

Action Framework:

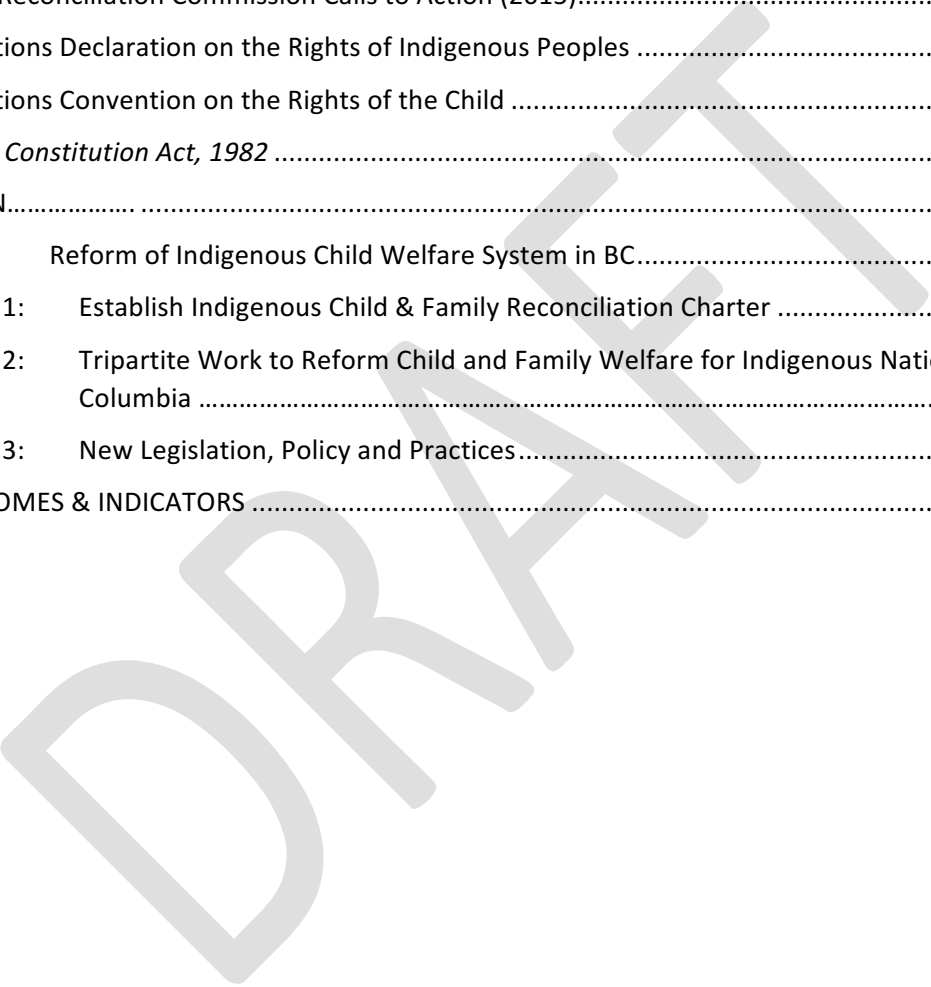
Reconciliation, Self-Determination, and Self-Government for
Indigenous Children, Families and Nations in BC

Prepared by the First Nations Leadership Council

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CONTEXT

There continues to be a disproportionately and significantly high percentage of Indigenous¹ children in care in BC, and the child welfare system as it relates to Indigenous children and youth is in a crisis state. At the same time, there is systematic discrimination against Indigenous children, as found by the Canadian Human Rights Tribunal in its 2016 decision in *First Nations Child and Family Caring Society*. This current state of affairs is unacceptable and must end. Indigenous children and families must have the best supports and services possible to ensure their physical, emotional, mental health, safety and well-being, provided in a culturally appropriate way that nurtures their particular identities, capacities and potential. Indigenous children have distinct rights internationally and domestically as children, and as Indigenous persons, and they must benefit from the same fundamental rights and freedoms as every other person free, from discrimination of any form.

On June 2, 2015 the Truth and Reconciliation Commission (TRC) released **94 Calls to Action**, calling for specific and concrete action by all levels of government and other segments of society, with the aim of advancing reconciliation. These Calls were made following a six-year comprehensive examination and “truth determination” of the residential school assimilation program run by the Government of Canada.

The TRC concluded in its Final Report that:

For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as “cultural genocide.”

The TRC’s first 5 Calls to Action are appropriately focused exclusively on Indigenous child welfare, as it was Indigenous children who were the target of state policies of assimilation, and were to be the instruments of the destruction of their cultures, languages and their ways of life as Indigenous peoples.

First Nations throughout Canada have supported these Calls to Action, and First Nations in British Columbia have expressly endorsed them through formal resolution.

Prime Minister Justin Trudeau, on behalf of the Government of Canada, has committed to fully implement all 94 TRC Calls to Action, including the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

In May 2016, Minister Bennett, Indigenous and Northern Affairs Canada, announced at the United Nations Permanent Forum on Indigenous Issues the Government of Canada’s unqualified endorsement of

¹ The terms “Indigenous” “Aboriginal” and “First Nations” will be used throughout the action plan.

the UNDRIP. UNDRIP sets out the minimum standards to ensure the survival, dignity and well-being of Indigenous Peoples around the world – respecting and protecting Indigenous human rights.

The Supreme Court of Canada has confirmed that the purpose underlying section 35 is the reconciliation of the prior existence of First Nations societies, and First Nations sovereignty, with assumed Crown sovereignty and, further, that Indigenous customary laws are part of the constitutional fabric of Canada.

The Crown – as represented by Canada and the Province - has a fundamental duty to reconcile with First Nations and to act honourably in all of its dealings with First Nations people. This is not a political choice, but a constitutional and legal imperative. It includes reconciliation with respect to the dark, shared history of the residential school program and child welfare system – as well as acting honourably today in establishing legislation, policy and practices affecting First Nations children, families and communities.

This is underscored by the January 2016 Canadian Human Rights Tribunal (CHRT) decision in *First Nations Child and Family Caring Society of Canada*, which starkly found that, for far too long, the federal government has been racially discriminating against 163,000 First Nations children and their families by providing flawed and inequitable child welfare services ("FNCFS Program") and failing to implement Jordan's Principle to ensure equitable access to government services available to other children.

The Canadian Human Rights Tribunal found that:

- INAC provides a service through its First Nations Child and Family Services (FNCFS) Program and other related provincial and territorial agreements such that the *Canadian Human Rights Act* applies;
- While the FNCFS Program is intended to ensure the safety and well-being of First Nations children on reserve and provide culturally appropriate services in accordance with provincial/territorial standards, INAC is far from meeting these goals and First Nations are adversely impacted by or denied adequate child welfare services by the application of the FNCFS Program;
- The FNCFS Program creates incentives to remove children from their homes and communities, largely a result of funding shortfalls created by inaccurate and outdated assumptions in funding formulas;
- The FNCFS Program's funding structure makes it difficult, if not impossible, for many FNCFS Agencies to comply with provincial/territorial legislation and standards;
- INAC and Health Canada narrowly interpreted Jordan's Principle, which requires governments of first contact to provide child services first and resolve jurisdictional questions later, resulting in service gaps, delays or denials and adverse impacts to First Nations children and families on reserves;

- It is only because of their race that First Nations people living on reserve suffer adverse impacts from AANDC's provision of child and family services. These adverse impacts perpetuate the historical disadvantage and trauma Aboriginal people have suffered, in particular as a result of the residential school system; and
- Despite being aware of these adverse impacts for many years, INAC has not significantly modified the program since its inception in 1990.

The Government of Canada did not appeal the CHRT decision and the CHRT is currently overseeing the implementation of remedies by Indigenous and Northern Affairs Canada (INAC) to rectify this discrimination against First Nations children and families. It is an opportune moment in time for a high-level and sincere tripartite discussion for reforming the child welfare model as we know it today, and seamlessly transitioning to an updated, appropriate system that honours - and derives primarily from - Indigenous worldviews, customs, legal traditions, and cultures. As a third legal order in Canada, Indigenous laws can no longer be unlawfully ignored in the design and creation of systems serving Indigenous peoples.

The federal Minister of Indigenous and Northern Affairs Canada's mandate letter from Prime Minister Trudeau expresses the Government's commitment to working toward reconciliation, to implementing the TRC Calls to Action, and to renewing the relationship between Canada and Indigenous Peoples as a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership. The Minister is mandated to make real progress on key issues, including child welfare. Fundamentally, the Government of Canada has committed to developing with First Nations a new federal Reconciliation Framework to guide a new nation-to-nation relationship. This Framework must be comprehensive and address the range of relational issues.

Indigenous legal systems and cultural traditions that have focused on keeping children safe, secure and healthy, with a strong sense of identity and community form the foundation of a new approach going forward with our partners.

STANDING UP OUR CHILDREN & FAMILIES

Following on commitments made at the September 2015 *BC Cabinet and First Nations Leadership Gathering*, the FNLC, supported by the Province of British Columbia, brought together First Nations Chiefs, advocates, experts, child-serving agencies and community members, to have a serious dialogue about the crisis state of First Nations child and family welfare and, and how to ensure that there are appropriate options for First Nations children in every community, and to identify necessary policy and legislative changes.

The objective of the Gathering was to have a frank discussion about the current realities of the child welfare system in British Columbia, and to identify short, medium and long term actions and solutions to

meaningfully respond to the TRC Calls to Action, and to address matters of jurisdiction, governance and improving services to support healthy families and communities, and pathways home for children in state care.

Subsequent to the Gathering and in correspondence, the First Nations Leadership Council became aware that the Province, responding to one of many recommendations of the Representative for Children and Youth (RCY), signalled its commitment to engage in a sincere discussion about transitioning to Indigenous jurisdiction over child and family well-being.

The TRC Calls to Action, UNDRIP, section 35 of the *Constitution Act, 1982* – along with other important legal instruments, including the *United Nations Convention on the Rights of the Child* – provide an established and **principled framework** for reforming Indigenous child welfare and family services in BC. Collectively, they establish minimum standards for respecting and protecting Indigenous human rights, the rights of children, and the common law Aboriginal rights of our Nations.

Going forward, First Nations in BC will accept nothing less than measures that fully align with, respect and implement these human rights and legal standards for our children and families.

In this context, the federal and provincial commitments to get on with hard work are welcomed by First Nations in British Columbia.

The following PRINCIPLED FRAMEWORK and ACTION PLAN set out the focus of First Nations in BC for transforming the crisis state of Indigenous child and family welfare in British Columbia.

PRINCIPLED FRAMEWORK: INDIGENOUS CHILD & FAMILY WELFARE

Truth and Reconciliation Commission Calls to Action (2015)

The Truth and Reconciliation Commission of Canada, the first and only of its kind, was formed out of a settlement agreement between the Government of Canada and residential school survivors. Beginning in 2009, the Commission embarked upon the difficult six-year journey of revealing the truth of this shared history and, in 2015, released its final report and Calls to Action. In broad terms, the TRC concluded that:

Canada's residential school system for Aboriginal children was an education system in name only for much of its existence. These residential schools were created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture—the culture of the legally dominant Euro-Christian Canadian society, led by Canada's first Prime Minister, Sir John A. Macdonald. The schools were in existence for well over 100 years, and many successive generations of children from the same communities and families endured the experience of them. That experience was hidden for most of Canada's history, until Survivors of the system were finally able to find the strength, courage, and support to bring their experiences to light in several thousand court cases that ultimately led to the largest class-action lawsuit in Canada's history...

At its close, the Commission issued a document identifying 94 "Calls to Action" to "redress the legacy of residential schools and advance the process of Canadian reconciliation". These were divided into two categories: "Legacy" and "Reconciliation". Under Legacy, the Commission directly addresses Child Welfare, setting out five specific recommendations, inter-related with Calls to Action in other areas, including health and education:

Legacy

Child welfare Calls to Action

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.
 - ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
 - iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
 - iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.

- v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.
 3. We call upon all levels of government to fully implement Jordan's Principle.
 4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
 - i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
 - ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
 - iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.
 5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

United Nations Declaration on the Rights of Indigenous Peoples

The UNDRIP applies in full to Indigenous peoples in British Columbia. The following are particularly important standards for protecting our children, families and cultures:

Recognizing in particular the **right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.**

Article 3

Indigenous peoples have the **right to self-determination**. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective **right to live in freedom, peace and security** as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the **right not to be subjected to forced assimilation or destruction of their culture.**
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the **right to belong to an indigenous community or nation**, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise of the exercise of such a right.”

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

United Nations Convention on the Rights of the Child

In 1989, the United Nations General Assembly adopted the *United Nations Convention on the Rights of the Child (1989)*, a **legally binding treaty** covering civil, political, social, economic and cultural rights of the child adopted for all States that is intended to protect the rights of children around the world. It contains 54 articles that establish the core of all children's civil and political rights, as well as their economic, social and cultural rights, and provides that the education of the child shall be directed to:

- The development of the child's abilities to their fullest potential;
- The development of respect for human rights and fundamental freedoms;
- The development of respect for the child's parents, his or her own cultural identity, language and values;
- The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- The development of respect for the natural environment; and
- In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Implementation of the Convention is overseen by the Committee on the Rights of the Child monitors, which Canada ratified on December 13, 1991. We note that the Committee held its 61st session on September 17 – October 5, 2012 in Geneva, and review Canada on September 27th.

Section 35 Constitution Act, 1982

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

ACTION PLAN: Reconciliation and Self-Determination for First Nations Children, Families and Nations in BC

PRIORITY: Reform of Indigenous Child Welfare System in BC

First Nations in BC have clearly identified that the current Indigenous child welfare system needs to change. This was emphasized strongly by First Nations at the Forum on May 30-31, 2016, which was aimed at advancing concrete action. First Nations called for an action plan going forward that recognizes, utilizes and builds on the existing principled framework and creates a new strategy to reform and drastically improve Indigenous child welfare in BC. First Nations called for working collectively with the Provincial and Federal Governments in a unity seeking approach, with a jointly determined focus that is led by First Nations, starting at the community and nation level. Through resolutions passed following the May 30-31 Forum, Chiefs supported the call by First Nations leadership for wholesale reform of the current Indigenous child welfare system in BC that have utterly failed our children and families.

This Action Plan addresses the areas of governance, operations, funding inequity, practice and policy, and rights-based outcomes for First Nations children and families, and seeks to ensure that First Nations are supported in making decisions over their own families. Communities must be able to exercise their own authority in order to make change.

ACTION 1: Establish Indigenous Child & Family Reconciliation Charter

The First Nations Leadership Council, supported by an expert internal advisory group, will work with the Government of Canada and the Government of British Columbia to develop an Indigenous Children and Family Reconciliation Charter to set out high-level commitments and establish an appropriate terms of reference for tripartite work on reforming child and family welfare for Indigenous Nations in British Columbia.

The Reconciliation Charter will:

- a) Set out a robust tripartite process for Indigenous child and family welfare reform that engages both political and technical discussions;
- b) Commit to inclusivity and engagement with appropriate and relevant persons, entities and agencies;
- c) Set out principles to guide this engagement, including that the safety and well-being of children is paramount; and
- d) Confirm adequate resourcing for this process, community engagement and associated work.

ACTION 2: Tripartite Work to Reform Child and Family Welfare for Indigenous Nations in British Columbia

The First Nations Leadership Council will work with the Government of Canada and the Government of British Columbia to implement the Indigenous Child & Family Reconciliation Charter.

Progress will be reported to First Nations in BC in an ongoing basis, and First Nations in BC will direct and approve the tripartite work.

The Tripartite Work will:

- a) Be sufficiently funded in order to carry out the goals and processes of the Indigenous Child & Family Reconciliation Charter;
- b) Include clear timelines and set out short, medium and long-term goals in thematic areas; and,
- c) Identify reporting mechanisms to and approval processes by First Nations in BC.

The First Nations Leadership Council will bring forward issues, interests and priorities identified by First Nations for tripartite short, interim and long-term work, including, but not limited to the following:

- a) Strategies to support efforts of First Nations in building and establishing their own culturally-based children and family strategies and action plans;
- b) Research and options paper on resumption and exercise of First Nations jurisdiction over children, and First Nations control over child and family services (e.g. models for exercise of self-governance over child and family; approaches to ensure no gaps in services or care while transition occurs; designing options for First Nations moving from delegated models to full jurisdiction models; best practices);
- c) Research and analysis of immediate, short and medium term measures to support children and families (e.g. establishment of a 6th Indigenous region);
- d) Research paper on US model where Native Americans are supported by the National Child Welfare Office to make decisions about their own children;
- e) Evaluation of on-reserve services for children that BC is funded by INAC to deliver, including an evaluation of external contractor services;
Analysis of funding inequities First Nations children in BC face in order to move toward financial transparency, building on work by Cindy Blackstock, and including non-Aboriginal contracted agencies receiving targeted Aboriginal funding;
- f) Development of new principles and model(s) for providing funding for care of First Nations children to Indigenous organizations as a priority;
- g) Immediate steps towards to implement custom adoption and other approaches to permanency pursuant to Indigenous laws and jurisdiction;
- h) Ensure that Delegated Aboriginal Agencies (DAAs) receive the same funding as the Province receives for providing the same services (currently DAAs receive 22% less); (This needs to include programs begun under Indigenous Approaches)
- i) Concrete plan and timetable to raise the aging out threshold of children in care; (planning needs to include full engagement with FN's; strategies and partnerships; need to ensure that these extended services are provided across sectors; youth can choose whether they require these

extended services – can't be across the board as some youth are capable of moving out on their own

- j) Development of Indigenous child poverty reduction action plan;
- k) Re-organize MCFD to better represents and support the high percentage of Aboriginal children in care;
- l) Support strategy for First Nations family courts; and (Family Court training as well as Family Court Workers to support families)
- m) Investment in revitalizing, relearning and documenting traditional child welfare practices.

ACTION 3: New Legislation, Policy and Practices

First Nations in BC will work with the Government of Canada and the Government of British Columbia to reform the child welfare system through the development of appropriate and First Nations-supported legislation that supports the development of Indigenous child welfare systems – based on cultures, languages and traditions – in our respective Nations, respecting and reflecting diversity. Legislation will also be advanced on ending violence against Indigenous women and girls.

New legislation, and associated policy and practices, will:

- a) Respect and recognize, and ensure space for, Indigenous laws, customs and practices in their diversity;
- b) Prioritize and focus on keeping children in their communities (i.e. prevention measures);
- c) Focus on providing culturally appropriate services to children and families;
- d) Prioritize supports for parents and kin to care for their children;
- e) Establish a new fiscal relationship and model, which guarantees sustained needs-based funding;
- f) Guarantee full implementation of Jordan's Principle;
- g) Support the resumption of jurisdiction by First Nations over time as their capacity evolves;
- h) Prohibit unilateral action by either Canada or the Province that materially impacts Indigenous children and families.

KEY OUTCOMES & INDICATORS

A reformed Indigenous Child and Family Welfare Regime in BC will have the following outcomes and indicators of success.

Key Outcome: Reduction of Indigenous Children in Care

- a) Indigenous children-in-care transitioned back to home/community
- b) Children prevented from going into care

Indicators:

- Revived customary adoption and traditional systems of care, and established principles and structures for raising and caring for children, and keeping children safe (e.g. kinship placements with supports)
- Range of prevention and harm reduction services implemented (e.g. Community Wellness Committees)

Key Outcome: Exercise of Indigenous Jurisdiction and Control

Indicators:

- Seamless transition from provincial exercise of jurisdiction to First Nations exercise of jurisdiction, based on First Nation indication of readiness
- First Nations have capacity, sustainable and ongoing funding, and support to exercise jurisdiction, which may take different forms among Nations – e.g.:
 - Law-making and policy development, program and service delivery
 - First Nation delegation of authority to another entity to deliver programs and services - i.e. inter-administrative G2G arrangements with Province (e.g. contract MFCD/Delegated Agency to deliver programs and services to communities)
 -

Key Outcome: Culturally Appropriate Programs for Children and Families, including Parenting Programs, in all Communities

Indicators:

- Neglect, poverty, etc., being addressed through substantive measures
- Implementation of programming and services grounded in Indigenous laws, values and practices
- Delivery of quality needs-based services and supports

- Health and special needs being addressed (i.e. assessments and needs-based services)
- Effective implementation and coordination of services within communities
- Implementation of culturally-based solutions

Key Outcome: Jordan’s Principle implemented

- Jordan’s Principle codified in legislation
- Systemic multi-disciplinary implementation of Jordan’s Principle by all relevant entities and agencies

Key Outcome: Extended Support for Indigenous Youth

Indicators:

- Implementation of appropriate supports for youth (e.g. life skills, suicide prevention, education)
- Range of appropriate supports and services extended to appropriate “age out” age (i.e. 24 years) to support youth to prepare to live independently
- Access to communities and kin while in care, and following care
- Support youth in understanding and exercising their Indigenous and legal rights

Key Outcome: System-Wide Capacity Development

Indicators:

- Human and economic capacity at all levels (First Nations, provincial and federal governments) to ensure seamless Indigenous child and family programs, services and supports
- In considering measurements of success, separate out indicators that First Nations do not have control over- these cannot be used as measuring tools
- Shift to culturally determined, Indigenous-led planning for child welfare, using a tool that exists such as Touchstones of Hope
- Implementation of competency and cross-cultural training (e.g. within MCFD, social workers)