

# A Vision for Band Rep: A United National Path Forward

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# The National View: A Patchwork of Band Rep Programs

- Notice and consultation requirements vary by province
- Standing and provincial funding varies by province
- Federal funding varies within and across provinces
- Service delivery models vary within and across provinces
- First Nation capacity varies within and across provinces
- Access to Band Rep varies within and across provinces





Nishnawbe  
Aski Nation

# National Assembly of Remote Communities (NARC) Background

- Established in November 2021 during AIP negotiations
- Represents a united advocacy voice on issues impacting remote communities in child welfare and other sectors
- Membership includes:
  - Nishnawbe Aski Nation
  - Federation of Sovereign Indigenous Nations
  - Anisinew Okimawin / Island Lake Tribal Council
  - Treaty 8 First Nations of Alberta
  - Dene Nation / Assembly of First NWT
- Surveyed regional representatives on Band Rep access issues





## What NARC Heard: Band Rep Access Issues

- On/off-reserve jurisdiction and funding differences
- Agency-Band Rep communication and information-sharing
- Inconsistent understanding of Band Rep Terms and Conditions
- Fear of requesting funds and raising hopes only to be denied
- Panic over funding transition and instability
- Complex Agency/Ministry structures and roles





## What NARC Heard: Band Rep Access Issues

- Inadequate resources for high caseloads and admin burden
- Increased costs associated with remoteness
- Recruitment, retention, and turnover challenges
- Capacity to make programming culturally relevant
- Community awareness re: Band Rep role/services
- Competing priorities and short terms of First Nation leadership





## Where We're Going: Realizing the Promise of Band Rep Programs

- The patchwork of Band Rep programs means the chances of children and families staying together varies by First Nation
- Band Rep access issues are obstacles to First Nations keeping more families together in their communities
- The history of Band Rep and prevention services is one of gross underfunding, but we have an opportunity to change that





## Where We've Been: The Fight for Band Rep Funding AND Prevention Funding

- ISC stopped Band Rep funding in Ontario in 2003, arguing that it was not required under provincial legislation or the 1965 Agreement, and that the focus should be on prevention instead.
- “In light of limited resources available for child and family services, the department continues to place a priority on supporting effective family support and prevention services that prevent the need for children to be placed in care. **To invest limited resources in participation in quasi-judicial placement hearings once the need for protection has arisen is less important than addressing the root causes through prevention.**”

- Internal briefing note to ISC Regional Director General (ON), April 2011



## Taking Canada to Court (2016 CHRT 2):

- In 2016, the Canadian Human Rights Tribunal found that Canada discriminated against First Nations children, youth, and families by underfunding Band Rep and prevention services, finding:

[426] Similar to the Residential Schools era, today, the fate and future of many First Nations children is still being determined by the government, whether it is through the application of restrictive and inadequate funding formulas or through bilateral agreements with the provinces. **The purpose of having a First Nation community deliver child and family services, and to be involved through a Band Representative, is to ensure services are culturally appropriate and reflect the needs of the community.** This in turn may help legitimize the child and family services in the eyes of the community, increasing their effectiveness, and ultimately help rebuild individuals, families and communities that have been heavily affected by the Residential Schools system and other historical trauma.



## Band Rep Actuals Funding (2018 CHRT 4):

- In 2018, the CHRT ordered Canada to fund Band Rep services “at actuals”:  
[427] The Panel [...] orders Canada to fund Band Representative Services for Ontario First Nations, Tribal Councils or First Nations Child and Family Services Agencies **at the actual cost of providing those services** [...] until such time as studies have been completed or until a further order of the Panel.
- The “actuals” claims process represented an opportunity for Ontario First Nations to access dedicated funding to develop their Band Rep programs.
- However, the administrative burden associated with the claims process contributed to the patchwork of Band Rep programs in Ontario.

Canadian Human Rights Tribunal  Tribunal canadien des droits de la personne

Citation: 2018 CHRT 4  
Date: February 1, 2018  
File No.: T1340/7008

Between:

First Nations Child and Family Caring Society of Canada	
- and -	
Assembly of First Nations	Complainants
- and -	
Canadian Human Rights Commission	Commission
- and -	
Attorney General of Canada	
(Representing the Minister of Indigenous and Northern Affairs Canada)	Respondent
- and -	
Chiefs of Ontario	
- and -	
Amnesty International	
- and -	
Nishnawbe Aski Nation	Interested parties



## Band Rep Actuals Funding in Ontario:

- No data is readily available on how many First Nations have Band Rep programs in Ontario or across the country, but it is a patchwork
- 40 of 133 Ontario First Nations (including 7 NAN First Nations) did not access the actuals claims process from 2019-2020 to 2021-2022
- Some of these First Nations used their own source revenue to fund Band Rep services, but **dedicated funding was left on the table**
- Since 2022-2023, Band Rep allocations have been based on previous claims and population – some First Nations receive only \$75k per year
- Band Rep funding is a patchwork, **but actuals are still available** to Ontario First Nations who expend 75% of their annual allocation



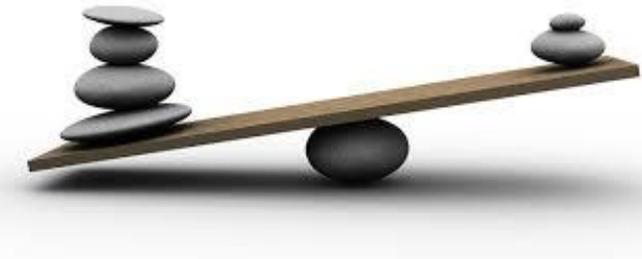


## Band Rep Funding in the AIP (Ontario):

- In the Agreement-in-Principle signed December 31, 2021, Canada committed to different Band Rep funding in Ontario than in other provinces:

**67. Canada shall provide stable and predictable funding** in the amount of \$332.9 million (exclusive of capital) over a period of five years beginning April 1, 2022, to support the delivery and operation of First Nation Representative Services in Ontario, with the following terms:

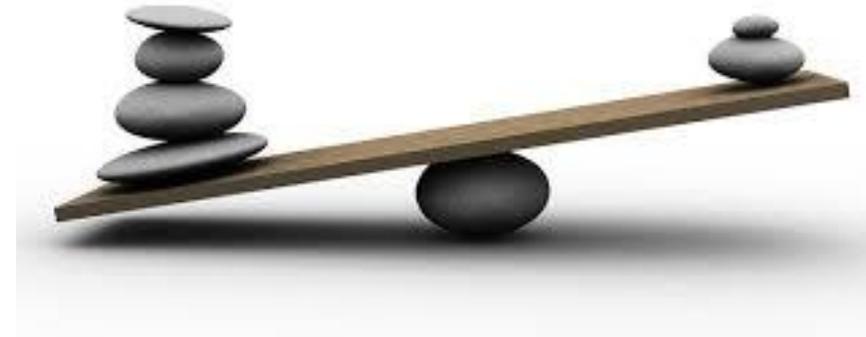
- a) **No First Nation Representative Services program in Ontario shall be funded at a rate lower than its highest annual funding from fiscal year 2019-2020 or 2020-2021;** and
- b) The Ontario Appendix shall [...] provide First Nations with flexibility to direct funding to any FNCFS service provider of their choice [...].





## Band Rep Funding in the AIP (Outside Ontario):

- First Nations outside Ontario receive less Band Rep funding than First Nations in Ontario, contributing to the patchwork:
  115. In addition to the funding provided to First Nations in Ontario as described in paragraph 67, Canada shall make available stable five-year funding on the basis of \$283 per capita, subject to growth for community population and inflation, equaling \$616 million over five years, starting April 1, 2022 to First Nations outside of Ontario for First Nations Representative Services.





## Band Rep Funding in the AIP (Ontario):

- However, the AIP provides for “needs-based” Band Rep funding in Ontario responsive to the Band Rep role as defined by First Nations:
  72. In designing the process for access to Jordan’s Principle funding for First Nation Representative Services in Ontario, Canada and COO shall consider the following principles:
    - a) **funding shall be needs-based**, based on actual costs and consistent with the principle of substantive equality **in order to secure long-term positive outcomes** for First Nations children, families and communities;
    - b) **funding shall be responsive to the role** of First Nation Representative Services in Ontario **as defined by provincial legislation and by First Nations;**



## Band Rep in the AIP (across the country):

- The AIP also provided for the Band Rep role to be “First Nations-derived”:  
  
116. Canada’s funding of First Nations Representative Services shall be sustainable and reflect principles of substantive equality, the federal and provincial legislative function and the unique circumstances of the First Nation. **The definition and mandates associated with First Nations Representatives Services will be First Nations-derived.**
- This supports evolution of the Band Rep role to overcome access issues and serve to implement prevention programs in First Nation communities.



## Band Rep in the AIP (across the country):

- The AIP outlined the role of Band Reps, providing a blank canvas:
  117. First Nation Representative Services functions may include:
    - a) serving as the main liaison between a First Nations and a FNCFS service provider;
    - b) providing cultural training and advice to FNCFS stakeholders;
    - c) delivering and supervising customary care;
    - d) monitoring custody agreements with FNCFS service providers;
    - e) securing access to legal resources;
    - f) attending and participating in court proceedings;
    - g) receiving and responding to notices under federal and provincial legislation;
    - h) adoption, customary adoption and other forms of permanency planning;
    - i) ensuring that the cultural needs of a child are being addressed by a FNCFS service provider; and
    - j) participating in the development a child's plan of care.





## Preventive Role of Band Rep: Painting the Canvas

- The AIP provides room for preventive Band Rep roles, opening a range of opportunities:
  - Primary and secondary prevention services
  - Family preservation and reunification
  - Supporting communities as the first point of contact in the implementation phase of long-term of CFS (e.g. NAN Coordination and Oversight Team (“COT”))





## Long-Term Reform Implementation: COT

- As a result of the historic discrimination within the FNCFS program and resulting long-term reform, there will be significant reforms and influxes of funds in the child welfare space in coming months and years.
- There is a risk that change is set up for failure as communities are bombarded with remedies of all kinds and few tools to cope.
- Many First Nations have experienced negative consequences when unprepared for wholesale change, including large influxes of funds. These are unique challenges faced by remote communities, but also presents an opportunity for growth of important programs like Band Rep.



## NAN Coordination and Oversight Team (“COT”)

- To ensure child welfare reforms succeed in addressing discrimination against First Nation children, youth, and families, without causing further harm, there is a need for planning, coordination, mobilization, and oversight. As the front line on the ground, Band Reps have a crucial role in preparing and supporting communities for change.
- To address these important issues, NAN has taken preliminary steps to develop a Coordination and Oversight Team (“COT”).
- COT has been designed to ensure that the citizens of NAN First Nations are supported and set up for success in the context of the implementation of long-term reform of the child welfare system. Band Reps can/will play a key role in implementation of change.



# The Vision of NAN Communities

For our Band Rep programs to be successful and robust, it will need to be defined by you – the Band Reps and community leadership within NAN territory.

1. What is your vision for Band Rep services in your community?
2. How can Band Reps be better resourced to serve your community?
3. What standards do you think need to be put in place to ensure healthy, safe, effective and culturally relevant Band Rep programming in your community?



## **Band Rep in *An Act Respecting First Nations, Inuit, and Métis Children, Youth and Families* (January 1, 2020):**

- The federal act:
  - provides national standards for Agencies notifying and consulting with First Nations
  - prioritizes prevention services over protection/intervention services
- However, there is currently no nationally agreed upon standards, mandate, or job description (with flexibility for shaping) for Band Reps





Nishnawbe  
Aski Nation

## **Band Rep in *An Act Respecting First Nations, Inuit, and Métis Children, Youth and Families* (January 1, 2020):**

14(1) In the context of providing child and family services in relation to an Indigenous child, to the extent that providing a service that promotes preventive care to support the child's family is consistent with the best interests of the child, the provision of that service is to be given priority over other services.





## A National Vision: Band Rep Evolution

- Create conditions for operating in a preventive role upstream before situations become critical
- Expand the basis for accessing Band Rep funds to support implementation of prevention programs
- Crystallize the preventive role of Band Reps in the Final Settlement Agreement (FSA) negotiations
- Establish a national Band Rep conference and network to develop and share best practices





## A National Vision: Band Rep Evolution

- First Nations can set a national Band Rep standard through a national prevention-focused mandate
- National First Nation-driven Band Rep standards would complement C-92 national CFS standards
- The Final Settlement Agreement on Long-Term Reform of the FNCFS Program is the vehicle
- **What do you want your Band Rep program to be?**





# Miigwetch!



- Litigation with a conscience.