



Briefing Paper: Rights, Legislation and moving beyond forensic approaches to child and family well-being.

The mainstream child welfare system is often thought of as the set of laws, policies, actions, and programs that are aimed at protecting children from harm and enforcing the rights of children to be protected from abuse, neglect and harmⁱ. This understanding has been affirmed in the courts who have declared that the child welfare system is, at its core, meant to provide children with “solutions for unsatisfactory home situations”ⁱⁱ. The right of the child to be protected from harm is an essential element of a child welfare system; however, it should be a system that protects *all* the rights of the child in their entirety.

An overly narrow and Eurocentricⁱⁱⁱ view of harm within mainstream child welfare systems has failed to consider the full ‘ecology’^{iv} that contributes to the safety and well-being of children, families and communities^v.

Protecting the rights of a child may require alternative approaches. It may also require governments to dedicate resources to improve the wellbeing of specific groups of children who experience discrimination. A rights-based approach to child welfare would recognize these elements as conferring rights to children and responsibilities on the governments who are legally tasked to care for them^{vi}.

For decades now, Indigenous advocates across Canada have been calling for changes to the mainstream child protection system. Countless reports^{vii} have highlighted how the current apprehension^{viii}-focused system is harming Indigenous children, families, and communities. The alarming overrepresentation of First Nations, Inuit and Métis children in the child protection system reveals deep systemic problems. Indigenous children are often removed from their families and communities because of racist and biased judgments made about their parents’ or caregivers’ ability or willingness to provide care. This is often directly correlated with the poverty families experience due to systemic discrimination and colonial and genocidal policies, and the fact that they are not receiving the supports they require to thrive^{ix}.

Moving beyond a forensic^x approach to child and family well-being means shifting the mainstream child welfare system’s focus from apprehension to prevention by supporting families to stay together and thrive with the help of community-based services, supports, and resources.

One of the co-convenor organizations for the *Beyond Neglect* webinar panel on this topic, West Coast Leaf, aims to shift the child protection system in British Columbia in this way. Along with surfacing the lived experience of Indigenous caregivers navigating

BC's child welfare system, their work is also focused on highlighting what the mainstream system can learn from Indigenous families, communities and Nations, who are engaged in efforts to revitalize Indigenous approaches to child welfare. In September 2019, West Coast Leaf released a report titled "*Pathways in a Forest: Indigenous guidance on prevention-based child welfare*" which centred the voices of 64 caregivers who shared their experience of fighting to keep their children out of government care. Far from fulfilling its mandate to support families, these caregivers' experiences reveal that the child welfare system in BC, like systems across the country, is lacking in accountability, steeped in systemic racism, operating without basic guarantees of fairness, and punitive in nature.

Another of our co-conveners for the webinar panel, Raymond Shingoose, is a leading voice for innovative approaches to governance, administration and program services in the First Nations child and family services sector in Saskatchewan. Anishinabek from the Cote First Nation, he is the Executive Director for the Yellow Thunderbird Lodge, a leading example of a First Nation Treaty Based governance structure. Raymond describes the guiding principles for a First Nations legislation as follows:

A proposed First Nations Child Welfare Legislation is designed to be a pathway for change. A proposed First Nations Child Welfare Legislation should present a brief overview of the First Nations children touched by the mainstream child welfare system and the emerging innovations that provide a basis for improving First Nations child welfare legislation. A proposed First Nations Child Welfare Legislation should offer a First Nations vision of an effective First Nations child protection and Family service system, including the necessary critical attributes of a First Nations legislation (Inherent and treaty based, First Nations owned and controlled). It will establish First Nations jurisdictional, procedural, and substantive standards aimed to achieve the dual propose of protecting the right of First Nations children to live with a First Nations family and to stabilize and foster continued inherent/treaty provisions. The First Nations Family Service Legislation will bring clarity through a legislative process formed by legislative advisors as identified by the First Nation.

The mainstream child protection system in Canada was designed over 150 years ago, expanding its role as Residential Schools closed their doors, and is underpinned by the belief that safety of children is found in separation from their "unfit" families. This belief is apparent in all stages of the child protection system; it is also embedded in the courts, in policy and in legislation. It is at the core of the language employed and it stems from the DNA of our country's colonial history and contemporary society fabric. Sadly, the system has failed to truly protect children and support families.

There are world views that hold alternative concepts about children, families and community; world views that affirm safety found in inclusion, that make no distinction between prevention and protection. In order to see meaningful change in the mainstream child protection system, we need to learn from families, communities and Nations who are engaged in shifting the system's focus from apprehension to prevention and moving beyond a forensic approach to child and family well-being.

Additional Resources:

First Nations Child & Family Caring Society: <https://fncaringsociety.com/>

Report on Indigenous Child Welfare in British Columbia: <https://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf>

Representative for Children and Youth, Reports and Publications: <https://rcybc.ca/reports-and-publications/>

West Coast Leaf Research Reports: <http://www.westcoastleaf.org/publication-types/research-reports/>

Information on Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*: <https://www.canada.ca/en/indigenous-services-canada/news/2019/06/an-act-respecting-first-nations-inuit-and-metis-children-youth-and-families-receives-royal-assent.html>

Sinclair, R. (2016). The Indigenous child removal system in Canada: An examination of legal decision-making and racial bias. *First Peoples Child & Family Review*, 11(2), 9-18. <http://journals.sfu.ca/fpcfr/index.php/FPCFR/article/view/310>

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ⁱ *Pathways in a forest: Indigenous Guidance on Prevention-Based Child Welfare*. West Coast LEAF, September 2019.

ⁱⁱ *L.J. v British Columbia (Director of Child, Family and Community Services)*, [2000] 2000 BCJ No 1539 (BCCA)

ⁱⁱⁱ A Euro-centric world view is a biased view centered on white and western civilization. Eurocentrism favours white and western views over non-western ways of knowing, such as Indigenous world view.

^{iv} An ecological framework for prevention is based on the following assumptions:

Children and families exist as part of an ecological system. This means that prevention strategies must target interventions at multiple levels: the individual, the family, the community, and society. From: <https://www.childwelfare.gov/topics/preventing/overview/framework/ecological/>

^v For more on this topic, see *Briefing Paper: What is Neglect* at <https://www.cwlc.ca/beyond-neglect>

^{vi} *Pathways in a forest: Indigenous Guidance on Prevention-Based Child Welfare*. West Coast LEAF, September 2019.

^{vii} Indigenous resilience, connectedness and reunification – from root causes to root solutions. A report on indigenous child welfare in British Columbia. Final Report of Special Advisor Grand Chief Ed John. November 2016. From: <https://fns.Bc.Ca/wp-content/uploads/2017/01/final-report-of-grand-chief-ed-john-re-indig-child-welfare-in-bc-november-2016.Pdf>

^{viii} Removal of children from their family of origin and placement in out-of-home child protection placements such as foster homes and group homes.

^{ix} *Pathways in a forest: Indigenous Guidance on Prevention-Based Child Welfare*. West Coast LEAF, September 2019.

^x A forensic approach is typical in child welfare investigations, focusing on a family assessment approach and an offer of voluntary services. Forensic interviewing is a first step in most child protective services (CPS) investigations, one in which a professional interviews a child to find out if he or she has been maltreated. In addition to yielding the information needed to make a determination about whether abuse or neglect has occurred, this approach produces evidence that will stand up in court if the investigation leads to criminal prosecution. From : https://practicenotes.org/vol8_no1/what_is.htm.