

By Patrick Johnston

Indigenous Children at Risk

Child welfare services need radical changes

In March of this year, approximately 400 people gathered in Regina to attend a conference sponsored by the Canadian Indian Lawyers' Association (CILA). The delegates included not only Indian lawyers but band chiefs, elders, members of band councils, representatives of Indian, Métis, and Inuit political organizations, and a variety of interested individuals. However, they were not, as one might have assumed, discussing land claims, treaty rights, or the constitution. Rather, they were talking about children. More specifically, they were discussing the effects of Canada's child welfare system on Indigenous families and children—Indian, Inuit, and Métis.

This interest in child welfare is not new, but it is an emotional and painful topic for Indigenous people.

Many have personally experienced the trauma of being dissociated from their families and culture. Many others have had their own children taken away by child welfare authorities, theoretically in the best interests of the child. One delegate at the Regina conference had had four of his eight children removed. Ironically, of the four who remained to live with him, all went on to university graduation and successful careers.

As evidenced by the success of the Regina conference, the concerns of Indigenous people about child welfare appear to be on the increase and assuming a sharper focus. There are several explanations, not the least of which is the fact that CILA is devoting a great deal of attention to the



issue. And there now exists a much clearer statistical picture of the extent of the problem. Or, more properly, the problems. The distinction is important. The child welfare system presents a variety of problems with respect to Indigenous families, which, although closely interrelated, are distinct from one another.

One of the most comprehensive statistical profiles is contained in a book entitled *Foster Care and Adoption in Canada*, which was published in 1980 by the Canadian Council on Social Development. Much of the data had never before been published. The author, H. Philip Hepworth, had culled them from a variety of sources, including Indian and Northern Affairs, Health and Welfare Canada, Statis-

tics Canada, and provincial departments of social services.

Using 1977 data, Hepworth estimated that approximately 15,000 status and non-status Indian and Métis children were in the care of child welfare authorities in foster homes, group homes, etc. That number represented almost 20 per cent of the total number of Canadian children in care. Given that Indigenous children make up a much smaller percentage of the total child population, that figure is highly disproportionate.

If one considers the four western provinces individually the figures are even more startling. In British Columbia, Hepworth estimated that Indigenous children represented 39 per cent of all children in care. In Alberta the proportion rose to 44 per cent. In Saskatchewan it was 51.5 per cent and in Manitoba the figure was as high as 60 per cent.

Looking at the data another way, Hepworth determined that 1.35 per cent of all children in Canada were in the care of child welfare authorities. If registered as well as non-status Indian and Métis children are considered separately, then an estimated 3.5 per cent of that total were in care. And by isolating the figures for registered Indian children, it was determined that 4.29 per cent of all registered Indian children were in care. It is significant to note that this percentage has increased steadily since 1961-62, when the figure stood at 3.34 per cent. That trend does not appear to be reversing. On the basis of Indian and Northern Affairs' 1978-79 projected

population figures, the proportion of registered Indian children in care has increased to 4.62 per cent.

Hepworth arrived at several other conclusions on the basis of the available data. After they are admitted into care, for example, children of Indigenous families are much less likely than other children to be returned to their natural parents or to be placed for adoption. If they are placed in foster homes, it is more likely to be with a non-Indigenous family.

The same situation characterizes adoption, although the only solid data available are restricted to registered Indian children. The figures show that for the 10-year period 1969-1979, slightly more than 78 per cent of registered Indian children who were placed for adoption were adopted by non-Indian families.

Those are the hard facts, but what do they mean? Quite clearly they suggest that our existing system of providing child welfare services is failing Indigenous families and children. How else does one explain statistics that show that 40 per cent or 50 per cent and in some cases 60 per cent of children in the care of provincial child welfare authorities are from Indigenous families? There is something seriously amiss. In any effort to address the problem, however, it is extremely important where we locate it. The real problem, in my opinion, is situated in the child welfare system and not in Indigenous families.

Given that assumption, where are the shortcomings in child welfare and what changes are needed? To begin, one of the major problems that must be resolved is the issue of culturally inappropriate services and standards.

By and large, such child welfare services as are available to Indigenous families are provided by social workers who are middle-class members of the dominant Euro-Canadian culture. They have their own set of culturally based values. They are charged with implementing child welfare legislation that has usually been prepared by people much like themselves. Definitions of family, of what constitutes neglect, and of the best interests of the child, for example, reflect the values and mores of the dominant culture.

Should that same set of standards and values be applied when judging Indigenous families? I think not. Elements of traditional Indian child-

rearing practices still exist to varying degrees in many Indigenous families. The relationship between parent and child, the importance of the extended family, and the role of elders are examples of culturally based differences that distinguish Indigenous from Euro-Canadian families.

There is an obvious lack of logic in the use of one set of standards to judge a group who have their own often differing set of standards. And yet this has happened to Indigenous families who have come into contact with the child welfare system. It may explain, in part, why such a disproportionately high number of children in care are Indigenous.

This situation places many Indigenous children in a position of double-jeopardy. Not only is the child removed from his or her natural parents, which is a traumatic experience in itself, but the Indigenous child is often removed from his or her culture and placed in another environment with substantially different attitudes toward and approaches to life.

This particular shortcoming has the potential to affect all Indigenous families: status Indian on or off the reserve, non-status Indian, Métis, and Inuit. Another flaw in the child welfare system, although it only affects some reserve Indian families and children, is perhaps even more important, however. In some instances, child welfare services are not provided at all.

There is no consensus between the federal and provincial governments as to which level of government has the ultimate legislative responsibility for the provision of child welfare services to status Indian children. On the one hand, the federal government claims that child welfare is the responsibility of the provinces according to Section 92 of the BNA Act. And, by virtue of Section 88 of the Indian Act, it is argued that such child welfare services should also be extended to all Indian residents of a province.

Provincial governments, on the other hand, point to Section 91 of the BNA Act, which reserves to the federal government the exclusive right to legislate for Indians. In some cases provincial governments have extended their child welfare legislation, but only when they are reimbursed by the federal government.

As a result of this jurisdictional squabbling, there are substantial vari-

ations across the country in the nature and method of delivery of child welfare services for status Indians on reserves. They serve to compound an already complex problem.

In some cases, a separate formal agreement exists between the federal and a provincial government whereby that province extends its child welfare services to all Indian people living on reserves with full or partial financial compensation by the federal government. This is the situation in Newfoundland, Nova Scotia, Ontario, parts of Manitoba, and the Yukon Territory. A variation of this arrangement exists in the Northwest Territories where the territorial government extends child welfare services to Indian and Inuit communities. The financial arrangements are part of the overall federal-territorial financial agreement, however.

In other cases, this sort of arrangement exists but by way of an informal, non-precedent-setting agreement between the federal and provincial governments. This characterizes the situation in British Columbia, Prince Edward Island, and New Brunswick.

Another variation occurs in Quebec, where the federal government has entered into formal agreements directly with social service centres, which provide child welfare services to almost all Indians in that province. And, in at least one instance, a formal agreement exists between a band council, the federal government, and a provincial government. Employees of the Blackfoot Band Council in Alberta administer the provincial child welfare legislation under the supervision of a provincial appointee.

To this list we should now add the arrangement recently established by the Spallumcheen Band in British Columbia, which was the first in the country to implement a bylaw giving itself exclusive jurisdiction in matters of child welfare. Although the validity of the bylaw has not been tested, B.C.'s Minister of Human Resources has signed an agreement authorizing the transfer of responsibility for child welfare from the province to the Band Council.

Finally, there are some instances where no agreement exists—informal or otherwise—between the federal government and either the province, a band council, or a non-government agency. With the exceptions noted

above, this describes the current status in Alberta, Saskatchewan, and parts of Manitoba.

It is this latter situation which poses the most serious problem confronting the child welfare system and the one most in need of immediate attention. Residents of reserves in those three provinces (with the exception of parts of Manitoba) are denied access to provincial child welfare services. Any assistance that might be available to them is provided by Indian and Northern Affairs employees, or by staff employed by band councils who are neither trained, experienced, nor given the resources to do an adequate job. As a result, status Indians living on reserves in at least three provinces are deprived of various kinds of family support services and assistance that are an integral part of a comprehensive child welfare system. Such support services often reduce the need to remove a child from his or her family.

It is important to remember, too, that the authority of federal or band council employees is very limited. They do not have the statutory powers of apprehension that are assigned to provincial child welfare officials. Even if neglect or abuse of a child is obvious by any standard used, they are powerless to remove the child without parental consent. In such cases, provincial officials may enter the picture but generally do so only in the case of extreme neglect or a "life and death" situation.

People involved in child welfare agree that if no support or assistance is given to a family before a child has to be removed because of extreme neglect, the emotional and psychological damage done to the child is often irreparable. The chances of that child being able to return to his or her parents are greatly reduced. This is part of the explanation for the statistics indicating that children of Indigenous families are much less likely than other children to be returned to their natural parents or to be placed for adoption.

In one sense, however, even those children can be considered fortunate in comparison to others. In a previous paragraph I used the term "life and death" situation. I did so advisedly. There have been instances where the intervention of provincial child welfare officials was too late. Indian children have died as a result. Such

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deaths might very well have been prevented if support and assistance were available to those families as they are to all other families in this country.

The most appalling aspect of the situation is the fact that those children died essentially because of the quibbling and bickering of the federal and some provincial governments about which one was responsible for providing child welfare services. It is yet another black mark against this country for its treatment of Indigenous people.

The issue of culturally inappropriate child welfare services has been described by some as a form of cultural genocide. By the same token, I don't think it too much of an exaggeration to argue that the lack of child welfare services for some Indian families is a form of infanticide that we continue to permit if not condone. Harsh as it may sound, this aspect of the problem will only be resolved if we place it in that context.

There is one last issue that I would like to mention before moving on in a more optimistic vein to suggest some future directions. It is a separate but extremely important issue that must be addressed when discussing the problems posed for Indigenous families by the existing child welfare system.

In December 1979, the National Council of Welfare published a report on child welfare in Canada entitled *In the Best Interests of the Child*. The report concluded that "the clientele of child welfare services was overwhelmingly drawn from the ranks of Canada's poor." It pointed out that poverty often created a host of addi-

tional stresses on low income families that were not experienced by the more affluent. The need for and use of child welfare services, in other words, is often a function of poverty.

This is an important point. For years, many Indigenous families have experienced chronic unemployment and have been forced to rely on social assistance as their sole means of income. They have lived in substandard housing and received inadequate health care. The most extensive, culturally appropriate system of child welfare services for Indigenous families can be developed, but it will be of little use if some of these other problems are not rectified. Opportunities to increase their share of this country's wealth and resources must be provided to Indigenous people. Until that begins to happen, child welfare will continue to be problematic for Indigenous families.

The impoverished economic condition of many Indigenous families, the lack of services in some parts of the country, and culturally inappropriate services and standards are the major problems that explain why our existing system of child welfare is not adequately serving Indigenous families and children. But how do we begin to resolve these problems?

I suggest that what is required is a change of attitude on the part of those officials charged with the responsibility for overseeing child welfare in Canada. It is an attitudinal change that would start from the basic assumption that it is Indigenous people who know best what kind of child welfare services should be provided for Indigenous families. It is a change in attitude that would result in Indigenous people gradually assuming responsibility for the design, the development, and the delivery of child welfare services for Indigenous families. Until this change pervades both the federal and provincial governments, many of the existing shortcomings of the child welfare system will continue to have an adverse effect on Indigenous children.

This attitudinal change will only be realized when governments commit themselves to substantive changes in existing policy and legislation. Three very broad alternatives are mentioned most frequently. There are proponents and opponents of each as there are advantages and disadvantages.

One of the means to ensure that

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Indigenous people assume responsibility for designing and delivering child welfare services to Indigenous families would entail a revision to existing arrangements between the federal and provincial governments. This might prove to be satisfactory in a province like Ontario where a comprehensive agreement is already in place. It would bear little fruit in Alberta or Saskatchewan, however, where no agreement exists.

A second alternative would necessitate a change in existing provincial child welfare legislation or the development of separate pieces of provincial legislation dealing exclusively with Indigenous children. This option would likely be rejected by most status Indian political organizations. They want to deal only with the federal government and view any increase in provincial responsibility for their affairs as an attempt at assimilation.

Alternative number three would follow the lead taken by Indigenous people in the United States. It would result in the responsibility for child welfare being shifted to band councils under legislative authority of the federal rather than provincial governments. Technically, this could probably be done by a revision to the Indian Act or the creation of a new piece of federal legislation similar to the U.S. Indian Child Welfare Act. This particular option, however, would not solve the problems confronting non-status Indians, Métis, and Inuit families. And it might not solve the problem for status Indians

who move away from the reserve.

There may very well be other options but these should not be seen as being mutually exclusive. Conceivably, we could even end up with Indigenous people in different regions selecting different combinations of alternatives. Whatever options may be desired, the change in attitude referred to earlier will become permanent only to the extent that the existing policy and legislative framework that describes the child welfare system is altered to incorporate such a change.

Changes in the child welfare system will happen neither easily nor quickly. Child welfare has a relatively low priority for governments and hasn't been able to compete for the political and public attention given issues like energy or the constitution. The topic of child welfare and Indigenous people, in particular, may receive even less attention because it requires the co-operation of both the federal and provincial governments. Such co-operation appears to be in very short supply at this point in our history.

Nevertheless, there are some important developments in various parts of the country that appear to hold some promise for the future. The progress of the Spallumcheen Band in B.C. is being watched very closely and a number of other band councils have started to draft their own child welfare bylaws.

Some of the recent work of tripartite committees—especially those in Manitoba and Ontario—may have an important bearing on the future of child welfare. In fact, a master agreement is about to be signed by Manitoba, the federal government, and the Four Nations Confederacy. The agreement would begin the transfer of responsibility for child welfare for status Indians from Children's Aid Societies to tribal councils and band councils.

The Tripartite Task Group on Social Services in Ontario recently submitted its second report, entitled *Community Care: Toward Indian Control of Indian Social Services*. The report describes six transitional steps that would lead to Indian-controlled social services. The child welfare system was one of the key social services discussed in that report. Indigenous people in Quebec and Newfoundland and Labrador have also begun to

assume more responsibility for the delivery of their own child welfare services.

Ontario is the location of another project which is potentially of great significance. The Ontario Task Force on Native People in the Urban Setting has been engaged in a massive research programme in that province. The researchers are attempting to identify the needs of Indigenous people living in urban settings. The project will assess the resources available to Indigenous people in urban areas and the extent to which such resources are meeting needs. It is hoped that the research results may help in the development of more culturally appropriate child welfare services.

The examples cited above represent some initial, constructive steps being taken to resolve the problems with child welfare that confront Indigenous families. But, for the most part, they are isolated developments that as often as not reflect the skills and interests of a particular individual. They are not elements of a cooperative, comprehensive, and systematic approach to the problem. If the recent experience of the James Bay Crees is any indication, an attempt at change of this nature that isn't cooperative, comprehensive, and systematic may be doomed to failure.

The inability of the existing child welfare system to meet adequately the needs of Indigenous families is now almost universally conceded. Additional studies are not necessary. And, although agreement on preferred alternatives isn't so universal, there is a general understanding of the range of options available.

The onus now rests with those bodies that have the authority and responsibility for policy and legislative change: the federal government, provincial governments, and Indigenous political organizations. Until now, none have really devoted much attention to the problem. It is significant that many of the delegates at the Regina conference were as critical of Indigenous political leaders as of federal and provincial officials for not giving the issue more than lip service. That political lack of attention is no longer excusable. The process of defining aboriginal rights affords an excellent opportunity to consider the child welfare concerns discussed here and to develop solutions. ◊