

National Children's Alliance

Policy Paper on Aboriginal Children



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Contextual History

This land, now known as Canada, has been home to First Nations and Inuit peoples for millennia. These complex and diverse societies included political, economic, social, educational and spiritual systems that developed over thousands of years of living in harmony with the land. Although there is significant diversity amongst the cultures, contexts, and languages, they are all bound together by a perspective that supports a holistic interdependent worldview, communal rights and a commitment to sustainable decision making.

As the Assembly of First Nations notes in its submission to the Royal Commission on Aboriginal Peoples:

Our lives were dominated by the need to fulfill our duties to our families, communities and nations. This way of life imposed an obligation on individuals to place other people's needs first. As a result, two distinctive features- sharing and cooperation became a central focus of First Nations' life. The people of the First Nations willingly sacrificed some individual freedom to the common good because that way of life ensured the comfort, well being and safety and survival of the nation. (1993, p. 2)

When John Cabot arrived in 1497, on the shores of what is now known as Newfoundland and Labrador, he was greeted by the Beothuck peoples. They shared their land and their knowledge on how to sustain life in the New World with the newcomers as was their custom. Cabot was followed by increasing numbers of immigrants who wanted to settle in the new lands and many of them depended on First Nations for the knowledge and resources needed to sustain life in the New World. This was a rich land – First Nations had acted properly ensuring that the substantial natural resources of the continent remained in balance by only harvesting those resources needed for life.

After Britain defeated France in the Seven Years War, they asserted control over what is now known as North America. This war was followed by the Royal Proclamation of 1763 which acknowledged that the lands were occupied by First Nations peoples and that Britain “...upon any lands which have not been ceded to or purchased by Us as aforesaid are reserved to the said Indians, or any of them” (Royal Proclamation of 1763).

The Royal Proclamation informed the development of the *Indian Act* of 1867 which confirmed that the federal government of the newly emerging nation of Canada would have responsibility for Indians and lands reserved for Indians, thus giving the federal government a primary role in Treaty making.

Although there are Treaties in most of Canada, there is significant concern regarding the conditions of their negotiation and implementation. There are also areas where Treaties have never been agreed upon, and thus those lands, principally in British Columbia, remain unceded lands as per the Royal Proclamation and the repeated rulings of the Supreme Court of Canada.

In the late 19th century, Canada decided to abandon its responsibility to settle Treaties and ensure fair treatment of the Indians proceeding instead with the focused policy of assimilation as expressed by Duncan Campbell Scott, Canada's top bureaucrat on Indian issues, "Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian department" (Henderson, n.d.). Campbell noted the significant loss of Indian lives as a result of disease, starvation, and aggression. The Royal Commission on Aboriginal Peoples estimates that the loss of life amongst all indigenous peoples in Canada to be at least 80% of the population base. Some communities, such as the Beothuck of Newfoundland, were entirely eradicated and others, such as the Haida, have documented evidence that when settlers failed to drive them off their lands they off-loaded a sailor infected with small pox to the Haida village. The Haida peoples lost 93% of their community members between 1850 and 1915 (Brown, 2002, p. 10). This degree of depopulation is horrendous. The implications of losing at least eight out of ten community members include multi-dimensional grief associated with loss of relationship, knowledge, skill, and the communal efforts needed to sustain traditional life (Blackstock, 2003).

Canada's policy of assimilation was weighted with legislative requirements of the *Indian Act* that forbid socio-political ceremonies, traditional dress, the hiring of legal counsel to negotiate Treaties and the introduction of the reserve pass system that later informed apartheid policies in South Africa. First Nations peoples had to renounce their Indian heritage and enfranchise if they wished to attend high school, university, work off-reserve, serve in the armed forces, or vote in federal or provincial elections. The most offensive policy was the introduction of residential schools as they were intended to assimilate and eliminate Indian peoples; the policy used the children as a means of accomplishing this. The Bagot Commission of 1842 recommended education as a means of "ridding the Dominion of Indians" (Aboriginal Healing Foundation, 2002, p. 3). The first schools opened in the 1870s and continued until the last school was closed in Saskatchewan in 1996 (INAC, 2002). One hundred and thirty residential schools were established by the federal government under authority of the *Indian Act* and were run by Christian based churches in an effort to proliferate the Christian agenda of proselytizing.

The schools were constructed of the cheapest materials possible and the per capita funding system encouraged overcrowding. These conditions, coupled with the pervasive assimilation policies including the prohibition of speaking indigenous languages, or practicing culture, and the forbade the use of indigenous names, stressing the importance to children of using the Christian names that would shape their new assimilated identities, resulted in sustained disruptions of family functioning.

The conditions in the schools were deplorable, as noted by P.H. Bryce, the Chief Medical Officer of the Department of Indian Affairs found in his 1907 report. The death rates at the schools were 24% per year and 46% over three years (RCAP, 1996). Bryce described these conditions as a “national crime” and published his findings in the *Montreal Star* and *Saturday Night Magazine*. Although Bryce’s report confirmed earlier findings, the government of Canada did nothing, except eliminate the medical health officer position (Aboriginal Healing Foundation, 2002).

These terrible conditions persisted as documented in a letter to the Medical Director of Indian Affairs by J.W. Breaky in 1953 which stated that “children... are not being fed properly to the extent that they are garbaging around for food that should only be fed to Barn occupants” (Aboriginal Healing Foundation, 2002, p. 5). There have been a significant number of criminal prosecutions for sexual and physical abuse of children whilst they attended the schools.

Thanks to the efforts of First Nations and Aboriginal peoples, the schools failed to entirely achieve their objective of eliminating Indian culture and knowledge; however, the impacts were significant and intergenerational. Every child was required to attend the schools from age five to fifteen – the Indian Agents, supported by police when necessary, would round up children by force if there was resistance from parents or children themselves. These children grew up in the absence of positive parenting models and amidst aggressive attacks to their essential being. As many survivors have noted, “each day we were made to pray we would not be Indians – something we could not change about ourselves.”

The *Indian Act* persists today. It continues to require a band council system of governance usurping traditional forms of governance. It includes provisions restricting land ownership, land use, and provisions regarding the property of Indians. It also spells out who is and is not a Status Indian, and in this way creates artificial divisions between Aboriginal peoples in an effort to restrict the number of Aboriginal peoples for whom Canada will exercise certain obligations.

The Métis peoples of Canada bring together First Nations and European heritages and have endured subjugation including attendance at residential schools, the negation of land claim settlements, and the marginalization of Métis culture, history, and rights.

The Constitution of Canada recognizes existing Aboriginal Rights and Title of Aboriginal peoples in Canada which include First Nations, Inuit, and Métis. The nature of these rights is still subject to negotiation and litigation as represented by the numerous Supreme Court of Canada decisions affirming Aboriginal Rights relating to First Nations and the present challenge to clarify Métis hunting and fishing rights.

Overview of Key Issues for Aboriginal Children and Families

Unfortunately, conditions for Canada's Aboriginal peoples continue to be extremely poor especially for Aboriginal children, youth, and families.

In contrast to the lives experienced by other Canadian children and youth, Aboriginal children are more likely to be born into poverty, to suffer health problems, maltreatment, incarceration, and placement in the child welfare system. Although provincial data collection systems vary, best estimates are that there are currently over 25,000 Aboriginal children in the child welfare system – three times the highest enrollment figures of residential school in the 1940s. In terms of First Nations children on-reserve, the numbers of children entering into care are tragically rising. DIAND data confirms that between the years of 1995 and 2001 the number of Status Indian children entering into care rose an astonishing 71.5% nationally (McKenzie, 2002).

Aboriginal peoples are aware of these problems and are actively working to establish Aboriginal Child and Family Service agencies in Canada to respond to the needs of these children and their families. There are over 120 of these agencies across the country, the vast majority of which receive their statutory authority to deliver child welfare programs through the provincial/territorial child welfare statutes. This has posed a significant challenge for Aboriginal agencies which must try to adapt services that reflect the holistic, interdependent, and communal rights framework of the cultural communities they serve with the individual rights based child welfare statutes. The concepts of child removal or apprehension, as it is known in many provinces/territories, is traditionally a foreign concept to Aboriginal communities who adopted a communal parenting system that allowed for the seamless transfer of dominant parental authority from one community member to another in times of stress. The impact of applying Western-centric concepts of child removal to Aboriginal communities has been substantial. The Western-centric child caring system developed child removal in order to respond to isolated incidents of child maltreatment. It was never intended to be the principal community development intervention in communities that have been so devastated by colonization. In the absence of focused Aboriginal driven community development, child removals will continue to be a symptomatic response to colonization failing to redress the etiological factors that contribute to the maltreatment of children and another generation of children will grow up away from home.

Funding regimes vary depending on whether the agency is serving clients on- or off-reserve. With the exception of Ontario, which operates under a separate agreement, First Nations child and family service agencies servicing on-reserve clients are funded by a national funding formula known as Directive 20-1. This funding formula was studied in a joint review conducted by the Department of Indian Affairs and Northern Development and the Assembly of First Nations in 2000 which provides some insight into the reasons why there has been such an increase in the numbers of Status Indian children entering into care (MacDonald et al, 2000.) The review found that funding for a range of services intended to ameliorate risk factors for children and youth at risk known as targeted

prevention services were inadequately funded. In addition, the funding formula does not adjust for changes in provincial/territorial or tribal child welfare authority thus resulting in inequities of service, nor did it support tribal based child welfare authority. The recommendations of this review remain unimplemented, as does the call for substantial investment in community development to redress the etiology of child maltreatment sourced in the multi-dimensional impacts of colonization.

Although Aboriginal agencies serving off-reserve Indians are funded by the provinces and territories and thus do not experience the disconnection between funding and authority to the same degree as on-reserve based agencies, they too require the vigorous investment in prevention and targeted prevention services to keep the growing numbers of Aboriginal children living off reserve at home with their families and connected to their diverse cultures and communities.

Many Aboriginal and First Nations governments are including child welfare in self-government agreements with the federal and provincial/territorial governments to validate Aboriginal laws and systems of caring for children. Their goal is to create coherence between the cultural ways of knowing and being of community members and the laws and practices that shape their caring of children. The research of Stephen Cornell and Joseph Kalt of the John F. Kennedy School of Government outlines the correlation between self-determination and positive community outcomes in the following statement:

We believe that the available evidence clearly demonstrates that tribal sovereignty is a necessary prerequisite of reservation economic development. Each present instance of substantial and sustained economic development in Indian Country is accompanied by a transfer of primary decision making control to tribal hands and away from federal and state authorities. Sovereignty brings accountability and allows “success” to be properly defined to include Indians’ goals of political and social well-being along with economic well being. Decades of control over reservation economic resources and affairs by federal state authorities did not work to put reservation economies on their feet. (Cornell & Kalt, 2002, p. 44)

Creating best outcomes for Aboriginal children means recognizing and validating the laws that ensured their well being for millennia and employing the commitment and skills of all community members to build on traditions to respond to the contemporary challenges and opportunities. As reflected by the Association of Native Child and Family Service Agencies of Ontario:

The responsibility for the safety and security of the next generations was bestowed upon First Nations by the Creator- it is an inalienable and inherent right that has not, and could never be, extinguished by any agreement, Treaty or otherwise. (2001, p. 4)

United Nations' Convention on the Rights of the Child

On November 20, 1989, the United Nations General Assembly promised certain things to children by formally adopting the United Nations *Convention on the Rights of the Child* (CRC) (United Nations, 1991). The CRC provides the framework for governments to improve, promote and protect the basic human rights for all children, everywhere. It calls for continuous action and progress in the realization of children's rights based on four general principles:

1. non-discrimination (Article 2) – by which states commit to respect and ensure the rights of all children under their jurisdiction without discrimination of any kind;
2. the best interests of the child (Article 3) – in which the interests of the child are recognized as paramount and budgetary allocations should give priority to children and to the safekeeping of their rights;
3. respect for the children's views and right to participate in all aspects of democratic society (Articles 12-15) – which asserts that children are not passive recipients, but actors contributing actively to the decisions that affect their lives;
4. the child's right to survival and development (Article 6) – which claims the right for children to realize their fullest potential, through a range of strategies from meeting their health, nutrition and education needs to supporting their personal and social development. (UNICEF, 2000, pp. 46-51)

The CRC was ratified by 91 countries including the Canadian government which signed the Convention in December, 1991 (Luxton, 2002). In 1990, one year prior to signing the CRC, Canada along with other world leaders attended the 1990 World Summit for Children in New York which resulted in a Plan of Action for the survival, protection, and development of children. As part of this coalition, Canada submits regular reports detailing its progress in achieving its promises made at the World Summit for Children in New York in implementing the goals and objectives of the CRC made to date. While Canada's status reports to the UN appear to be positive, its ability to apply and extend the spirit and intent of the CRC to the children and youth of First Nations and Aboriginal ancestry in Canada has not been as positive.

At a time when Canada is repeatedly ranked as one of the best countries in the world to live according to the Human Development Index (HDI), the safety and well being of First Nations and Aboriginal children, youth, and families continues to be at risk after centuries of focused colonial policies. In fact, when the Department of Indian Affairs and Northern Development applied the Human Development Index to Registered Indians living on-reserves in Canada in 1998, results indicated that the quality of life for First Nations would be equivalent to the 0.739 HDI scores of Brazil and Peru which are ranked 79th and 80th in the world respectively (Beavon & Cooke, 2001). The available evidence consistently suggests that First Nations children, youth and families residing on- and off-reserves are disproportionately represented amongst all Canadians living in poverty. For example, the Vancouver Aboriginal Council, in a report for the Vancouver Richmond Aboriginal Health Board in 1999, estimates that of the 4,300 Aboriginal children aged 0-

6 years in the area, eight of ten Aboriginal children live in poverty (Vancouver Aboriginal Council, 2000). Poverty continues to be a significant factor contributing to the myriad social problems for Aboriginal and First Nations children, youth, and families including child maltreatment. It is unacceptable seven years after the Royal Commission on Aboriginal Peoples tabled its recommendations for restoring and affirming the capacities of First Nations and Aboriginal peoples, that Aboriginal Canadians still continue to lag behind other Canadians in quality of life measures and that the status quo allows Aboriginal children to live in poverty in one of the wealthiest countries in the world. This is contrary to Article 27 of the CRC.

First Nations children and youth are also highly represented in the child welfare systems of the country. Eight years after Canada closed its last residential school in Saskatchewan, and seven years after the Royal Commission on Aboriginal Peoples completed its final report, the numbers of First Nations children in care continues to increase. In fact, the Department of Indian and Northern Affairs Canada indicates that Registered Indian children in care of the child welfare system has increased by a shocking 71.5% from 1995 to 2001 (McKenzie, 2001.) Of additional concern is that many of these children are placed in non-Aboriginal homes. Regrettably, not all provinces/territories track the degree to which Aboriginal children are placed in Aboriginal homes; however, the available data suggests that much improvement is needed. For example, in 1988 the British Columbia Children's Commissioner found that only 2.5% of Aboriginal children in the care of the Ministry for Children and Families were placed in Aboriginal homes. The lack of placement of Aboriginal children in Aboriginal homes suggests that little was learned from the devastating effects of residential schools and numerous inquiries such as the Aboriginal Justice Inquiry in Manitoba. The disproportional placement of Aboriginal children in the child welfare system in non-Aboriginal homes is contrary to Articles 2, 6, 9, and 30 of the CRC.

There is no indication that this trend will stop given the increase in the population statistics of Aboriginal people both on- and off-reserve and the migration trends from reserve to urban based environments. Almost half of the First Nations people in Canada now live in urban centres (Graham & Peters, 2002; Hanselmann, 2001, 2003). Data recently released by Statistics Canada shows that Winnipeg in particular continues to lead the country in Aboriginal population rates. But the increased numbers of Aboriginal people is not just a Winnipeg phenomenon; it is mirrored in cities and towns across Manitoba as well as throughout Canada (Rollason, 2003). As the population increases so too does the proportion of children and youth in the Aboriginal populations (Hanselmann, 2001, 2003; Rollason, 2003). Children under 15 years of age comprise one-third (33%) of the urban Aboriginal population, compared with 20% of the urban non-Aboriginal population (Graham & Peters, 2002). In terms of child welfare, these statistics are significant as most Aboriginal children and families in urban areas do not receive the same access to a range of culturally appropriate programming as First Nations on-reserve (Graham & Peters, 2002). Hanselmann (2003) also noted that urban First Nations and Aboriginal people (especially children) lack an effective voice with which to participate in designing and implementing policies and programs that impact on them.

In a publication entitled *National Plans of Action for Children: Involving Children and Young People in their Development* produced in 2002 by Save the Children, two major gaps regarding the lack of participation of children and youth were identified in the National Plans of Action which arose from conducting research in the 1990s toward the implementation of the goals and objectives of the CRC:

- Even when other groups were encouraged to get involved in their development, children and young people themselves were rarely included. National Plans of Action were seen as being something that was prepared *for* children rather than *with* them.
- National Plans of Action for children were developed separately from implementation plans for the CRC. This resulted in wasted efforts and a failure to link the goals in the National Plans of Action to the human rights of children. (Save the Children, 2002, p. 5)

While both of these problems are beginning to be addressed, many decisions are being made about the future of First Nations and Aboriginal children, especially those in government care, without input, knowledge and/or the participation of these children and youth and/or their families, communities, and Nations. The child welfare legislation across Canada provides most children with very limited opportunities to be heard in judicial or administrative proceedings that affect them. A recent consultation with children and youth in care conducted by the Saskatchewan Children's Advocate Office (2000) indicates that children and youth want to be involved in all decisions that affect them. For the large number of First Nation and Aboriginal children in care this is a must. In earlier times, Aboriginal voices were simply silenced (Cairns, 2000) and until recently, rarely were Aboriginal people, let alone children and youth, invited or asked by either the federal or provincial governments to participate in events or discussions that would ultimately impact on them politically, economically, socially, culturally, or spiritually. A case in point is the *Indian Act*, which in 1876 was unilaterally created without consultation with the people against whom it was directed. This Act has intruded on the lives, cultures, and spirits of Aboriginal peoples more than any other laws subsequently created by the Canadian governments. The lack of participation of First Nations and Aboriginal children in decision outcomes that affect them is contrary to Articles 12-15 the CRC. And as noted in the *National Plans of Action for Children: Involving Children and Young People in their Development*, the involvement of First Nations and Aboriginal children is necessary for improving Canada's role in the global Plans of Action.

Recommendations

Despite these and other risk factors facing First Nations children and youth, the trend in Canada has been to address these concerns in a piecemeal fashion that fails to consider the holistic needs of First Nations children and their interdependence with First Nations families, communities, and Nations. As previously noted in the research of Cornell and Kalt (1998) of Harvard University, the available evidence suggests that sustained social and economic well being in First Nations communities is preceded by self-government, suggesting a call for Canada to commit to the deliberate implementation of the recommendations of the Royal Commission on Aboriginal Peoples. Cornell and Kalts' findings are echoed by the research of Michael Chandler and Christopher Lalonde (1998), of the University of British Columbia, who found that a decrease in youth suicide rates is correlated with increased evidence of First Nations' self-determination and government.

The issues confronting First Nations children, youth, and families are as multi-dimensional as the colonial policies which gave rise to them and thus a rights based approach which inadequately considers children's interdependence with the historical and present experiences of family, community, and culture is unlikely to be successful. The Assembly of First Nations in partnership with the Department of Indian and Northern Affairs Canada suggested a holistic approach to ensuring child and youth well being in the seventeen recommendations of the First Nations Child and Family Services Joint National Policy Review conducted in 2000. The recommendations which range from supporting First Nations self-government aspirations in child welfare to increases in levels and flexibility of funding regimes to promote community capacity to care for children, through community development and prevention programming, and meeting the needs of special needs children, remain unimplemented due to departmental budget concerns. This lack of implementation is inconsistent with the government of Canada's commitments to Aboriginal peoples in the Statement of Reconciliation and numerous articles of the United Nations including the *Convention on the Rights of the Child* (1989) and the *Draft Declaration on the Rights of Indigenous Peoples* (1994) and is particularly distressing given the remarkable escalation in the number of First Nations and Aboriginal children in the child welfare system.

The lack of meaningful opportunities for Aboriginal children to have success within the education system in Canada is also a concern. First Nations and Aboriginal children continue to be over-represented in school drop out rates, special education programs and amongst children classified with behavioural challenges. The Royal Commission on Aboriginal Peoples (1996) suggested a way forward in its finding that,

Where Aboriginal people have assumed control of the education of their children, youth, and adults, the results with regard to program completion, personal satisfaction and successful preparation for employment or continuing education are much improved.

This calls for focused inclusion of Aboriginal history, culture, and language into school curricula and giving value to indigenous knowledge on equal footing to Western-centric concepts of knowledge and education. Current educational programs in Canada fail to meet the requirements of Articles 23, 28, 29, and 30 of the CRC calling for a more focused commitment and funding of culturally based education services.

Canada's record in working with First Nations in Canada to restore peace, harmony, and safety to First Nations children, youth, and families has been extremely inadequate and fails to ensure that Canada's distressing tradition of colonialism and assimilation will not continue to be passed on to the next generation of Aboriginal children in this country. Immediate and deliberate commitment on the part of the government of Canada is required to implement the recommendations of the Royal Commission on Aboriginal Peoples, the Joint National Policy Review, and the spirit and intent of the CRC. This commitment must be coupled with support for First Nations peoples and their NGO's to participate in a direct way in the dialogue, implementation, and measurement of the efficacy of the United Nations' *Convention on the Rights of the Child*.

The National Children's Alliance is well positioned to offer the advocacy required to ensure that the next generation of Aboriginal children and youth do not face the substantive socio-economic risks arising from colonization. Accomplishing this will mean ensuring all members have adequate access to information on Aboriginal peoples and nations in Canada, as well as the relationships between the needs of Aboriginal peoples and mandates of the respective member organizations.

The multi-dimensional and multi-generational impacts of colonization have created a plethora of systematic problems that give rise to significant risk for Aboriginal children and youth. The appropriate response is to support adequately resourced culturally based community development approaches that build on community assets. An over-reliance on services intended to respond to the symptomatic impacts of colonization versus routing out the fundamental etiology of colonization has resulted in marginal outcomes for Aboriginal children and families. This is particularly the case for universal services and programs that fail to recognize the significant inequalities and unique cultural contexts of Aboriginal children, therefore perpetuating inequality.

An additional area where the National Children's Alliance advocacy is needed is to support Aboriginal governments and service providers in the design and delivery of culturally based programs that respond to a myriad of community needs in a holistic and interdependent fashion.

Above all, there is a need for focused and sustained commitment on behalf of all sectors within Canadian society to understand our history as a country, learn from the processes of colonization, and vigorously work to restore peace and harmony for Aboriginal children and youth. For hundreds of years we have been marginalized, at risk and vulnerable – we are now ready for a new future where we are included, respected, and proud. It will take all of us to get there; it will take all of us to set an example our Aboriginal and non-Aboriginal children and youth can be proud of.

About the Authors

Marlyn Bennett, BSW, MA(candidate) and Cindy Blackstock (BA, MM) co-authored this report for the Children's Alliance. Ms. Bennett is member of Sandy Bay First Nation, is the Director of the First Nations Research Site, and has substantial knowledge of Aboriginal social services through her work with First Nations in Manitoba and her service on the boards of social services organizations. Ms. Bennett has authored several papers on First Nations and Aboriginal child welfare research, legislation, and policy.

Ms. Blackstock, a member of the Gitanmaax First Nation, is the Executive Director of the First Nations Child and Family Caring Society and has over 18 years of experience in social services in both provincial and First Nations child welfare services. As the former Executive Director for the Caring for First Nations Children Society, she oversaw the development of an eight week training program designed by and for First Nations social workers. She has authored numerous papers on First Nations child and family services and worked extensively on First Nations child welfare curriculum for both Aboriginal and non-Aboriginal students.

The authors recently produced a *Literature Review and Annotated Bibliography on Aspects of Aboriginal Child Welfare* in November 2002, marking the publication of the most extensive collection of Aboriginal child welfare resources in Canada, available on line at www.fncfcs.com and www.cecw-cepb.ca.

Glossary

The authors relied on a glossary of terms maintained by the Department of Indian Affairs and Northern Development relating to Aboriginal peoples and governments. This evolving glossary is available on line at www.ainc-inac.gc.ca/pr/pub/wf/index_e.html

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