

Systemic Factor: Child Welfare Systems and the Effects of Child Apprehension

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Contents:

- Context on Child Welfare Systems Page 2
- Adverse Childhood Experiences Page 2
- Defining Trauma (Historical, Intergenerational, System-Orientated) Page 3
- Effects of Apprehension: The Sixties Scoop and Current CFS Practices..... Page 5
- Effects of Apprehension: Residential Schools..... Page 6
- Bill C-92 and *Gladue* Page 8
- Bibliography: Endnotes Page 10

Context on Child Welfare Systems

Child Welfare Systems in Canada have arguably caused a great deal of damage within Indigenous families, communities, and collectives – this fact has become wholly recognized by federal and provincial governments, alongside much of Canadian society. Despite knowing the profoundly damaging and complex impacts of childhood apprehension, especially for Indigenous children adopted or fostered by non-Indigenous families, not much has changed. This is especially true for Saskatchewan’s Child Welfare System, which has historically and contemporarily played an immensely active role in the apprehension of Indigenous children.

Even today, the statistics on child welfare apprehensions are stark. According to the Government of Saskatchewan, in 2023 the percentage of Indigenous children in care sits at 81% (3158 out of 3904), while Indigenous children considered Persons of Sufficient Interest by Child Welfare Services represent 87% (1795 out of 2063).ⁱ Needless to say, the crisis surrounding the state apprehension of Indigenous children has only continued since the ‘Sixties Scoop,’ with little improvement.

It has long been understood that effects of the Sixties Scoop and the mass apprehension of Indigenous children by the colonial state has persisted, “The long-lasting effects of the Sixties Scoop on adult adoptees are considerable, ranging from a loss of cultural identity to low self-esteem and feelings of shame, loneliness and confusion. Since birth records could not be opened unless both the child and parent consented, many adoptees learned about their true heritage late in life, causing frustration and emotional distress. While some adoptees were placed in homes with loving and supportive people, they could not provide culturally specific education and experiences essential to the creation of healthy, Indigenous identities. Some adoptees also reported sexual, physical and other abuse. These varied experiences and feelings led to long-term challenges with the health and livelihood of the adoptees.”ⁱⁱⁱ

Adverse Childhood Experiences

Childhood apprehensions are a known factor in what are called Adverse Childhood Experiences. These experiences contribute to the development of negative health and social outcomes later in life.

“The term ‘Adverse Childhood Experiences’ (ACEs) refers to harmful experiences that happen during a person’s developing years – infancy, childhood, adolescence and even young adulthood. These events can be acute (e.g., a single exposure to an episode of domestic violence), chronic (e.g., lack of adequate nutrition throughout pre-school years), or complex (e.g., being raised by parents with substance use issues). Since many of these adverse events begin in the childhood home and involve parents and other trusted caregivers, ACEs often indicate complex trauma (The Colombo Plan and University of North Carolina – Chapel Hill, 2020). ... The ACE Study (Felitti, 1998), was designed to assess the links between various adverse conditions in childhood and physical and mental health status in later life. The ten specific adverse conditions included in the study were: abuse (emotional, physical, or sexual); neglect (physical or emotional); and household dysfunction (mental illness in the home, violence against mother, divorce, household members abusing substances, or a relative being incarcerated) [...] ... Results of the original study showed, and have since been replicated (Waite, 2020), that experiencing trauma in childhood is directly correlated to risk factors for health and social well-being. ACEs harm neurological, endocrine and immune systems, increasing a person’s risk of physical, mental, and substance use disorders. Moreover, ACEs increase the risk of having more trauma events across the life span.”ⁱⁱⁱⁱ

ACE’s contribute to the development of **Posttraumatic Stress Symptoms** in children and adolescents and have the ability to influence behaviour and emotional responses.

“The nature of Posttraumatic Stress Symptoms (PTSS) change as children grow older. For example, anger is more commonly expressed by adolescents who have PTSD, than adolescents who do not have the diagnosis. In boys this often takes the form of verbal and physical aggression; in girls, it takes the form of anger rumination, which refers to the tendency to dwell on frustrating experiences and to recall past anger experiences. (Isaksson, 2020). In addition, similar to Major Depression, sex differences in trauma symptom presentation begin in early adolescence (from around age 13), with girls more prone to PTSS (Cao, 2019). This effect remains even after separating symptoms that only characterize depression (Haag, 2020).”^{iv}

Defining Trauma

Indigenous communities and Nations have long established childcare practices and traditions to ensure the safety of their children, “Children play a critical role in cultural continuity of Indigenous communities; they have the right to live in their traditional territory, as well as maintain their traditional language and cultural identity. Prior to colonization, traditional laws existed to keep children safe. Indigenous systems of care were in place, for example, to arrange fostering and adoption with community or extended family.”^v

This helped to ensure kinship connections remained strong and accountable to each other.

“Rather than a source of support and strength, white social scientists and social workers viewed the extended family system as sources of retrogression and impediment to integration. The gradual weaning of Aboriginal people from kinship obligations, and replacing the supports provided by family with the rationalized and regularized services provided by the state in the form of social welfare, education, child rearing advice, day care, and public health services were idealized as the solution to poverty and separation that contributed to the marginalized place of Canada’s First Nations. ... Rather than support, Indian and Métis people in Canada ended up with children removed and placed into underfunded and poorly run provincial child welfare systems. Child removal policies provided an opportunity to discipline non-conforming women, shape family relations to approximate... those of the two-parent nuclear family, and socialize Indian children into normative working-class roles.”^{vi}

Unfortunately, Indigenous systems of care have been interrupted by the imposition of the colonial Child Welfare System, and of course, Residential Schools. The effects of apprehension on Indigenous children, adoptees, families, and communities, has resulted in personal and collective experiences of Historical, Intergenerational, and System-Orientated trauma.

Historical Trauma

“Historical trauma (HT) is defined as cumulative emotional and psychological wounding across generations, including the lifespan, which emanates from massive group trauma (Brave Heart 2003, 1998).”^{vii}

“The historical trauma response (HTR) has been conceptualized as a constellation of features associated with a reaction to massive group trauma. Historical unresolved grief, a component of this response, is the profound unsettled bereavement resulting from cumulative devastating losses, compounded by the prohibition and interruption of Indigenous burial practices and ceremonies.”^{viii}

“Whitbeck and colleagues (2004a) found that thinking about historical trauma is associated with emotional distress, specifically depression and anger. These researchers raised additional important questions for consideration such as: what are the psychological characteristics of people with high levels of perceived

loss and what tribal differences contribute to responses to historical trauma. Further considerations include diversity in responses related to being a direct descendant of a historically traumatic event or more recent collective trauma.”^{ix}

Intergenerational Trauma

Intergenerational trauma is defined as, “... an aspect of Historical trauma and describes the psychological and/or emotional effects that can be experienced by people who have a long-term connection to trauma survivors. Memories of the trauma and the sometimes inadequate coping strategies of trauma survivors are passed from one generation to the next. These memories and ways of coping are reportedly transmitted from caregiver to child, who often also transmit this legacy of trauma to subsequent generations unless healing processes are supported and allowed to take place (BC Provincial Mental Health and Substance Use Planning Council, 2013). For example, intergenerational trauma has been used as a causal narrative to interpret negative social impacts amongst Indigenous people in Canada relating to colonization (Hatala, 2016) [.]”^x

System-Orientated Trauma

System-orientated trauma describes trauma that has been incurred by negative experiences with systems that are intended to help people, “System-oriented trauma occurs when services that are meant to help people unintentionally [or intentionally] cause trauma or retraumatization. Sometimes maneuvering through an unfamiliar system can be overwhelming and trigger feelings of helplessness and isolation akin to a traumatic experience. Some examples include: lack of privacy in medical health settings or poorly explained invasive medical procedures; minimizing or discounting reports of bullying within a school system, or the use of seclusion or restraint in mental health settings (Centre for Substance Abuse Treatment, 2014).”^{xi}

In the cases of child apprehension survivors and adoptees, system-orientated trauma may relate to their experiences with foster care or adoption services (social workers, youth and group homes, foster or adoptive guardians, sexual/physical/emotional abuses, etc.).

The trauma of apprehension not only affects the child, it affects parents and families as well, “Emerging evidence also suggests that the trauma of separation from children through child welfare systems has a life-changing impact on mother’s health and wellness, including among those affected by substance use. After having a child apprehended by the state, women affected by substance use report deteriorating mental health, symptoms of PTSD and psychological distress, and increased drugs and alcohol use to cope with loss and grief. Since 2016, BC has struggled with a public health emergency from pervasive levels of fentanyl in the local drug supply, which has resulted in rising opioid-related overdose deaths. A recent study found marginalized women in Vancouver, Canada who had their children apprehended experienced greater odds of unintended, non-fatal drug overdose and these odds were even greater for Indigenous women. In the context of economic precarity, impacts on social determinants of health may also include loss of child-related income supplements with consequences for housing and food security. Symptoms of trauma and substance use are often cyclical and compounded by separation from children taken into foster care.”^{xii}

There are dangerous consequences stemming from state apprehension, “Young Indigenous women who recently had a child apprehended were almost twice as likely to attempt suicide, even after controlling for demographics, past and recent traumas, substance use, and sexual vulnerabilities. Our findings contribute to an emerging literature examining the harms of having children removed on the health and wellbeing of young Indigenous mothers entrenched in substance use and complex trauma. This study provides evidence affirming what is common sense—that separating mothers from their children adversely

impacts the health and wellbeing of mothers. These findings are highly relevant in light of the nation-wide overrepresentation of Indigenous children in child welfare systems. Substantial evidence demonstrates that concerning proportions of apprehensions are linked to economic hardship and/or funding structures that incentivize removals rather than prevention. Self-determined culturally safe prevention resources for families, including trauma-and-violence informed approaches to support healing from lifetime and intergenerational traumas, are urgently required.”^{xiii}

Neurobiology of Trauma

“Psychological trauma overwhelms a person’s capacity to cope, not just psychologically, but biologically. Advances in neuroscience have increased our understanding of what happens in the brain and body when experiencing trauma reactions. We react as a whole being and now understand that psychological trauma is also a neurobiological trauma (Harvard Health Publishing, 2020).”^{xiv}

Flight, Fight or Freeze

“In a traumatic situation, multiple organs and systems engage to create a response to the threat in the environment and prepare us to survive the threat. This is called the “Fight, Flight, or Freeze Response” because it helps us to pay attention (freeze), and either fight off the threat or flee to safety. It is worth noting, however, that the ‘freeze’ response may also signal an overwhelmed system which detracts from being able to pay attention. With the ‘fight’ and ‘flight’ responses, a group of stress hormones are released upon signals from the brain and physiological responses may result, including increased heart rate, faster breathing, tension in muscles, and sweating (Harvard Health Publishing, 2020). Physiological responses to trauma can be varied and even hard to identify. The response can be short-term or long-term, depending on how a person experiences the event. Most physiological responses are unconscious, and quite often a person experiencing trauma may not know what they are feeling or why. They may perceive threats where there are none, their body responds accordingly, and a state of physiological balance may be hard to achieve. This dysregulation in the brain and body systems maintains mental, emotional, and physical distress (Harvard Health Publishing, 2020).”^{xv}

Effects of Apprehension: The Sixties Scoop and Current CFS Practices

In Saskatchewan, particularly the Northern region, Indigenous children were taken or ‘scooped’ from their communities and most frequently relocated to white families in southern colonial settlements.^{xvi} Under the administration of the provincial CCF (the pre-cursor to the NDP), scooping children from the North was deemed necessary because Northern foster care was reportedly unable to meet capacity.^{xvii} But of course, scooping Indigenous children from their home communities fostered a social and cultural disconnect that aligned with Canada’s ultimate goal of assimilation and cultural homogeny. Scooping children contributed to assimilation by disconnecting Indigenous youth from their ancestral lands, families, communities, resources, and livelihoods. Many Indigenous children who were scooped at birth or an early age were not told of their relocation or Indigenous kinship by their adoptive guardians, and only found out later in life.

“Children were relocated from their parents, siblings and communities and sent far from their homes to stay with non-Aboriginal families (Cull, 2006). Additionally, social workers’ caseloads were too heavy to allow for proper screening of foster homes, which largely resulted in countless children being placed in homes where they were abused and treated like slaves (Fournier & Crey). The mass removal of children and youth that began in the sixties has been referred to as the “sixties scoop;” however it lasted far longer than a decade (Fournier & Crey). Patrick Johnston developed the term “sixties scoop;” which

generally refers to the period 1960-1980 (Sinclair, 2007). It is a term used to refer to the time period from the initial closing of the residential schools to the mid-1980s (Sinclair). Unfortunately to date there has been little difference in the situation of Aboriginal children and the child welfare system (Sinclair)^{xxviii}

"During the 1960s, child and welfare services focussed on the prevention of "child neglect," which placed emphasis on the moral attributes of individual parents, especially mothers, and on enforcing and improving care of children within the family (Swift 1991:239-240). However, "neglect" in the case of Aboriginal families was mainly linked to factors associated with poverty and other social problems, which were dealt with under what social workers referred to as "the need for adequate care." Improving care within Aboriginal families was not prioritized as it was for non-Aboriginal families, nor did provincial child welfare policies include similar preventive family counseling services for Aboriginal families as they did for other families. In many situations a lack of resources such as flush toilets, running water, or a refrigerator were grounds to make an Aboriginal child a ward of the state (Fournier & Crey 1997:85). So also was the absence of the biological mother and the placement of her children by way of traditional fostering and adoption. The typical pattern of intervention was for non-Aboriginal social workers to "apprehend" children in "severe crisis situations" and seek court-ordered committals to care, followed by placement in a substitute home off the reserve (MacDonald 1995:381). Since there were no services to facilitate family re-unification on reserves, social workers usually chose adoption or long-term foster care for Aboriginal children separated from their parents. The result was that Aboriginal children experienced much longer periods of foster care than their non-Aboriginal counterparts (MacDonald 1995:381).^{xxix}

Evidence from the 1980s and 1990s on First Nations child apprehensions demonstrates the continued discrimination against Indigenous families, particularly Indigenous mothers following the Sixties Scoop: "In reviewing legal child welfare decisions involving First Nations mothers in the 1980s and early 1990s, Kline determined that addiction was often characterized as a 'lifestyle choice' while domestic violence was described by judges as a 'personal problem' or 'chaotic lifestyle' (1993: 321). Furthermore, Kline found that housing issues were also blamed on the mothers, when they are actually indicative of poverty. Again, the material conditions of colonial oppression are taken to be 'risk factors' and the fault of the mother (Kline 1993: 324). Bennett explains that mothers also need the support and resources that are only provided to children under the child welfare system. She found that mothers whose children are removed from their custody had experienced similar trauma as the children (Bennett 2009:79, 81). Moreover, once children have been in alternative care, they have a very hard time returning to their communities and becoming functional members (Bennett 2009: 94).^{xxx}

This discriminatory pattern is an ongoing issue within current Child Welfare frameworks, "[Social workers, court systems, and lawyers working within child welfare frameworks while utilizing provincial child welfare legislative frameworks evaluate Indigenous homes and families as lacking] and therefore [rationalize] the removal of children from homes, by force if necessary, as essential. This has been particularly hostile for Indigenous women and mothers: targeted discriminatory legislation has increasingly left them marginalized and vulnerable to state intervention."^{xxxi}

The effects of apprehension on the child, their family, and community are complex. How the child is apprehended, where they are placed, why they have been apprehended, and the ability of parents or families to connect with their child are all determining factors in the potential outcomes of apprehended children. While all scenarios of child apprehension can be traumatic for the children and families involved, there are protective factors that can mitigate that risk. For example, if a child is apprehended but placed in the care of a close family member, friend, or trusted community member – one with ties back to the child's family – this can greatly reduce the traumatic risk. For Indigenous children, proximity to a culturally appropriate and supportive environment are also protective factors against trauma. Unfortunately, until very

recently, these protective factors have rarely been considered or respected by provincial Child Welfare Services.

Child welfare apprehension is decidedly a negative social determinant of health with the capacity to influence other social determinants: “Youth exposed to the child welfare system are among society’s most vulnerable citizens. A large body of scientific evidence has documented the elevated risk for homelessness, mental health issues, substance use, incarceration and unplanned pregnancies among those previously maltreated and subsequently exposed to the child welfare system. Exposure to child welfare refers to all youth and families who are investigated and monitored by the government for suspected maltreatment, whether or not subsequent out-of-home placement occurs.”^{xxii}

Effects of Apprehension: Residential Schools

Returning now to the concepts of historical and intergenerational trauma - systemic discrimination, the enduring impacts of settler colonialism, and genocide have caused considerable societal impacts for Indigenous peoples. Prior to Child and Family Services, state apprehensions were conducted via the Residential School system.

“... Aboriginal children and youth suffer a disproportionately higher rate of child abuse and neglect, which is primarily the result of systemic issues (Canadian Council of Provincial Child and Youth Advocates, 2010). There is no doubt that the history of colonial policies leading to family disruption has left a lasting impact on the parenting practices for many Aboriginal families (Sullivan & Charles, 2010). One of the most prominent examples of family disruption was (as mentioned earlier) the residential school system. The residential school system prevented children from observing healthy parenting role models and subsequently many of the children that attended residential schools grew to be adults who were poorly equipped for parenting (Trocmé et al., 2004).”^{xxiii}

Beyond observable parenting roles, violence inflicted upon children in Residential Schools and the societal failure to assist survivors heal has left many people struggling to cope.

“The Royal Commission on Aboriginal People explained, ‘A wedge had to be driven not only physically between parent and child but also culturally and spiritually’ so that upon returning to their communities, the child would still feel disconnected and separated (RCAP 1996: 316). It has been widely confirmed that residential schools greatly affected the cultural integrity of Indigenous communities, leading to dysfunction (RCAP 1996: 361). Consequently, First Nations, Metis and Inuit children “remain among the most vulnerable children today in Canada” (Canadian Council of Child and Youth Advocates 2011:1).”^{xxiv}

“Nationally representative surveys have revealed that IRS Survivors faced significant and long-term challenges to their well-being (Bombay et al., 2014a; First Nations Information Governance Centre [FNIGC], 2012, 2018), including depressive symptoms and alcohol and substance use, among other health and social challenges (Corrado & Cohen, 2003; FNIGC, 2012, 2018). **The long-term effects of chronic childhood adversity can influence the ability to provide adequate care for one’s own children through various pathways, including poverty, lower socioeconomic status, and poor parental health and social outcomes in both mainstream and Indigenous populations** (Bombay et al., 2009, 2014a, 2014b; Chartier et al., 2010; Edwards et al., 2003; EvansCampbell, 2008; Lafrance & Collins, 2003; Larkin et al., 2012). Several successive generations of Indigenous children were exposed to chronic trauma, neglect, abuse, and malnutrition at IRSs (Bombay et al., 2012).”^{xxv}

“Although there are many stories of resilience in these studies, most also describe negative experiences associated with their adoption, such as struggles with racism, shame, and confusion related to their identity, and many reported being subjected to neglect and/or spiritual, emotional, physical, and sexual abuse in their adoptive settings (Abdulwasi, 2015; Carriere, 2005; Starr, 2016; Wright Cardinal, 2017).”^{xxvi}

“Indigenous adults from across Canada who were born during the Sixties Scoop period, those who had a parent who attended IRS were approximately four times more likely to have spent time in foster care or in a group home while growing up. They were also more likely to have grown up in a household in which someone used alcohol or drugs, had a mental illness and/or a previous suicide attempt, had spent time in prison, had household economic instability, and general household instability.”^{xxvii}

“The direct and intergenerationally transmitted effects of experiences at IRSs in relation to mental health, poverty, substance use, and social isolation are known factors that predict child neglect and child removal into foster care (Brittain & Blackstock, 2015; McKenzie et al., 2016). In fact, neglect is reported as the main reason Indigenous children enter the CWS and is a term used to remove children from their homes due to poverty (Brittain & Blackstock, 2015; Trocmé et al., 2006).”^{xxviii}

“Although some who were affected have recounted very positive adoption stories and subsequent success in their adulthood (Swidrovich, 2004), in general, the large majority of narratives shared by former adoptees in research studies included descriptions of adversities similar to those described by Survivors of the IRS system (McKenzie et al., 2016; Sinclair, 2007; Starr, 2016).”^{xxix}

“The stories of former adoptees also suggest that most (but not all) were deprived of healthy cultural socialisation practices from Indigenous adults and peers to allow for the development of cultural engagement and pride, which has been shown to be a protective factor for Indigenous peoples (Bombay et al., 2010).”^{xxx}

Bill C-92 and *Gladue*

The following is a short summary extracted from “[Bill C-92 National Standards Guide for Legal Professionals](#)” published by the Wahkohtowin Law and Governance Lodge, University of Alberta.^{xxxi} It outlines National Standards for legal professionals in the application of Bill C-92. For a complete exploration of the legal principles outlined below, read the full article (four pages).

Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families is the first federal legislation on the subject of Indigenous Child and Family Services [CFS] and the first statute to recognize inherent Indigenous jurisdiction over CFS as a S. 35 right in Canada.

In addition, as called for in the TRC Final Report, the statute establishes national minimal standards for CFS delivery for all Indigenous children and families. This includes First Nation, ‘nonstatus,’ Métis, and Inuit children, living on or off reserve.

Bill C-92 came into force on January 1, 2020, and the National Standards apply as of that date.

What do courts and legal professionals need to know?

Which courts will hear Indigenous CFS cases after Bill C-92 is in force? The statute is silent, but the law is clear. Provincial courts who currently hear CFS cases will continue to have jurisdiction and can apply federal statutes like Bill C-92. See Prof. Naomi Metallic’s short article for doctrinal explanation and case law on this point.

How do the Bill C-92 National Standards interact with provincial CFS legislation? Bill C-92 binds both federal and provincial governments: S.7. Where provincial laws or regulations are not inconsistent or in conflict with the minimum national standards in Bill C-92, the provincial law or regulation still apply: S.4

Where do the Bill C-92 National Standards likely require more from service providers or a different approach to decision-making from provincial laws? There are four main areas that require more from service providers or a different approach from decision-making that relies on provincial laws alone.

1. Principles: Best Interests of the Child, Cultural Continuity and Substantive Equality
2. Expanded Notice and Representation Requirements
3. Reasonable Efforts & Prioritization of Preventative Care & Socio-economic Conditions Requirements
4. Placement Priorities for Indigenous Children

Judges, legal professionals, advocates and CFSA service providers may need to be educated about these in order to comply with and properly apply the law, as well as understand the legal options available.

In the context of a *Gladue* analysis, report, or submission, the rights and protections of Indigenous children and Indigenous families are paramount. Maintaining connection between parent and child, however possible, must be accounted for when considering potential sanctions and sentencing options. Often, incarceration can present an incredibly difficult barrier in the continuity of a relationship between parent and child. It is well established in the scholarship that a detrimental effect of incarceration lies in the separation of the family; the severity and length to which this disruption occurs are variables in the overall impact to the parent-child relationship.^{xxxii} Whereas, family continuity and maintaining parent/child relationships are protective factors against recidivism and supports the long-term wellbeing of the child.^{xxxiii}

The foundational principles and tenets respecting the rights of Indigenous parents and communities to care for their children, especially within the contexts of Child and Family Services, are applicable whenever the wellbeing of an Indigenous child is concerned. Bill C-92 clarifies the expectations that legal professionals should abide by when considering the best interests of the Indigenous child, the family, and the community. One of the foundational *Gladue* principles asks, ‘what other sanctions as opposed to incarceration are most appropriate for this particular offender?’ If the liberty of the child or parent is at stake through risk of incarceration, then the question must be asked as to whether incarceration jeopardizes the Indigenous family in this case? Principles outlined within Bill C-92 may help to contextualize and impress upon legal professionals, crown prosecutors, and sentencing judges, to consider more fully the potential threats to parent and child that incarceration imposes. Even under circumstances where incarceration must be imposed, the rights and relationship of the Indigenous child and their parent should

be given proper weight, and steps meant to support that connection should be addressed through rehabilitative Aftercare and Healing plans. Aftercare and Healing plans can outline pathways of support and identify the needs of the parent(s), and child(ren) while the parent is incarcerated; this provides a comprehensive picture as to the best interests of the family. This is especially true for Indigenous mothers and their children, whose lives are threatened the most by incarceration.

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