

Historical context

First Nations, Inuit and Métis peoples in Canada have traditional systems of culture, law and knowledge that ensured effective protection of children for thousands of years. Despite diverse cultures, languages and traditions, Indigenous Peoples share a high value for children, with a community-centered approach to caring for children: “kinship care is a long-standing tradition which involves relatives caring for other relatives. [...] When children required an alternative placement they were cared for within the extended family and all family members participated in caring for these children” (Carrière-Laboucane, 1997, p.44).

Relations in Canada between Indigenous Peoples and European settlers generally began on good terms; however, worldviews

eventually collided as colonizers sought territorial control and adopted the view of Indigenous Peoples as “savages.” As a result, they imposed foreign, and often harmful, policies on Indigenous families which continue to affect families today (TRC, 2015a; TRC, 2015b). Such policies were the result of a deliberate attempt to “civilize” Indigenous peoples according to European standards, enacted in part by removing Indigenous children from the influences of their families and communities by way of the Indian Residential Schools system (also including Indian Day Schools and industrial schools). There are many influential figures who have been involved in the removal of children, including Duncan Campbell Scott, Acting Superintendent General of Indian Affairs. His letter of August 22, 1895, addressed to the Deputy Minister of Justice, requested a warrant which would force the

removal of Indigenous children from their homes and into Residential Schools (Scott, 1895). Approximately 150,000 First Nations, Inuit and Métis children went to Residential Schools in Canada until the closure of the last federally-run Indian Residential School in 1996 (TRC, 2015a).

More than 40 years before the closure of the last IRS, a new form of child apprehensions began to take root in the form of the child welfare system. Many apprehensions can be attributed to the addition of a new section (s.88) in the Indian Act in 1951 which cleared the way for provincial and territorial laws to be applied to First Nations people living on reserve. Following this change, provincial and territorial child welfare authorities apprehended large numbers of Indigenous children, beginning in the 1950s and intensifying in the 1960s and 1970s,



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(Carrière-Laboucane, 1997, p.44).

a period now commonly known as the “60s Scoop” (Blackstock, 2011). Social workers placed some of these children in Residential Schools, while many others were fostered or adopted into non-Indigenous homes. As federal policy began to favour integrating Indigenous children into public schools, the IRS system started to lose its original purpose of educating and “civilizing” Indigenous children. Instead, the schools remained open primarily as centres for child welfare placements (Milloy, 1999). The TRC (2015b) provided an example from Saskatchewan where, “[t]he percentage of residential school children who were there for child-welfare reasons only increased in the 1960s. A 1966 study of nine Residential Schools in Saskatchewan concluded that 59.1% of the students enrolled were there for what were termed ‘welfare reasons’” (p.160). Due to federal and provincial/territorial funding disputes, apprehensions were usually the only child welfare “service” provided to Indigenous communities (Bennett, Blackstock, & de la Ronde, 2005). Indigenous communities began forming their own child welfare agencies in the late 1970s and early 1980s in order to provide culturally relevant child welfare services to children, youth and families both on and off reserve. While these agencies have worked extremely hard to provide culturally relevant and holistic services, their reach is often limited by the ongoing control of government authorities over the



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legislation and funding of child welfare, including significantly less funding for Indigenous children.

Today's framework³

In Canada, child welfare services for Indigenous peoples are delivered in various ways depending on Indigenous group and location. The next sections provide an overview of child welfare in Canada including funding and legislation arrangements, child welfare models, and types of agencies.

Funding and legislation

First Nations child welfare services for children ordinarily resident on reserve and in the Yukon Territory are funded federally, whereas all other child welfare agencies are funded provincially or territorially.

It must be noted that a Supreme Court decision in 2016 (the Daniels decision) may change the course of funding for agencies serving Métis and non-status First Nations Peoples. The Supreme Court ruled that the federal government “must classif[y] non-status Indians and Métis as ‘Indians’⁴ under section 91(24) of the Constitution” (Vowel, 2016, para.3). This would mean that like First Nations Peoples with status, non-status First Nation and Métis Peoples may be able to access services from existing First Nations agencies, or be eligible for Department of Indigenous and Northern Affairs Canada funding to create or support their own agencies. The full implications of the Daniels decision have yet to be determined.

³ This section is intended as an overview of Indigenous child welfare framework in Canada. Sinha and Kozlowski (2013) provide further details in their article, The Structure of Aboriginal Child Welfare in Canada. The Canadian Child Welfare Research Portal is also an excellent resource in terms of publications, resources and information pertaining to child welfare in Canada.

⁴ Legal terminology for status First Nations Peoples, as set out in the Indian Act.



Provincial and territorial child welfare legislation applies to all child and family service agencies in Canada, both on and off reserve. First Nations agencies, even though funded federally, are not exempted from provincial and territorial legislation since the federal government “has never enacted [its own] child welfare legislation” and prior to the opening of the First Nations Child & Family Service agencies, they went into agreements with the provinces to deliver child welfare services on reserve (First Nations Child and Family Caring Society et al., 2014, p.24). Each province or territory has its own legislations and standards. There is a unique example in Saskatchewan where the Federation of Saskatchewan Indian Nations (FSIN) created First Nations legislation in 1990, the Indian Child Welfare and Family Support Act. This legislation recognizes First Nations rights and supersedes the Child and Family Services Act (Kozlowski, Sinha, Hartsook, Thomas, & Montgomery, 2012; Sinha & Kozlowski, 2013).

Indigenous child welfare models

Provincial/territorial

Sinha and Kozlowski (2013) describe the provincial or territorial model as being comparable to the mainstream child welfare model where “the province or territory is responsible for service provision, lawmaking, governance, and funding for off-reserve families” (p.7). This situation is most likely to apply to urban Indigenous child welfare agencies and Métis agencies and is also relevant in Nunavut (see section on Inuit child welfare); however, it must be noted that these agencies continue to deliver culturally relevant services.

A unique example of the provincial/territorial model is in the Yukon where there are no reserves and no First Nations child and family service agencies. There is a large population of First Nations peoples residing in the Yukon so funding for child welfare services is provided by the federal government and services are delivered by the province (First Nations Child & Family Caring Society, 2016a).

Sinha and Kozlowski (2013) also outline that the provincial and territorial government model can also apply on reserve with the federal government funding the services. According to John (2016), there are cases like this in British Columbia where the Ministry of Children and Family Development is responsible for service delivery on reserve when a First Nation has no delegated agency providing services to the community.

Delegated

Delegation is when provincial, territorial and/or federal governments grant specific powers to agencies to deliver child welfare services for a specified purpose but retain overall authority. Agencies fall under different categories of ‘delegation.’ Many Indigenous child and family service agencies provide delegated child welfare service delivery, either as full or partial delegation. Under the full delegation model, the agencies provide the full range of child welfare services (on or off reserve), including prevention, family support, protection, and guardianship. In the partial delegation model, the provincial or territorial government provides protection and the agencies provide a limited range of services, most often prevention and guardianship (Sinha & Kozlowski, 2013).

Integrated

Some First Nations child and family service agencies are expanding their service delivery to include members off reserve and these agencies are known as integrated agencies. The responsibility for child welfare lies with the First Nations agencies, with some direction from the provinces or territories (Sinha & Kozlowski, 2013; TRC, 2015c). Sinha and Kozlowski

(2013) provide an example in Manitoba where there are four child welfare authorities: the General Child and Family Services Authority, Métis Child & Family Services Authority, First Nations of Northern Manitoba Child and Family Services Authority, and Southern First Nations Network of Care Child and Family Services Authority. They outline that “the regional authorities have the right to direct child and family service agencies, [whereas] [t]he Minister is responsible for determining the policies, standards, and objectives of child and family services, and for monitoring and funding child welfare authorities” (Sinha & Kozłowski, 2013, p.8).

Band by-laws

Prior to colonization, Indigenous communities had unique ways of governance in their communities. As a means of colonizing and controlling First Nations Peoples, the federal government enacted the Indian Act, which still exists, to define who is or is not First Nations and to govern activities on reserve (TRC, 2015a). With regard to law making on reserve, “[t]he Indian Act allows for Indian Band⁵ Chiefs and Counsels to pass band by-laws that apply on reserve” (Bennett, n.d., p.4). The Spallumcheen First Nation in British Columbia established a child welfare band by-law in the early 1980s giving the nation “jurisdictional control over child welfare services to members” (Sinha & Kozłowski, 2013, p. 8). While the power to enact a band by-law is delegated by the federal government to the band under the Indian Act,

each by-law requires the approval of the federal Minister of Indigenous Affairs (Bennett et al., 2005; Sinha & Kozłowski, 2013).

Tripartite

The Nisga’a Lisims First Nation Government has had a tripartite agreement since 1999 with the federal government and Government of British Columbia to allow them more control over their nation, including child welfare services. In this tripartite agreement, the Nisga’a Lisims Nation makes laws with respect to child welfare that adhere to provincial child welfare standards and the federal government funds the services (Sinha & Kozłowski, 2013).

Self-governed

Self-government is the framework under which most Indigenous peoples wish to support their children (Mandell, Blackstock, Clouston Carlson, & Fine, 2006). It includes not only Indigenous service delivery, but also Indigenous authority over policy and funding. According to Gough, Blackstock and Bala (2005), “[a]lthough many First Nations would like to have sole jurisdictional authority for their child and family services, a First Nations self-government model has yet to be fully implemented anywhere in Canada” (p.5). The Nisga’a Lisims Government is the exception with its self-government agreements that include authority over child welfare; they are working to establish policies and services under this framework and eventual full delegation (Bennett et al., 2005; TRC, 2015c).

Nunavut became its own territory almost two decades ago and could be seen as an example of self-government in terms of child welfare, since most of its residents are of Inuit descent. Although all other Inuit regions (the Inuvialuit Settlement Region in the Northwest Territories, Nunavik in Quebec, and the Nunatsiavut Government in Newfoundland/Labrador), as well as First Nations Peoples in the Yukon, are working toward becoming self-governing nations, child and family services continue to be delivered by the provincial/territorial government (Gough, 2008; Rae, 2011; Blumenthal & Sinha, 2014).

In November 2016, the Province of British Columbia made a commitment to Indigenous child welfare and control of Indigenous child welfare by Indigenous Peoples following the release of a report by Grand Chief Ed John, which presented recommendations for moving forth with Indigenous child welfare in British Columbia (John, 2016). If the province implements the recommendations, this could present an interesting precedent for other provinces in terms of self-government in child welfare.



⁵ The term ‘band’ is also known as reserves or First Nations communities.

Types of agencies

Canada is unique in that there are both mainstream child welfare services and specific agencies dedicated solely to Indigenous Peoples (First Nations and Métis). There are over 140 First Nations agencies delivering services to First Nations peoples⁶ and 8 Métis agencies delivering culturally relevant services to Métis families. As of 2011, “84 [of these First Nations and Métis] agencies have signed agreements with provincial governments affirming their rights to apply provincial child welfare legislation and to provide the full range of child protection services, including child welfare investigations (but excluding adoption services for most agencies)” (Sinha & Kozlowski, 2013, p.4).⁷ The following sections briefly explain the various types of child welfare agencies across the country serving Indigenous children and families, including services to Indigenous Peoples residing on and off reserve.

Mainstream services

Many Indigenous children in urban settings are served by mainstream provincial or territorial child welfare services where provinces and territories create legislation and

mandates, regulate service delivery, control funding, and act as the overall governmental authority. Historically, mainstream child welfare services have been built on Western concepts of caring for children and have not provided culturally appropriate services to Indigenous children and families. According to Blackstock, Cross, George, Brown, and Formsma (2006):

For thousands of years, Indigenous communities successfully used traditional systems of care to ensure the safety and well-being of their children. Instead of affirming these Indigenous systems of care, the child welfare systems disregarded them and imposed a new way of ensuring child safety for Indigenous children and youth, which has not been successful. (p.6)

Some mainstream child welfare agencies,⁸ however, recognize the need to provide more culturally relevant services and have specific departments that assist in this. An example is the Simcoe Muskoka Family Connexions, a mainstream child welfare organization that offers services through the First Nations, Métis and Inuit Services Unit.⁹

Urban Indigenous child welfare

Several urban cities in Canada, including Vancouver, Surrey, Victoria, Toronto, and Saskatoon (to name a few), have Indigenous child and family service agencies that serve Indigenous families residing in the area. These are usually funded and delegated by provincial governments but are still bound by provincial legislation and standards (Mandell et al., 2006).

Métis child welfare

There are numerous Métis child welfare agencies in Western Canada, operating at various levels of delegation, from fully mandated to partial support services (Bala, Zapf, Williams, Vogl, & Hornick, 2004). British Columbia, Alberta and Manitoba are the only provinces with delegated Métis child and family service agencies. British Columbia has five Métis agencies, with one, Métis Family Services (La Société De Les Enfants Michif), operating at full delegation (John, 2016). Alberta has one agency with sub-offices, while Manitoba has two Métis child and family service agencies.

To date, the federal government has denied responsibility for funding Métis child and family service

⁶ Figures from December 2016. See <https://fncaringsociety.com/child-and-family-service-agencies-canada> for a complete list and contact information.

⁷ This number is likely higher in 2016.

⁸ The exact number of mainstream agencies and organization providing culturally relevant child welfare services to Indigenous children and families is unclear.

⁹ See <http://familyconnexions.ca/fnmi-overview>.

agencies. Manitoba's two agencies are funded provincially whereas Alberta and British Columbia have different funding arrangements:

In Alberta, the province funds municipalities and Métis settlements for Métis child welfare services, such as the Métis Child and Family Services Society in Edmonton and the Métis Calgary Family Services Society. In British Columbia, five Métis child and family service agencies deliver services while a non-profit organization, the Métis Commission for Children and Families, consults with the provincial government. (TRC, 2015c, p. 52)

With the Daniels decision mentioned above, this situation may change as the federal government may be responsible for providing funding to these agencies and we may see the emergence of additional Métis child and family service agencies.

Inuit child welfare

There are four main regions in Canada with sizeable populations of Inuit children and families: Nunavut, Nunavik, the Inuvialuit Settlement Region, and Nunatsiavut.

There are no Inuit delegated agencies in Canada and services are provided by the provincial department offering child and family services, most often health and social services (Bala et al., 2004; Rae, 2011). Three years ago, Nunavut created its own department for child and family services and it functions under legislation according to Inuit societal values (Henderson-White, 2015). As stated above, this is presently the closest example of Indigenous self-government over child welfare in Canada.

First Nations child welfare

First Nations Peoples with status or ordinarily resident on reserve (with the exception of the Yukon, which has no reserves) are a "federal responsibility" under Canada's constitution. As such, the federal government, through the Department of Indigenous and Northern Affairs Canada (INAC)'s First Nations Child and Family Services (FNCFS) Program, plays a prominent role in First Nations child welfare. In 1991, the federal government established a program known as Directive 20-1 to fund First Nations child and family service agencies on reserve. As of 2016, British Columbia, Newfoundland and Labrador, New Brunswick and the Yukon continue to operate pursuant to Directive 20-1. Directive 20-1 provides funding for children in care, as well as funding for First Nations



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The historic win of the case on First Nations child welfare at the Canadian Human Rights Tribunal confirms that the current provision of First Nations child welfare discriminates against children living on reserves.



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agencies to operate (First Nations Child & Family Caring Society [FNCFCSC], 2016a).

First Nations child and family service agencies in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Prince Edward Island operate under the INAC's Enhanced Prevention Focused Approach (EPFA) (First Nations Child & Family Caring Society, 2016b). The federal government created this approach following criticism in two reports of Directive 20-1, which does not provide funding for prevention services (McDonald et al., 2000; Blackstock, Prakash, Loxley, & Wien, 2005). The EPFA provides funding for children in care, for First Nations agencies to operate, and for prevention services.

Agencies on reserve in Ontario are funded by the province to provide the full range of child welfare services, which is then reimbursed by the federal government pursuant to an earlier agreement (referred to as the 1965 Agreement). There are several other provincial and territorial funding agreements which lay out the terms of funding for child welfare services to First Nations children including: Government of Yukon Department of Health and Social Services (2011-2012), the Alberta Administrative Reform Agreement (1991), and the British Columbia Service Agreement (2012-2013) (FNCFCSC, 2016a).

Inequities in funding for First Nations child and family service agencies on reserve and in the Yukon

to provide culturally relevant services are well documented and the federal government has a longstanding pattern of providing less funding when compared to off-reserve communities (McDonald et al., 2000; Blackstock et al., 2005; FNCFCSC et al., 2016). In 2016, the First Nations Child & Family Caring Society (the Caring Society) and the Assembly of First Nations (AFN) won a human rights complaint at the Canadian Human Rights Tribunal which found that the overrepresentation of First Nations children was a direct result of the federal government's inadequate funding to the child welfare agencies that serve children ordinarily resident on-reserve.¹⁰

¹⁰ For more information on this case, visit <https://fncaringsociety.com/i-am-witness>.

Moving toward reconciliation in child welfare

In fact, we have in evidence that between 1989 and 2012, First Nations children spent over 66 million nights in foster care, or 167,000 years of childhood. (Blackstock, 2016)

Although many Indigenous Peoples receive culturally relevant child welfare services from Indigenous agencies, there are still a great number of Indigenous families serviced through child welfare models that are not equipped to address the unique contexts and needs of First Nations, Métis and Inuit children and families. We know from the Canadian Incidence Study, for example, that the primary reason for apprehension in First Nations communities is neglect resulting from structural issues such as poverty, poor housing and parental or guardian substance misuse, many factors which are direct results of colonialism and residential schools (Trocmé, Fallon, et al., 2005; Trocmé, MacLaurin,

et al., 2005). Numerous challenges remain, including the need for legislation and funding that allows Indigenous communities to ensure adequate care for their children in a way that incorporates traditional knowledge, recognizes the ongoing impact of historical wrongs, and builds on the strengths of Indigenous communities in their service delivery. This is important work to be done as Canada attempts to move forward in reconciliation, especially given the unique experiences of First Nations, Inuit and Métis communities that continue to be challenged by the multi-generational impacts of the Residential Schools, ongoing discrimination against Indigenous peoples that interferes with housing, employment, and other paths to accessing the social determinants of health, and other harmful colonial policies and practices such as those in child welfare.

The historic win of the case on First Nations child welfare at the Canadian Human Rights Tribunal confirms that the current provision of First Nations child welfare

discriminates against children living on reserves. This raises the question: what if other agencies servicing Indigenous Peoples are also discriminatory due to underfunding and lack of culturally appropriate services? Provincial legislation continues to guide all child welfare agencies in Canada, which makes it difficult for Indigenous communities to truly regain control over their own children and families, a legacy that continues from the beginning of colonization in Canada.

As demonstrated by the TRC's top Calls to Action, reforms to Indigenous child welfare are the first priority in Canada's journey towards reconciliation. As these reforms include ensuring equitable funding for Indigenous child welfare agencies as well as recognizing that Indigenous communities are in the best position to make decisions about their children's care, it is hoped that there will be significant changes to come for Indigenous child welfare.



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