of protection.***

***Fact:*** The payment of a subsidy by a CAS does not require a court order or court involvement. Where a child is believed to be in need of protection and a First Nation and the CAS agree that placement of the child with an alternative caregiver is necessary to protect the child, the CAS can provide a subsidy to the caregivers. Eligibility for a subsidy requires that: 1) the child be considered to be in need of protection; 2) the caregiver home meets provincial foster home licensing requirements; and 3) the CAS must supervise the placement.

***Myth # 5: Financial support in Formal Customary Care Agreements automatically expires when a child turns 18 years of age.***

***Fact:*** A Formal Customary Care Agreement sets out the length of time for which the agreement is in effect. The agreement can be renewed by the signatories or parties to the agreement. A child who was in receipt of care through a Formal Customary Care Agreement immediately prior to his or her 18<sup>th</sup> birthday is eligible for Extended Care and Maintenance (financial and non-financial supports) until 21 years of age, and may be eligible for other postsecondary supports.

***Myth # 6: A Formal Customary Care Agreement pertains to children placed in on-reserve caregiver homes only.***

***Fact:*** The First Nation's Band Council Resolution declares that a child is to be cared for according to the customs of the First Nation either within the child's extended family system in the child's home community or off-reserve. Sometimes, however, extended family may reside off-reserve, or in another First Nation community. In some cases, a Formal Customary Care arrangement may involve a non-Aboriginal family living on- or off-reserve that is deemed by the First Nation to be capable of caring for the child according to the customs of the First Nation. The paramount consideration of the First Nation is that the caregiver is able to provide care according to the customs of the First Nation – not whether the caregiver is of Aboriginal heritage or lives on-reserve.

***Myth # 7: Formal Customary Care is more applicable in Northern First Nation communities served by Aboriginal CASs than in southern, urban communities served by non-Aboriginal CASs.***

***Fact:*** Formal Customary Care should be considered for all children who are members of a First Nation including children who may be eligible for membership with a First Nation and reside anywhere in the province of Ontario. Every CAS in Ontario has a responsibility to explore a Formal Customary Care arrangement for First Nation children and their families who become involved with a CAS.

***Myth # 8: Formal Customary Care homes do not have to meet the same standards as regular foster homes.***

***Fact:*** Current policy requires that all approved customary caregiver homes that are in receipt of a subsidy from a CAS must meet the same licensing standards as a foster home. A customary care home file is created by the CAS and all foster care standards and recording requirements apply.

***Myth # 9: Provincial licensing standards for children in care do not apply to children in Formal Customary Care arrangements.***

***Fact:*** Although the child is not legally a “child in care”, the same licensing standards apply as if the child were in care. A customary care child file is created, and child-in-care standards and recording requirements apply. All documentation attesting to compliance with licensing standards must be completed, including a plan of care that details what services will be provided to the child, by whom, and the objectives of the interventions.

***Myth # 10: Children being cared for pursuant to a Formal Customary Care Agreement have the same legal status as children in care pursuant to a court order or temporary care agreement.***

***Fact:*** A child in an out-of-home placement pursuant to a Formal Customary Care Agreement and BCR does not have legal status as a child in care of a CAS. The child is being cared for by the First Nation; the CAS provides support (fiscal and otherwise) to the child, the child’s biological parents, the alternative caregivers, and others who will collaborate in helping the child and family. At this time, CASs count children in Formal Customary Care arrangements as “children in care” for reporting and funding purposes only.

***Myth # 11: Children being cared for pursuant to a Formal Customary Care Agreement are not eligible for the same supports and services as a child in a Kinship Care arrangement (pursuant to a TCA or as a Society or Crown ward).***

***Fact:*** Fiscal resources provided by a CAS for a child being cared for in a Formal Customary Care arrangement are identical to those provided for a child who is in a Kinship Care arrangement or foster care arrangement.

***Myth # 12: The supervision of a child in a Formal Customary Care arrangement is the responsibility of the First Nation that has issued the BCR and signed the FCCA.***

**Fact:** The First Nation and CAS share in the responsibility for ensuring that the child and caregiver home are sufficiently resourced, supported and supervised for the duration of the child's placement. The ways in which the First Nation and CAS collaborate are set out in the Formal Customary Care Agreement; the specific interventions and services that are provided are set out in the plan of care. When the child is living in a caregiver home that is situated on-reserve, First Nation-based natural and professional helpers (e.g., an Elder and Family Support Worker, respectively) may be able to provide more culturally and community appropriate services. When the child is being cared for in a caregiver home situated off-reserve, the CAS is often the primary service provider. Whether the child is being cared for on- or off-reserve, the First Nation service providers, including the Representative of the First Nation, and the CAS service providers meet at regularly scheduled intervals to review and, when necessary, revise the plan of care.

***Myth # 13: There is a lack of accountability in Formal Customary Care arrangements that may place children at risk.***

**Fact:** Accountability in Formal Customary Care arrangements is achieved in several important ways:

1. The CAS and the First Nation set out their mutual expectations including a plan for resolving any conflicts that may arise in a service protocol agreement;
2. A Band Council Resolution (BCR) declares that a child is believed to be in need of protection and will be cared for according to the custom of the First Nation;
3. A Formal Customary Care Agreement is entered into voluntarily by the key parties: the biological parents if one or both are available, the alternative caregivers, a representative of the First Nation, the child if 12 years of age or older, and a representative from the CAS. Others may be included in the agreement depending on the circumstances (for example, extended family members); and
4. The child and the caregiver home are supervised and supported by the CAS or a designate of the CAS (e.g., a First Nation Family Support Worker). Supervision ensures compliance with foster care licensing and children in care standards.

Through Band Council Resolution and a Customary Care Declaration, First Nations are asserting their capacity to be accountable for the child for whom they are responsible. The province holds CASs directly responsible for ensuring that children believed to be in need of protection and residing in Formal Customary Care arrangements are cared for and supervised according to prescribed licensing standards for both children in care and approved caregiver or foster homes.

***Myth # 14: Customary care does not provide permanency for children.***

**Fact:** The most critical determinants of permanency are a child's sense of whether it exists for him or her, cultural continuity (staying connected) and the child's sense of connectedness, and stability (staying put). Customary care allows for a First Nation child to remain connected to his or her heritage, language, community and culture. Researchers have found that a strong sense of cultural identity builds resilience and acts to protect and support young people, for example, in

building a commitment to their own future that is able to withstand and overcome periods of adversity (Lalonde et al., 2006).

***Myth # 15: First Nation children who are currently in CAS care as Society wards or wards of the Crown are not eligible for Formal Customary Care.***

***Fact:*** Every First Nation child who is currently in the care of a CAS in Ontario is eligible for Formal Customary Care. Section 63.1 of the CFSA makes clear that customary care is one of three permanency options that assist children in developing “*a positive, secure and enduring relationship within a family*”.

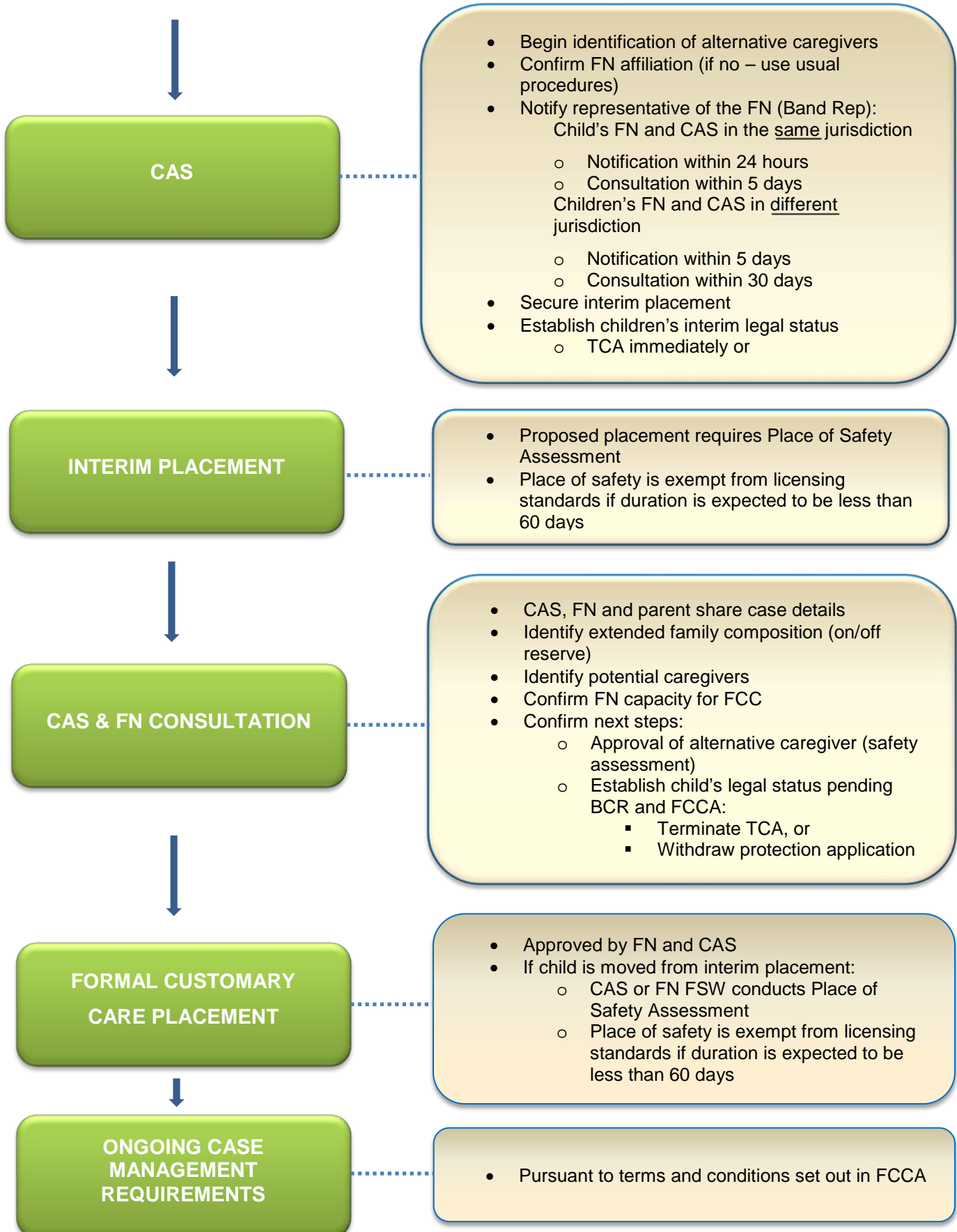
The process of converting a temporary care agreement (TCA), Society wardship, or Crown wardship into a FCCA requires that:

1. The First Nation with whom the child is registered or is eligible for registration has made a Band Council Resolution (BCR) declaring that the child is believed to be in need of protection and is to be cared for according to the customs of the First Nation;
2. The child’s biological parents, if one or both are available, and/or the caregivers who had custody of the child prior to the child’s admission to CAS care, want to enter into a Formal Customary Care Agreement;
3. The caregivers who are presently caring for the child are agreeable to entering into a FCCA;
4. The child, if 12 years of age or older, consents to the FCCA;
5. The FCCA and the plan of care for the child carefully set out how the child will be cared for including the nature of services and support that will be provided to the child and caregiver, as well as who will be responsible for ensuring these are provided; and
6. The court, upon receipt and review of a Status Review Application requesting termination of any outstanding court order (in cases where the child is a Society ward or ward of the Crown), agrees that a Formal Customary Care Agreement is in the child’s best interests. A Status Review Application can be made by the CAS or by a Representative of the First Nation with whom the child is a registered member or with whom the child may be eligible for membership.

**PART B:  
USING FORMAL CUSTOMARY CARE  
STEP BY STEP**

# USING FORMAL CUSTOMARY CARE: STEP BY STEP

## Child in Need of Place of Safety



One of the most frequently asked questions during the provincial consultations was, “*How do we do customary care?*” In other words, what does customary care entail from a procedural perspective? The flow chart<sup>9</sup> on the previous page and the procedures, processes and considerations that follow provide a general framework to enable readers to consider critical issues from the perspectives of both the First Nation and the CAS. Readers are reminded that every First Nation is unique and will have its own preferred practices that the CAS will need to understand.

## First-Time Contact with a First Nation Child Requiring Placement

The following steps (see flow chart on the previous page) are applicable when a CAS becomes involved with a First Nation child who has had no previous contact with the agency and who requires an immediate place of safety.

***Within the first 24 hours (within five days if the First Nation is situated outside of the CAS’s jurisdiction):***

- Try to determine if the child is a registered member of a First Nation or may be eligible for membership (information on how to determine membership is included in the Resources section of this guide);
- Explain to the parents that the First Nation with whom the child is registered or with whom the child is eligible for registration, must be notified;
- Try to enter into a TCA with the parents as an interim arrangement pending preparation of a FCCA;
- Together with the parents, identify extended family members or community members who may be able to provide a Formal Customary Care arrangement for the child beyond the emergency placement. Extended family members living on- and off-reserve should be identified;
- Notify the First Nation’s Chief (or the Representative of the First Nation if the identity of this person can be determined) that a member of the First Nation has become involved with the CAS;

Time constraints such as the requirement that a CAS file a protection application within five days of a child’s admission to care if the child is not returned to his or her caregiver, or enter into a TCA with the parent(s), often preclude a CAS’s consideration of Formal Customary Care as a viable alternative. Securing a BCR and FCCA within five days is rarely achievable. The CAS can, however, withdraw its application (or terminate the TCA), or file an amendment to the application seeking termination at a later date after a BCR and FCCA have been secured.

A FCCA is also an alternative to making a child a ward of the Crown when the maximum length of time the child can be in the CAS’s care has been reached.

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<sup>9</sup> The flow chart does not replace Ontario child protection standards and steps in the child protection investigation process. The flow chart assumes that a child protection investigation has occurred or will occur and the child requires placement in a place of safety.

- Ascertain from the Chief and/or Representative of the First Nation whether the First Nation is affiliated with an Aboriginal child and family services agency. If yes, confirm whether the First Nation wants that organization to become involved and in what capacity. For example, the organization may be authorized by the First Nation to fulfil the Representative of the First Nation (Band Rep) functions, or the organization may have a resource team that is dedicated to the First Nation and with whom the CAS will need to collaborate;
- Request that a case conference take place within five days (and within 30 days if the First Nation is situated outside of the CAS's jurisdiction) and confirm the date, time and location;
- If a TCA has not been signed, confirm the child's current legal status and pending court appearances. If a first court appearance is pending, determine the Representative of the First Nation's availability to attend; and
- Serve the Representative of the First Nation with a copy of all court-related documentation.

***Within five days (within 30 days if the First Nation is situated outside of the CAS's jurisdiction):***

- Convene a case conference with the Representative of the First Nation, the parents, and others as identified by the First Nation Representative and/or parents for the purpose of:
  - Serving the Representative of the First Nation with a copy of all court-related documentation (if this has not already occurred);
  - Clarifying the circumstances that necessitated the child's placement in a Place of Safety as well as any reasons why the child remains in need of protection;
  - Identifying the extended family composition and their whereabouts;
  - Identifying potential alternative caregivers within the extended family system and community;
  - Confirming the parents' desire to proceed with a Formal Customary Care arrangement (where one or both parents are available);
  - Confirming the First Nation's interest and capacity to have the child cared for pursuant to the custom of the First Nation;
  - Articulating next steps including who will have responsibility for approving the proposed caregiver home pursuant to licensing standards, and the child's legal status pending preparation of a BCR and FCCA; and



- Confirming the terms and conditions to be included in the FCCA, including the immediate case plan for the child, the child’s parents, and the alternative caregivers. This includes articulating the roles and responsibilities of the natural and professional helpers who will be providing various types of supports and services.

***Upon receipt of the BCR and FCCA***

- Confirm that the parties are in agreement with the terms and conditions set out in the FCCA and arrange for signatures;
- Terminate any outstanding agreement that the parents may have entered into with the CAS (e.g., TCA), or file an amended application to withdraw any protection application that may have been filed, or terminate any order that may have been made;
- Obtain a restraining order where this is deemed necessary at the point of withdrawing any protection application; and
- Develop and implement the plan to move the child from the Place of Safety to the alternative caregiver’s home if the Place of Safety will not be the Formal Customary Care home.

***Subsequent to the child’s placement in the alternative care home pursuant to the FCCA:***

- Carry out case management practices that are consistent with prescribed foster care licensing standards, and congruent with the terms and conditions set out in the FCCA.

## Notification to Representative of the First Nation

- **CFSA Requirement:** If the child’s First Nation is situated within the CAS’s territorial jurisdiction, the CAS notifies the Representative of the First Nation (Band Rep) within 24 hours of the circumstances and requests that a case consultation occur within five days. Notification can be verbal and then followed up in writing.<sup>10</sup> Date and time of the notification and the name of the person who received the notification must be documented in the CAS’s records.
- **CFSA Requirement:** If the child’s First Nation is situated in another CAS’s territorial jurisdiction, the CAS notifies the Representative of the First Nation in writing of the circumstances precipitating CAS involvement within five days and requests that a case consultation occur within 30 days. Notification in writing can be via regular mail or fax. Mailed notifications are deemed to have been received on the fifth day after being mailed. Faxed notifications are deemed to have been received on the same day if it is a regular work day; if the notification is faxed on a holiday, the notification is deemed to

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<sup>10</sup> Notification and case consultation should be undertaken pursuant to the procedures set out in the CAS-First Nation protocol where one exists.

have occurred on the first work day following the holiday.

- **Preferred practice:** If the person to whom notification has been faxed or mailed indicates at a later date that he or she acting in good faith did not receive the notification due to accident, illness or other cause, the dates upon which notification is deemed to have occurred do not apply. It is therefore preferable that the CAS making notification follow up with the Representative of the First Nation via telephone and/or email within 24 hours of sending a fax, and on Day 5 where notification has been mailed, to confirm receipt of the notification.

## Consultation Under the CFSA

Consultation can take place in person or via teleconference. The purpose of the consultation is to:

- Clarify the circumstances that have resulted in the child being in need of protection services;
- Share efforts the parents have made to redress the circumstances;
- Confirm who the extended family members are and their whereabouts (living within the First Nation or off-reserve);
- Identify potential alternative caregivers within the extended family system or community who may be able to care for the child;
- Confirm the First Nation's desire to have the child cared for pursuant to a Formal Customary Care declaration and Formal Customary Care Agreement;
- Confirm next steps, responsibilities of those involved and relevant timelines including:
  - Where the child will be placed until such time as the BCR has been received, the FCCA is prepared, and an alternative caregiver within the extended family system or community is approved for the placement.
  - What the child's legal status will be pending completion of the BCR and FCCA. For example, will the parents and CAS enter into a short-term Temporary Care Agreement (TCA), or will the CAS file a protection application that can be withdrawn or amended as soon as the BCR and FCCA are formalized?
  - If an extended family member or community member has been identified as an alternative caregiver for the child, who will conduct the initial assessment of the caregiver home?
- **Preferred practice:** If the First Nation is situated within the CAS's territorial boundaries, an in-person case consultation is preferred. All those who will be involved in planning for and supporting the child, the child's parents and the alternative caregivers should be invited to the case consultation. This includes, but is not limited to: the Representative of the Band, the First Nation Family Support Workers (or their equivalent), the CAS's

workers, the child's parents and the alternative caregivers (if they have been identified prior to the case consultation).

## Customary Care Declaration by a First Nation

The process of having a customary care declaration executed varies from First Nation to First Nation. The Representative of the First Nation and First Nation Family Support Worker in each First Nation will be able to confirm the process that is specific to their community. Generally, the process includes the following considerations:

- Consultation between the CAS, Representative of the First Nation and First Nation Family Support Worker confirming that a child is in need of an out-of-home placement;
- Preparation of content for inclusion in the BCR by the Band Rep and/or First Nation Family Support Worker;
- Submission of the content document to the Chief and members of Council prior to their next regularly scheduled Band meeting. Sometimes the Chief and Council will convene specifically to consider the need for a BCR and FCC declaration. In some communities, a Family Service Committee appointed by the First Nation will make verbal submissions to the Chief and Council; and
- Resolution by the Chief and Council declaring that the child is in need of protection and placement and shall be cared for according to the custom of the First Nation and in accordance with the terms and conditions set out in a FCCA.

## Assessment of the Proposed Place of Safety

### Assessment (of Potential Caregiver Home) *Before* Placement Occurs

When a child is believed to be in need of protection and placement in a place of safety, an assessment of an extended family member's home can often be undertaken at the time or immediately after the placement is required. This is especially the case when the child and extended family member live in the same community or within close proximity.

The CAS or a First Nation Family Service Worker can undertake the Place of Safety assessment. The person who conducts the assessment is responsible for the following<sup>11</sup>:

1. Identifying every person 18 years of age or older who lives in the caregiver home and determining their relationship with the child;
2. Meeting with and interviewing the caregiver;
3. Meeting with and interviewing the child, in private;
4. Inspecting and assessing the physical home environment;

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<sup>11</sup> As set out in Regulation 70

5. Conducting a review of CAS records to determine if anyone in the home who is 18 years of age or older has been or is presently involved with the CAS for child protection reasons;
6. Obtaining the consent of the primary caregiver to a criminal records check; and
7. Obtaining the consent of the primary caregiver to disclosure of information that another CAS in Ontario or outside of Ontario may have about the caregivers.

The child's legal status while residing in the place of safety is that of a child in care of the CAS (pursuant to a TCA or pending protection application) until a BCR and FCCA have been declared and signed by the parties.

### **60 Day Exemption**

Completion of the Place of Safety Assessment allows for a child to remain in a caregiver home for up to 60 days. If the child is to remain in the home after this period, the caregiver home must be approved as a Formal Customary Care home, in accordance with prescribed foster home licensing standards. This 60-day exemption minimizes disruption and trauma to the child. It also allows for continuity with family, culture and community.

### **Assessment of Caregiver Home by a non-designated Aboriginal Child and Family Services Agency**

When the Place of Safety Assessment is undertaken by an Aboriginal Child and Family Services agency that is not a designated CAS, that agency is responsible for advising the CAS of any person over 18 years of age living in the caregiver home and the relationship of these individuals to the child. The CAS in turn will conduct an internal records check pertaining to individuals identified, and will disclose information about these individuals to the Aboriginal agency, where written consent to make such disclosures has been obtained.

### **Documentation of the Assessment of the Caregiver Home**

The person who conducts the Place of Safety assessment is responsible for documenting the assessment findings as soon as possible, but no later than 30 days after the assessment is completed.

### **Assessment of the Proposed Caregiver Home After Placement Occurs**

When extended family members live in close proximity, it is not uncommon for a child to be placed with an extended family member when concerns arise about a child's safety and well-being *before* a CAS becomes involved with the matter. There are a number of ways in which the placement can occur:

- An extended family member or other community member removes the child from an unsafe environment;
- A First Nation-based family support worker is contacted and asked to provide immediate assistance in placing the child in a place of safety because the risk of harm to the child is imminent; or

- A police officer attends at the child’s home and removes the child due to safety concerns.

Evaluation of the caregiver home after the child has already begun to reside in the home is still required. The same procedures (see 1 through 7 above) are to be followed. The objective of the evaluation is to confirm that the person is providing the child with a safe home environment and is capable of continuing to do so.

### **Family and Community Placements under Regulation 206-00 of the CFSA**

When a child is not in the care of a CAS, an assessment of a proposed caregiver home may be conducted under Regulation 206-00 of the CFSA (Family and Community Placement). The procedures set out in this Regulation are very similar to the Place of Safety assessment.

Sometimes, a Family and Community Placement assessment cannot be undertaken that satisfies all of the procedures set out in the Regulation. It may be, for example, that consent to a record check could not be obtained because one of the individuals living in the home and over 18 years of age was not available during a scheduled visit. Or, perhaps one of the caregivers has a historical distrust of the CAS and refuses to sign any documents that would allow for disclosure of records.

If the CAS and First Nation are satisfied that despite the barriers to fulfilling the evaluation procedures, the home is safe, the CAS is required to document the following:

- the circumstances and reasons why specific procedures were not followed; and
- any additional steps that were taken to satisfy the determination of the safety of the home.

## **Attestation of the First Nation**

When the Place of Safety is situated within or outside the First Nation, the CAS may seek a reference from the First Nation Chief and Council for the family that is seeking to provide formal customary care for a First Nation child.

## **Jurisdictional Considerations**

CASs and First Nations face a number of challenges when the involved parties are from different territorial jurisdictions. The complexity of each situation depends on whether the parties have been able to reach consensus on a plan for the child. A CAS situated in one jurisdiction can enter into a Formal Customary Care Agreement with a First Nation situated in another jurisdiction; however, in doing so, the CAS must be able to provide the necessary supports to the child, the customary caregiver and the First Nation. It very rarely makes sense for the CAS to attempt to provide essential supports directly to the parties; the more effective and efficient alternative is to transfer case jurisdiction to the CAS in whose jurisdiction the child and caregiver are proposed to reside. If the transferring CAS has an outstanding court application, an

application for transfer of jurisdiction is made to the court. The court will require the receiving CAS to confirm that it accepts responsibility for the case.

Once the receiving CAS assumes responsibility for the case, that CAS can make an application to the receiving court in their jurisdiction to withdraw or amend the outstanding application to allow for substitution of a FCCA.

Jurisdictional considerations can be especially significant when considering placement of a First Nation child pursuant to a FCCA in a region of the province other than the region in which the child's First Nation is situated.

Section 48 of the CFSA allows for an agency to make application for a transfer of court proceedings to another territorial jurisdiction. Asking the court for a transfer of jurisdiction may be costly and time-consuming, and unnecessary in view of the FCCA that was activated.

## Opportunities for Changing CAS Practice

There are a number of points in time both prior and subsequent to filing a protection application or obtaining a protection order, that present opportunities for CASs and First Nation communities to engage in discussions about utilizing Formal Customary Care as a viable placement choice. Below are some examples of common CAS practices and opportunities where Formal Customary Care may be considered as an alternative to these common CAS practices:

- **Common CAS practice:** The CAS enters into a TCA with the parent.
  - **Opportunity to consider Formal Customary Care:** When a parent voluntarily requests assistance in securing an alternative placement for their child while the parent voluntarily addresses circumstances in the parent's life that have placed the child in need of protection or placed the child at risk of being in need of protection.
- **Common CAS practice:** The CAS apprehends the child, places the child in a Place of Safety and files a protection application or may enter into a TCA.
  - **Opportunity to consider Formal Customary Care:** When an extended family member who has been caring for a child for a period of time while the child's parent(s) address stressors in the parents' life contacts the CAS for assistance in addressing the child's needs for a longer period of time than was originally agreed upon by the parents and the caregivers. For example, a parent leaves a remote community for medical treatment that has exceeded the amount of time that the parents and caregivers agreed was required, or the caregiver is suddenly unable to continue providing care for the child due to unanticipated changes in the circumstances of the caregiver's life.
- **Common CAS practice:** The CAS files a protection application requesting Society wardship.
  - **Opportunity to Consider Formal Customary Care:** Where a child is apprehended as a result of having been left unsupervised for a period of time, or the child has experienced severe neglect that compromises the child's immediate safety and well-being, or the child is alleged to have been maltreated by the parent or someone in a

caregiving role who resides in the family home such that the child must be relocated to a place of safety.

- ***Common CAS practice:*** The CAS files a protection application or a Status Review requesting that the child be made a ward of the Crown.
  - ***Opportunity to Consider Formal Customary Care:*** Where a child has been in the temporary care of a CAS for the maximum allowable period of time (12 or 24 months depending on the child's age).
- ***Common CAS practice:*** The CAS continues to look for an adoptive home or, in the case of an older child who is in a group home, transitions the child to independence.
  - ***Opportunity to Consider Formal Customary Care:*** Where a First Nation child is a ward of the Crown and permanency has not been found for the child through adoption.

## The Judiciary

When a CAS seeks to withdraw a protection application in favor of a FCCA supported by a BCR, the court needs to be satisfied that the child can be adequately protected by the proposed FCCA and that a FCCA offers the child as good an opportunity to be safe, secure and nurtured as an order for the child to remain in the care of the CAS would provide. The onus is on the CAS and the Representative of the Band to show this to be the case.

When a CAS or a First Nation files a Status Review Application requesting that a protection order, including Crown wardship be terminated in order to substitute the existing order with a FCCA, the court will similarly want to hear evidence as to how the First Nation and the CAS plan to address the ongoing needs of the child through a FCCA.

## Office of the Children's Lawyer (OCL)

The Office of the Children's Lawyer becomes involved with children for whom the court has requested independent legal counsel. An OCL is usually appointed to represent the interests of the child, whose interests the court believes may differ from the interests of other parties to the proceedings.

Ascertaining the wishes of young children is especially challenging for pre-verbal children and for children who are not capable of making informed decisions owing to their age or developmental capabilities. If the OCL is representing the interests of a First Nation child for whom a FCCA is desired, the OCL, like the Judiciary, wants to be satisfied that any proposed alternative plan safeguards the child's overall well-being and is in the best interests of the child. This includes having a default plan as part of the proposed plan of care in the event the proposed Formal Customary Care placement as indicated in the FCCA is not sustained. Since a child in a Formal Customary Care arrangement is a child who is believed to be in need of protection, a default plan could include filing a protection application with the court.

# Challenges and Solutions

## Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a mechanism for resolving child welfare disputes in a less adversarial manner, by minimizing or avoiding court involvement. ADR is a strength-based, inclusive and collaborative approach that encourages the involvement and support of the family, extended family and the community in planning and decision-making for children.

CASs are required to consider use of ADR at several junctures, including:

- Prior to the commencement of a child protection hearing, and
- At any time during a hearing.

Aboriginal Approaches to ADR refer to traditional methods of dispute resolution, including circle processes established by First Nations communities and Aboriginal organizations. Impartial facilitators, who have no decision-making power and who are skilled in First Nation traditional methods, assist the participants in developing a plan that is supported by the participants, including the First Nation, and addresses the concerns identified.

When a party is opposed to utilizing Formal Customary Care, or there is disagreement about the choice of a proposed caregiver, or there is opposition by any party to a plan proposed by another, ADR can be an effective means to finding common ground acceptable to all of the parties.

## Protocols

Protocols between CASs and First Nations:

- Serve as a collaboration tool;
- Clarify mutual expectations;
- Delineate roles and responsibilities;
- Set out processes and procedures to guide interventions;
- Establish credibility and accountability;
- Build capacity; and
- Strengthen relationships.

Protocols can facilitate a positive working relationship between CASs and First Nation communities and provide an essential framework for both to collaborate in developing and managing Formal Customary Care Agreements.

A protocol is a written document that sets out policies, procedures and agreements that guide how interactions between two or more parties will be undertaken. The primary objective of a protocol is to guide a standardized response to specific circumstances and that associated tasks are performed consistently. Protocols can serve as a road map and are especially helpful in



orienting new staff to processes and procedures that are to be followed when interacting with specific groups.

The Statement of Purpose is the foundation for everything that is included in the protocol. A meaningful Statement of Purpose indicates what is valued most. It is most effective when it reflects input from every sector of the community, including but not limited to the Chief and Council, Elders, youth, natural and professional helpers such as family support workers, prevention workers and child welfare workers, law enforcement, health and wellness professionals and educators. A statement of purpose is usually one or two sentences, but it can be as long as a few paragraphs.

A protocol is entered into voluntarily; it reflects the views of the signatories and how each wants to do business to avoid duplication of tasks and confusion.

CASs have protocols with many groups including local and provincial police forces, boards of education, sexual assault centres, victim witness programs, and providers of probation and parole, youth justice, and children's mental health services. Many CASs have protocols with First Nation communities that are situated in the same geographic jurisdiction. Some CASs have protocols with agencies and First Nations in other jurisdictions with whom they interact on a regular basis.

Protocols promote community accountability, mutual respect and cooperation.

The development and implementation of protocols and service agreements<sup>12</sup> between many CASs and their affiliate First Nations have served to build capacity while at the same time providing an accountability structure. Within those structures the First Nation's own standards, processes, and practice principles are indicated as are lines of accountability and mechanisms for holding the parties responsible for decision-making.

Every protocol will be different because each reflects the uniqueness of each First Nation and each CAS. There is a common format and some key components that are common to most. These include:

- A Declaration of Commitment
- Signatory Partners
- A Statement of Purpose or Mission Statement
- Guiding Principles
- A Glossary and Clarification of Terms
- Jurisdiction
- Roles and Responsibilities of the Parties (Designates)
- Timeframes
- A Process for Resolving Conflicts that may arise

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<sup>12</sup> Some protocols include service agreements; some CASs and First Nations enter into service agreements separate from protocols. Service agreements set out the type, nature, and duration of services that the parties agree will be provided, including responsibilities for the provision of these.

- A Process for Reviewing and Revising the Protocol

A Sample Protocol Between a CAS and a First Nation is included in Appendix D.

## Recruiting First Nation-Based Formal Customary Care Homes

The number of First Nation children requiring placement with alternative caregivers due to child protection concerns far exceeds the number of approved First Nation-based alternative care homes. As a consequence, CASs often have to utilize non-Aboriginal foster homes and group care facilities situated in non-Aboriginal communities to provide foster care for First Nation children.

Throughout the course of the consultations that informed the development of this Practice Guide, a number of barriers to recruitment of First Nation-based caregiver homes were identified. These included the following:

- ***Historical Distrust*** lingers from First Nation peoples' involvement with the residential school and child welfare systems. Compounding this distrust are the traumatic experiences of many Aboriginal people who were placed in foster care as children and/or have had one or more of their own children removed by child welfare authorities.
- ***Perceived intrusiveness of the home study tool during the application process:*** During the application process, applicants are asked several questions that are often experienced as intrusive. For many, being asked to reveal aspects of their past is a deterrent to participating in the application process.
- ***Housing Conditions:*** In many First Nation communities houses are small, sparsely furnished, overcrowded, and in some instances, without indoor sewer amenities and running water. Some prospective caregiver applicants may be embarrassed about their home environment, or fear they will be judged unfavorably due to their living conditions.
- ***Availability of Resources:*** Roughly 75 per cent of the First Nation communities in Ontario are situated in remote and/or rural settings. Supportive resources for children and caregivers involved in FCC arrangements are often perceived as minimal due to availability and accessibility.
- ***Provincial Licensing Standards:*** Foster care, kinship care and Formal Customary Care homes are assessed according to provincial standards. In addition to provincial standards, CASs may have additional standards that are used to assess potential caregiver homes. These additional standards may vary among CASs, resulting in homes being either approved or not approved, depending on which CAS conducts the home assessment. Prospective caregivers refer to this as being “screened in” or “screened out”.

# Liability and Accountability

Through the consultations, representatives from CASs throughout Ontario were asked to identify factors or circumstances that they believe impede their utilization of Formal Customary Care Agreements with First Nation children. One of the most often cited factors was fear of liability and more specifically, concern that a CAS could be held liable if a First Nation child sustained serious harm or injury in a Formal Customary Care arrangement.

CASs are authorized under the CFSA to intervene when children are in need of protection or at risk of being in need of protection. Prescribed standards provide a framework within which services to children and their families are delivered. The standards provide a baseline against which the performance of each CAS is measured by the province.

Similarly, protocols and service agreements that CASs enter into with other service providers, including First Nation communities, set out mutual roles and responsibilities and articulate lines of accountability to which the parties mutually agree. In the case of Formal Customary Care Agreements, the roles and responsibilities of all the parties are clearly stated. The CAS as the designated child protection authority<sup>13</sup> provides oversight and is responsible for ensuring that each party fulfils their agreed-upon responsibilities. The way in which the CAS does this depends on the nature of the working relationship between the CAS and the parties.

For example, if a First Nation service provider agrees to supervise the placement of a child in a Formal Customary Care arrangement, the manner in which the supervision will be carried out is stated in both the FCCA and the Plan of Care for the child. CASs hold service providers accountable for the provision of supervision and other services, according to what has been agreed upon and in accordance with prescribed standards and procedures.

CASs are accountable to the province of Ontario to fulfil the mandate for which they are designated under the CFSA. Some Aboriginal CASs have dual accountability: in addition to being accountable to the province, they are accountable to the Chiefs and Councils of their affiliate First Nations. This two-fold accountability brings different expectations and obligations.

If terms and conditions set out in the FCCA are not adhered to, and/or standards and procedures intended to protect the child have been compromised, and the child in a FCCA is believed to be in need of protection, the CAS can take further measures. For example, a CAS may bring the matter before the court on a protection application.

**Myth # 13 in the Dispelling Myths** section of this Practice Guide articulates several important ways in which accountability is achieved in Formal Customary Care arrangements.

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<sup>13</sup> The broader issue of Aboriginal self-governance and the question of where authority ultimately lies for Aboriginal child welfare laws and policy is a complex issue and is not within the scope of this document.

# Summary: This is What We Know...

In considering Formal Customary Care as a placement option for First Nation children, here are some key points, raised throughout this guide, to keep in mind:

- The importance of First Nations' participation in child welfare matters with respect to their children is acknowledged and emphasized throughout the CFSA. Exploration of the extended family and community as potential resources for First Nation children is also woven throughout the CFSA.
- The CFSA has recognized Customary Care as a placement option for First Nation children for almost three decades. The broad definition set out in Part X of the CFSA respects the integrity of each First Nation to define customary care and enact practices and standards of care that are congruent with the customs that are unique to each First Nation.
- MCYS has set out rules relating to when a subsidy can be provided by a CAS to a customary care provider. These rules are contained in the 2006 Ontario Permanency Funding Policy Guidelines (see Appendix F) under the heading "Formal Customary Care".
- Formal Customary Care can preserve significant attachments, allow for continuity with culture and community, and reinforce a cultural identity for First Nation children.
- Protocols between CASs, Aboriginal child and family service organizations and First Nations with respect to Formal Customary Care can provide an opportunity to:
  - build capacity;
  - clarify mutual roles, responsibilities and expectations;
  - articulate service standards and processes; and
  - develop accountability mechanisms.
- An ADR process can provide an opportunity for terms and conditions of Formal Customary Care Agreements to be agreed upon when a disagreement between the parties has occurred.
- Risk with respect to Formal Customary Care can be mitigated through:
  - protocols, service agreements and Formal Customary Care Agreements in which clear lines of accountability and mutual expectation are outlined; and
  - consistent and supportive oversight.
- Co-participation by Aboriginal and non-Aboriginal child and family service workers in training and professional development events strengthens relationships and deepens cross-cultural respect.
- The Elders have traditionally held special roles and responsibilities in matters of governance, community and family. Their importance stems from their positions as

esteemed members of the family and the larger community. They provide advice at certain critical junctures, participate in decision-making processes, lend vision and leadership, and resolve disputes within the community. The Elders can be an important source of support and knowledge to child welfare professionals. Linking children who are placed outside of their communities and/or with non-Aboriginal caregivers to Elders helps First Nation children retain a positive sense of cultural identity.

## Next Steps

If you are inspired to continue searching for information to increase your understanding about why Formal Customary Care is an appropriate placement option for First Nation children, this guide will have achieved one of its goals. Here are some additional suggestions:

- Think about what you have learned about Formal Customary Care and how this new information will inform the permanency options you consider for First Nation children;
- Reflect on the number of First Nation children presently in CAS care in your jurisdiction. Identify opportunities for these children to find permanency through Formal Customary Care arrangements with their own or another First Nation;
- Consider the number of foster homes or Formal Customary Care homes that exist in each of the First Nations in your jurisdiction. What can be done to encourage more First Nation community members to become formal caregivers?
- Review the CAS policy for recruiting and screening potential customary caregiver homes and consider how this policy screens in or inadvertently screens out potential caregivers;
- Determine whether the CAS and First Nations situated in your geographical jurisdiction have working protocols and review them. Consider how these protocols support your collaboration or whether they need to be revised to support the development of stronger relationships;
- Reflect on the number of times you have visited First Nations within your geographic jurisdiction. Consider revisiting these communities to attend cultural events and participate in traditional ceremonies that offer opportunities for celebration;
- Convene a meeting with CAS and First Nation-based Family Support Workers to brainstorm barriers to foster home recruitment and approaches for mitigating these;
- Consider opportunities for CAS and First Nation-based Family Support/child welfare workers to participate in cross-training sessions;
- Become familiar with First Nation-based resources such as cultural centres, daycares, schools, early learning centres, and health centres to learn more about how various resources are made available and accessible to the community, and how these may be

beneficial for children and families; and

- Read about the unique history of the First Nations in your jurisdiction and consider how historical events have shaped First Nation family and community life today.

First Nation and other Aboriginal peoples in Canada have, despite tremendous odds, embarked on a journey of reconciliation, cultural restoration, and community renewal that is strengthening families and creating communities of wellness. The utilization of Formal Customary Care as a placement alternative to court-ordered CAS care has the potential to enhance this journey.

## Frequently Asked Questions

1. *We have protocols with First Nations situated in the geographical jurisdiction served by our agency. Can we enter into protocols with First Nations situated in other geographical jurisdictions?*

**Response:** Yes. You might also want to enter into a protocol with the agency in which the First Nation is situated. First Nation people are highly mobile owing to the economic and social conditions in their communities. Many urban centres are home to First Nation people from specific regions of the province because they offer greater opportunities for housing and employment.

2. *How do I determine who the Representative of the Band is?*

**Response:** Call the First Nation administrative office (often referred to as the Band Office) and state that you are calling about a child protection matter. Ask, “Who is the Band Rep for child welfare-related matters and how can I contact this person?” If the receptionist does not know, ask: “Who is the Family Service Worker or child welfare worker for your community and how can I contact this person?” Most First Nations have a child welfare worker or family support worker that is employed by the First Nation. Sometimes these workers are situated in the Band Office and sometimes they are situated in a separate building. A complete list of First Nation communities and the phone numbers for their administration offices can be found on this website:

<http://www.chiefs-of-ontario.org/directory> or

<http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/FNListGrid.aspx?lang=eng>

3. *If the First Nation does not identify a Representative of the Band (Band Rep), who do I notify?*

**Response:** Notify the Chief. His or her name and contact information can be found on the website listed above.

4. *I called the Band Office and left a message. No one has called me back. What should I do?*

**Response:** Call again and emphasize the urgency of the situation. Confirm that the person you are trying to reach is the correct person. Confirm this individual's email address and send a note confirming your need to talk regarding the matter in question. Copy the Chief on any email correspondence you send (email addresses for First Nation Chiefs are listed on the website above). Send your email with a Request a Read Receipt. This will tell you if the recipients of your electronic correspondence have read your message.

5. ***I [Children's Aid Society (CAS)] faxed court papers to a fax number that someone in the First Nation administration office provided. I don't know if the papers reached their intended recipient. Have I "served notice" on the First Nation by definition?***

**Response:** If you faxed the papers to the attention of the individual who was identified as the Representative of the First Nation (Band Rep), notification via fax is deemed to have occurred the same day when it is a regular business day. In the case of a weekend or Statutory Holiday, notification is deemed to have occurred on the next regular business day. A preferred practice is to follow up via telephone or email to confirm that the papers were received, and to offer an opportunity for discussion about the implications as well as next steps.

**Note:** Some First Nations have a dedicated fax line for child protection documents that is situated in a secure location to maintain confidentiality and out of respect for the involved parties.

6. ***How do I determine if a child is a registered member of a First Nation or eligible for membership?***

**Response:** Each First Nation maintains a membership list. Ask the child's biological parents if either of them or their parents is affiliated with a First Nation community. Contact the First Nation administration office and ask to speak with the person responsible for maintaining the First Nation registry or membership list. Eligibility for membership is addressed on the following website:

<http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp410-e.htm>

7. ***Can our agency enter into a Formal Customary Care Agreement (FCCA) with a First Nation for a child who will not be placed in that First Nation?***

**Response:** Yes. The BCR sets out that the child will be cared for according to the custom of the First Nation. An alternative caregiver who is caring for a First Nation child pursuant to a FCCA does not have to reside within the child's First Nation. What is most important is that the caregiver is able to fulfil the terms and conditions set out in the FCCA which reflects the customs of the First Nation. The caregiver may or may not live in the First Nation.

8. ***When the parents of a First Nation child are registered with two different First Nations, who should the CAS be notifying?***

**Response:** The First Nation with whom the child is a registered member must be notified. If the child is not yet a registered member of either First Nation, he or she may be eligible for

membership with both First Nations. For this reason, both First Nations should be notified.

9. *We have a First Nation child in our agency's care as a Society ward. The child's mother would like the child placed with her extended family in her First Nation. The child's father is contesting this; he would like the child placed with his extended family in his First Nation. How do we resolve this?*

**Response:** Placement would normally be explored first with the First Nation with whom the child is a registered member. If no acceptable placement could be identified, placement would be explored in the other First Nation. If the child is not registered with either First Nation, he or she may be eligible for membership in both. Bringing the parents, representatives from their respective extended family systems, and representatives from both First Nations together to participate in an Aboriginal ADR process may be helpful in bringing the families to a consensus about what is in the child's best interests. If both First Nations are situated within the CAS's territorial jurisdiction, protocols that the CAS has with each First Nation should set out mechanisms for addressing conflicts.

10. *What are the circumstances where Formal Customary Care would not be appropriate for a First Nation child?*

**Response:** Circumstances when Formal Customary Care may not be the placement of choice for a First Nation child include (but are not limited to) the following:

- i. When Formal Customary Care would require physically moving the child from another caregiver with whom the child has developed a secure attachment, a sense of security and belonging, and established enduring relationships;
- ii. When a child 12 years of age or older states his or her wishes not to be cared for pursuant to a FCCA;
- iii. When a child's parents are opposed to a First Nation Customary Care Declaration and assert a preference to proceed with a child protection hearing; and
- iv. When the First Nation with whom the child has membership will not make a Formal Customary Care Declaration respecting the child.



# Resources

## Web Accessible Resources

### *Map Highlighting Names and Locations of First Nations in Ontario*

[http://www.aboriginalaffairs.gov.on.ca/english/about/firstnations\\_map.asp](http://www.aboriginalaffairs.gov.on.ca/english/about/firstnations_map.asp)

The Ontario First Nations map can be downloaded from this website. A large printed copy of the map can also be ordered.

### *First Nation Demographic and Historical Information*

Many First Nations have dedicated websites that provide historical and contemporary information about their community. Contact information for First Nation-based child and family services workers is often posted on these sites. The following websites provide information about First Nations in Ontario in general, as well as links to many individual First Nations.

[http://en.wikipedia.org/wiki/First\\_Nations](http://en.wikipedia.org/wiki/First_Nations)

<http://www.aboriginalcanada.ca/nativel.html>

### *Chiefs of Ontario*

The Chiefs of Ontario is a coordinating body for 133 First Nations in Ontario. A complete list of First Nation communities and their Chiefs is located on this site. CASs should direct all correspondence to the Chief, or where the Representative of the First Nation is known to the CAS, correspondence should go to the Band Rep and copied to the Chief.

<http://www.chiefs-of-ontario.org/>

### *Indian Status and Membership Issues*

<http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp410-e.htm>

This 22-page document from the Parliamentary Library provides an overview of events that have historically and more recently affected Indian Band membership. Readers who have asked the questions, “Who is eligible for registration as a Status Indian?” and “How is Band membership determined?” will find this document informative.

For more information, visit the Aboriginal Affairs and Northern Development website:

<http://www.aadnc-aandc.gc.ca/eng/1100100032374/1100100032378>

### ***The Indian Act***

<http://laws-lois.justice.gc.ca/eng/acts/I-5/page-1.html>

The *Indian Act*, current to May 2, 2012, is available on this site.

### ***Adopted Children and Their Indian Status***

<http://web.ncf.ca/de723/statuschild.html>

This site provides clarification about the eligibility of Aboriginal children adopted into Aboriginal and non-Aboriginal families for Band membership.

### ***First Nations Child Caring Society of Canada***

<http://www.fncaringsociety.com>

Documents available from this site include:

- Literature and Annotated Bibliography on Aspects of Aboriginal Child Welfare in Canada
- Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth and Families

### ***Canadian Legal Information Institute***

<http://www.canlii.com/en/on/laws/stat/rso-1990-c-c11/latest/rso-1990-c-c11.html>

This site includes the most recent version of the *Child and Family Services Act* as well as past versions as far back as 1985.

### ***Promising Practices / Best Practices / Evidence-Based Practices***

<http://www.promisingpractices.net>

The Promising Practices Network (PPN) website is a unique resource that offers credible, research-based information on what works to improve the lives of children and families. Sometimes referred to as a "best practices" site or a "model program" site, PPN is both of those things and much more. In addition to providing information on Programs that Work, PPN also links to additional research information in all areas related to child well-being, including their physical and mental health, academic success and economic security. To promote successful implementation of best practices and model programs, PPN also screens and posts evidence-based information on effective Service Delivery.

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# APPENDICES

## Appendix A

### Designated Aboriginal Child and Family Services Agencies in Ontario

Agency Name & Address	Phone / Fax Website	First Nations Within Territorial Jurisdiction
<b>Akwesasne Child and Family Services</b>  P.O Box 579 Cornwall, ON K6H 5T3	PH (613) 575-2341 FAX (613) 575-1154 <a href="http://www.akwesasne.ca/contactus.html">www.akwesasne.ca/contactus.html</a>	(1) Akwesasne
<b>Anishinaabe Abinoojii Family Services</b>  20 Main St. S Kenora, ON P9N 1S7	PH (807) 468-6224 TOLL FREE 1-866-420-9990 FAX (807) 468-6643 <a href="http://www.aafs.ca">www.aafs.ca</a>	(5) Washagamis Bay; Noatkamegwanning; Wabaseemoong; Asubpechoseewagong; Wauzhushk Onigum
<b>Dilico Ojibway Child and Family Services</b>  200 Anemki Place Fort William First Nation, ON P7J 1L6	PH (807) 623-8511 TOLL FREE 1-855-623-8511 FAX (807) 626-7999 <a href="http://www.dilico.com">www.dilico.com</a>	(13) Fort William; Red Rock; Whitesand; Kiashke Zaaging Anishinaabek (Gull Bay); Long Lake # 58; Animbigoo Zaagi'igan Anishinaabek; Bingwi Neyaashi Anishinaabek (Sandpoint); Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay); Ginoogaming; Pays Plat; Pic Mobert; Pic River; Michipicoten
<b>Payukotayno James and Hudson Bay Family Services</b>  P.O. Box 189, 50 Bay Road Moosenee, ON P0L 1Y0	PH (705) 336-2229 TOLL FREE 1-888-298-2916 (705 area code only) FAX (705) 336-2492 <a href="http://www.payukotayno.ca">www.payukotayno.ca</a>	(5) Attawapiskat; Kashechewan; Fort Albany; Moose Cree; Peawanuck

<b>Agency Name &amp; Address</b>	<b>Phone / Fax Website</b>	<b>First Nations Within Territorial Jurisdiction</b>
<p><b>Native Child and Family Services of Toronto</b></p> <p>30 College Street Toronto, ON M5G 1K2</p>	<p>PH (416) 969-8510 FAX (416) 928-0706 <a href="http://www.nativechild.org">www.nativechild.org</a></p>	<p>Urban Aboriginal Population</p>
<p><b>Tikinagan Child and Family Services</b></p> <p>P.O. Box 627, 63 King Street Sioux Lookout, ON P8T 2T0</p>	<p>PH (807) 737-3466 TOLL FREE 1-800-465-3624 FAX (807) 737-3543 <a href="http://www.tikinagan.org">www.tikinagan.org</a></p>	<p>(30)</p> <p>Aroland; Bearskin Lake; Cat Lake; Deer Lake; Eabametoong; Fort Severn; Kasabonika Lake; Keewaywin; Kingfisher Lake; Kitchenuhmaykoosib Inninuwug; Koocheching; Lac Seul; Marten Falls; McDowell Lake; Mishkeegogamang; Muskrat Dam; Neskantaga; Nibinamik; North Caribou Lake; North Spirit Lake; Pikangikum; Poplar Hill; Sachigo Lake; Sandy Lake; Saugeen; Slate Falls; Wapekeka; Wawakapewin; Webequie; Wunnumin Lake</p>
<p><b>Weechi-it-te-win Family Services, Inc.</b></p> <p>P.O. Box 812, 1457 Idylwild Drive Fort Frances, ON P9A 3N1</p>	<p>PH (807) 274-3201 FAX (807) 274-8435 <a href="http://www.weechi.ca">www.weechi.ca</a></p>	<p>(10)</p> <p>Onigaming; Mitaanjigamiing; Couchiching; Lac La Croix; Nigigoonsiminikaaning; Naicatchewenin; Big Grassy; Rainy River; Seine River; Naongashiing</p>



# Aboriginal Child and Family Services Agencies in Ontario

Agency Name & Address	Phone / Fax Website	First Nations Within Geographical Jurisdiction
<b>Dnaagdawenmag Binnoojiiyag Child and Family Services</b> 517 Hiawatha Line. R.R.#2 Hiawatha First Nation, ON K0L 2G0	PH (705) 295-7135 FAX (705) 295-7133 <a href="http://www.binnoojiiyag.ca">www.binnoojiiyag.ca</a>	(7) Curve Lake; Alderville; Mississaugas of Scugog Island; Hiawatha; Georgina Island; Moose Deer Point; Beausoliel
<b>Kina Gbezhgomi Child and Family Services</b> 98 Pottawatomi Ave. Wikwemikong, ON P0P 2J0	PH (705) 859-2100 TOLL FREE 1-800-268-1899 FAX (705) 859-2195 <a href="http://www.kgcf.org">www.kgcf.org</a>	(7) Wikwemikong; M'Chigeeng; Aundeck Omni Kaning; Sheshegwaning; Zhiibaahaasing; Sheguiandah; Whitefish River
<b>Kunuwanimano Child and Family Services</b> 30 Pine Street N., Unit 120 Timmins, ON P4N 6K6	PH (705) 268-9033 TOLL FREE 1-800-461-1293 FAX (705) 268-9272 <a href="http://www.kunuwanimano.com">www.kunuwanimano.com</a>	(11) Constance Lake; Matachewan; Wahgoshig; Mattagami; Beaver House; Taykwa Tagamou (New Post); Chapleau Cree; Chapleau Ojibwe; Brunswick House; Missanabie Cree; Hornepayne
<b>Mnaasged Child &amp; Family Services</b> 311 Jubilee Road Muncey, ON N0L 1Y0	PH (519) 289-1117 TOLL FREE 1-877-652-1118 FAX (519) 289-3068 <a href="http://www.mnaasged.com">www.mnaasged.com</a>	(6) Muncee-Delaware; Delaware Nation of Moravian Town; Kettle and Stoney Point; Aamjiwnaang; Chippewas of the Thames; Oneida Nation of the Thames
<b>Nog-da-win-da-min Family and Community Services</b> 210 Gran Street B. Batchewana First Nation, ON P6C 0C4	PH (705) 946-3700 TOLL FREE 1-800-465-0999 FAX (705) 946-3717 <a href="http://www.nog.ca">www.nog.ca</a>	(7) Batchewana; Garden River; Thessalon; Mississaugas; Serpent River; Sagamok Anishnawbek; Atikameksheng Anishnawbek (Whitefish Lake)

<b>Six Nations of the Grand River Child and Family Services</b>  Box 5001, 15 Sunrise Court Ohsweken, ON N0A 1M0	PH (519) 445-0230 FAX (519) 445-0249 <a href="http://www.sixnations.ca/cfsAdmin.htm">http://www.sixnations.ca/cfsAdmin.htm</a>	(1) Six Nations of the Grand River
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# Appendix B

## Band Council Resolution (sample)

The Council of the \_\_\_\_\_ First Nation

**Do Hereby Resolve:**

**That:**

1. The \_\_\_\_\_ First Nation is exercising its authority and responsibility for their children; and

2. The \_\_\_\_\_ First Nation supports the care of

\_\_\_\_\_ DOB \_\_\_\_\_ according to the custom of the First Nation.

Dated and executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



# Appendix C

## Sample Customary Care Agreement

This is an agreement made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Between:** \_\_\_\_\_ First Nation

**And:** \_\_\_\_\_ Child and Family Services

**And:** \_\_\_\_\_  
Names of Parents/Guardians

\_\_\_\_\_  
Address Phone #

**And:** \_\_\_\_\_  
Name of Caregivers

\_\_\_\_\_  
Address Phone #

**And:** \_\_\_\_\_  
Name of Child (if 12 years of age or older)

### Whereas:

1. The parent(s) have legal authority and responsibility to care for and supervise the child(ren) whose name(s) and date of birth are as follows:

\_\_\_\_\_  
DOB \_\_\_\_\_  
\_\_\_\_\_  
DOB \_\_\_\_\_  
\_\_\_\_\_  
DOB \_\_\_\_\_

2. The parent(s) are temporarily unable to care adequately for the child(ren) for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The parent(s) have arranged with the caregiver(s) to have the caregiver(s) provide care and supervision on behalf of the parent(s); and,

4. The First Nation by its Council has, with the consent of the parent(s) made a declaration that the child(ren) are to be cared for in accordance with the customs of the First Nation.

**The parties hereby agree to the following:**

**The Parents/Caregivers agree that:**

1. The caregivers shall provide care and supervision of the child(ren).
2. The parents shall work and cooperate with the \_\_\_\_\_ First Nation Family Support Workers and the \_\_\_\_\_ Child and Family Services to plan for the return of the child(ren) to the parent(s).
3. The parent(s) shall cooperate and sign any consent for the release of information that may be required by \_\_\_\_\_ Child and Family Services.
4. The parent(s) and/or their designate(s) shall participate in case review and case planning conferences, and be involved in developing the Plan of Care for their child(ren).
5. The parent(s) agree to maintain contact with their child(ren) and honour visiting arrangements that are agreed upon by the parties.
6. Where it is not possible to maintain contact and be involved with the child(ren)'s Plan of Care, the parent(s) may designate another person who is willing to do so. The designated person is: \_\_\_\_\_ whose relationship to the parent(s) is as \_\_\_\_\_ and who lives at:  
\_\_\_\_\_
7. The parents shall notify \_\_\_\_\_ Child and Family Services of any change of their address or place of residency.
8. \_\_\_\_\_ Child and Family Services and the First Nation Family Support Worker will provide support and supervision for the child and caregivers.
9. The child(ren)'s placement with the caregivers shall be assessed and monitored by the First Nation Family Support Worker and the \_\_\_\_\_ Child and Family Services Resource worker.
10. The parent(s) hereby grant(s) to the caregiver(s) and the \_\_\_\_\_ Child and Family Services, their consent and permission to give or refuse consents to any form of medical, surgical, dental, or diagnostic treatment and/or anaesthetic care for the child(ren) if the parent's consent would otherwise be required.
11. The parent(s) acknowledge that the consent and permission granted shall allow the caregiver(s) to make a decision or pursue any course of action that the caregivers reasonably believe is in the best interests of the child(ren).

12. The parent(s) shall provide financial assistance for the child(ren) as agreed upon by the parties.
13. The parent(s) hereby agree(s) to save the caregiver(s) from any and all liability or costs which they now, or hereafter, incur as a result of providing care and supervision to the child(ren).
14. To indemnify \_\_\_\_\_ Child and Family Services, its staff or agents with respect to any/all claims and liabilities arising out of the care provided to the said child(ren).

**The Caregivers agree that:**

15. The caregivers shall provide support, nurturance and day-to-day guidance to the child(ren).
16. The caregivers shall promote cultural pride and support the child in achieving a positive cultural identity.
17. The caregivers shall participate in case review and case planning conferences and support the Plan of Care for the child.
18. The caregivers will cooperate and work in partnership with the First Nation Family Support Workers, the \_\_\_\_\_ Child and Family Services, and other professional and natural helpers as may be required by the Plan of Care for the child.
19. The caregivers agree to honor visiting arrangements that are agreed upon by the parties.
20. The caregivers shall maintain a safe and secure home environment.
21. The caregivers shall provide consent for any form of medical, surgical, dental, psychological or diagnostic treatment and/or anaesthetic care for the child that a duly qualified medical or dental practitioner may recommend as necessary and in the best interests of the child. The caregivers will provide written reports arising from such treatments to \_\_\_\_\_ Child and Family Services.
22. In the case of an emergency involving a requirement for care to be provided for the child(ren), and whereas the caregiver(s) after reasonable attempts to do so, cannot locate the parent(s) to notify and consult with them regarding the provision of care, the caregiver(s) may obtain and authorize care for the child(ren) without notice and consultation with the parent(s). The caregiver(s) agree, however, to notify the parent(s) and the \_\_\_\_\_ Child and Family Services of the details of such care provided as soon as reasonably possible.
23. The caregivers will inform the parents, the First Nation Family Support worker, and the \_\_\_\_\_ Child and Family Services of any serious occurrence involving the child including any activities that may result in Youth Criminal Justice charges or liability to the Caregivers or \_\_\_\_\_ Child and Family Services.

24. The caregivers agree not to return the children to the parents/caregivers without the consent of \_\_\_\_\_ Child and Family Services.
25. The caregivers agree that the child's need for safety, stability and a sense of belonging is best achieved through continuity in a stable, enduring family environment. Accordingly, the caregivers are committed to working with the parents/caregivers, the First Nation Family Support Worker and the \_\_\_\_\_ Child and Family Services to prevent placement disruption.
26. The caregivers shall obtain the written consent of \_\_\_\_\_ Child and Family Services before travelling out of the province of Ontario.
27. The caregiver(s) are not assuming, by the agreement, any liability for acts or omissions of the child(ren) nor shall they become financially liable to any third party for any expense or cost which may be incurred by the child(ren).

**The First Nation agrees:**

28. The First Nation is in agreement with the Plan of Care for the child including placement of the children with the caregivers who are party to this agreement.
29. The First Nation Representative shall participate in case reviews and case planning conferences.
30. The First Nation Representative will collaborate with the First Nation Family Support Workers, the \_\_\_\_\_ Child and Family Services, the caregivers and the child's parents/caregivers in achieving permanence for the child.

\_\_\_\_\_ **Child and Family Services agrees that:**

31. The Society will provide services to the child, the child's parents/caregivers, and the caregivers that is consistent with the customs and standards of care prescribed by the First Nation and that are consistent with the case management practices and standards prescribed by \_\_\_\_\_ Child and Family Services.
32. The Society will provide a subsidy for the care of the child(ren) to the caregivers.
33. The Society has the right to receive the Child Tax Benefit on behalf of the child.

**The parties further agree:**

34. That the parties or their representatives shall collaborate in the development, implementation and ongoing review of a plan of care for the children that preserves the child(ren)'s cultural identity, recognizes and reinforces the child(ren)'s unique culture, heritage and traditions, and supports the child(ren)'s right to a safe, secure, nurturing and permanent home.



**Termination:**

35. This agreement may be terminated by any party at any time upon giving \_\_\_\_\_ days written notice to the other parties.

**Parents**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_

**Child(ren) if 12 years of age or over**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_

**Caregivers**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_

**Representative(s) of the First Nation**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_

**Representatives of the \_\_\_\_\_ Child and Family Services**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_

# Appendix D

## Sample Protocol Between CAS and First Nation

The following protocol is intended to serve as an example of what a protocol between a CAS and First Nation may look like. It is important for parties to customize their own protocol so it reflects the parties' individual circumstances and the needs of children and families in their particular jurisdiction.

## Protocol Pertaining to the Delivery of Child and Family Services

Between \_\_\_\_\_ First Nation

And

The Children's Aid Society of \_\_\_\_\_

**WHEREAS** the parties acknowledge and respect that the protection, best interests and well-being of children is the paramount purpose in developing and implementing this protocol;

**AND WHEREAS** the parties acknowledge that services to children should be provided in a manner that,

- i. Respects a child's need for continuity of care and for stable relationships within a family and cultural environment;
- ii. Takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children;
- iii. Provides early assessment, planning and decision-making to achieve permanent plans for children in accordance with their best interests; and,
- iv. Includes the participation of a child, his or her parents, members of the extended family system and others wherever appropriate.

**AND WHEREAS** all parties acknowledge the terms of this agreement will remain in effect, subject to scheduled review, until such time as mechanisms are instituted for the provision of child welfare services to the First Nation;

**AND WHEREAS** the *Child and Family Services Act* (CFSA) encourages a flexible approach to the delivery of child and family services that explicitly recognizes the unique cultures and traditions of First Nations and the right of First Nations to deliver their own services whenever possible;

**AND WHEREAS** the First Nation has established a child and family services capacity to provide both community-oriented and case-specific support services on a voluntary basis – one major objective of which is to minimize the necessity of involuntary interventions with families experiencing problems meeting the needs of their children;

**AND WHEREAS** it is acknowledged by the First Nation that the Society continues to have responsibility, under the CFSA for dealing with situations in which children and youth of the communities may be in need of protection;

**AND WHEREAS** the Society acknowledges that the First Nation provides services and community support, and for the protection of children, and in partnership with the Society;

**AND WHEREAS** this document is forged from two separate and distinct groups with differing philosophies and approaches coming together to understand and develop a protocol that both respects these different entities and allows each to operate in unison to provide child welfare services;

**AND WHEREAS** the Society approaches the protocol from the mandate of the CFSA, that gives them the overall responsibility for child protection, and the First Nation approaches the protocol from the mandate of its Chief and Council that gives them responsibility to preserve and protect the culture and well-being of First Nation children;

**AND WHEREAS** the intent of both parties is to provide a rich, flexible and respectful protocol to assist our mutual work with children and families;

**NOW THEREFORE THE FIRST NATION AND THE SOCIETY AGREE AS FOLLOWS:**

**(A) Definitions**

Throughout this protocol, the words beginning in lower case letters denote a broad meaning; whereas, words or phrases beginning with uppercase letters have the specific meaning as defined in the *Child and Family Services Act*, R.S.O. 1990, cC.11 (hereinafter referred to as the CFSA).

- I. **First Nation (FN):** means a band as defined in the *Indian Act* Section 2(1).
- II. **First Nation Representation:** means a First Nation Representative of the \_\_\_\_\_ First Nation, hereafter referred to as the \_\_\_First Nation, for the purpose of representing the First Nation's interest in child welfare court proceedings and all other case planning undertakings.
- III. **Case Management:** means that component of service delivery consisting of information gathering, needs assessment, service/treatment planning and contracting, referral, monitoring, and review and evaluation of outcomes.
- IV. **Chief:** means the Chief of a First Nation selected in accordance with the *Indian Act*.
- V. **Child:** the First Nation recognizes any person less than 19 years as a child; whereas, a Child under Part III of the CFSA means a person under the age of 16 as defined by the CFSA unless the child is 16 and over and subject to an order. For the purpose of this protocol, the CFSA definition will apply.
- VI. **Child's Community:** means a person who has ethnic, cultural or religious ties in common with a child or with a parent, sibling or extended family members of the child; a person who has a beneficial and meaningful relationship with the child or a parent or an extended family member of the child.
- VII. **Children's Aid Society Workers:** refers to any workers employed directly or contracted by the Children's Aid Society (hereinafter referred to as CAS or Society).

- VIII. ***Customary Care***: means an out-of-home care arrangement that is voluntarily entered into by the child's current parents or caregivers, and is declared to be a Customary Care arrangement by the First Nation according to the custom of the child's First Nation as defined by the First Nation that is party to this protocol.
- IX. ***Customary Care Agreement***: is a written agreement between the Society, the parent(s), and the Representative of the First Nation, and the Customary Care provider in an arrangement as described above in VIII.
- X. ***Extended Family***: means persons to whom a child is related by blood, through a spousal relationship, or through adoption, and, in the case of a First Nation child, includes any member of the child's First Nation community.
- XI. ***First Nation Child and Family Service Workers***: means any person employed or contracted by the First Nation to provide or supervise and manage the delivery of child and family services.
- XII. ***Mandate***: the mandate of the CAS is defined by the CFSA, Regulations under the Act, and Ministry Policies and Directives. The mandate of the First Nation Child and Family Service Program is self-defined by the First Nation according to the customs, traditions and cultural norms of the First Nation.
- XIII. ***Members***: means any status or non-status member of the First Nation, as defined by the First Nation, and whether residing on or off the First Nation's territory.
- XIV. ***Parent/guardian***: means parent as defined in Part III Section 37(1) of the CFSA, or a guardian, and may also include a member of the child's extended family, or an approved member of the child's First Nation as determined by the First Nation.
- XV. ***Place of Safety***: means a foster home, a hospital or a person's home that satisfies the requirements of Section 37(5) or a place or a class of places designated as a place of safety by a Director or local Director under Section 18. Section 37(1)(a) (b) and 37 (5) (a) (b).
- XVI. ***Plans of Service or Care***: means the plans outlining services and expectations of the individuals involved to meet the needs of the child developed by the Society together with the child, the family, the First Nation Child and Family Service Worker, the First Nation Representative and other collaterals as may be required.
- XVII. ***Subsidy for Customary Care***: means a subsidy granted by the Society to a person caring for a child where the First Nation declares that a member child is being cared for pursuant to a customary care declaration made by the First Nation.

**(B) Responsibilities:**

1. The following division of responsibility for those child and family services that are permitted and/or required under law is in effect:

First Nations have responsibility for all community-oriented and family/individual case-specific child/youth and family services that are voluntarily requested by the families and/or children of the First Nation, providing such services to the extent permitted by funding.

Following the service principles, policy, practices and standards that have been approved by the First Nation Chief and Council, the First Nation acts through the First Nation Child and Family Service Workers to:

- Identify actual or potential child and family issues;
  - Provide both community-oriented and, on a voluntary and customary basis, case-specific assistance to families and individuals including customary/alternative care arrangements; and
  - Maximize the extent to which these issues are resolved within the community and family.
2. The Society continues to hold responsibility for any mandatory interventions required under the CFSA.
  3. The First Nation, through designation of its First Nation Representative and/or designated CFS Authority pursuant to Section 211 of Part X of the CFSA, has responsibility for the development of alternative care providers and for the designation of the home of a child's relative or of the child's extended family or community as a place of safety – and will do so according to Ministry guidelines and criteria, culturally appropriate standards and assessment procedures and the requirements of the CFSA.

### **(C) Principles of the Relationship**

The parties to this agreement will work cooperatively in those cases on-reserve requiring mandatory intervention. The process of cooperative involvement will be based on the following principles, of which the first is the most important:

1. Both parties will promote the best interests, protection and well-being of children.
2. Both parties will premise their involvement with families and individuals on the goal of maintaining family autonomy and integrity especially with a focus on “admission prevention.” A respectful and impartial approach will be taken in providing services to children and families.
3. The First Nation Child and Family Service Workers, First Nation Representative and/or designated Authority will respect the mandatory service obligation placed upon the Society by the CFSA.
4. Wherever possible, the least disruptive course of action to ensure the well-being of a child will be taken in order to maximize the possibility of providing service on a voluntary basis, the maintenance of the family unit, and the re-integration of families when separation is required.

5. The Society will respect the partnership with First Nations with respect to Child and Family Service Workers dealing with child, youth and related problems in the community through the delivery of culturally appropriate, community-oriented and case-specific services.
6. The Society will also respect the First Nation's right to case-specific consultation under Section 213.1 of the CFSA by ensuring that the First Nation Child and Family Service Worker, the First Nation Representative or Designated Authority is informed at first involvement with a child and/or family and is kept fully informed throughout the course of involvement and is engaged in case conferences.
7. If the Society makes a decision to initiate court proceedings, the Society will immediately inform, by telephone, the First Nation Representative and/or Designated Authority of that decision. Notification by telephone will be done prior to completion of written documentation and the formal service of documents that is required by the CFSA.
8. A consensual decision-making process will be used whenever possible, and every effort will be made to achieve agreement respecting appropriate action between the workers of the respective parties and the family and children/youth involved in each case.
9. The First Nation and the Society will maintain case files and will share information in cases of joint involvement, subject to applicable rules/policies of confidentiality and privacy legislation, but in recognition of the fact that staff in both instances are operating with reference to the same legislation and regulations and are subject to an oath of confidentiality.
10. The First Nation and the Society will mutually extend invitations to participate in training opportunities offered by the respective parties.
11. When situations arise not anticipated by this protocol, both parties agree that a meeting of designates will occur in an attempt to speedily resolve the issues at hand.

#### **(D) Joint Participation in Respect to the Society's Mandatory Responsibilities**

**It is agreed that the parties will cooperate in situations requiring non-voluntary, mandatory intervention by the Society as described below:**

##### **Determining First Nation Ancestry:**

1. The Society is responsible for determining whether a child is a registered member of the First Nation that is party to this protocol or eligible for membership, for the purposes of providing services pursuant to this agreement.

The Society will determine if the child is a member of the First Nation or eligible for membership with the First Nation in consultation with the First Nation Representative and/or Designated Authority of the First Nation by using the following methods:

- Asking the parent;
- Asking the child;
- Asking someone who knows the child and parent(s);

- Asking the First Nation membership clerk;
- Consulting with an Aboriginal agency or off-reserve Aboriginal, Inuit or Métis organization that may have knowledge of the child;
- Keeping in mind that the parent or child might not necessarily know (or self identify) if the child is a member or eligible for membership, and if there is any question as to eligibility for membership, the Society will contact Aboriginal and Northern Affairs Canada at 416-954-6436 or 416-973-6201 (note that the child's parents' and grandparents' names must be disclosed to this department in order to determine status and eligibility).

### **Notification and Consultation**

2. When allegations are received by the Society concerning the protection of a First Nation child/youth or family, the Society will, other than in an emergency situation, notify and consult with the First Nation Child and Family Service Worker and/or Designated Authority as to the required and appropriate response prior to undertaking investigative or other actions. The Society and the First Nation will also give consideration to protocols with other entities (e.g., police services) prior to taking action.

In an emergency situation that requires immediate action, where the Society may not be able to notify and consult before taking action as provided for under the CFSA, the Society worker will as part of the Safety assessment and development of the Immediate Safety Plan contact and consult with the Child & Family Service Worker of the First Nation.

When it is necessary to go onto First Nation territory, the Society Worker will in every instance inform the First Nation, the First Nation Representative and/or Designated Authority that they are visiting.

The First Nation will be notified even if the case involves a child and/or family that is a non-member living on the territory.

If it is unclear whether the person to be visited actually lives on the First Nation territory (they live close by if not on, or they live on land that may be First Nation territory), the Society Worker will first inform the First Nation and clarify whether the location is on First Nation territory or not.

### **Accompaniment**

3. The First Nation CFS Worker and/or Designated Authority shall determine whether they will accompany the Society Worker in conducting protection investigations and any subsequent execution of court orders and plans of service/care, except in emergency situations where circumstances prohibit.

If the family refuses the participation of the First Nation Representative and/or Designated Authority, their decision will be respected. However, every effort will be made by the Society Worker(s) to encourage the family to involve the First Nation over the course of the



Society's involvement by providing them with information about the First Nation's CFS Programs, and the Society Worker(s) will continue to consult with the First Nation Representative and/or Designated Authority as a valuable source of information.

### **Alternative Dispute Resolution**

4. Where the family, Society and/or court in consultation with the First Nation Representative and/or Designated Authority has decided that ADR could assist in resolving an issue related to a child or a plan for the child's care, the Society with the agreement of the family will use an ADR process. Where there is an agreement by all parties, the Society and/or First Nation will encourage use of culturally based ADR processes that are available and accessible to the parties.

### **Protection Applications**

5. When all efforts to provide service on a voluntary/supportive basis by the First Nation and/or Society have proved to be unsuccessful and where a member First Nation child or youth has to be apprehended, or a protection application for an out-of-home placement is initiated, the Society will consult with the First Nation Representative and/or Designated Authority to determine whether it is possible that the home of a relative, extended family member or other community member is available and meets the requirements as a Place of Safety and/or Foster Care Guidelines.
6. Where a member First Nation child or youth must be provided with supervision or care pursuant to a court order:
  - i. Through case conferencing and ongoing communication, the Society will collaborate with the First Nation Representative and/or Designated Authority in the preparation of any plans of care or service planning and in the development of all amendments to the initial plan. Through such collaboration, all plans will include a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity (section 56(f)).
  - ii. The Society will ensure that the First Nation Representative and/or Designated Authority will be kept fully informed as to the Society's actions and progress in working with the family involved in a protection issue and the First Nation Representative and/or Designated Authority, if involved in providing service, will ensure that the Society will be kept fully informed as to his/her actions and progress.
  - iii. The First Nation and Society will collaborate in creating the conditions required for the return of the child or children to the family at the earliest possible date. Both

parties will jointly plan their involvement in a way that ensures that the child and his/her family are effectively supported in their attempts to heal.

## **Adoption**

7.

- i. Where a child is or is being made a Crown ward, the Society will collaborate with the First Nation, preferably through case conferencing, to consider which of the following options are in the best interest of the child and the child's need for permanency (section 63.1): an adoption placement; a proposed custody arrangement; or a plan for customary care submitted by the child's First Nation.
- ii. Where the Society intends to plan for the adoption of the child regardless of whether a child is legally freed for adoption by way of parental consent or by way of a Crown Wardship order, the Society will give the First Nation Representative and/or Designated Authority 60 days written notice, and will consider any alternative plan of care prepared and submitted by the First Nation (Section 141.2). The Society will send written notice by registered mail, and telephone the First Nation Representative and/or Designated Authority about the notice. The 60 days begins on the date of receipt of the notice by the First Nation.

Should the First Nation propose a potential adoptive applicant, the Society will review the home study of the applicant before considering any other potential adoptive applicants. However, consideration will be given to an applicant with whom the child has a significant emotional tie, including a foster parent of the child, or a member of the child's extended family or community. To be accepted, an applicant must be a suitable match for the individual child and his/her needs, as determined through an assessment process completed by the Society. If the proposed applicant has not completed an adoptive home study, the Society will assess the potential viability of the proposed applicant and determine if it is in the child's best interests to delay permanency planning until the home study is completed.

If the First Nation is unable to offer an adoptive placement, the First Nation Representative and/or Designated Authority will be invited to participate in the adoptive selection process. It is agreed that no unnecessary delays will impede the adoption process.

- iii. Where a Society subsequently refuses to accept an application to adopt or removes a child from an adoption placement, the Society will give 10 days notice, in writing, to the adoptive applicant, the First Nation Representative and/or Designated Authority of the child's First Nation of its decision and will consult with the First Nation/First Nation Representative and/or Designated Authority on planning for the care of the

child. While both the First Nation and the adoptive applicant will receive written notice, only the adoptive applicant can request a Child and Family Services Review Board (CFSRB) hearing as per Section 144 of the CFSA. It is the responsibility of the Society to inform the applicant of his/her right to request a CFSRB hearing and to provide the applicant a copy of the CFSRB pamphlet along with a copy of the Refusal of Adoption and a CFSRB Application. If the complaint is deemed eligible, the First Nation will receive notice of the hearing from the CFSRB and can participate.

### **(E) Customary Care Arrangements**

1. In the course of voluntary and/or mandatory service efforts by the First Nation and the Society, situations may arise in which an out-of-home care arrangement may be necessary for a period of time. When alternative care is deemed appropriate and/or necessary by the Society, the First Nation may recommend a Customary Care Arrangement to the Society.

If the First Nation proposes a Customary Care Arrangement, the First Nation will present it to the Society accompanied by a Band Council Resolution and First Nation Declaration.

Where the Society is presented with a Customary Care Arrangement by the First Nation, the Society will:

- i. Carry out an assessment of the proposed customary care home in accordance with the CFSA standards for Place of Safety and/or Foster Care Regulations (attached as Appendices \_\_ & \_\_\_)
  - iii. Negotiate a subsidy arrangement with the proposed caregivers which references the signed Customary Care Agreement using Foster Care rates as a guide.
2. Once the arrangement has been agreed to by all parties, this will become the Customary Care Agreement (FCCA) to be signed, at a minimum, by the parents, caregivers, the child if 12 years of age or older, a Representative of the First Nation, and the Society. A copy of the First Nation Declaration will form part of the agreement.
3. Before exploring any potential changes to the FCCA, full consultation must take place with all parties to the agreement.
4. The required plans to meet the needs of the children will be developed in collaboration with the parties to the FCCA and will include the First Nation Declaration as presented by the First Nation and supported in the FCCA.
5. The placement must be recorded as a "Customary Care" home on CAS mandatory reporting forms.

6. Where there is agreement about a child who is a Society ward or whose legal status is Temporary Care and Custody (TCC), the Society will apply to the courts expeditiously to have the status of the child changed. Where the child is in care by way of a Temporary Care Agreement (TCA), the Society will provide notice of termination and terminate the agreement with the parties expeditiously, in accordance with the terms of the CFSA.
7. A First Nation can present a Customary Care Arrangement even after an order of Crown wardship has been made. Should a Customary Care Arrangement be presented and approved, the Society will apply to the courts expeditiously to have the status of the child changed.
8. Once the status of the child has been changed as per item 6, it is understood by all parties that the "clock does not tick" on a Customary Care placement, that is, it is not time-limited.
9. If the CC Arrangement does not meet the requirements as per item 1(i) the Society will:
  - i. Inform the First Nation that the arrangement is unacceptable with reasons for the decision, and
  - ii Consult with the First Nation Representative and/or Designated Authority as to the modifications necessary to make the arrangement acceptable.
10. Both parties agree that:
  - i. Children's Aid Societies hold the legal and financial responsibility and liability for their approved alternative care homes: Formal Customary Care arrangements, adoption, kinship and foster care.
  - ii. First Nations have the responsibility for prevention services, community support and to preserve and protect the culture, traditions and ensure connection to their First Nation
  - iii. The Society can contract the First Nation Representative and/or Designated Authority to complete Place of Safety and/or assessments for potential alternative care homes for community members as per Ministry/Society guidelines, provided the First Nation Representative and/or Designated Authority has been trained and is qualified to do so. It is understood that the Society is still the designated agency to approve such homes and therefore responsible for the alternative care home placement.

## **(F) Transition Provisions**

1. Upon the signing of this protocol, the First Nation and Society will establish a Standing Committee that will undertake the following:
  - i. Review the terms of reference and parameters for evaluating the operation of this protocol.
  - ii. Review issues referred for dispute resolution.
  - iii. Discuss and define mutually acceptable case information requirements and information sharing procedures within the parameters of existing legislation.
  - iv. Use resources from all parties to develop mutually acceptable standards and procedures that may be required in agreed-upon areas of joint responsibility.
2. The Society will review all current open cases involving members to ensure compliance with this protocol. The Society and First Nation will review cases of joint involvement to determine respective roles and responsibilities pursuant to this protocol, and to amend service plans, as appropriate:
  - i. Addendums to this protocol will be developed to address any First Nation/Society specific circumstances
  - ii. The Society and First Nation will ensure that all relevant staff members are trained in the use of this protocol.

## **(G) Term and Evaluation of the Protocol**

The Standing Committee will meet on an annual basis to review and revise the Protocol to reflect current legislation and other relevant changes. The Standing Committee will meet on an ad hoc basis to address any Protocol issues or concerns. The Protocol may be amended and extended at any time by mutual consent of all parties.

## **(H) Resolving Differences Regarding Case Management Decisions**

Differences between the Society and individual parents and/or the First Nation Representative and/or Designated Authority regarding case management decisions shall be resolved using the Society's internal dispute resolution policies and procedures, or alternatively, and if agreed upon by the parties, an ADR process.

**(I) Resolving Differences Regarding this Protocol Between the Society and First Nation**

Subject to the Society's mandatory obligations under the CFSA, disputes respecting the interpretation of terms of this Protocol shall be resolved in the following manner:

1. The dispute will be submitted to the Standing Committee for resolution.
2. A dispute that is not resolved by the Standing Committee will be deferred to a Dispute Resolution Committee consisting of the Chief and/or the Chief's delegates and the Society Executive Director and/or the Executive Director's delegates within 30 days of the decision of the Standing Committee. The decision of the Dispute Resolution Committee shall determine the matter and such decision shall be final.

**Signatories to this agreement:**

\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

# Appendix E

## Sample Letter of Notification to a First Nation

### **Sample Letter of Notification from CAS to a First Nation Regarding a First Nation Child and Family Who Reside Off-Reserve**

Dear Chief \_\_\_\_\_,

Our agency has recently become involved with a child that we have reason to believe is a member of your First Nation [may be eligible for registration with your First Nation].

The child, \_\_\_\_\_ (name), born on \_\_\_\_\_ (date of birth) to \_\_\_\_\_ (mother) and \_\_\_\_\_ (father), is presently in the care of our Society.

The child was apprehended (admitted to care) on \_\_\_\_\_ (date of admission) pursuant to a temporary care agreement [or court order].

We have explained to the mother and/or father that we are legally obligated to notify you of the status of this child. The mother/father were [were not] agreeable to this notification.

As you may know, your First Nation has the right to participate in all legal proceedings and planning related to this child, including the development of a services plan that will honor \_\_\_\_\_'s (name of child) heritage and culture.

We would like to arrange a meeting / teleconference as soon as possible with the Representative of your First Nation who acts on behalf of your community in child welfare-related matters to discuss planning for \_\_\_\_\_ (name of child).

We have (have not) explored with the parents the possibility of having \_\_\_\_\_ (name of child) cared for by extended family that may reside in your community. We would like to discuss this further when we talk with your First Nation Representative.

We would like to collaborate with your First Nation in planning for \_\_\_\_\_ (name of child) in a manner that respects and honours the customs of your First Nation.

We look forward to hearing from you at your earliest convenience.

Respectfully,

\_\_\_\_\_ (name of worker)

# Appendix F

## Ontario Permanency Funding Policy Guidelines for Formal Customary Care

	CUSTOMARY CARE
Eligibility	<p>Customary care is defined for the purposes of Part X in the <i>Child and Family Services Act</i> as the care and supervision of an Indian or native child by a person who is not the child's parent according to the custom of the child's band or native community. R.S.O. 1990, c. C.11, s.208.</p> <p>An Indian child is an "Indian" as defined in the <i>Indian Act</i>. A native child is a "native person" as defined in the <i>Child and Family Services Act</i>.</p> <p>Where a society determines that an Indian or native child is in need of protection, removal of the child from the parents/caregiver is required and there is a customary care declaration by the band of either parent, the society will grant a subsidy to the person caring for the child. The home must meet foster care licensing regulations and standards.</p> <p>The child is supervised by a children's aid society pursuant to the band declaration.</p> <p>There must be a customary care agreement in place.</p>
Community Support	Availability of assistance from extended family members should be considered.
Financial Assistance	A children's aid society will grant a subsidy for formal customary care only. A customary caregiver providing formal customary care will be paid at regular, specialized or treatment foster care rates in accordance with the child's needs. The caregiver will be entitled to the same reimbursements, training and support systems as foster parents.
Decision Making Criteria	<p>The society has made a determination that the child is in need of protection and cannot remain with the parent/caregiver due to protection concerns.</p> <p>There is a customary care declaration by the band of either parent.</p> <p>The child is supervised by a children's aid society pursuant to the band declaration.</p> <p>A customary care agreement is in place.</p> <p>Financial assistance will not exceed foster care rates.</p> <p>The customary caregiver requires assistance in providing for a child's basic needs and to address the health and safety concerns for the child.</p>
Rationale	<p>Customary care is recognized as a culturally appropriate placement option for Indian or native children. A number of Aboriginal children's aid societies have developed good working models of customary care for protection cases within the current legislative regulations and standards of the <i>Child and Family Services Act</i>.</p> <p>These models recognize that children must be kept safe, secure and raised in an environment that is conducive to learning and supporting their growth to become healthy, productive adults. The Child Welfare Secretariat supports the continued use of customary care as a child protection placement option for Indian and native children.</p>
Accountability	<p>Band declaration.</p> <p>Customary care agreement.</p> <p>Children are supervised by the children's aid society and foster care standards apply.</p> <p>Eligibility criteria have been met.</p> <p>Decision making criteria have been applied.</p>
Record Keeping	<p>Customary care child file is created.</p> <p>Children in care standards and recording requirements apply.</p> <p>Customary care home file is created.</p> <p>Foster care standards and recording requirements apply.</p>



# Appendix G

## Customary Care Art Gallery











# Notes

