

## Reclaiming Indigenous Child Welfare through Indigenous Laws and Legal Orders: A case study for Qwi:qwelstom and the Stó:lō Nation

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*Research Article*

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Indigenous jurisdiction

### ABSTRACT

The current child welfare system in Canada is failing Indigenous children and families. This includes delegated Aboriginal agencies and is evident through a statistical analysis of the overrepresentation of Indigenous children in care and case studies such as the preventable deaths of Alex Gervais (Métis) and Traevon Chalifoux-Desjarlais (Cree). This article will examine the legislative history that has contributed to this systemic discrimination and explore the ways in which Indigenous laws and legal orders, such as Qwi:qwelstom, can and do contribute to reframing Indigenous child welfare policy and practice. While the inherent jurisdiction over Indigenous children and families is now recognized as a constitutionally protected right under section 35 of the Canadian Constitution Act, how this right is asserted will be fraught with many external and internal challenges. This article explores some of these challenges and the ways in which Indigenous laws and legal orders can be used to address them.

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## Introduction

Prior to the establishment of Canada as a colonial state, hundreds of autonomous and independent Indigenous Nations<sup>1</sup> existed on Turtle Island, each with their own political and social systems of economy, governance, justice, international relations and, many argue, superior childcare philosophies and values. The majority of the time most of these Nations lived together relatively harmoniously and respectfully. Despite colonization, these Indigenous Nations continue to exist; however, our autonomy and independence have been repeatedly attacked and undermined by colonial processes and policies, none more apparent than through the Indian Act, and perhaps none more insidiously than through provincial and federal child welfare policy. It is now widely believed that as long as the Indian Act remains in effect, the relationship between Canada and Indigenous Peoples will remain a colonial one that simultaneously sustains an assumption of Euro-Canadian superiority and an acceptance of the displacement of Indigenous Peoples' ways of knowing and being. As long as the Indian Act and other policies steeped in eurocentrism remain in place, any aspiration or attempt to develop a new relationship will be misguided and ultimately unsuccessful. Sadly, this reality is probably most apparent and detrimental in the area of child welfare policy as it impacts the most vulnerable people—Indigenous children—and ultimately affects their birthright of connection to their culture, family, and community.

Detrimental colonial policy in relation to Indigenous child welfare in Canada is now widely accepted as having begun with “Indian Residential Schools”—a term that I argue is a euphemism for child labor camps at best and death camps at worst (see, for example, Milloy, 1999). And despite “residential schools” closing, it has been argued that as early as 1971<sup>2</sup> the provincial child welfare system simply took over where residential schools left off (Blackstock, 2007, 2009; Fournier & Crey, 1997; RCAP, 1994). Blackstock (2009), for instance, found that there were three times more Indigenous children in the care of the government under child welfare than there had been at the height of the residential school era.<sup>3</sup> It has been over fifty years since the overrepresentation of Indigenous children in the care of the provincial governments became a problem and at least thirty years since Patrick Johnston (1983), a researcher for the Canadian Council on Social Development, brought it to the public's attention. In 1983, Johnston found the rate of Indigenous children being apprehended by provincial governments to be so alarming that he labelled it “the Sixties' Scoop” (Fournier & Crey, 1997, p. 88). As one example of this severity, Fournier and Crey (1997) cite Ernie Klassen, a former district superintendent for Indian Affairs, who recalls a time when a social worker chartered a bus to apprehend 38 children from the Spallumcheen<sup>4</sup> First Nation (p. 87).<sup>5</sup> According to Walmsley, the percentage of Indigenous children in the care of the British Columbia provincial government went from less than 1% in 1955 to 34.2% in 1964 (2005, p. 2); Johnston (1983) found similar increases across Canada. Realistically, these statistics are probably low, as it is unclear whether provincial and national statistics included placements with Mormon families. From 1947 to 1996, the Mormon and Church of Jesus Christ of Latter-Day Saints operated the Home Placement Program (Fournier & Crey, 1997, p. 87; King, 2012, p. 62), and it is likely that provincial statistics do not include those Indigenous children placed with Mormon families during this period. Unfortunately, this problem has persisted, as the “sixties scoop”<sup>6</sup> has transformed into what is known as the “millennial scoop.”

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<sup>1</sup> Note on nomenclature: The term Indigenous includes First Nations (living both on and off reserve), Métis (as defined by the Métis), and Inuit Peoples. Aboriginal is an outdated term listed in 1982 Constitution of Canada section 35(2) as the Indian, Inuit, and Métis peoples of Canada. Aboriginal is an outdated term as it is racist, discriminatory, and incorrect. “Indian” generally means “registered as an Indian” with the Federal government (i.e., has a status number) so is problematic for many reasons, one being that many First Nations people do not have a status number while many non-First Nation people do. The “registration” system has also led to discriminatory practices based on “on-reserve,” “off-reserve,” “status,” and “non-status.” This paper purposely uses the term as it appears in the report or statistic being cited to help with clarity even if and when the term is being used incorrectly.

<sup>2</sup> According to Manitoba Chiefs Final Report *Bringing Our Children Home* (2014), this was first cited in 1971 by Judge Kimmelman.

<sup>3</sup> The Truth and Reconciliation Commission has reported that, at its height, there were 11,000 Indigenous children in Indian Residential Schools (as cited in Fallon, Lefebvre, Trocme et al., 2019, p. 4)

<sup>4</sup> Now known as Słatsin First Nation.

<sup>5</sup> Klassen noted that by 1970 there were at least 60 Spallumcheen children in permanent care and an unknown number had been adopted out (Fournier & Crey, 1997, p. 87).

<sup>6</sup> This term is often capitalized; however, I will use it in lower case to denote that it is not a single decade or single policy, rather it is an ongoing colonial system of apprehension that continues to impact Indigenous families to this day. Hence, it is now known as the millennial scoop.

While this paper relies on a policy and statistical analysis that spans ten years, it also incorporates elements of an Indigenous Research Methodology that centers my experiential learnings as name carrier of Qwi:qwelstom and Ts'qwelemót and my teachings from Sí:west and Sí:yólexwe.<sup>7</sup> As a result, this article explores ways that Indigenous legal orders and laws are or may be used in addressing the systemic issue of the overrepresentation of Indigenous children currently in the care of the provincial governments. It begins with an overview of why the overrepresentation of Indigenous children in the care of the government is a systemic issue and not one caused by Indigenous Peoples. It argues that, although Indigenous Peoples are not responsible for creating this issue, its resolution relies on the continued implementation or reinstatement of Indigenous laws and legal orders. This argument relies on already published verifications of the importance of Indigenous laws and legal orders (Borrows, 2005, 2007, 2010(a), 2010(b), Friedland & Napoleon, 2015–2016; Minnawaanagogiizhigook, 2007; Morales, 2012, 2014, 2019; Napoleon, 2009; Hall, 2007, 2012; Wilson, 2020) and their application to child welfare (Borrows, 2010(b); Morales, 2020; Walkem, 2020). From here, I will provide one case study of an Indigenous legal order already in use, Qwi:qwelstom. It will include a critical analysis of one governmental response to the overrepresentation of Indigenous children in care (CICs) and the establishment of First Nation Child Welfare Agencies (FNCWAs)—now referred to as Indigenous Child Welfare Agencies (ICWAs). The article will conclude by exploring how Indigenous laws and legal orders are best used when they are not curtailed to fit into current colonial concepts such as “aging-out,” “best interests of the child,” “risk factors,” “strength-based practice,” “trauma-informed social work,” and “anti-oppressive” social work practice.<sup>8</sup>

#### Defining the Problem [H1]

While there have been many legislative, practice, and policy changes in the past decade, the overrepresentation of Indigenous children in the care of the government has remained. This paper argues that this overrepresentation is due to systemic discrimination and that this overrepresentation will persist so long as it is wrongfully categorized as an Indigenous parenting problem. An examination of the available statistics over a span of a decade shows that, despite the wide acknowledgement of this overrepresentation as well as the implementation of several policy and legislated changes designed to address this overrepresentation, not much has changed. In a 2013 conference presentation, I argued that the harsh reality is that nothing will change—and, in fact, the situation may actually worsen—if we do not first: (1) challenge the eurocentrism and racism embedded within the colonial policies and ideologies that contemporary child welfare practice and policy are based upon; (2) engage in purposeful processes of decolonization; and (3) sincerely support our Indigenous right to self-determination, which includes our right to raise our own children within our own culture(s), including our own laws and legal systems.

Since 2013 there have been substantive legislated changes, largely stemming from the December 2015 release of the Truth and Reconciliation Commission (TRC) report, which contained 94 Calls to Action. The first five Calls to Action pertained to child welfare.<sup>9</sup> In 2016 the Canadian Human Rights Tribunal

<sup>7</sup> See the Reference List for a full list of my teachers and Old People to whom I refer.

<sup>8</sup> The research for this paper spans over a decade and includes author's MA and PhD research findings; portions of this paper have been presented at two conferences: one at the UBC Indigenous Peoples and Democratic Politics conference in 2013 and a second at the Loving Justice Conference: Breathing Life into our Own Laws held in 2024.

<sup>9</sup> In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following calls to action.

#### Legacy

i) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:

- i. Monitoring and assessing neglect investigations.
- ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
- iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
- iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
- v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.

2) We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

affirmed that there was a funding inequity, as FNCFS agencies were receiving 22% less funding per child than the province. In January 2018, at an Emergency Meeting on Child and Family Services, the Government of Canada committed to six points of action to address the overrepresentation of Indigenous children and youth in care in Canada:

1. Continuing the work to fully implement all orders of the Canadian Human Rights Tribunal, and reforming child and family services, including moving to a flexible funding model
2. Shifting the programming focus to prevention and early intervention
3. Supporting communities to exercise jurisdiction and explore the potential for co-developed federal child and family services legislation
4. Accelerating the work of trilateral and technical tables that are in place across the country
5. Supporting Inuit and Métis Nation leadership to advance culturally-appropriate reform
6. Developing a data and reporting strategy with provinces, territories, and Indigenous partners

In 2019, the Missing and Murdered Indigenous Women and Girls Inquiry released its final report with 231 Calls for Justice of which 15 pertained to Indigenous child welfare. And in January 2020, the Federal Government passed An Act respecting First Nations, Inuit and Métis children, youth and families, which affirmed the Indigenous inherent right of self-government, including jurisdiction in relation to children and family services. In June 2021, the federal government adopted the United Nations Declaration on the Rights of Indigenous Peoples Act as law. And in February 2024, the Supreme Court of Canada confirmed An Act respecting First Nations, Inuit and Métis children, youth and families as constitutionally valid (An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5).

Yet despite all of this legislative acknowledgement, the overrepresentation of Indigenous children in the care of the government itself has not changed.

### Legislative History Pertaining to Indigenous Child Welfare<sup>10</sup>

Of course, this all has a much deeper history. Until an amendment to the Indian Act<sup>11</sup> was made in 1951, child welfare for Indigenous children was a federal responsibility and, sadly, the federal government relied upon Indian Residential Schools (IRS) to provide this service. Federally run Indian Residential Schools served several policy objectives from “civilization” and “assimilation” to the “exploitation of child labor” through farming, sewing, and cleaning; and in its later years, to some level the functions of child welfare agencies. The IRS era is also known for the enactment of “cultural genocide” (TRC, 2015). In fact, “social workers were among the strongest supporters of residential schools” and joined churches to lobby against their closure (Indian Residential School Survivor Society, 2006 as cited in Blackstock, Brown & Bennett, 2007, p. 61). In Canada, child welfare is the responsibility of the provincial government while First Nations people were the responsibility of the federal government. As a result, First Nations children received little to no child welfare services at all. This jurisdictional “no man’s land” had devastating results for First Nations children (RCAP, 1996).

Under s. 91(24) of the British North America Act of 1867, the federal government assumed exclusive constitutional authority over “Indians and lands reserved for Indians” and this exclusive federal jurisdiction was reinforced by the Indian Act. In 1951, the federal government amended s. 88 of the Indian Act to allow “all laws of general application ... in force in any province” to apply to on- and off-reserve Indians (RCAP, 1996). This amendment meant that provincial child welfare policies could apply to First Nations

<sup>3</sup>) We call upon all levels of government to fully implement Jordan’s Principle.

<sup>4</sup>) We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:

- i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.
- ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.
- iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.

<sup>5</sup>) We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

<sup>10</sup> While I use the term Indigenous, this paper is focused on First Nations and not Métis or Inuit Peoples. See Table 1 for a chronological list of reports and legislation used in this paper.

<sup>11</sup> In 1857, this act was referred to as The Gradual Civilization Act until it was amalgamated under the title Indian Act in 1876 and remains in effect today.

people; however, the federal government did not provide the provinces with any additional funding to assume this responsibility. The result was a “patchwork of provincial child welfare services to reserves: some agencies in some provinces extended some services to some reserves, some extended none, and some acted to apprehend children only when they considered them to be in a ‘life or death’ situation” (RCAP, 1996, vol. 1, p. 517).

In 1966, the Department of Indian Affairs created the Hawthorne Report, which sought to detail all aspects of life for First Nations people on reserve. With respect to child welfare services the report found “the situation varies from unsatisfactory to appalling” (RCAP, 1996, vol. 1, p. 518). In 1966, the federal government entered into a cost sharing agreement with the provinces to extend child welfare services to First Nations children. In keeping with previous policy:

No Aboriginal people or organizations were consulted about these changes, and there was no commitment to preserve Aboriginal culture or to provide for local Aboriginal control over child welfare services. These services were to be delivered by non-Aboriginal agencies employing non-Aboriginal social workers. (RCAP, 1996, vol. 1, p. 518)

The result was that First Nations children were apprehended from their homes and placed in white middle-class foster homes or adopted into white families—often in the United States—at such an alarming rate that the term “sixties scoop” was coined. From 1960 to 1990, over 11,000 status First Nations children were placed for adoption (Bennett & Shangreux, 2005, p. 94). First Nation parents affected by “the scoop” referred to it as the “brutalizing of our families,” “kidnapping,” and “exporting” of First Nations children, which received little to no public attention (RCAP, 1996, vol. 1, p. 519). Sadly and shamefully not much has changed: the overrepresentation of Indigenous children in care still receives little if any alarm.

The extension of provincial child welfare policy into First Nations communities led the Royal Commission of Aboriginal Peoples to conclude that:

The child welfare system was doing essentially the same thing with Aboriginal children that the residential schools had done. It removed Aboriginal children from their families, communities and cultures, and placed them in mainstream society. Child welfare workers removed Aboriginal children from their families and communities because they felt the best homes for the children were not Aboriginal homes. The ideal home would instill the values and lifestyles with which the child welfare workers themselves were familiar: white, middle-class homes in white, middle-class neighborhoods. Aboriginal communities and Aboriginal parents and families were deemed to be “unfit.” As a result, between 1971 and 1981 3,400 Aboriginal children were shipped away to adoptive parents in other societies, and sometimes in other countries. (1996, vol. 1, p. 520)

It remains the case today that Indigenous families, parents, and communities are deemed “unfit,” as indicated by the large percentage of Indigenous children still being placed with non-Indigenous service providers (see placements section below). The eurocentrism and racism embedded within placement decisions has yet to be thoroughly, let alone meaningfully deconstructed. Monture-Angus (1995) provided a preliminary analysis of the standard child welfare policy and practice that exposed the racism and eurocentrism often embedded in standard practice and perpetuated by both Indigenous and non-Indigenous child welfare agencies and workers. For example, because decision makers have been unable to adequately assess what Monture referred to as the “Indigenous factor”—what we would today refer to as the importance of cultural continuity and connection (Walkem, 2020)—doctrines such as “the best interests of the child” have been used to justify placements and even adoptions with non-Indigenous care providers. Unfortunately, as many people working within child welfare are non-Indigenous, there is a lack of understanding of how important “culture” is to a child, so this is often ticked off as having been met so long as the non-Indigenous caregiver takes the child to a local powwow or dream-catcher workshop.

One of the government’s responses to addressing the cultural issues alongside the overrepresentation of Indigenous children in the child welfare system was to devolve their responsibility to First Nation Children and Family Service Agencies (FNCFSAs). Beginning in the late 1980s, several First Nations were willing to assume this responsibility and provide “culturally” relevant services; however, instead of the issue of overrepresentation ameliorating, it worsened.

## First Nation Child and Family Service Agencies (FNCFSA): A Trojan Horse Model of ICW

“The presumption that Euro-Canadian standards are universal in their application is the conceit that has done the most damage to Aboriginal communities.”  
(Indian Child & Family Services Standards Project, 1992)

“The Child Welfare system isn’t broken, it is doing exactly what it was meant to do.”  
(Mary Teegee Loving Justice Conference, 2024)

According to Blackstock (2003), the development of First Nations agencies sought to “stem the tide of children and youth being placed outside their communities” (cited in Blackstock, 2005, p. 5). In Canada, over a decade ago there were over 120 First Nations agencies; today there are over 140 (Fallon, Lefebvre, Trocme et al., 2019, p. 21). Until recently, these agencies were mostly federally funded, but as child and family services is a provincial jurisdiction, they are required to obtain their mandate and authority from their respective provincial governments (Bennett & Shangreux, 2005, p. 90). According to the then-Department of Indian Affairs and Northern Development (DIAND):

FNCFSA are mandated by the province in accordance with provincial legislation, to deliver: (1) prevention services to families, in order to keep children in the home; (2) protection services to children at risk; (3) adoption services where required by provincial legislation. (Shangreux & Blackstock, 2004, cited in Bennett & Shangreux, 2005, p. 90)

Within British Columbia there were and still are 24 FNCFS agencies in operation (see Table 2). According to a Directors’ report available in 2009<sup>12</sup> there were five more agencies in their planning stages; however, as there remains 24 Indigenous Agencies today, it is unclear if they opened while others closed or didn’t make it past the planning stage.

While still mandated to follow provincial child welfare legislation, these First Nations organizations were deemed better equipped to deliver services in a more culturally appropriate manner and in a way that would take Canada’s colonial legacy into account. Whether they actually do this or not has yet to be adequately assessed. There is some evidence that many FNCFSs are not able to meet this mandate for a variety of reasons. One main reason is that Indigenous agencies continue to be directed and led by non-Indigenous ministry social workers, so the importance of “culture” continues to be misunderstood, and in some cases misused and abused (for example, see the section below, BC Coroner’s Inquest into the death of Traevon Thomas Keith Desjarlais). This failure is also supported by the fact that the number of Indigenous children in care has not declined; in fact, in most provinces, it has increased.

Unfortunately, Delegated Aboriginal Agencies (DAAs) therefore appear to have exacerbated the problem of the overrepresentation of Indigenous children in care. There are several reasons for this failure: (1) Directive 20—funding arrangement that provided funding for on reserve only and only for apprehensions (2) DAAs’s failure to follow both the DIAND mandate and the Indigenous-specific sections of the 1994 CFSA for Indigenous child placement (see s. 71(3) listed below) and, most notably, (3) the definition and subjugation of “culturally” relevant services to eurocentric social work practices, policies, and provincial legislation. Despite these attempts by the government to off-load the responsibility for a problem from its creators to the Indigenous communities that have sincerely wanted to address it, the issue of the overrepresentation of Indigenous children in care has nonetheless persisted.

## Child, Family and Community Services Act (CFCSA) 1994

The June 1994 Child, Family and Community Services Act (CFCSA) is significant to Indigenous child welfare as it contained remedial sections to address the overrepresentation of Indigenous children in care. Section 71 of CFCS act stipulates:

Out-of-home living arrangements

- (1) When deciding where to place a child, the director must consider the child’s best interest
- (2) The director must give priority to placing the child with a relative or, if that is not consistent with the child’s best interests, placing the child as follows:

<sup>12</sup> This report was available at <http://www.fndirectorsforum.ca/downloads/aboriginal-children-in-care-10-09.pdf>. Accessed August 10 2013.

- (a) in a location where the child can maintain contact with relatives and friends;
  - (b) in the same family unit as the child's brothers and sisters;
  - (c) in a location that will allow the child to continue in the same school
- (3) If the child is an aboriginal child, the director must give priority to placing the child as follows:
- (a) with the child's extended family or within the child's aboriginal cultural community;
  - (b) with another aboriginal family, if the child cannot be safely placed under paragraph (a);
  - (c) in accordance with subsection (2), if the child cannot be safely placed under paragraph (a) or (b) of this subsection.

This act also stated that Indigenous identity should be preserved, that Indigenous communities had the right to participate in decision-making processes, and that the child's family was the preferred home for Indigenous children (Walmsley, 2005, p. 27). However, the release of the Gove report (1995) around the same time complicated matters. This report led to provincial reform processes that failed to touch on important issues such as poverty and the right to self-government; at the same time, preventative services and family and community involvement were set aside (Walmsley, 2005, p.7). The report also failed to highlight sections of the act that had been having positive effects, such as family conferencing, service agreements with family members, and youth services (Walmsley, 2005, p. 27).

Adding to the failure to properly implement legislation pertaining to Indigenous placements was—and remains—inadequate and inequitable funding regimes. Up until the Canadian Human Rights Tribunal decision of 2016, and despite the well-documented higher child welfare needs on-reserve, FNCFS agencies received 22% less funding per child than the province (MacDonald & Ladd, 2000, cited in Blackstock, 2005, p. 5). Leading up to this decision, funding had been determined by Directive 20-1 (as of April 1st 1999) by the then-Department of Indian and Northern Development (DIAND, which was then termed INAC, and is now known as Indigenous Services Canada, ISC) (Bennett, 2004). In order to receive funding, FNCFSAs were required to comply with provincial standards and legislation (Bennett, 2004) and funding under Directive 20-1 was completely inadequate and discriminatory.

Despite the fact that services such as prevention and family strengthening would be less costly than apprehension, prior to 2018, funding for these types of services had not been provided. While the federal government has since corrected this financial issue, the province has not done so, despite the fact that the majority of families in need reside off-reserve. Given that poverty is a primary driver for DAAs' involvement in Indigenous child welfare, these types of services would clearly address and ameliorate the overrepresentation of Indigenous children in care. What's more, both federal and provincial governments are fully aware of this. An internal INAC document states:

the lack of in-home family support for children at risk and inequitable access to services have been identified by First Nations Child and Family Services Agencies, and INAC, as important contributing factors to the over-representation of First Nations children in care.<sup>13</sup>

A survey conducted by Shangreux (2004) found that those FNCFS agencies that responded stated they could reduce the number of Indigenous children in care by as much as 33% if prevention and support services were made available (p. 41).

Given that new funding regimes currently being implemented include prevention funding, it will be interesting to see if this is in fact the case. However, given the complexities and obscurities of ICW funding, results may be difficult to assess. In 2022, a report by the Representative of Children and Youth (RCY) found that the fiscal landscape for child welfare was so complex and "labyrinthine in nature" that the RCY had to contract experts to accurately assess federal and provincial fiscal systems and practices around child welfare funding (RCY report 2022, p. 3). The RCY needed to contract with the Institute of Fiscal Studies and Democracy and work with an expert in Ministry of Children and Family Development (MCFD) finances to interpret "complex" internal practices—all of which "indicate[d] a lack of transparency." Should this trend continue, it would be difficult to track—let alone to assess—any ameliorating funding effects.

For DAAs, alongside the legislative and funding confusion that discriminated between on- and off-reserve families, issues of internal colonialism persisted (Harris-Short, 2012, p. 14). As early as 1997, the

<sup>13</sup> See <http://www.fncaringociety.com/sites/default/files/fnwitness/DomesticAffairsCommittee-SpeakingNotes-Dec2004.pdf>. Retrieved August 10 2013.

delegated model was described as a “wolf in sheep’s clothing” (Fournier & Crey, 1997). While in theory it appeared to offer Indigenous communities more control over their children, in practice it was better known as a Trojan Horse and many grassroots workers warned their leadership against it (Stó:lō Matriarchs; Joanne Hugh). By 2002, the constraints of the delegated authority model were described as a form of neocolonialism—thus, by its very nature, it was designed to fail (Brown, Haddock & Kovach, 2002). A present-day example highlights this failure: when one local DAA Executive Director boastfully described the agency she worked for as being “the largest Aboriginal agency in the province.”

### **An Act respecting First Nations, Inuit, and Métis children, youth and families (2019)**

In 2019 the Federal government passed An act Respecting First Nations, Inuit, and Métis children, youth and families (herein referred to as An Act respecting). This act officially recognized what First Nation governments had been proclaiming from the start: our inherent responsibility and jurisdiction to raise and look after our children. In its preamble it “affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services” (An Act respecting, preamble). Along with three more affirmations, An Act respecting affirms the need to respect the diversity of Indigenous Peoples and the need to “eliminate the overrepresentation of Indigenous children in child and family services systems” (p 2 An Act respecting). The act recognizes that jurisdiction, including legislative authority, in relation to child and family services is part of the inherent right to self-government recognized and affirmed by section 35 of the Canadian Constitution (see section 18(1) of An Act respecting). Section 21(1) gives Indigenous laws the same force as federal law and paramountcy (as in that they will prevail) when in conflict with federal law (section 22(1)) with exceptions given to sections 10 to 15 of An Act respecting and the Canadian Human Rights Act). Indigenous laws prevail over provincial laws as well and this is given “greater certainty” under section 22(3). Section 23 offers an important caveat: that Indigenous laws prevail “except if the application of the provision would be contrary to the best interests of the child.” This can be interpreted one of two ways: either the drafters of An Act respecting had no clue about Indigenous laws and legal traditions, or this section was included to protect the status quo—especially if the “best interests of the child” continued to be defined according to Western, Euro-Canadian values and standards.

This same query applies to the exempted sections 10 to 15 of An Act respecting, exemptions that can be interpreted as either extremely ignorant of Indigenous laws or as a means to ensure that nothing would change. While I would like to hope that they are simply extra safeguards protecting our Indigenous children, federal legislation has a terrible track record of protecting our children. Section 10 addresses Best Interests of Indigenous Child. Sections 11 to 14 address Provision of Child and Family Services, including the promotion of prevention (s. 14), ensuring the child’s safety, security, and wellbeing, cultural needs, connections to family, and substantive equality (s. 11), that notice of measures must be provided to parents, caregivers, and Indigenous community (s. 12), the right to make representations in civil proceeding (s. 13), that reasonable efforts be made to have child remain with family before apprehension is made (s. 15.1), and that a child not be apprehended based solely on socio-economic conditions, including poverty, lack of adequate housing or infrastructure, or the state of health of a parent or care provider (s. 15). At face value, these all seem like great safeguards. But when applied to Indigenous laws and legal traditions they are redundant, so why are they being singled out?

Is it because the federal government has no confidence in Indigenous child welfare laws to do better? No offense to federal and provincial governments, but the bar is on the ground. When read overall, it is easy to assume that the drafters of An Act respecting are either racist, ignorant, or truly do not see the overrepresentation of Indigenous children in care of the government as an issue of systemic discrimination. There may be some hope in how these sections are interpreted within the courts—but leaving Indigenous rights and jurisdiction in the hands of colonial courts is also problematic.

### **Statistical Analysis**

#### **TRC Call to Action #2**

Call to Action number two of the TRC Report (2015) calls upon the governments to prepare and publish annual reports on:

- (1) the number of Indigenous children in care in comparison to non-Indigenous children,
- (2) the reasons for apprehension,
- (3) the total spending amounts by child welfare agencies and
- (4) the effectiveness of various interventions

Despite the TRC Call to Action requesting annual reports and despite the usefulness of statistics in identifying problems, changes, improvements, and areas of concern, gathering statistics in relation to Indigenous child welfare has been harmfully neglected. When statistics are available, they may not be specific to Indigenous youth and children, and they may be fraught with methodological errors. And, due to differing years being reported, various categories being used, and changes in nomenclature (see footnote 1), available data is difficult to analyze and compare. Added to this challenge, each province and territory in Canada has its own legislation pertaining to child welfare and may or may not have its own data collecting system. There is no uniform national database focused on Indigenous child welfare. National statistics that are provided are often from household census data, which is fraught with methodological challenges.

On top of provincial and territorial differences, most provinces have service agreements with Indigenous agencies that then provide various levels of child protection to the Indigenous communities within the geographical service area of the Indigenous agency (for a national list of agencies see Fallon, Lefebvre, Trocme, et al., 2019, p. 21). Each Indigenous community then decides if it would like to receive services from the Indigenous agency or the province. For example, Fallon, Lefebvre, Trocme, et. al (2019, p. 21) listed 141 different Indigenous-specific service agencies located in eight different provinces and one territory (i.e., Nunavut in which 25 of the 141 agencies is located), while Prince Edward Island, Newfoundland Labrador, Yukon, and the Northwest Territories had only provincial services available to Indigenous communities. While provincial and territorial statistics are challenging to find, work in collecting data from the over 140 Indigenous agencies across the country has not yet started.

This neglect could have an easy fix. For example, in British Columbia, Metallic, Friedland, Morales, Hewitt & Craft (2019, p. 19) noted that the Gowlings/CSFS draft recommended that the independent Caring Society Institute be made responsible for the collection and publications of annual reports. From a scan of other provinces, it appears that this type of independent Indigenous organization is or could be available to collect data and publish yearly reports for all of the Indigenous children and youth service agencies within that province or territory.

In 2019 Fallon, Lefebvre, Trocme, et. al. published the most recent national study, focused on First Nations child welfare data within the Canadian Incidence Study (CIS) framework, titled *Denouncing the Continued Over-Representation of First Nation Children in Canadian Child Welfare*. The study was directed by the Assembly of First Nations and was the fourth and the final national study to provide up-to-date estimates of child welfare investigations across Canada; they found disparities that were identical to the previous reports (Fallon, Lefebvre, Trocme, et al, 2019, p. 3). This study also noted that the governments have failed to meet the TRC Call to Action #2 as they do not “monitor the most basic information about First Nation Children in their care” (2019, p. 4). As mentioned above, this would be simple to remedy, as recommendations have already been made by the First Nations Child and Family Services Caring Society of BC (see DRAFT 2018 First Nations Child and Family Caring Act<sup>14</sup>) and the Yellowhead Institute report of July 2019, which made submissions to both House and Senate that data collection be made mandatory (Metallic, Friedland, & Morales, 2019, p. 9).

## Statistics Don't Lie

The statistics on the overrepresentation of Indigenous children in care that can be gathered are difficult to compare or aggregate let alone provide a proper analysis. How statistics are gathered differs from province to province and some—such as Ontario and Quebec—do not provide Indigenous statistics at all. Depending on the organization or government providing the data, comparisons are challenging due to differences in categories, age ranges, regions, definitions, or lack thereof, all of which can be further complicated by differing terminology and meanings. For example, some statistics use “Indigenous” while others still use the antiquated “Aboriginal”; some collect data for children under 18 years while others collect for

<sup>14</sup> <https://fncaringsociety.com/publications/draft-first-nations-child-and-family-caring-act-november-5-2018-working-draft>

under 14 years of age. Even terms used can vary from province to province. For example, some Indigenous child welfare agencies will offer data based on the eurocentric definitions of “in-care” and “out of care,” which requires Indigenous readers to think twice, as “in care” used by some child welfare agencies actually means “in care of the government” and therefore “out of the care” of the Indigenous community.

Compounding the challenge with these statistics is how the terms “Indigenous,” “First Nation,” “Aboriginal,” and “Métis” lack definition let alone verification. This is further complicated by discriminatory distinctions between the colonial and antiquated category of “on and off reserve” and “status and non-status.” What’s more, there are current and real problems plaguing Métis identity as defined by Métis organizations that are funded based on number of “registrations.” This has led to some Métis organizations approving all registration requests without verifying them first (Teillet, 2022). Several Indigenous child welfare agencies still use the term “Aboriginal” despite the RCY recommendation to use “Indigenous.” With both the term “Aboriginal” and “Métis” there is a great deal of confusion and many cases wherein someone claiming to be either Aboriginal or Métis is found to have no Indigenous ancestry at all or an ancestor so far removed as to make claiming Indigenous identity fraudulent (TallBear, 2021).

These issues are situated within broader problematic colonial categorizations. Pan-Indianism and now pan-Indigeneity have always been a problem. Especially in the area of child welfare, making distinctions is helpful, and separating statistics for First Nations, Métis, and Inuit people is beneficial. For example, the needs of a Nisga’a child will have very little if anything in common with the needs of a Métis child or an Inuit child.

Available National Statistics

One of my original intentions with this article had been to analyze the statistics over a ten-year period to see what if any changes have occurred in relation to the overrepresentation of Indigenous children in the care of the government. Unfortunately, for the reasons listed above, this was not possible. The chart below represents the statistics my research assistant and I have been able to find so far:

| Province                | # of ICWAs |      | # of Indigenous CYIC |         | % of Total CYIC |         |
|-------------------------|------------|------|----------------------|---------|-----------------|---------|
|                         | 2010       | 2020 | 2012/13              | 2022/23 | 2012/13         | 2022/23 |
| British Columbia        | 20         | 24   | 4171                 | 3294    | 52.5%           | 67.5%   |
| Alberta                 |            | 20   | 5625 <sup>15</sup>   | 5780    | 69%             | 74%     |
| Saskatchewan            |            | 19   | 1842                 | 3158    | 63.5%           | 81%     |
| Manitoba                |            | 15   | ~7760 <sup>16</sup>  | 8270    | 80%             | 90%     |
| Ontario                 |            | 13   |                      |         | 15.5%           |         |
| Quebec                  |            | 16   |                      |         |                 |         |
| Newfoundland & Labrador |            | 0    |                      | ~465    |                 | 36%     |
| PEI                     |            | 0    |                      |         |                 |         |
| New Brunswick           |            | 10   |                      |         |                 | 20%     |
| Nova Scotia             |            | 1    |                      |         |                 |         |
| Nunavut                 |            |      |                      | 244     |                 |         |
| Northwest Territories   |            | 0    |                      |         |                 | 98%     |
| Yukon                   |            |      |                      |         |                 |         |

By 2020 the Province of Ontario had 13 ICWAs and from the Province of Ontario website, titled First Nations, Métis, and Inuit young people in residential care:<sup>17</sup>

<sup>15</sup> [child-intervention-info-stats-summary-2013-14-q1.pdf \(SECURED\)](#)  
<sup>16</sup> See Hughes report (2013) Volume 2, p. 447 at [http://www.phoenixsinclairinquiry.ca/rulings/ps\\_volume2.pdf](http://www.phoenixsinclairinquiry.ca/rulings/ps_volume2.pdf)  
<sup>17</sup> <https://www.ontario.ca/document/because-young-people-matter-report-residential-services-review-panel/first-nations-metis-and-inuit-young-people-residential-care>

The Ministry generally does not report on trends with respect to Aboriginal youth involved in the child welfare sector. According to information collected as part of the annual Crown Ward reviews, the Ministry reported that in 2013 15.5% of Crown Wards were identified as Aboriginal. The report to Canada’s Premier’s on Aboriginal children in care states that “in Ontario 3% of the child population under age 15 is Aboriginal, and 21% of the children in care are Aboriginal children living off-reserve”. In a recent analysis of people identified as foster children by respondents to the 2011 National Household Survey, Sinha and Wray (2015) examined disparities between the rates of Aboriginal and Non-Aboriginal foster children. In Ontario, First Nations children were 12 times more likely to be identified as foster children than were non-Aboriginal children: 3.1% of First Nations children were identified as being in foster care compared to 0.25% of non-Aboriginal children. Similar disparities have been noted in the Ontario Incidence Study of Reported Child Abuse and Neglect which found that 9% of investigations involved Aboriginal children, whereas less than 4% of the Ontario’s children and youth are Aboriginal (Fallon, Van Wert, Trocmé, et al., 2015)

According to Statistics Canada<sup>18</sup> there was an increase in the overrepresentation of Indigenous children in foster care from 2011 to 2021. Indigenous children were significantly overrepresented among foster children compared to their overall representation within the population. While there were increases in the total population of Indigenous children under 15 years of age from 6.9% of all children in 2011 to 7.5% in 2016 and to 7.6% in 2021, the representation of Indigenous children in foster care increased from 47.8% of all foster children in 2011 to 51.7% in 2016 and to 53.7% in 2021.

Province of BC Statistics

The following statistics are from Statistics of Indigenous Children in Care in Province of British Columbia (Walmsley, 2005, p 19):

| YEAR | # OF ABORIGINAL CICs | % Of TOTAL CICs |
|------|----------------------|-----------------|
| 1955 | 29                   | <1%             |
| 1964 | 1446                 | 34.2%           |
| 2005 | 3810                 | 42%             |
| 2009 | 4642                 | 53%             |

According to Walmsley, between the years 1976 to 1980 (before ICWAs), the percentage of Indigenous children in care in British Columbia fluctuated between 36.7% and 39.2% (2005, p. 19). As mentioned earlier, these statistics did not include the number of Indigenous children placed with Mormon families under the Mormon and Church of Jesus Christ of Latter-Day Saints Home Placement Program, which operated from 1947 to 1996.

The Ministry of Children and Family Services Government of BC website<sup>19</sup> presented the following statistics:

| YEAR      | # OF INDIGENOUS CICs | % of TOTAL # OF CICs |
|-----------|----------------------|----------------------|
| 2001/2002 | 4273                 | 42.5%                |
| 2005/2006 | 4491                 | 49.5%                |
| 2010/2011 | 4567                 | 54.5%                |
| 2015/2016 | 4418                 | 61%                  |
| 2020/2021 | 3542                 | 67.5%                |
| 2022/2023 | 3294                 | 67.5%                |

From 2001/2002 to 2022/2023, the number of Indigenous children in care went from 4273 to 3294, representing a 23% decline. For non-Indigenous children in care in 2001/2002, however, the number was

<sup>18</sup> <https://www150.statcan.gc.ca/n1/pub/41-20-0002/412000022024001-eng.htm>  
<sup>19</sup> <https://mcfld.gov.bc.ca/reporting/services/child-protection/permanency-for-children-and-youth/performance-indicators/children-in-care>

5776 and dropped to 1581 in 2022/2023, which is a decline of 72.6%. From the substantially declining number of non-Indigenous children in care, it can be surmised that the provincial government's rationale—that keeping families together rather than taking them into government care has better outcomes—was being reflected in how child welfare is being practiced—at least for non-Indigenous children. The fact that this has not translated to Indigenous child welfare practice highlights the systemic discrimination endemic to these governmental structures.

If Indigenous youth and children make up 14% of the general population, it would be proportionate for them to make up 14% of the children and youth in care of the government. However, given that to be in the care of the government is a result of negative living conditions, their representation in care should be lower than the general population. So even if we were to see 14% of children in care of the government, this would be alarming; anything above 14% requires an explanation. Even if we factor in the effects of Indian Residential School and the sixties scoop, perhaps their combined impact could account for a disproportionate 20% of children in care of government being Indigenous. The fact that over 50% of the children in care are Indigenous is clearly a sign of systemic discrimination.

### Reasons for Apprehensions

A 2019 national study requested by the Assembly of First Nations (AFN) and conducted by 22 experts found that disparities between Indigenous and non-Indigenous children involved with child welfare agencies still existed. Authors Fallon, Lefebvre, Trocme, et al. (2019) found that 44% of the investigations for First Nations children were based on neglect and an additional 27% were due to exposure to intimate partner violence (p. 10). Over a decade earlier, in 2007, Blackstock, Brown, and Bennett stated that the number one reason Indigenous children came to the attention of child welfare agencies was neglect (citing Trocme, Knoke, and Blackstock, p. 63). In 2019, Fallon, Lefebvre, Trocme, et al. found that First Nation children were 3.6 times more likely to be investigated than non-Indigenous children and 17.2 times more likely to be placed in government care as a result of investigations (p. 12). This same report found that 63% of the First Nation child investigations were from households that either depended on social assistance or had no income at all (p. 37) and that in terms of the state of their caregiver, 34% reported alcohol abuse issues, 23% had drug/solvent issues, 34% had mental health issues, and 19% recorded a history of their own experiences in foster care (p. 36). Given that section 15 of An Act respecting states “child must not be apprehended solely on the basis of ... socio-economic conditions, including poverty ... or the state of health of his or her parent or the care provider” it is probably safe to assume this section is still being violated.<sup>20</sup>

### Cultural Continuity and Placements

In 1998, the British Columbia Children's Commissioner found that only 2.5% of the Aboriginal children in care had been placed in First Nations homes (Bennett & Shangreux, 2005, p. 96). In 2009 in British Columbia, 4642—or 53%—of the children in care were Aboriginal, of which 40% were being served by a Delegated Aboriginal agency.<sup>21</sup> Yet, according to a 2009 MCFD report, despite the decline in the number of Aboriginal children being serviced by MCFD as a result of these children now being serviced by an Aboriginal agency, the number of MCFD Aboriginal CICs being placed with non-Aboriginal service-providers remained the same, averaging 85% still being placed with non-Aboriginal care providers.

Indigenous Peoples know that Indigenous children need to be raised within a culture that respects, reifies, honors, and promotes their development of a positive Indigenous identity. For colonized Peoples this goes beyond just the family—it is also seeing ourselves positively reflected in the media, books, songs, arts, movies, and educational curricula. Indigenous children and youth require a sense of belonging, meaningful connection to land and Indigenous ways of being that are safe and valued. The harmful effects of residential schools and the foster care system on Indigenous children, families, and communities is now widely documented and accepted as an act of genocide.<sup>22</sup> According to Article II (e) of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, forcibly transferring children from one group to another group is an act of genocide.

<sup>20</sup> See also Call to Justice number 12.4 MMIWG Final Report (2019).

<sup>21</sup> Ministry of Children and Family Development, Aboriginal Children in Care. Report prepared 2009 available at <http://www.fndirectorsforum.ca/downloads/aboriginal-children-in-care-10-09.pdf>.

<sup>22</sup> See Woolford's (2009) article in relation to how cultural genocide is genocide

In 1972, the Berger Commission observed that Indigenous children being adopted by non-Indigenous families was heavily influenced by the “widespread conviction that native [sic] children placed in non-Indian [sic] adoption homes would suffer no ill effects, if the homes were loving and supportive” (as cited in Walmsley, 2005, p. 23). This incorrect and harmful conclusion is reflected in the 1983 *Racine v Woods* SCC case when Justice Wilson concluded that the importance of culture fades over time in comparison to the Indigenous child’s bonding with foster or potential adoptive parents (Metallic, Friedland, Morales, Hewitt & Craft, 2019, p. 6). The eurocentric attachment theory used as the basis for this decision has since been called into question for both gendered stereotypes and cultural biases that over-emphasize the Western notion of single caregiver importance (Metallic, Friedland, Morales, Hewitt & Craft, 2019, p. 6). And despite the 2017 *Brown v Canada* case—known as the “sixties scoop” case—in which experts from across Canada gave evidence that “great harm was done by placing Indigenous children in non-Indigenous foster and adoptive homes” (as cited in Metallic, Friedland, Morales, Hewitt & Craft, 2019, p. 6), current statistics show that Indigenous children in care of the government are disproportionately placed with non-Indigenous caregivers and even more detrimentally within residential group homes.

The 2019 national report also found that of the estimated 45,918 investigations involving First Nation children (p. 24) 66% were substantiated (p. 40) and resulted in the following placement types: 39% in informal placements such as kinship out of care and customary, 26% in Kinship in care, 29% in foster care non-kinship, and 3% in group home residential care. If 207 First Nation children were placed in group residential care in the year 2018 and this represents 3% of placements (p. 47) this means there were 6,900 First Nation children (status and non-status) 15 years old or younger taken into care that year. However, this also means an estimated 2691, or 39% were placed informally with kin and customary care agreements and 2000 (or 29%) were placed in foster care non-kinship (p. 12). These statistics highlight both a high rate of investigations that led to high rates of apprehensions. Coupled with non-Indigenous placements patterns, this all strongly suggests systemic discrimination issues.

The 2011 Statistics Canada National Household survey reported that of the 11,700 First Nation foster children aged 14 and under, 37% were living with at least one foster parent who identified as First Nations.<sup>23</sup> In 2021, the percentage of First Nation children living with non-Indigenous foster parents was 50.6% (Statistics Canada, *The Daily*, released April 18, 2024). Most statistics do break down the category of Indigenous children into First Nations children, Métis children, and Inuit children. However, some studies use the terms Aboriginal and First Nations interchangeably, making it difficult to analyze and compare data. These statistics, alongside the ones from the preceding paragraph strongly suggest that the majority of Indigenous children in care are not having their cultural needs met in a meaningful way. This systemic issue is further compounded by the use of broad categorizations that place children from different cultures within the same category. For example, not distinguishing between Métis, First Nations, and Inuit children means their distinct cultural needs are not being met.

### Contracted Residential Group Homes

In June 2018, the office of the Representative for Children and Youth (RCY) issued a statement condemning the failure of most MCFD contracted residential resources to “review the background and qualifications of all staff who are currently providing care to children and youth through these agencies.” This came after the RCY released a report in 2017 entitled *Broken Promises, Alex’s Story*, which detailed “the tragic 2015 death by suicide of a youth who had been placed in a hotel with unqualified staff and little in the way of supervision or supports.” Alex had been moved to the hotel after the residential agency he lived in was closed by MCFD and all 33 children and youth in the agency’s care were “relocated due to problems, including inadequate screening of staff, several of whom were found unqualified and unsuitable as caregivers.” Again, in May 2018, another residential group home was closed resulting in the relocation of 18 children and youth.

The June 2018, RCY statement listed the following concerns regarding residential group homes:

- lack of screening and suitability of staff and caregivers
- inadequate training and lack of support for staff who often deal with complex care and behavior management;
- lack of evidence-based, therapeutic approaches in these facilities;

<sup>23</sup> See <https://www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>

- inappropriate matching of the needs of the children and youth with the capacity of the caregivers;
- issues arising with poor matching of children and youth residing in the same placement; and
- undue reliance on police intervention for behavior management and crisis response.

The 2019 national report found 3% or 207 First Nation children were placed within a group home that year (Fallon, Lefebvre, Trocme, et al., 2019, p. 47).

### BC Coroner's Inquest into the death of Traevon Thomas Keith Desjarlais<sup>24</sup>

Traevon was a 17-year-old Indigenous child in the continuing care of Fraser Valley Aboriginal Children Services Society (FVACFSS) when he died by asphyxiation on the evening of September 13, 2020. His body was not discovered until the police found him four days later in his closet on the morning of September 18, 2020. At the time of his death Traevon was living in Abbotsford, British Columbia, in a MCFD-contracted residential group home operated by Rees Family Services. At the time of his death, Traevon was the only youth residing in this residential resource, which can cost a minimum of \$30,000.00 per month to operate. I mention this cost for two reasons: one is the poverty experienced by Traevon's biological mother<sup>25</sup> and the second is the absolutely deplorable living conditions of the Rees home (photos were provided during the inquest). During the Coroner's inquest, four employees of the Rees Family home gave testimony, three of whom referred to themselves as "foster parents," one who was the administrative director. Three employees from FVACFSS also gave testimony: an Executive Director, a social worker, and the social worker's team leader.

None of the above-mentioned employees were from the same nation as Traevon and none identified as Indigenous.<sup>26</sup> The social worker did have a self-proclaimed Métis Elder sitting with her during her testimony given in Vancouver on Tuesday November 29 2022, but when her testimony continued the next morning from her home, the self-proclaimed Métis Elder was absent. It is also important to note that the Métis Elder had never met Traevon or his mom. None of the staff testified to having any knowledge of Indigenous culture let alone understanding of Traevon's First Nation. The social worker testified to having attended a ceremony at her local First Nation community, but from her testimony it was evident this "ceremony" was not a spiritual one. It is also interesting to note that Jury Recommendation number 9 was to "share with children in care the same cultural opportunities provided to staff."

From all their testimony, none of the staff were qualified to meet Traevon's Indigenous, let alone cultural needs. None of them had any training in Indigenous culture, let alone the impacts of colonialism on Indigenous communities. And, in fact, none of the staff referred to the specific Indigenous nation or community to which Traevon belonged; in fact, I believe that none of them knew where or to whom he belonged. When one Rees worker was asked if he ever took Traevon to any local cultural events the worker responded: "no, because Traevon did not want to go so I wanted to respect his decision." This was the same worker who refused to give Traevon his clean sheets when Traevon asked for them.

The realities of care experienced in residential schools, in which Indigenous children were subjected to "parental" figures with absolutely no training, let alone an understanding of the child's cultural needs, continues in the child welfare system today. And perhaps this is the saddest part of Traevon's preventable death: his biological mother Samantha Chalifoux wanted to care for him but was not able to solely because of poverty. In fact, Traevon had been returned to her, but at the time she was living in low-income housing that had a zero tolerance for drugs policy. During this period, Samantha had another child, a toddler, living with her. Traevon smoked marijuana and had a violent outbreak while living with his mom. Instead of moving her to a place where his pot smoking would not be an issue (or at least moved to the bottom of the list of things needing immediate attention) and providing her with supports needed to address his anger issues,<sup>27</sup> he was placed with Rees at an expense of over \$30,000.00 a month.

<sup>24</sup> As vice-chair of the Board for FVACFSS at the time of Traevon's death, I was subpoenaed as a witness, but what I provide here is all public information from the Public Inquest into Traevon's death

<sup>25</sup> MMIWG 2019 Report Call to Justice number 12.4 prohibits apprehension of children based on poverty and number 12.6, which states family care givers should be eligible for financial support equal to that given to paid foster family.

<sup>26</sup> Of the over 20 witnesses subpoenaed over the nine-day Inquest only two identified as Indigenous: myself and Traevon's Mom.

<sup>27</sup> Which is in violation of Call to Justice number 12.6 of MMIWG Final Report (2019).

When it comes to Indigenous children, Indigenous families and communities know best. The fact that it is now 2025 and this is not a given tells us that eurocentrism, racism and, systemic discrimination are still normalized in Indigenous child welfare. I will always wonder if Traevon and Alex's stories might have been different if the Indigenous laws and legal orders of the territory they were residing on guided their journey and experience with child welfare. Until Indigenous Nations are given the resources, the space, and the time to reinstate Indigenous laws and legal orders, this cycle of preventable loss and systemic neglect will continue.

## Indigenous Laws and Legal Orders

In keeping with my critique of one law for all and the self-serving colonial habit of pan-Indigeneity, it is not my place to define the Indigenous legal orders that should be used or to provide a check list—which could end up subjugated or subsumed under colonial law and legal traditions, in any case. If nothing else, we do know that Indigenous laws and legal orders are defined by and unique to the Indigenous Nation from which they come and are *sui generis* from colonial laws. The recognition of Indigenous Laws and Legal Orders and their proper placement within the inherent right to self-determination and their ability to assist with decolonization is critical. This recognition must include legal recognition that is not undermined by provincial or federal colonial laws. We have already seen the tragic consequences when we try to replace Indigenous laws and legal orders with provincial child welfare policies and practices that are ostensibly culturally appropriate. It is oxy moronic to try to do so.

At the same time, we must acknowledge the impacts colonialism and genocide have had on Indigenous communities and how they may interfere with the assertion of Indigenous Laws. Such interference can come from white supremacist ideology and/or our own lack of confidence, internal racism and colonialism, and assimilation or unresolved colonial trauma that can manifest in ways that support colonialism.

Thankfully, we can look to Indigenous and non-Indigenous scholars who have dedicated years of thought and labour to help us untangle the colonial web of lies and create space for our Indigenous truth (Alfred, 2023; Anaya, 2004; Asch, 2014; Cajete, 1999; Turner, 2006, Henderson, 2002, 2006; Simpson, 2011; Valandra, 2006; Vine Deloria, 1997; Wilson-Raybould, 2019). In work specific to Indigenous Laws and Legal Orders we can draw from Indigenous legal scholars such as Val Napoleon, John Burrows, Vernon Wilson, Sharon Venne, Ardith Walkem, and Sarah Morales. For example, Gyooksgan (Val Napoleon) shares that a People's "legal order and laws will reflect how its members understand themselves and their world, their place in the universe, and others, including non-human life forms" (Napoleon, 2009, p. 164). As she states, "It is our cosmologies and ontologies that determine the kind of legal traditions we create, because fundamentally our laws will reflect what we think of ourselves and others" (Napoleon, 2009, p. 164).

Cowichan Legal Scholar Sarah Morales shares that:

while law draws from and mingles with ideas both local and global at the end of the day it must be applied in a particular context – law comes to life in people's lives not just their minds as such to be persuasive law cannot be separated from the societies from which it arises – it must make sense in its place and cannot be separated from its surrounding culture. (2012 Lawyers Rights Watch Canada, video series 2011–2012 found at 11:00 Part I Video)

Morales also draws on the work of Anishinaabe legal scholar John Borrows to argue that law cannot be understood apart from culture. She cites Borrows (at 12:13): "law is a culture of argument that provides a place and set of institutions and methods where the conversation process can go on as well as a second conversation where this first one is criticized" and adds that Canada's other legal traditions are also embedded in the culture of argument. Morales agrees with Borrows that each "contains a degree of ambiguity but requires judgment beyond its initial formulation. This is why every legal system employs different methods of interpretation to help bridge ambiguities" (Morales, 2012 Lawyers Rights Watch Canada, video series). John Borrows cites Merryman (1985) and shares that:

a legal tradition ... is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and

operation of a legal system and about the ways law is or should be made, applied, studied, perfected, and taught. (2010(b), p. 7)

Keeping these teachings as a framework for Indigenous laws and legal orders, I would like to share how one Nation, the Stó:lō, are using our own laws and legal traditions through our legal order known as Qwi:qwelstom.

Qwi:qwelstom as an Indigenous Legal Order Guided by Indigenous Laws and Tradition

It is always a challenge to attempt to explain and describe Indigenous laws, traditions, and legal orders using a foreign language. It is often the case that it takes hundreds of English words to describe one Halq'eméylem<sup>28</sup> concept. In the table below, I provide a few of the Stó:lō<sup>29</sup> laws and legal traditions that guide one of our legal orders: Qwi:qwelstom. This table is by no means exhaustive, but offers a few insights to help the reader reach an understanding of some laws of S'ólh Téméxw:<sup>30</sup>

|               |                                                                                 |
|---------------|---------------------------------------------------------------------------------|
| syuwá:lelh    | Words of our ancestors: our laws                                                |
| Xwélmexw      | To learn how to be a good human being                                           |
| Qwi:qwelstom  | To learn how to resolve conflict in a good way                                  |
| shxwel        | Life force, energy – to learn to respect spirit                                 |
| Lets'emot     | To be of one heart and one mind                                                 |
| sxexo:mes     | To learn to respect all our gifts from our ancestors/creator – All My Relations |
| Xexá:ls       | The power of transformation                                                     |
| ey sqwa:lewel | To be of good thoughts and feelings                                             |
| q'lam t'ey    | To be moving toward the good                                                    |

For the Stó:lō People, one of our legal orders is *Qwi:qwelstom q' lam t'ey*, which is guided by several of our legal traditions. *Qwi:qwelstom* is the closest word in our Halq'eméylem language to describe the English word “justice” but is not an exact match, as for us justice is more about how we live our lives and relate to each other. It is about *Qwi:qwelstom*; it is a way of life that promotes balance and harmony. It is a way to help one another survive and to care and share among all living life; and as all living life is interconnected, it focuses on relationships. It is guided by the Stó:lō legal traditions of *ey sqwa:lewel* (to be of good thoughts/feelings), *lets'mot* (to be of one heart and mind), *q'lam t'ey* (to be moving toward the good) and *sxexo:mes* (to respect all gifts from our ancestors/creator). Just as it takes years to learn all there is to know of Canadian laws and legal traditions, the same applies to Stó:lō laws and legal traditions. Even if I wanted to, I could not possibly explain them all properly, particularly though writing, as this is not my place. As one of the name carriers for Qwi:qwelstom,<sup>31</sup> I do try to live them in my everyday life and I continue to be taught by our Sí:yólexwe.<sup>32</sup> I know this is an honor so I will try to share a little bit about what I have come to understand so far. Please note that any mistakes I make are mine and mine alone and not a reflection of my sí:west (see Victory (now Hall), 2001 and Victor (now Hall), 2012 for my *Sí:yólexwe sí:west*).<sup>33</sup>

Since 1999, Qwi:qwelstom has also been known as an Indigenous Justice program that serves Indigenous Peoples residing within Stó:lō territory. As a “program” there are some alterations and additions that had to be made, not only due to the funding regime of the Department of Justice and its Indigenous Justice Strategy, but also due to the high level of demand being asked of the program. Qwi:qwelstom remains one of the longest running Indigenous Justice Programs and is often asked to help mentor other First Nations in their re-instatement of their own Indigenous justice processes. One of the main reasons

<sup>28</sup> Halq'eméylem is the upriver dialect of Halkomelem language of Xwélmexw People  
<sup>29</sup> The Stó:lō belong to the Xwélmexw Nation whose territory runs from Yale BC to lower portions of Vancouver Island along both sides of the Fraser River as well as extending across colonial imposed border. The Stó:lō tend to occupy the territory from Yale, British Columbia to Langley, British Columbia.  
<sup>30</sup> Our World  
<sup>31</sup> I was gifted this honor along with Elder Joe Alec from Cheam in 1998 in ceremony held at Tzeachten Hall. My son Justice Victor is the current male name carrier to uphold tradition of having both a male and a female name carrier.  
<sup>32</sup> Old People  
<sup>33</sup> See the Reference List under Sí:west and Sí:yólexwe for a list that helped guide this research project

for its longevity is that the Stó:lō made sure to ground Qwi:qwelstom as a “program” in the same way that we see it “a way of life.” In doing so, we ensured it was led by Stó:lō people, guided by Stó:lō teachings and traditions and supported by the Stó:lō communities (for early lessons learned see Palys & Victor (now Hall), 2007). Qwi:qwelstom is guided by syuwá:lelh (ancestral teachings/laws); Siyelyólexwa (Elders and Old People); Siyolexwálh (our ancestors), Sí:yá:m (respected ones), and smómíyelhtel (trained helpers). Qwi:qwelstom utilizes several different processes depending on the needs of the people, family and community being served. Processes can range from “being talked to” and sitting with Siyelyólexwa, as shared by Yamolot: “it’s like, if we would sit you there and talk to you and give you all kinds of advice, that is what it means, Qwi:qwelstom” (as cited in Victor (now Hall), 2001, p.108).

Qwi:qwelstom process also makes use of “circlework.”<sup>34</sup> While our preferred process happens within our Longhouses, there were several reasons we needed to find another process as well. First was the sheer volume of work being asked of us: from the beginning, Qwi:qwelstom has been inundated with referrals and requests, and one of our teachings is that you can’t say no when someone asks for help. Another reason is that many of the people asking for help were not Stó:lō (they were Indigenous families, but not from our territory, so from a different culture). We quickly adopted the circle process and within a couple of years we had confidence with and success in what we came to refer to as “circlework.” Our circle workers are known as smómíyelhtel and undergo two years of training to learn how to guide this type of work. Circle work is powerful for many reasons and at Qwi:qwelstom we treat circlework like a relative, with respect and proper protocol. We use circles for dispute resolution, healing, peacemaking, education and sometimes simply to “get to a better place” (see Victor (now Hall), 2001 & 2006 for more details on circlework).

No matter the process, Qwi:qwelstom is about restoring balance, especially for those who are transgressing and harming others. This process can take weeks or years. It is believed that only those out of balance harm others and that when balance is restored, relationships might also be reestablished, even if it’s only one’s relationship with self. Our Elders tell us that Qwi:qwelstom takes as long as Qwi:qwelstom takes and is guided by q’lam t’ey, which means “toward the good, they are teaching you” (Yamolot, cited in Victor (now Hall), 2001, p. 111). In this respect, I recall working with two very different families: one family was dealing with intimate partner violence (IPV) and the other family was dealing with their teenage son who had stolen a chocolate bar from 7–11. I thought the IPV case would need more time and resources, and that the stolen chocolate bar would be a fairly quick and easy process to restore balance and harmony. This was so not the case. The IPV case took less time, effort, and resources to restore balance and harmony to the family impacted, whereas the situation with the young boy who had stolen the chocolate bar took years.

The IPV case involved a young couple who has been married for almost ten years, and early in their marriage they had struggled with IPV. As a result, both the husband and the wife already had supports in place, including the community they were living in. So, this family was already surrounded by a loving and caring community that wanted to help them and keep them safe. Their circle involved Elders, Aunts, Uncles, community leaders, community counselor, family therapist, and other family members to support them and offer them help. In their circle of support the young couple explained what had happened and how after years of “good” they slipped, made a mistake, and reverted back to old unhealthy behaviors that put them out of balance. Both wanted balance restored and had an entire community ready, willing, and able to help them.

The young boy who had stolen a chocolate bar from 7–11, however, had absolutely no one. He was a foster child living in an abusive foster home and was being sexually abused by a neighbor—issues that were only brought to light through the skilled work of smómíyelhtel. Given his living conditions and upbringing, this young boy also had a variety of mental health issues. Working with his foster family and social worker proved to be challenging, as they refused to look at how their parenting style was contributing to the young boy’s behavior. Instead, they wanted to focus solely on the stolen chocolate bar. To restore balance to this situation took years and was mostly due to the skilled training of the smómíyelhtel and caring Qwi:qwelstom Elders who were able to model our legal traditions and develop a relationship with this young teenager.

<sup>34</sup> This is a term I coined as a direct result of working with Dr. Jo-anne Archibald’s PhD dissertation (1997) in which she coined the term “storywork.”

The ability of Qwi:qwelstom q'lam t'ey and our legal traditions to help restore balance and harmony among our families and communities is evident not only in the above examples and countless others, but also in the longevity of the “program.” And all while we are still living under a colonial regime. As mentioned, this is because we ensured that, as a “program,” the process is to be guided by the very teachings we follow, as Qwi:qwelstom is a legal order. The teachings/traditions (syuwá:lelh), the Elders (Siyelyólexwa), trained helpers (smómíyelhtel), and circlework are all essential components. But there is one other vital component: the role of our the sile (Matriarchs) play in restoring, reclaiming, and revitalizing our legal orders and traditions. The very early days of Qwi:qwelstom were guided by Yamolot (Rosaleen George), St'enilhot (Amy Victor), Ts'ats'elxwot (Elizabeth Herrling), and our Elder-in-training, Julie George. We were also guided by Rudy Leon, Ivan McIntyre, and Joe Alec, but I mention the Matriarchs (the sile) as it has been the women who have held everything together. Today, Qwi:qwelstom is headed by Joanne Jefferson, the eldest daughter of Rene Greene and the eldest granddaughter of Rena Point Bolton (Xweliqwiya). Joanne has guided Qwi:qwelstom for over twenty years and has ensured that our traditions, legal orders, and ways of being remain front and centre in all our work.

In terms of case studies, there are now thousands we could draw upon to highlight how Qwi:qwelstom q'lam t'ey has been used to address colonial harms and traumas and move our families “toward the good.” I am by no means suggesting that perfect balance and harmony was restored in every opportunity presented, but I can attest to the fact that every effort was made in accordance with our own laws and traditions. There are probably just as many lessons learned as there are success stories, but for Qwi:qwelstom these are equally, if not more, important. It will be interesting and beneficial for all to see how doctrines like “best interests of the child” and “aging-out” are redefined according to Sto:lo laws and legal orders.

## Colonial Challenges in Implementing Indigenous Legal Orders

### Challenge of Language

In large part, most Indigenous Nations currently use the English language to describe Indigenous laws, legal orders, traditions, and ways of being. To describe one's Indigenous worldview and ways of being using a foreign language can be challenging, but not insurmountable. But to truly implement and abide by Indigenous legal orders, they need to be provided within the Indigenous language from which they come and then translated into English, all while making sure they are not being altered by colonial mentality such as eurocentrism. For example, the English word “resources” is best described by the *Halq'eméylem* (up river Stó:lō dialect) word *sxexo:mes*, which means “gifts from our ancestors”. In other words, it refers to our relatives. So, according to our legal orders, what can now be referred to in English as “resources”—such as our rivers, our land, our minerals, our mountains, our trees, our children—are, for Stó:lō people, our relatives. How this small word is mobilized affects, for example, how we relate to our “land” based on whether we see her as a “relative” or a “resource.” This is an extremely important distinction to make as the type of relationship we develop will depend on how we view and define other living life. When viewed as a resource it is easier to distance oneself and therefore easier to transgress against and do things that harm our relatives. Clearcutting, digging massive holes for mineral extraction, and sweeping the ocean for millions of fish at a time are examples of things I hope we would never do to a relative.

Another example is the English word “Elder.” This is a word we do not have a direct translation for, naturally, as it does not come from our culture; yet, it has become synonymous with Indigenous Peoples. The closest word we have in *Halq'eméylem* is *Siyelyólexwa*, which is better translated into English as “Old People.” Given the negative western worldview of “aging,” this has been a difficult word to reclaim, but in our Sto:lo worldview to grow old is a privilege and an honor, so Old People are held in high regard. Reclaiming the concept of *Siyelyólexwa* also means we can avoid the harmful effects of pan-Indigeneity and the false claims of being an “Elder” based on terms not of our own making.

For example, in *Halq'eméylem* *Siyelyólexwa* are our Old People who are still mobile. They are the ones still travelling around our territory sharing their gift of knowledge with the People, whereas we also have the word *Sxwolexwiyám* (ancient people), not to be confused with *sxwōxwiyám* (ancient stories) or *siyelyolwexalh* (ancestors), although their similarities in speech are important to note. *Sxwolexwiyám* are our ancient people and are the ones not mobile anymore. Whereas *Siyelyólexwa* are still mobile and *sqwelqwel* inform us that, prior to colonialism and especially before the colonial diet, many Stó:lō lived into their

100s. If you look at our nutrition, what we ate, our movement in relationship to the land, to live into our hundreds was easy to do. And it happened a lot.

Today we see the misuse of the word Elder and who qualifies as one being used to further the colonial project. We saw this in the case of Traevon, where a Métis Elder was being “used” when neither the social worker nor Treavon were Métis. We witness this again whenever a child welfare agency claims to be abiding by Indigenous culture because it has an Elders’ Advisory Council in which many of the Elders are not from the children’s culture and/or are not recognized by Indigenous People as such. This is by no means a reflection of the Elders who participate on these advisory councils; this is a reflection of how non-Indigenous social workers misuse and abuse these Elders in order to maintain the status quo while claiming to do culturally appropriate child welfare.

### The Challenge of Intergenerational Racism and a Lack of Confidence

While there has been much written about the effects and impacts of intergenerational trauma on Indigenous Peoples, very little has been written on how Settlers’ intergenerational racism has continued to contribute to two national crises: the overrepresentation of Indigenous children in the care of the government and Murdered and Missing Indigenous Women and Girls. I believe the two are correlated and, to some degree, may be causal. Could it be that the lack of public outcry at the overrepresentation of Indigenous children in the care of the government (and the MMIWGs) can be explained by intergenerational racism? Just as white supremacy has been normalized, and even codified, so too have both these crises—as we blame Indigenous Peoples despite empirical evidence that tells us the blame lies elsewhere.

As noted above, if Indigenous youth make up 14% of the general Canadian population, at most they should make up 14% of the children that are in need of protection. Given that this is a negative indicator of wellbeing, even a proportionate percentage is high. But if we factor in the intergenerational effects of residential school and the child welfare system it would be understandable that we would be proportionate within this negative statistic. The fact that we are disproportionate suggests a systemic problem. I also want to highlight our own lack of outcry at this disproportion. From both my work experience and research, I have noticed a lack of confidence in ourselves: that, in important ways, we have come to believe that we do not know how best to care for our children and/or that our communities are cesspools of violence and dysfunction. This is a colonial myth, a damaging colonial narrative that justifies the overrepresentation of Indigenous children in care and systemic racism. I am not saying that Indigenous families/communities are void of violence and dysfunction, I am saying that no community, no matter its ethnicity is void of violence and dysfunction. So why are Indigenous children overrepresented within the child welfare system?

### Challenge of Surviving a Genocide

There is interesting research being done in the area of trauma survival and the impacts of intergenerational trauma that I do not go into for this paper, but that has obvious relevance to this context. For it does not require a stretch of the mind to understand that when a People are trying to survive a genocide that is based upon racist ideology, there will be personalized effects—impacts known as internalized racism and internal-colonialism (Duran, 2019). The genocide of Indigenous Peoples, as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide below not only continues today, but has specific personalized ramifications for those affected by the interrelated crises of Missing and Murdered Indigenous Women in Canada, and the overrepresentation of Indigenous children in care.

### *Convention on the Prevention and Punishment of the Crime of Genocide*

Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

The most pertinent section of the Convention, Article 2, tells us that:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The National Inquiry into Missing and Murdered Indigenous Women and Girls found that:

The violence the National Inquiry heard about amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQIA people. This genocide has been empowered by colonial structures, evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations (Volume 1A, 2019, p.50).

For Indigenous Peoples of Canada, we have experienced not one, not two but all five of these forms of genocide. And in many regards, these acts of genocide have not stopped. When one is trying to survive a genocide, developing a discourse to describe it is not top on one's list of priorities. It is important, however, for us to remember that we are the survivors of a genocide and we are still trying to survive that genocide. The genocide of Indigenous Peoples continues today. One response provided at the Living Justice conference in 2024 was to be gentle with each other and to be kind with each other. When somebody is acting "out of pocket,"—as the young kids say—there is probably a very good reason. We need to be kind with this as we move and work through our genocide. This is by no means suggesting that we should accept unacceptable behaviour: it is suggesting that we hold our People accountable with love and care.

Another important message that came from the 2024 Loving Justice Conference is that we need to support our communities in reclaiming their jurisdiction of their own children. This is something I like to frame as based within the PeopleBack movement. We need to take our kids back (and our incarcerated women, men, Elders, and LGBTQ2S+ people). The federal and provincial governments have shown us time and time again that they are not able or capable of looking after our kids. At this conference I shared how we might apply what Judge Judy has stated: that even on our worst day we are still going to do a better job than the colonial governments do on their best day.

I think it is only fitting that I end this paper with a few words shared by Dr. Cindy Blackstock at the Loving Justice Conference (2024) on the need to decolonize:

When we start to decolonize ourselves it's a way for us to love those future generations that we don't know yet. Because if we don't do the work, we leave that work to our children to do. And if they don't do the work, then our grandchildren are doing it. If we can start decolonizing ourselves as challenging as that is, then we're helping those future generations.

**Table 1. Chronological List of Reports, Legislation and Policy Used in Paper**

|           |                                                                                                                                                                                                                                                      |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1879–1986 | Residential schools in operation in Canada and held largely responsible for child welfare                                                                                                                                                            |
| 1907      | Dr. P.H Bryce Report (Bryce was the "Medical Inspector to the Department of the Interior and Indian Affairs") for which 35 residential schools were visited (Millory, 1999 p 90)                                                                     |
| 1920      | Attendance at Residential Schools made mandatory                                                                                                                                                                                                     |
| 1951      | Amendment to the Indian Act making provincial legislation pertaining to child welfare applicable to Indigenous children; however no additional funding to provide this service was given to the province                                             |
| 1966      | Hawthorne Report commissioned by the Department of Indian Affairs                                                                                                                                                                                    |
| 1966      | Federal government enters into cost sharing agreement with provincial governments in relation to child welfare                                                                                                                                       |
| 1973      | Family and Children's Law Commission appointed under leadership of Justice Thomas Berger (Walmsley, 2005, p. 22)                                                                                                                                     |
| 1987–1995 | 8 DAAs established in British Columbia (Walmsley, 2005, p. 29)                                                                                                                                                                                       |
| 1992      | Liberating our Children Liberating our Nations: a report released by L. White and E. Jacobs                                                                                                                                                          |
| 1994      | Child, Family, and Community Services Act (CFCSA) was passed in Legislature and is significant to Indigenous child welfare as it had remedial sections to address the overrepresentation of Indigenous children in care                              |
| 1995      | The Gove report led to provincial reform processes that failed to touch on important issues such as poverty and the right to self-government, and preventative services and family and community involvement were set aside (Walmsley, 2005, p. 27). |
| 1996      | Royal Commission on Aboriginal People                                                                                                                                                                                                                |
| 1997–2002 | 12 more DAAs established in British Columbia (Walmsley, 2005, p, 29)                                                                                                                                                                                 |

|           |                                                                                                                                                                                                                                                                                                      |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2004      | Shangreiaux survey found that those FNCFS agencies that responded stated they could reduce the number of Indigenous children in care by as much as 33% if prevention and support services were available (p. 41).                                                                                    |
| 2015      | Truth and Reconciliation Commission (TRC) report released, which contains 94 Calls to Action                                                                                                                                                                                                         |
| 2016      | Canadian Human Rights Tribunal decision: FNCFS agencies were receiving 22% less funding than the province per child, despite the well-documented higher child welfare needs on reserve (MacDonald and Ladd, 2000 as cited in Blackstock, 2005, p. 5).                                                |
| 2016      | Grand Chief Ed John's report released: <i>Indigenous Resilience, Connectedness and Reunification-From Root Causes to Root Solutions</i>                                                                                                                                                              |
| 2017      | RCY Report: Delegated Aboriginal Agencies-How resourcing affects service delivery                                                                                                                                                                                                                    |
| 2018      | Federal Government's Six-Point-Plan: at an emergency meeting the Government of Canada committed to six points of action to address the overrepresentation of Indigenous children and youth in care in Canada                                                                                         |
| 2018      | RCY Statement on Residential agencies contracted by MCFD found at: <a href="https://rcybc.ca/reports-and-publications/statements-and-news-releases/statement-on-residential-agencies/">https://rcybc.ca/reports-and-publications/statements-and-news-releases/statement-on-residential-agencies/</a> |
| 2019      | Release of Missing and Murdered Indigenous Women and Girls: Reclaiming Power and Place Final Report, available at <a href="https://www.mmiwg-ffada.ca/final-report/">https://www.mmiwg-ffada.ca/final-report/</a>                                                                                    |
| 2019      | Federal government passed An act respecting First Nations, Inuit and Métis children, youth and families                                                                                                                                                                                              |
| 2021      | Federal government made official the United Nations Declaration on the Rights of Indigenous Peoples                                                                                                                                                                                                  |
| 2022      | RCY Report "At a Crossroads" released as the roadmap from fiscal discrimination to equity in Indigenous Child welfare"                                                                                                                                                                               |
| 2022      | Findings and Recommendations as a Result of the Coroner's Inquest into death of Traevon Thomas Keith Desjarlais                                                                                                                                                                                      |
| 2024      | Supreme Court of Canada upholds constitutionality of An Act respecting First Nations, Inuit, and Métis children, youth and families                                                                                                                                                                  |
| 2024      | RCY Report "Don't Look Away"                                                                                                                                                                                                                                                                         |
| 1987–2024 | Delegated Aboriginal Agencies (DAAs) were established and there are now 24 operating within the province of British Columbia                                                                                                                                                                         |

Table 2. List of Delegated Aboriginal Agencies in BC35

|    | Name                                                                                  | Level of Delegation | Region                                                               | Year established                     |
|----|---------------------------------------------------------------------------------------|---------------------|----------------------------------------------------------------------|--------------------------------------|
| 1  | Haida Child and Family Services Society                                               | C3                  | Northwest-Old Masset and Skidegate                                   | 2005                                 |
| 2  | Heiltsuk Kaxla Society                                                                | C3                  | Coast North Shore-Bella Bella                                        | 2000                                 |
| 3  | K'wak'walat'si ('Namgis) Child and Family Services Society                            | C3                  | North Vancouver Island-Alert Bay                                     | (earliest data available is in 2001) |
| 4  | Ayas Men Men Child and Family Services (Squamish Nation)                              | C4                  | Coast North Shore-West Vancouver                                     | 1993                                 |
| 5  | Carrier Sekani Family Services                                                        | C4                  | North Central-Prince George, Burns Lake, Vanderhoof                  | 1998                                 |
| 6  | Denisiqi Services Society                                                             | C4                  | Thompson Cariboo-Williams Lake                                       | 2004                                 |
| 7  | Gitxsan Child and Family Services Society                                             | C4                  | Hazelton                                                             | 1999                                 |
| 8  | Nezul Be Hunuyeh Child and Family Services Society                                    | C4                  | Fort St. James, Prince George                                        | 2002                                 |
| 9  | Niltu,O Child and Family Services Society                                             | C4                  | South Vancouver Island-Sannichon                                     | 1999                                 |
| 10 | Surrounded By Cedar Child and Family Services                                         | C4                  | South Island-Victoria                                                | 2002                                 |
| 11 | Fraser Valley Aboriginal Children and Family Society (Also known as Xyolhemeylh CFSS) | C6                  | East Fraser-Chilliwack, Mission, Agassiz, 12Abbotsford an13d Langley | 1993                                 |
| 12 | Knucwentwecw Society                                                                  | C6                  | Thom14pson Cariboo15-Williams L16ake                                 | 1995                                 |
| 13 | Ktunaxa/Kinbasket Child and Family Services                                           | C6                  | East Kootenays-Cranbrook, Creston and Windermere                     | 1999                                 |

<sup>35</sup> Sechelt Child and Family Services established in 1993 is no longer in operation. As of 2025, child and family services in the Sechelt area are provided by the Ministry of Children and Family Development (MCFD).

|    |                                                                                    |    |                                     |      |
|----|------------------------------------------------------------------------------------|----|-------------------------------------|------|
| 14 | Kw'umut Lelum Child and Family Services                                            | C6 | North Vancouver Island-Nanaimo      | 1997 |
| 15 | Lalum'utul' Smun'eem Child and Family Services                                     | C6 | South Vancouver Island-Duncan       | 1993 |
| 16 | Lii Michif Otipemisiwak Family and Community Services                              | C6 | Thompson Cariboo-Kamloops           | 1998 |
| 17 | Métis Family Services (also known as La Societe de les Enfants Michif)             | C6 | South Fraser-Surrey                 | 2001 |
| 18 | Nisga'a Child and Family Services                                                  | C6 | Northwest-Prince Rupert and Terrace | 1997 |
| 19 | Nlha'7kapmx Child and Family Services Society                                      | C6 | Lytton                              | 1994 |
| 20 | Northwest Inter-Nation Family and Community Services Society                       | C6 | Northwest-Terrace, Prince Rupert    | 1999 |
| 21 | Nuu-Chan-Nulth Tribal Council Usma Family and Child Services (Usma Nuu-Chan-Nulth) | C6 | North Vancouver Island-Port Alberni | 1987 |
| 22 | Scw'exmx Child and Family Services Society                                         | C6 | Merritt                             | 1994 |
| 23 | Secwepemc Child and Family Services Agency                                         | C6 | Kamloops                            | 2000 |
| 24 | Vancouver Aboriginal Child and Family Services Society (VACFSS)                    | C6 | Vancouver                           | 2001 |

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