

Cindy Blackstock

Cindy Blackstock is a member of the Gitksan Nation who has worked in the field of child and family services for over twenty years. She began on the front lines as a social worker for provincial and First Nations family service agencies in British Columbia and is currently serving as executive director of the First Nations Child and Family Caring Society of Canada. This national organization supports First Nations child and family service agencies and regional organizations by providing research, professional development, and networking services.

Advocacy and policy analysis are essential components of Cindy's commitment to improving the child welfare system. She actively participated in two national child welfare policy reviews overseen by the Assembly of First Nations and Indian and Northern Affairs Canada and currently serves as co-convenor of the United Nations Sub-group on Indigenous Children and Young People and as a member of the board of directors for the Boys and Girls Clubs of Canada and the Canadian Education Association. In 2006, Cindy was the recipient of the Canadian Paediatric Society's Victor Marchessault Advocacy Award. She is one of the authors of a pioneering report on transforming child and family services—*Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families*—published in 2006.

Cindy called her contribution to this collection *Reconciliation Means Not Saying Sorry Twice: Lessons from Child Welfare in Canada*. It is a hard-hitting condemnation of structural problems in child welfare, the roots of which reach back into residential schools and the large-scale removal of Aboriginal children into care during the 1960s and 1970s. The consequences of inadequate funding, poorly defined policies, and jurisdictional disputes are elucidated in the story of a young child, Jordan, born with a complex medical disorder, who spent his short life in hospital while governments argued over who should pay for his at-home care. This tragic situation inspired *Jordan's Principle*, which calls on governments to meet the needs of the child first and then resolve the jurisdictional disputes later. Cindy is passionate about seeing this principle implemented throughout the country. She is encouraged that the House of Commons unanimously passed a private member's motion in support of *Jordan's Principle* in December 2007 and British Columbia became the first province to endorse *Jordan's Principle* in 2008.

Reconciliation Means Not Saying Sorry Twice: Lessons from Child Welfare in Canada

A Deepening Crisis

The number of First Nations children in care outside their own homes today is three times the number of children in residential schools at the height of their operation.¹ In February 2007, Minister of Indian Affairs Jim Prentice indicated that over nine thousand children from the on-reserve population were under the care of child welfare agencies, and the numbers had increased sixty-five per cent over the past decade.² A study of child welfare data from three provinces in 2005 found that one in ten First Nations children were in alternative care compared to about one in two hundred non-Aboriginal children.³ Overall, best estimates are that over twenty-seven thousand First Nations children on-and off-reserves in Canada are in care.⁴

The federal government funds child welfare services on reserve and, as reported by Indian and Northern Affairs Canada (INAC), “A fundamental change in the funding approach of First Nations Child and Family Services Agencies to child welfare is required in order to reverse the growth rate of children coming into care, and in order for the agencies to meet their mandated responsibilities.”⁵ The inadequacy of federal child welfare funding was reported in 2000 following a joint review conducted by the Assembly of First Nations and INAC,⁶ and yet seven years later, the inequities in federal child welfare funding persist and the number of First Nations children being taken into care by child welfare agencies continues to climb.

This paper reviews evidence of Canada’s failure to meaningfully redress inequalities in the treatment of vulnerable First Nations children and the impact of jurisdictional debates between federal and provincial governments on child and community well-being. The popular movement in support of *Jordan’s Principle*, putting children first when conflicts around financial responsibility arise, is described along with emerging guidelines for Aboriginal child welfare and child health services. The primary responsibility of child-serving professionals to implement child-first principles is underlined, particularly in light of professional collaboration with past intrusions on Aboriginal families. The paper concludes with an affirmation that putting children first must be a foundational principle for reconciliation in order to ensure the historic violations of children in the residential school system are not replicated.

Why are so many First Nations children in alternative care?

A growing body of evidence supports the judgment that provincial/territorial child welfare systems have substantively failed First Nations children.⁷ Recognition of this reality was triggered in the 1960s by First Nation and Métis protests against large-scale foster care placement and adoption of their children. Media reports of abuse of children in placement, research sponsored by the Canadian Council on Social Development on the prevalence of placements, and a public inquiry led by Justice Kimmelman of Manitoba were all highly critical of the effectiveness of child welfare practices. Patrick Johnston in his 1983 publication *Native Children and the Child Welfare System*⁸ adopted the phrase the “Sixties Scoop” to describe the mass removals of Aboriginal children mainly fuelled by disproportionate poverty rates. Bilateral agreements between federal and provincial governments to extend child welfare services on reserve were made beginning in 1965, and, in some provinces, INAC entered into informal arrangements with bands and tribal councils to reimburse caregivers for the placement of children. The focus in these funding arrangements was on placement rather than preventive or rehabilitative family services. First Nations child and family service agencies developed in the early 1980s on the initiative of bands and tribal councils, pressing for more appropriate child welfare approaches. In 1990, INAC received Treasury Board approval for creating a national First Nations Child and Family Services Program.⁹ By 2005, INAC was funding one hundred and five Aboriginal child and family agencies.

Despite the significant questions about the efficacy of provincial and territorial child welfare laws, First Nations Child and Family Service Agencies (FNCFSA) must operate in compliance with these statutes. FNCFSA receive funding for on-reserve services from the federal government and, in some cases, they receive funding from the provinces where they are located to provide services off reserve. Some ask why two child welfare systems, one for First Nations and one for everyone else, are needed. The answer is that these children represent two very different populations, and treating them as if they were the same has contributed to the drastic overrepresentation of First Nations children in care.

In 1998, the Canadian Incidence Study on Reported Child Abuse and Neglect (CIS)¹⁰ was the first national study to confirm the differences between Aboriginal and non-Aboriginal children coming to the attention of child welfare authorities. This cross-sectional study describes the experience of children from the time they are reported to the child welfare authority to the point of case disposition, that is, the closure of the case, referral to other services, or child removal.

The 1998 and 2003 cycles of CIS found that First Nations children were drastically overrepresented in the child welfare system at every point of intervention *despite the fact that they were not overly represented for reports of sexual abuse, physical abuse, emotional abuse, and exposure to domestic violence.*¹¹ Moreover, higher rates of incidence of physical and emotional harm do not account for the overrepresentation of First Nations children.¹² There is also no evidence to suggest that differences in child functioning among First Nations and non-Aboriginal children account for the overrepresentation of First Nations children in care. The only type of child maltreatment for which First Nations are overrepresented is neglect, fuelled by poverty, poor housing, and caregiver substance misuse.¹³

The child welfare system is designed to intervene at the level of children and their families, but the structural risks for Aboriginal children are primarily sourced at a societal level. The child welfare system supports only marginal efforts to address structural risks, and this has frustrated efforts to redress the overrepresentation of Aboriginal children in care.¹⁴ For example, in a poor family living in an unsafe or overcrowded house with a caregiver who has addictions issues, there is a high probability that neglect will manifest. Child welfare authorities will typically respond to this risk by making a referral to addictions programs, which often have long waiting lists, and to parenting skills interventions.

Although marginal improvements might come from the parent having better parenting skills, the degree to which parents can implement the knowledge will be compromised by the outstanding issues of poverty and poor housing. In fact, in many regions of the country, removal of a child or children from a family receiving income assistance actually exacerbates family poverty because it results in a reduction in the amount of income assistance received. The reduction in family income increases the risk of the family having to move to even less suitable housing, experiencing food insecurity and family stress.

Overall, child protection workers are not equipped with the training or resources required to adequately identify and address risks beyond those manifested at the level of the caregiver.¹⁵ For example, risk assessment models used by child protection workers in many regions of the country do not take into account risk that is sourced outside of the family. This raises the strong potential that child welfare authorities will hold First Nations parents primarily responsible to change structural risk factors that they have little ability to influence on their own. Having practised child protection for over ten years on the front line, I believe unequivocally that parents should be held responsible for redressing the risk faced by their children, but only if they have the ability to influence that change. If the risk is sourced at a

societal level, then the child welfare system and other allied services must be held primarily accountable for redressing the risk.

Unless child welfare and allied social support services significantly reorient child welfare legislation, policy, and practice to adequately identify and address structural risks, we can expect the numbers of First Nations children in child welfare care will continue to rise.

Impacts of Federal and Provincial Child Welfare Policy

The motivation for the current reconciliation initiative being discussed between Aboriginal peoples and the Government of Canada is anchored in the historical wrongs experienced by Aboriginal children during colonial and residential school eras. The revelations of individual and collective trauma inflicted on Aboriginal communities during these periods, marked by cultural subjugation and the forced removal of Aboriginal children, should compel learning for the federal government, a commitment to restitution for those who experienced it, and a commitment to avoid similar mistakes in future. In terms of children in child welfare care, the necessary response is seriously lacking.

When it comes to federally funded child welfare services on reserve, provincial legislation applies, but typically no provincial money is provided. The problem is that there is no link between the requirement to maintain provincially mandated standards of service and the federal funding formula. If the federal government chooses not to fund statutory child welfare services or funds them inadequately, the provinces rarely step up to make up the shortfall. The result is a “two-tiered” child welfare system.¹⁶

The Assembly of First Nations and INAC conducted the first joint review of the federal government’s child welfare funding formula in 2000 and found that First Nations children on reserve received approximately twenty-two per cent less child welfare funding than other children in Canada.¹⁷ The review, called the Joint National Policy Review (NPR), indicated a severe shortfall in funding levels for least disruptive services. All provincial/territorial child welfare statutes require social workers to offer families the least disruptive services that help families at risk to safely care for their children at home before considering removal. The shortfall in services offering least disruptive measures is further complicated by the lack of federal and provincial investments in voluntary sector resources for families on reserves. Research indicates that voluntary sector services such as food banks, literacy programs, recreation, low-income housing, and domestic violence services routinely used by child protection workers off reserve to support families are rarely available on reserves. In fact, it is estimated that in 2003, First Nations received negligible levels of philanthropic funding for children, youth, and families as compared

to over ninety billion dollars provided to other Canadians.¹⁸ Approximately sixty per cent of voluntary sector funding comes from provincial/territorial and federal governments,¹⁹ and therefore they are in a good position to re-target voluntary sector funds to ensure equal benefit for First Nations families. With the shortfall in voluntary sector supports and inadequate investment in least disruptive measures, removal is often the only option to resolve child safety concerns on reserves instead of the last resort.

The NPR contained seventeen recommendations for improvements to the federal government funding formula, including critical investments in least disruptive measures. Four years later, INAC had not implemented any new funding for First Nations child and family services and was making only negligible progress in implementing the recommendations. There was also no move to implement a recommendation to target federal voluntary sector funding to on-reserve families.

This lack of progress spurred a second, more detailed review of the funding formula in 2005 conducted by the First Nations Child and Family Caring Society of Canada for a joint committee of the Assembly of First Nations and INAC. The First Nations Child and Family Caring Society of Canada partnered with over twenty leading researchers in law, child welfare, economics, sociology, community development, substance misuse, information technology, and First Nations child welfare to produce a series of three reports documenting the structure of the formula, shortfalls in the current funding approach, and an evidence base for a detailed affordable solution.²⁰ These reports, collectively referred to as the *Wen:de* reports, have received unanimous support from First Nations by means of a resolution from the Assembly of First Nations as well as commendations from INAC.

Findings indicated that the current federal child welfare funding formula is inadequate at all levels with crucial underfunding of least disruptive measures services. The *Wen:de* reports proposed an additional federal investment of \$109 million in the first year of the formula, with comparable investments over the following six years, in order to bring First Nations Child and Family Service funding to a minimal level of comparability with non-Aboriginal service providers. The reports also reaffirmed an earlier recommendation to enhance the range of voluntary sector services by specifically targeting existing voluntary sector federal grants to on-reserve families. The \$109 million annual increment was proposed at a time when the federal government was posting a thirteen billion-dollar budget surplus.²¹

Despite the accolades that the reports received, the number of the *Wen:de* recommendations implemented by INAC in the subsequent two years has

been negligible while, in the same period, INAC has introduced a number of funding policy changes that do not have a robust, publicly reported evidence base or cost analysis.

First Nations were faced with a dilemma: should they continue to talk to INAC in the hope of redressing inequities through implementation of jointly developed, evidence-based solutions? Or should they take stronger action? In December of 2006, the Assembly of First Nations' Chiefs-in-Assembly passed Resolution Number 53 giving authority to file a human rights complaint against Canada for inequitable child welfare funding, which the department acknowledged as contributing to the growing numbers of First Nations children in care.²²

In February 2007, the Assembly of First Nations, in partnership with the First Nations Child and Family Caring Society of Canada, filed a complaint with the Canadian Human Rights Commission alleging that Canada's conscious underfunding of First Nations child welfare was resulting in First Nations children receiving unequal benefit, which was in violation of child welfare legislation and the *Charter of Rights and Freedoms*.

Jordan's Principle: Reconciliation in Action

Inadequacies in federal child welfare funding are not the only problem. The quality of child welfare service is further undermined by poorly defined policies that have a discriminatory effect on First Nations children. Jurisdictional disputes within and between federal and provincial governments repeatedly deny or delay services to First Nations children on reserve because the federal and provincial governments cannot agree on who should pay for services.²³ The impacts of these jurisdictional disputes go far beyond frustrated bureaucrats to affect life and death decisions affecting First Nations children.²⁴

The case that has provoked widespread citizen response involved a First Nations toddler named Jordan who was born with a complex medical disorder to a family residing in Norway House Cree Nation in Manitoba. Jordan's family had to place him in the care of a child welfare agency shortly after birth, since that was the only way governments could pay for the services he needed. Jordan remained in hospital for two years until his medical condition stabilized and doctors said he could be discharged to family care. Jordan's family and community had located a medically trained foster family and raised funds to refit a van so that Jordan could go to medical appointments and have family visits. Everything was prepared for Jordan's care. It should have been a time of celebration, but as Noni MacDonald and Amir Attaran note in the Canadian Medical Association Journal editorial, "bureaucrats ruined it."²⁵

A dispute arose between the governments of Manitoba and Canada regarding which government should pay for Jordan's at-home care. Government officials decided that Jordan should remain in hospital at almost twice the cost of at-home care while they resolved the payment issue. Jordan spent the next two years in hospital unnecessarily while government officials argued, and sadly he passed away before a resolution to the dispute was implemented, never having spent a day in a family home.²⁶

A study of 12 of the 105 First Nations child and family service agencies in 2005 found that 393 children were affected by payment-related jurisdictional disputes in the previous year. The vast majority of these disputes were between the federal and provincial governments or between departments of the respective governments.²⁷ The end result was that, almost without exception, services to First Nations children were denied or delayed until a resolution of the payment issue could be reached using a highly variable and inefficient "case-by-case" resolution process.

Inspired by Jordan's story and the frequency of the disputes across Canada, First Nations developed *Jordan's Principle*, a child-first principle for resolving jurisdictional disputes. *Jordan's Principle* applies in situations where government services are otherwise available to Canadian children and a jurisdictional dispute occurs within, or between, the federal and provincial/territorial government(s) around payment for services to a status Indian child. Pursuant to *Jordan's Principle*, when such a dispute happens, the government of first contact pays, and then the dispute is subsequently referred for resolution. In this way, the needs of the child are met still allowing for the jurisdictional dispute to be resolved.

Two years after First Nations called on the federal and provincial/territorial governments to adopt and implement *Jordan's Principle* without delay, there is only one government that has acted—Jordan's home community of Norway House Cree Nation.²⁸ At the time of Jordan's death in February 2005, Norway House Cree Nation resolved that no other child should be denied desperately needed services because of jurisdictional disputes between the provincial and federal governments. Doctors and specialists had diagnosed thirty-seven other children in Norway House who required specialized medical, educational, and social support services, but despite Jordan's death, Manitoba and Canada were deeply enmeshed in jurisdictional disputes around the costs of caring for each of these children. Norway House Cree Nation decided to use its trust fund, established to compensate for flooding of their traditional lands, to provide for the special needs of these children and to avoid the necessity of thirty-seven foster care placements. For over two years, Norway House Cree Nation continued to pay for these children's

services while working to resolve the jurisdictional issue between the federal and provincial governments.

In April of 2007, the flood trust monies ran out and Norway House had to make a distressing decision, either to incur deficits to fund the services and risk charges of mismanagement or to place the children in foster care. They chose the former. The children are with their families today because Norway House implemented *Jordan's Principle* as an example of good governance on behalf of their children; however, the decision is clearly not sustainable. The ongoing refusal of the provincial and federal governments to support these vulnerable children quite possibly amounts to a breach of the *Charter of Rights and Freedoms*, the *Canada Health Act*, and suggests moral bankruptcy.

There is some encouraging movement to report from the Parliament of Canada. In the spring of 2007, Member of Parliament Jean Crowder tabled a private member's motion affirming "That, in the opinion of the House, the government should immediately adopt a child first principle, based on *Jordan's Principle*, to resolve jurisdictional disputes involving the care of First Nations children."²⁹ The private member's motion received all-party support on the two occasions it was debated in the House of Commons and was adopted on 12 December 2007.³⁰ As encouraging as this is, a private member's motion creates only a moral imperative rather than a legal one. Monitoring implementation of *Jordan's Principle* will be required to ensure that the full intent is realized.

Unfortunately, as the Canadian Paediatric Society³¹ reports, no province or territory has adopted *Jordan's Principle* despite the fact that over fourteen hundred citizens and Aboriginal and non-Aboriginal non-profit, philanthropic, professional, labour, and corporate organizations, and Aboriginal governments have endorsed the initiative.³² The support of these organizations and individuals demonstrates the broad base of Canadian support for *Jordan's Principle* and the willingness of Canadians to join with First Nations to breathe life into the principles of reconciliation by putting children first. It is uplifting to see the ease with which Canadians understood and took action to support *Jordan's Principle*. Canadians have joined with First Nations to send their governments the message that depriving First Nations children of services available to other Canadians on the basis of race and residency is a practice that cannot continue.

Reconciliation: A Role for Child and Youth Professionals?

While addressing resource inequities is important, a growing number of child welfare experts understand that the child welfare system itself will need to undergo radical change in order to rectify the overrepresentation of Aboriginal children in alternative care. Indigenous and non-Indigenous

child welfare experts from Canada and the United States gathered in 2005 on the Territory of Six Nations of the Grand River to develop reconciliation principles and processes from which a new child welfare system for Aboriginal children could emerge.³³

Reconciliation conference delegates were united in the belief that the child welfare system, infused with the culture of its colonial founders, would have to engage in a process of reconciliation internally in order to better serve Aboriginal families. Delegates acknowledged that child welfare professionals needed to account for, and learn from, the history in which child welfare workers stood in silence despite public reports of child abuse and deaths in residential schools, served on residential school advisory committees, and directly placed Aboriginal children in the schools as child welfare placements when risks were identified in families.³⁴ As a profession, we need to confront our role in the mass removal of Aboriginal children from their families and communities during the 1960s with the goal of placing them on a permanent basis with non-Aboriginal families. Most importantly, social workers need to understand why, despite our good intentions, we are removing more First Nations children from their families than at any time in history.

The conference report *Reconciliation in Child Welfare: Touchstones of Hope* proposed a four-phase reconciliation process beginning with *truth-telling* before moving to *acknowledgement, restoration, and finally relationship*. These four phases needed to be centred on what were termed *Touchstone principles* for a newly supportive child welfare system for Aboriginal children. The touchstone principles are *self-determination, culture and language, holism, structural interventions, and non-discrimination*. They are constitutional in nature in that they are to be interpreted at a local level by First Nations, Métis, and Inuit communities to reflect the rich diversity of Aboriginal cultures, languages, and contexts in Canada.³⁵

Delegates at the conference also suggested that reconciliation processes and principles need to infuse all aspects of social work involving Indigenous peoples, from research to policy and practice. Reconciliation in the child welfare movement was, and is, an ambitious undertaking, but it is gaining momentum as growing numbers of social workers come to understand that modest changes to the current child welfare system are inadequate to address the long-standing overrepresentation of Aboriginal children in alternative care.

The reconciliation process in child welfare inspired a similar movement in child health called *Many Hands, One Dream*, led by eleven national

organizations working in Aboriginal child health. As in the case of child welfare, this coalition believed that a new concept of child health, driven by Aboriginal peoples and embedded in a set of fundamental principles, is needed to restore the health and well-being of Aboriginal children. The resulting *Many Hands, One Dream* principles³⁶ are very similar to the principles presented in *Reconciliation in Child Welfare: Touchstones of Hope*. The two initiatives, in concert, provide an important basis to strengthen cross-disciplinary relationships across Aboriginal child and family serving professions. Initiatives are underway in both movements to centre professional training programs, research, policy, and practice on the principles.

As colonization had the most devastating impacts on Aboriginal children, it makes sense that professionals serving children and youth within and outside of government should be among the first to engage in the reconciliation process. We must do better for Aboriginal children, youth, and families—and we can.

Is Canada Ready for Reconciliation?

If the federal government's lacklustre efforts to fully redress inequities in child welfare funding are any indication, there are serious and important questions about the federal government's commitment and readiness to engage in reconciliation. Reconciliation is not just about saying sorry, it is about understanding the harm in a way that not only acknowledges the past but also leads to new awareness and commitment to avoid repeating the same mistakes in the future. Reconciliation requires not just *saying* the right thing but *doing* the right thing.

Ultimately, the federal and provincial governments' commitment and readiness for reconciliation will be judged by their actions, especially toward Aboriginal children. Will they provide equitable funding for services to children that respect solutions developed jointly by Aboriginal people and colleagues in the professions? Will they support and fully implement *Jordan's Principle*? Will they say they are sorry for residential schools, but consciously contribute to another generation of Aboriginal children being unnecessarily removed from their homes? Canadians who believe in treating people with dignity, fairness, justice, and equality should pay close attention to the answers their political leaders give to questions such as these.

If the mobilization around *Jordan's Principle* is any indication, Canadians are ready for reconciliation. At no other time in history have governments and child and youth professionals had such an abundance of knowledge, tools, and resources to address inequalities that limit the lives of Aboriginal

children. For child welfare and the federal and provincial governments—no more excuses—if we fail to make a positive difference for First Nations children now, the moral failure and the responsibility of saying sorry again will be ours.

Let us resolve to make a difference by putting children first. If reconciliation does not live in the hearts of children, it does not exist at all.

Notes

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