FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA: FEDERAL GOVERNMENT UNDER-FUNDING OF CHILDREN'S SERVICES ON RESERVES AS A RISK FACTOR FOR DISADVANTAGE INCLUDING SEXUAL EXPLOITATION

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WHY DISCRIMINATION MATTERS IN THE SEXUAL EXPLOITATION OF FIRST NATIONS CHILDREN AND YOUTH

Principles of equality are so fundamental to the health and well being of children that non-discrimination measures are enshrined in the United Nations Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child General Comment 11 on the rights of Indigenous children (United Nations Committee on the Rights of the Child, 2009), provincial/territorial child welfare and education statutes and the Canadian Charter of Rights and Freedoms. The United Nations Committee on the Rights of the Child called on Canada to close the gaps in life chances between Aboriginal and non-Aboriginal children in their last periodic report on Canada (United Nations Committee on the Rights of the Child, 2003).

Repeated studies point to poverty, poor housing, racial discrimination, lack of educational and social opportunities as pavers of disadvantage placing First Nations children and youth at risk of sexual exploitation (Blackstock, Clarke, Cullen, D'Hondt & Formsma, 2003). There are also longstanding and numerous expert reports by the Auditor General of Canada (2004, 2008) and others (McDonald & Ladd, 2000; Loxley, De Riviere, Prakash, Blackstock, Wien, & Thomas Prokop, 2005; Standing Senate Committee on Human Rights, 2007; Standing Committee on Public Accounts, 2009; UNICEF, 2009) documenting that the federal government provides less government funding for critical services to First Nations children and youth on reserves than other children enjoy.

This submission focuses on the causal factors placing First Nations children at risk for disadvantages such as sexual exploitation paying particular attention to the well documented under funding of children and youth services on reserves by the federal government. We believe sexual exploitation is a symptom of systemic discrimination and disadvantage and therefore strategies to address sexual exploitation must address systemic discrimination and disadvantage.

This submission argues that the cumulative effects of federal government under-funding of children's services on reserves creates a perfect storm of disadvantage driving First Nations children and youth on reserves into sexual exploitation at disproportionate rates.

THE FEDERAL GOVERNMENT'S PROGRAM OF INEQUALITY FOR FIRST NATIONS CHILDREN AND YOUTH ON RESERVE

Provincial/territorial child welfare, education and health laws apply on and off reserves in Canada. The province/territory pays for this essential life saving and life wellness services off reserves but expects the federal government to provide equitable funding for services on reserves. When the federal government does not, or does so inadequately, the provincial/territorial governments typically do not top up the funding resulting in a two tiered public service system for children where First Nations children get less (First Nations Child and Family Caring Society of Canada, 2009). The evidence of the inequality is overwhelming (United Nations Committee on the Rights of the Child, 2003; Senate Standing Committee on Human Rights, 2007; Standing Committee on Public Accounts, 2009) and yet the federal government has done little to address the problem.

The most flagrant example of discrimination arising from federal funding regimes is with regard to First Nations child welfare services on reserves. There are more First Nations children in child welfare care today than there were at the height of residential schools by a factor of three and children in child welfare care are at heightened risk for sexual exploitation (Tricia's Trust, 2008). First Nations children are not more likely to be reported to child welfare for abuse – it is neglect fueled by poverty, poor housing, substance misuse that drives so many First Nations children into foster care (Trocme, Knoke & Blackstock, 2004). All of these factors are responsive to services but the federal government provides less child welfare funding on reserves than other children receive even though First Nations children have higher child welfare needs (McDonald & Ladd, 2000; McKenzie, 2002; Loxley et al., 2005; Auditor General of Canada, 2008; Standing Committee on Public Accounts, 2009.

Child welfare services are statutory in nature and the goal is to protect children from child abuse and neglect by offering interventions that, whenever possible, allow the child to remain safely in their family home. The child welfare laws are provincial/territorial in nature but the federal government funds child welfare services on reserves. The federal government has a number of funding regimes for its child welfare funding service on reserves: 1) Directive 20-1 applying in BC, Manitoba, and New Brunswick 2) the 1965 Indian Child Welfare Agreement in Ontario 3) Family Enhancement Program in Nova Scotia, Alberta, Saskatchewan and very recently in Quebec. In the territories, the federal government transfers funds to the territorial governments to deliver child welfare. There are a number of First Nations in the territories that have expressed interest in operating their own child welfare agencies.

The Auditor General of Canada (2008) reviewed INAC's child welfare funding regimes and found them to be inequitable. A key area of underfunding is in services intended to keep First Nations children safely at home and INAC itself has publically stated that it funding formula needs to be improved in order to reverse the growing numbers of First Nations children in care (Indian Affairs and Northern Development Canada, 2006). Directive 20-1 results in the least amount of funding and is the most out of step with advances in child welfare. The Family Enhancement Program currently being championed by INAC has been linked with reductions or caps in other elements of child welfare making it difficult to determine if the new funding is a net loss or gain for First Nations child welfare agencies. The Family Enhancement Program was also criticized by the Auditor General of Canada (2008) for not being linked to the needs of children and families. First Nations and expert reports dating back at least nine years have called on INAC to jointly review the child welfare funding provided via the 1965 Indian Welfare agreement in Ontario to determine the degree to which it provides equitable child welfare funding on reserves but INAC has yet to conduct such a review (McDonald & Ladd, 2000; Loxley et al., 2005).

First Nations worked with the federal government for over ten years to develop two joint, and evidence based, solutions to address the inequalities in child welfare funding on reserves (McDonald & Ladd, 2000; Loxley et al., 2005) but the federal government walked away from both proposals. Studies have shown that placing children in foster care has been linked with many of the same tragic outcomes as children who attended residential schools such as cultural and linguistic erosion, poorer educational outcomes, over-representation in justice systems, and higher incidence of substance misuse and sexual exploitation. Although some children need to be in foster care, government's have a legal and moral responsibility to give each child an equitable opportunity to

live safely at home. Federal government under-funding of child welfare and other services undermine the safety and well being of First Nations children on reserves.

HISTORIC EFFORTS UNDERWAY TO ENSURE CANADA TREATS FIRST NATIONS CHILDREN EQUITABLY

In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a historic human rights complaint against the Government of Canada alleging that the federal government is discriminating against First Nations children by providing them with inequitable child welfare funding and narrowing the definition of Jordan's Principle. INAC, as represented by Attorney General lawyers from the residential school division of Justice Canada, has questioned the jurisdiction of the Canadian Human Rights Commission suggesting that federal funding, assumingly no matter how inequitable, is not a service as defined in the Canadian Human Rights Act (CHRA) and thus the complaint falls outside of the jurisdiction of the CHRA.

When the Canadian Human Rights Commission referred the case to the Canadian Human Rights Tribunal in September of 2008, the federal government immediately filed a judicial review in federal court to derail the tribunal. The federal court continues to review the matter but the federal court action has not stopped the tribunal from going forward. The tribunal began on September 14, 2009 and will resume the week of November 16, 2009. The Canadian Human Rights Tribunal's ruling is expected in the Spring of 2010. Rulings made by the tribunal are binding in federal court.

The inequality in child and family services directly funded by the federal/provincial/territorial governments is compounded by the deficits in publically funded voluntary sector services (i.e.: food banks, literacy programs, recreational clubs, shelters) on reserve. The voluntary sector in Canada employs over 1 million people and takes in about 115 billion dollars in annual revenue of which 60 percent is funded by the federal/provincial/territorial governments (Canadian Council on Social Development, 2003). A study done in 2003 found that First Nations children get negligible benefit from the voluntary sector even though it is funded using public money targeted to the public good (Nadjiwan & Blackstock, 2003).

This tragic pattern of inequality is echoed across other children's programs on reserve. The Auditor General of Canada (2004) found elementary and secondary funding on reserves to be inequitable. The Assembly of First Nations estimates that at the current rate of federal investment it will take 28 years to achieve equity with non-Aboriginal education systems (Assembly of First Nations, n.d.). There are also severe shortages of schools on reserves with 53 First Nations communities not having schools and schools in many other communities are in need of substantial renovations or expansion. Only three out of ten First Nations children on reserves graduate from high school (Assembly of First Nations, n.d.)

All of these service deficits are magnified by housing shortages and inadequacies on reserve and the water and food security challenges (Loppie-Reading & Wien, 2009).

The impacts of this disadvantage are profound for children, families and their communities and this disadvantage often translates into higher risk for youth suicide, sexual exploitation, juvenile justice and substance misuse. That is why equity in federal service provision is so essential to the reduction of a broad range of poor social and economic outcomes including sexual exploitation.

THERE ARE SOLUTIONS

The good news is that there are solutions ready and waiting to be implemented to eliminate the inequalities in federally funded services to children and youth on reserves. Jordan's Principle is one such example. This child first principle would ensure all children receive an equitable level of government services regardless of federal/provincial/territorial jurisdictional disputes about who should pay for government services on reserve. Jordan's Principle is named after Jordan River Anderson from Norway House Cree Nation who spent over two years unnecessarily in hospital because the Province of Manitoba and Canada argued over who should pay for his at home care. If he were non-Aboriginal he would have gone home but because he was a First Nations children these two governments argued over who should pay. Jordan sadly died at the age of 5 never having spent a day in a family home. Jordan's legacy is one of equality for all children. The House of Commons passed Private Members Motion 296 on December 12, 2007 however since that time the federal government has been trying to narrow Jordan's Principle to only apply to children with complex medical problems with multiple service providers. This interpretation is inappropriate and not based on the definition of Jordan's Principle which has been publically available since 2005. The correct definition makes it perfectly clear that Jordan's Principle applies across all federal government services to ensure that First Nations children on reserves do not get fewer, or inferior, government services than those provided to other children.

There are also a number of solutions, many jointly developed between the federal government and First Nations, to address other inequities such as the shortfalls in child welfare funding. Specific to sexual exploitation a number of excellent reports, some authored by Aboriginal youth, have provided excellent recommendations for action but few of the recommendations have been implemented (see Blackstock et al., 2003 & Tricia's Trust, 2008 for further information). On an international level the Second World Congress on Sexual Exploitation and the Third World Congress against Commercial Sexual Exploitation of Children and Adolescents provide useful guidance on how to prevent and respond to sexual exploitation.

CAN CANADA AFFORD EQUALITY FOR VULNERABLE CHILDREN?

When First Nations child welfare experts completed the first two reports to remedy inequalities in First Nations child welfare funding (McDonald & Ladd, 2000; Loxley et al., 2005), the federal government was running a surplus budget in the billions of dollars. The second report known as the Wen:de: the journey continues report (Loxley et al., 2005) suggested that an additional 109 million dollars in additional child welfare funding on reserves was needed (excluding Ontario and the territories) along with some policy changes. The cost of the Wen:de solution when it was released represented less than 1 percent of the federal surplus budget. The Wen:de reports also suggested a special review was needed to assess the comparability of the 1965 Indian Welfare agreement and address any inequalities. Despite having billions in the bank the federal government did not take the action needed to ensure equitable treatment of First Nations children.

Today, the federal government is spending billions of dollars to stimulate the economy and thousands of dollars to fight the case before the Canadian Human Rights Tribunal and yet the 2008 federal budget announcement on First Nations child welfare funding (Department of Finance, 2008) provided only 23% per year of what was needed. In the 2009 budget the government announced an additional 20 million over two years (Department of Finance, 2009). If you add the amount provided in both budgets it only represents one third of what was recommended per year in the Wen:de reports (excluding Ontario and the territories) to achieve equity.

RAISING A GENERATION OF FIRST NATIONS CHILDREN WHO DO NOT HAVE TO RECOVER FROM THEIR CHILDHOODS

In many cases there are solutions to remedy existing inequalities suggesting that the federal government is in an excellent position to take immediate action to remedy the problem. The provision of equitable federally funded services will not eradicate sexual exploitation but it will provide a significant basis to address the factors placing disproportionate numbers of First Nations children and youth at risk. There is simply little hope of making meaningful progress in the prevention or response to sexual exploitation on a foundation of inequality in government services.

The following specific recommendations, consistent with the equality provisions of the Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child, are respectfully provided for the urgent consideration of the Senate Committee on Human Rights:

1) The recommendations of the Senate Committee on Human Rights report includes recommendations on how federal government funding and policy directions can be changed to better prevent the disadvantage experienced by First Nations children including over-representation among children who are sexually exploited. We draw the Committee's attention to the recommendations in the 2008 report produced by Tricia's Trust in Manitoba.
2) Consistent with the Second World Congress against Commercial Sexual Exploitation of Children, Canada in partnership with Aboriginal governments and organizations as well as the provinces and territories should develop a national plan of action on sexual exploitation that addresses both domestic and international situations.
3) The Government of Canada fully implements Jordan's Principle across all federal government services as directed in Private Members Motion 296 which was unanimously passed by the House of Commons on December 12, 2007.
4) The Government of Canada to immediately and fully implement the recommendations set out in the Wen:de: the Journey Continues Report and the Auditor General's Report on First Nations Child and Family Services (October, 2008).
5) The Government of Canada to immediately ensure all First Nations children and youth have access to safe schools funded at levels where they can achieve culturally based scholastic success comparable to what other children receive.
6) The Government of Canada to immediately re-profile its allocations to the voluntary sector to ensure First Nations children, youth and families on reserves receive equitable benefit from these important services.
7) The Government of Canada, in partnership with First Nations, immediately establish a reliable mechanism or institute to collect and publically report statistics on the determinants of health for First Nations children on and off reserves including incidence rates of sexual exploitation.

8) That the Senate Committee on Human Rights conducts public hearings on the equality of federally funded children’s services on reserves.

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