

Canadian First Nations Child Welfare Care Policy: Managing Money in "Ottawapiskat"

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Abstract

The inter-generational loss of Indigenous identity in Canada has been a result of Canadian Aboriginal policy in the past and present. The policies of the residential school era and the policies of today's child welfare system lead to similar outcomes, particularly governmental determination of how the next generation of First Nations people are affected by the state. By 1997-1998, the Department of Indian and Native Affairs reported that First Nations child and family services were administering services to 70% of children on reserves, and that number was projected to increase to 91% by 2002. In 1940 when the residential school system was still in full use, there were almost 8,000 children in the schools across the country; compare that statistic to the year 2002 when there were over 22,500 First Nations children in the child welfare system, showing a progression of almost three times the number living in state care. The numerous social problems resulting from poverty are re-enforced by the Federal Government's policy decision to neglect taking action despite their own commissions and research data. Procedural problems in child welfare administration arise due to government jurisdictions, which will also be discussed.

Keywords: First Nations, Aboriginal, Canadian, child, welfare, human rights, residential school, government

Early in the twentieth century, South Africa sent a delegation to Canada to observe Canada's policies towards First Nations people in the reserve and residential school system. This was to help it develop the apartheid system that was implemented, and is a stain on Canada's human rights record. This paper will discuss Canada's federal government policies regarding First Nations child welfare. The main focus on this topic will be the shortfalls in funding, government opposition, and problems with research methods and implementation in this policy area. The reserve system and residential school policies of the past are a lingering afterthought in Canada's history that still

affect socioeconomic status for First Nations children and their families. For today's First Nations people in Canada, average life expectancies and incomes are far less than those of non-First Nations Canadians, and rates of suicide, alcoholism, violent death, unemployment, crowded housing, and infant mortality are all higher than those of non-First Nations Canadians.

The legacy of the residential school system beginning in the 1870s will be discussed briefly, to the extent of the generational dysfunction it has created in families and First Nations communities. There are many social problems resulting from poverty, and they are enforced by the

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Federal Government's policy decision to neglect taking action despite their own commissions and research data. Procedural problems in child welfare administration arise due to conflicting government jurisdictions, which will also be discussed. The inter-generational loss of Indigenous identity in Canada has been a result of Canadian Aboriginal policy in the past and present. The policies of the residential school era up until today's child welfare system have created similar outcomes, which are government decisions determining how the next generation of First Nations people are affected by the state.

Background and History

In 1940 when the residential school system was still in full operation, there were almost 8,000 children in residential schools across the country; compare that statistic to the year 2002 when there were over 22,500 children in the child welfare system, showing a progression of almost three times the number of children living in state care.¹ This increase also shows that the colonization and assimilation of First Nations children are not only systems of the past, but also are active in the present. The lack of community nurturing and basic cultural knowledge for the majority of these children serve to perpetuate the intergenerational dysfunction in families.

The Federal Young Offenders Act was established in 1984, and relieved the child welfare authority of any legal responsibility in the case of youth convictions.² This new law was grounded in the recognition of the possibility of differences in value and belief systems of children from their guardians, which is relevant based on the fact that there were, and are still, many First Nations children living

away from their home communities.³ The Act resulted in a major shift of the focus on government jurisdictions concerning the administration of child and family services. In the 1980s some provinces entered into tripartite agreements with First Nations agencies and the Federal Government for the administration of services on-reserve.⁴ This was also done with a variety of funding formulas between the governments. Since that time, First Nations communities have been able to tailor programs to their specific needs and implement them. There has been a lot of variation to the programs because of the cultural and regional diversity of First Nations communities, and their respective histories across the country. This variation also is affected by the differences in provincial governments' policies regarding child welfare, and those specific policies are subject to change with new provincial governments being formed in the legislatures after election periods. The difference in the ministerial position within the Provincial Government causes policies to change from government to government.⁵ This can result in an inherent instability and lack of equity from these overlapping systems.

Following the Oka crisis of 1990, the Federal Government set out the Royal Commission on Aboriginal Peoples in 1996. This was to troubleshoot the causes of the damaged relationship between Aboriginal peoples and the Crown.⁶ The commission issued a report with 440 recommendations. One of the recommendations was to increase money to Aboriginal programs, which would

¹ Cindy Blackstock and Marilyn Bennett, "First Nations Child and Family Services and Indigenous Knowledge as a Framework for Research, Policy, and Practise." In *Towards Positive Systems of Child and Family Welfare: International Comparisons of Child Protection, Family Service, and Community Caring Systems* by Gary Cameron and Nancy Freymond (Toronto: University of Toronto Press, 2006), 271.

² Lorinda Stoneman, "Constructing and Regulating the Young Offender: Trends in Punishment from Colonial to Contemporary Canada," in *Child and Youth Care: Critical Perspectives on Pedagogy, Practice, and Policy*, by Jennifer White, ed. Allan Pence (Vancouver: UBC Press, 2011), 189.

³ *Ibid.*, 189.

⁴ Karen Swift and Marilyn Callahan, "Problems and Potential of Canadian Child Welfare." In *Towards Positive Systems of Child and Family Welfare*, by Gary Cameron ed. Nancy Freymond (Toronto: University of Toronto Press, 2006), 121.

⁵ Deena Mandell, Cindy Blackstock, Joyce Clouston Carlson, and Marshall Fine, "From Child Welfare to Child, Family, and Community Welfare: The Agenda of Canada's Aboriginal Peoples," in *Towards Positive Systems of Child and Family Welfare: International Comparisons of Child Protection, Family Service, and Community Caring Systems*, by Gary Cameron and Nancy Freymond (Toronto: University of Toronto Press, 2006), 216.

⁶ Stephen Brooks, *Canadian Democracy* (Don Mills: Oxford University Press, 2009), 46.

include First Nations child and family services agencies.⁷ It has been almost two decades since the report was issued, and the government has not implemented the recommendations from its own commission into Aboriginal policy. By 1997-1998, the Department of Indian and Native Affairs reported that First Nations child and family services were administering services to 70% of children on reserves, and that number was projected to increase to 91% by 2002.⁸

Acknowledging the Faults

Despite the progression to First Nations agencies administering child welfare care over the years, some key statistics are indicators that the current formulas are not working. First Nations children make up almost 5% of the child population in the country, yet they represent 30-40% of the children in the child welfare system.⁹ In the Constitution Act of 1867, the Treaty Rights of First Nations people (Indians) are under the jurisdiction of the Federal Government and not the provinces. The funding for First Nations child welfare care comes from the federal government, and is distributed to the First Nations Child and Family Services agencies on reserves. Though there is a greater need for resources in these communities, they receive roughly 20% less funding than the provincial governments.¹⁰ Cindy Blackstock refers to this arrangement as a two-tiered system that discriminates against First Nations children in Canada.¹¹ Despite a decade of voluntary negotiations between First Nations advocates, the Assembly of First Nations (AFN), and the Federal Government, little to no action and improvement was made in this policy area.

When it comes to research and the policy analysis stage, it is of utmost importance to critique the current

system objectively because efficacy should be part of the mandate. Objective research must also ask if there is importance to the type of value systems and viewpoints held by the researchers themselves, and whether Indigenous ways of knowing have been included. Alderson and Morrow believe that viewpoints do matter in research with children, stating, "[r]esearchers therefore need to think about the 'standpoint' from which they are studying children, and the ethical implications of that standpoint: whether they try to stand in and understand the child's position or the adults' viewpoints, such as parent, teacher, social worker, politician or tax payer."¹² There are many perspectives when analyzing these kinds of statistics, but if there is no value for money and no improvement, there needs to be change.

Governments must report to the United Nations Committee on the Rights of the Child (UNCRC) every five years to track the progress of their implementation of the aspects of the United Nations Convention on the Rights of the Child.¹³ Similarly, non-government organizations (NGOs) will give a critical report to the UN to give another perspective on the application of the UNCRC in their country. Alderson and Morrow suggest similar audits and overviews of the process through research and consultation, covering areas such as sources and amounts of funding. In other words, this process would be finding out how hard the country in question is trying to protect the rights of the child by comparing its economic investments in other areas. Though the UN's resolutions are non-binding in domestic law, this is a process that has already been started by the AFN and the First Nations Child and Family Caring Society of Canada. In 2005 the Federal Government publicly admitted the relationship between funding inequities and the growing number of First Nations children in the child welfare system.¹⁴ By Alderson and Morrow's suggestion, though, Canada is not trying hard to correct this. At the same time as the Federal Government had acknowledged it could be doing more, it was running a 22 billion dollar surplus budget, and later spent billions to stimulate the economy.¹⁵

⁷ Ibid., 462.

⁸ Swift, 123.

⁹ Cindy Blackstock, "The Canadian Human Rights Tribunal on First Nations Child Welfare: Why if Canada wins, equality and justice lose," *Children and Youth Services Review* 33, (2010): 187.

¹⁰ Ibid., 189.

¹¹ Ibid., 189.

¹² Priscilla Alderson, Virginia Morrow, *The Ethics of Research with Children and Young People*. (London: SAGE Publications, 2011), 12-13.

¹³ Ibid., p. 136.

¹⁴ Blackstock, p. 189.

¹⁵ Blackstock, p. 189.

Where We Are Today

Litigation should be the last option for policy change because of the adversarial nature of the courtroom. Reconciliation of the relationship between First Nations and the Crown should be done in the spirit of friendship and mutual respect, as was intended in the Treaties which opened up the lands for settlement. However, the passive aggressive discrimination by the current government has left the First Nations Child and Family Caring Society of Canada and the AFN no other choice but to file a human rights complaint.¹⁶ The Federal Government's policy decisions towards First Nations children in Canada are discriminatory when compared to other demographics in Canada; this has been proven by the lack of action and Canada's opposition through legal technicalities in court over a large span of time that otherwise could have been spent constructively. Recent records show that since the beginning of the court cases, the Federal Government has spent roughly 3 million dollars to fight against Cindy Blackstock and the First Nations Child and Family Caring Society of Canada.¹⁷

The Federal Government is fighting this case partly due to the implications a government defeat would have on other areas of First Nations and Aboriginal policy in Canada. Canadian law is common law, similar in principle to the United Kingdom's because of its adopted governance structures. This means that interpretation of the law is grounded in the past decisions of judges, called precedents. While logical to pursue the best case in terms of this dispute by the Federal Government, it is certainly not ethical, and contradicts statements, agreements, and rights entrenched in the Constitution. Essentially, the Federal Government is spending money to try to save it in other areas, where it will be forced to acknowledge the shortfalls in funding for other Aboriginal policies. This would open a floodgate of other pressing matters like First Nations education, which is fundamental to the well-being and development of children, and the quality thereof is a determinant of socio-

economic upward mobility. In April, 2012 Tom Hanson from the Canadian Press wrote, "[f]or years, the First Nations Child and Family Caring Society of Canada as well as the Assembly of First Nations have argued that the Federal Government would be better off funding prevention services and supports for families, rather than paying for foster care."¹⁸ In provinces like Saskatchewan, governments have been able to have some success working with Tribal Council agencies, which only is beginning to be put into practice. Currently, the funding inadequacies are being disputed in the Canadian Human Rights Tribunal; they have been going on since February 25, 2013, and are expected to conclude in the summer of 2013.¹⁹

Conclusion

Canadian Aboriginal policies of the residential school era and today's child welfare system create similar outcomes, which are the Canadian governments' decisions determining how future generations of First Nations people are affected by the state. The colonial history of Canada and government relationships with the Aboriginal peoples will stay at the forefront for years to come. Progress will take time for the improvement of First Nations child welfare in Canada, just as it has taken decades for other cases of Aboriginal Rights in the Canadian courts to be decided. Children in care eventually grow up, and their lives will not wait for the Government of Canada to decide that they should have had better services in the past. This area of policy is crucial for the health of First Nations people as a whole, especially in the establishment of an equal place in Canadian society. The statistics show the high number of children in care, and can overall be deemed as the majority of a generation of First Nations people. Intergenerational loss of Indigenous identity is the result of Canadian public

¹⁶ Blackstock, p. 189.

¹⁷ Heather Scoffield, "Ottawa Spends 3 Million to Battle First Nations Child Welfare Case." *Globe and Mail*, October 1, 2012, accessed February 3, 2013, <http://www.theglobeandmail.com/news/national/ottawa-spends-3-million-to-battle-first-nations-child-welfare-case/article4581093/>.

¹⁸ Tom Hanson, "Court Victory for First Nations Child Welfare," *CBC*, April 18, 2012, accessed February 1, 2013, <http://www.cbc.ca/news/canada/story/2012/04/18/pol-first-nations-court-welfare.html>.

¹⁹ Assembly of First Nations. "AFN Welcomes Federal Court of Appeal Decision to Continue Canadian Human Rights Tribunal in Support of Equity and Fairness for First Nation Children," March 12, 2013, accessed March 22, 2013, <http://www.afn.ca/index.php/en/news-media/latest-news/afn-welcomes-federal-court-of-appeal-decision-to-continue-chrt>.

policy, and what the Government does and does not do in this area; Canadian public policy needs to change for the health and survival of future generations.

Bibliography

- Alderson, Priscilla, and Virginia Morrow. *The Ethics of Research with Children and Young People*. London: SAGE Publications, 2011.
- Assembly of First Nations. "AFN Welcomes Federal Court of Appeal Decision to Continue Canadian Human Rights Tribunal in Support of Equity and Fairness for First Nation Children." March 12, 2013. Accessed March 22, 2013. <http://www.afn.ca/index.php/en/news-media/latest-news/afn-welcomes-federal-court-of-appeal-decision-to-continue-chrt>.
- Blackstock, Cindy. "The Canadian Human Rights Tribunal on First Nations Child Welfare: Why if Canada wins, equality and justice lose." *Children and Youth Services Review* 33 (2010): 187-194.
- Blackstock, Cindy, Deena Mandell, Joyce Clouston Carlson, and Marshall Fine. "From Child Welfare to Child, Family, and Community Welfare: The Agenda of Canada's Aboriginal Peoples." In *Towards Positive Systems of Child and Family Welfare: International Comparisons of Child Protection, Family Service, and Community Caring Systems*, by Gary Cameron and Nancy Freymond, 212-236. Toronto: University of Toronto Press, 2006.
- Blackstock, Cindy and Marilyn Bennet. "First Nations Child and Family Services and Indigenous Knowledge as a Framework for Research, Policy, and Practice." In *Towards Positive Systems of Child and Family Welfare: International Comparisons of Child Protection, Family Service, and Community Caring Systems*, by Cindy Blackstock and Marilyn Bennet, 269-288. Toronto: University of Toronto Press, 2006.
- Brooks, Stephen. *Canadian Democracy*. Don Mills: Oxford University Press, 2009.
- Hanson, Tom. *CBC*. April 18, 2012. Accessed February 1, 2013. <http://www.cbc.ca/news/canada/story/2012/04/18/pol-first-nations-court-welfare.html>.
- Scofield, Heather. "Ottawa Spends 3 Million to Battle First Nations Child Welfare Case." *The Globe and Mail*. October 1, 2012. Accessed February 1, 2013. <http://www.theglobeandmail.com/news/national/ottawa-spends-3-million-to-battle-first-nations-child-welfare-case/article4581093/>.
- Stoneman, Lorinda. "Constructing and Regulating the Young Offender: Trends in Punishment from Colonial to Contemporary Canada." In *Child and Youth Care: Critical Perspectives on Pedagogy, Practice, and Policy*, by Jennifer White. Edited by Allan Pence, 179-198. Vancouver: UBC Press, 2011.
- Swift, Karen, and Marilyn Callahan. "Problems and Potential of Canadian Child Welfare." In *Towards Positive Systems of Child and Family Welfare*, by Gary Cameron. Edited by Nancy Freymond, 118-150. Toronto: University of Toronto Press, 2006.