

# **A Chance to Make A Difference for this Generation of First Nations Children and Young People**

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## **The UNCRC and the Lived Experience of First Nations Children in the Child Welfare System in Canada**

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## **Standing Senate Committee on Human Rights**

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### **First Nations Children and Families**

As one of the first countries to ratify the United Nations Convention on the Rights of the Child (UNCRC), Canada is in an optimal position to ensure the rights of First Nations<sup>1</sup> children under the UNCRC are upheld. It has a surplus budget, stable government and a strong value for human rights and yet as this paper will show these advantages do not always result in the full implementation of the Convention with regard to First Nations children even when the problem is known to the federal government, within its immediate jurisdiction and a promising solution has been jointly developed with First Nations. Canada has repeatedly said it wants to make a difference for First Nations children and young people – this report will outline how Canada can make a difference for this generation of First Nations children whilst respecting its obligations under the Convention on the Rights of the Child.

### **What is the problem?**

Although provincial data collection systems vary, best estimates are that there are currently between 22,500 and 28,000 Aboriginal children in the child welfare system – three times the highest enrollment figures of residential school during the height of those operations (Farris-Manning & Zandstra, 2003; First Nations Child and Family Caring Society of Canada, 2003.) In terms of First Nations children on-reserve, the numbers of children entering into care are tragically rising. Department of Indian Affairs and Northern Development (INAC) data confirm that between the years of 1995 and 2001 the number of Registered (Status) Indian children entering into care rose an astonishing 71.5% nationally (McKenzie, 2002). Using data from the Canadian Incident Study on Reported Child Abuse and Neglect, researchers have determined that Aboriginal children are not coming to the attention of child welfare authorities at disproportionate rates for sexual or physical abuse – but rather are twice as likely to be reported for neglect. Unpacking the neglect definition further, researchers determined that if poverty, poor

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<sup>1</sup> The term First Nations describes persons identifying as original peoples of the land whose traditional territories typically reside between the 49<sup>th</sup> and 60<sup>th</sup> parallels longitude in Canada.

housing and substance misuse were controlled for there should be no over-representation of Aboriginal children in the child welfare system (Trocme, Knoke and Blackstock, 2004). This is an important finding as it suggests that two of the three critical factors (poverty and poor housing) driving the over-representation of Aboriginal children in child welfare are structural in nature and thus families themselves have little influence to change them. The third factor, substance misuse, is arguably within the personal domain of change but it necessarily calls for access to resources.

The FNCFCS undertook a national study in 2003 to explore the nature and extent of access to child and family resources by First Nations children and families resident on reserve. This study which had a specific focus on the voluntary sector, found that First Nations children have significantly less access to quality of life services and services intended to redress maltreatment than other Canadian children. Specifically, findings indicate that a negligible amount of the 90 billion dollars in annual revenues provided to the voluntary sector benefit children and families on reserve. Moreover, there is often little or no evidence of provincial or municipal services for children and families such as public libraries or recreation facilities and the average family income on reserve is about \$9500 per annum (Nadjiwan and Blackstock, 2003). These findings echo a research project conducted by Beavon and Cooke (2001) which found that when the United Nations Development Index was applied to First Nations peoples on reserve in the same year that Canada, overall ranked number 1 in terms of quality of life worldwide – First Nations would rank 78<sup>th</sup> in the world. We argue that if one were to apply these conditions to any population in Canada – the risks to children would likely be as dramatic as those experienced by First Nations children on reserve. In fact it is a testament to the resilience of First Nations families that many children are doing as well as they are.

Taken as a whole – the research suggests that strategic investments in family support services that redress poverty, poor housing and substance misuse whilst augmenting their quality of life would go a long way to reducing the numbers of First Nations children in care.

## **Context and Solutions**

First Nations peoples are aware of these problems and have established over one hundred First Nations Child and Family Service agencies (FNCFSA) in Canada to respond to the needs of First Nation children and their families. Although all First Nations agencies must follow the provincial child welfare legislation where they are located, funding regimes for First Nations child welfare services vary depending on whether the agency is serving First Nations clients resident 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, Chapter 5. This funding formula was studied in a joint review conducted by the Department of Indian Affairs and Northern Development (INAC) and the Assembly of First Nations in 2000 which provides some insight into the reasons why there has been such a dramatic increase in the numbers of Registered Indian children

entering into care (MacDonald et al, 2000.) This review, entitled the Joint National Policy Review on First Nations Child and Family Services (NPR), found that INAC provides 22% less funding per child to First Nations child and family service agencies than the average province (MacDonald & Ladd, 2000). A key area of inadequate funding is a statutory range of services, known as least disruptive measures, that are provided to children and youth at significant risk of child maltreatment so that they can remain safely in their homes. First Nations agencies report that the numbers of children in care could be reduced if adequate and sustained funding for least disruptive measures was provided by the Department of Indian Affairs and Northern Development (Shangreux & Blackstock, 2004). INAC documents obtained through access to information not only acknowledge that increased funding for least disruptive measures services would reduce the numbers of First Nations children in child welfare care, these documents confirm that the current level of funding provided by INAC are insufficient for FNCFSA to meet their statutory obligations under provincial child welfare laws – particularly with regard to least disruptive measures (INAC, 2002.)

The situation is further aggravated by the fact that the current funding formula does not adjust for changes in provincial/territorial child welfare authority thus resulting in inequities of service. The situation is particularly acute in Alberta, as the Alberta government has just revised it's child welfare statute to significantly augment the responsibilities of child welfare agencies (including First Nations) to provide a wider range of least disruptive measures but has not made arrangements to ensure First Nations child welfare agencies have access to the resources needed to meet these new and expanded responsibilities.

Although INAC is undertaking research to inform the development of new Treasury Board Authorities for First Nations child and family services it is important to keep in mind that these efforts are not guaranteed to result in new funding for child welfare on reserve nor will they result in immediate relief for the First Nations children and families who today are being affected by this inequality of service.

Meanwhile, the evidence suggesting that the lack of least disruptive measures funding is having an impact on First Nations children is mounting – there are large numbers of status Indian children entering care, several inquest such as the Baby Andy Report (Saskatchewan Child Advocate, 2004) have cited the lack of implementation of the NPR recommendations as contributing factors and INAC itself has acknowledged that its level of funding does not allow agencies to provide statutory services.

Within every government, there are competing funding priorities – but surely ensuring equitable resources are made available to the most vulnerable of children in our society should be the top priority. This is congruent with our national values of equality and a respect of human rights but it is also required by the commitments made by Canada under Gathering Strength, the United Nations Convention on the Rights of the Child and the Charter of Rights and Freedoms. Economically there are also important reasons for investing in equitable levels of child welfare funding (and thus services) for First Nations children. As researchers at the University of Western Ontario found, the costs of child

maltreatment to Canadian society amount to a minimum of **\$15,705,910,047.00** per annum. They further conclude that “ {T}he investment of Canadian governments at all levels in social services directed at this serious social problem represents only a small fraction of the billions of dollars lost each year. A well-planned and thoughtful investment of significant public funds in early detection, prevention and treatments of all forms of child abuse is not only a moral necessity for Canadian society, it is also sound fiscal policy that would directly benefit all.”<sup>2</sup>

## **The Chance to Make a Difference**

In summary, there is significant evidence of inequitable funding resulting in disproportionate numbers of First Nations children on reserve entering into child welfare care, the federal government agrees the level of funding it provides to First Nations agencies does not allow them to meet statutory obligations in child welfare, and a national policy review mapped out a solution to resolve the issue over four years ago.

The Standing Senate Committee on Human Rights is exploring Canada’s implementation of the Convention on the Rights of the Child. Realization of the interdependent corollary of rights articulated in the CRC depends largely on the good will of Nation States, such as Canada, to respond to rights violations within their borders when they are able—especially with regard to the most vulnerable of children. There are many reasons why Canada should move immediately to provide sufficient funds to First Nations child and family service agencies— but perhaps the most important reason Canada should act – is because it can. Canada can make a difference because it knows the problem; it has a solution; it has jurisdiction; and surplus budget. Canada must make difference if it is to hold its promises made pursuant to the United Nations Convention on the Rights of the Child. After all of all the promises Canada has made, it should keep the ones it makes to children.

This chance to make a very positive difference for Aboriginal children extends to other situations as well. As the United Nations Committee on the Rights of the Child found in its concluding remarks to Canada in 2003, Aboriginal children continue to experience risk to a degree not experienced by other Canadian children. This finding was echoed by a report entitled *Keeping the Promise: The United Nations Convention on the Rights of the Child and the Lived Experience of First Nations Children and Young People*, completed in 2004 which found that First Nations children and youth are more likely to be born into poverty, to suffer health problems, maltreatment, incarceration, and placement in the child welfare system (Blackstock, Clarke, Cullen, D’Hondt and Formsma, 2004). Most importantly, this report identified that in many cases progressive solutions have already been developed but too often have been not been implemented or have been implemented in a piece meal fashion.

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<sup>2</sup> Bowlus, McKenna, Day and Wright (2003) *The Economic Costs and Consequences of Child Abuse in Canada: Report to the Law Commission of Canada*. P.V.

## **Keeping the Promise: Recommendations**

The Convention on the Rights of the Child provides a framework for ensuring the rights of all children around the world are celebrated and upheld but this worldwide success depends largely on countries such as Canada setting a positive example. In terms of First Nations children and young people – Canada can make a difference by:

- 1) Moving immediately to provide sustainable and equitable funds to First Nations child and family service agencies as recommended in the Joint National Policy Review on First Nations Child and Family Services (2000) – especially in the case of least disruptive measures.
- 2) Working with First Nations to augment the quality of life and risk response services available to on reserve communities.
- 3) Ensuring that Aboriginal children off reserve have access to culturally based child welfare services.
- 4) To work with First Nations to coordinate a national strategy for First Nations children and young people that builds on many of the recommendations outlined in previous studies, including the Royal Commission on Aboriginal Peoples, and summarized in the Keeping the Promises report.

Canada can make a difference for this generation of First Nations children, young people and families - we are all praying you do – because you can... and most importantly because First Nations families deserve the same opportunity to love and safely care for their children as other Canadians.

Respectfully submitted:

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