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Issue 2: Reimagining Child Welfare Systems in Canada

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Reimagining Child Welfare Systems in Canada – Part II

JANET MOSHER & JEFFERY HEWITT

Contributions to volume 28:1 of the JLSP offered poignant insights into the root sources of the overrepresentation of Indigenous and African Canadian children and families in state child welfare systems, highlighting the role of poverty, racism, discrimination, and ongoing colonial violence. The contributions to this volume, 28:2, offer insights to deepen our understanding of the roots of overrepresentation, as well as concrete strategies with the potential to dramatically improve outcomes for children, families, and communities. As with volume 28:1, the contributions here arise from a symposium, *Reimagining Child Welfare Systems in Canada*, held 21 October 2016 and co-hosted by the JLSP, the First Nations Child and Family Caring Society of Canada, the African Canadian Legal Clinic, and The Action Group on Access to Justice (TAG) of the Law Society of Ontario. The symposium brought together community members, practitioners, academics, and students to explore how state child welfare systems have failed Indigenous and African Canadian communities and to share alternatives that communities have implemented, planned, and/or imagined.

As noted in our Introduction to volume 28:1, a consistent refrain during the Symposium was that communities impacted and harmed by existing child welfare practices must be the ones to lead change, for it is within these communities that the experience of inter-generational trauma is lived daily and where sources of culturally relevant knowledge have been sustained and nurtured. Three of the contributions in volume 28:2, by Naomi Metallic, Jennifer Clarke et al, and Isaac Yoryor, take up this clarion call, offering community-grounded strategies for change.

Naiomi Walqwan Metallic, in “A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the *Caring Society* Case,” provides a detailed account over time of the role of the federal and provincial governments in the provision of child welfare services on reserve. Through her review of the evolution of the First Nations Child and Family Services Program (FNCFS Program) of the federal government, Metallic catalogues a range of deeply troubling features that have led to the widespread removal of children from their families and communities, undermined community control, and deepened poverty. Turning to the decision of the Canadian Human Rights Tribunal in the *Caring Society* case, Metallic notes that while much of the attention given to this decision has focused on its finding that the federal government’s underfunding of child welfare services on reserve constitutes discrimination, critically important are two further propositions: “that, as a matter of human rights, (1) First Nations are entitled to child and family services that meet their cultural, historical, and geographical needs and circumstances; and (2) such services cannot be assimilative in design or effect.”¹ As Metallic argues, these propositions in the Tribunal’s decision ground a further claim: that First Nations have a human right to self-government, for it is only through community designed and controlled services that the “cultural, historical and geographic needs of First Nations communities” will be appropriately addressed. Moreover, Metallic argues, there is no reason why this logic should apply to child welfare services only; rather it is equally applicable to all First Nations essential services. Consistent with the analysis

¹ Naiomi Walqwan Metallic, “A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the *Caring Society* Case,” this volume.

developed by Sébastien Grammond in volume 28:1,² Metallic suggests that the federal government's role now is to clear “a legislative path to allow for effective implementation of self-government by First Nations ... as well as provid[e] adequate funding.”³

Jennifer Clarke, Julian Hasford, Leyland Gudge and Sonia Mills-Minster, in their article, “Imagining a Community-Led, Multi-Service Delivery Model for Ontario Child Welfare: A Framework for Collaboration Among African Canadian Community Partners,” document the ways in which child welfare services have failed African Canadian children, youth, and families. Understanding these failures, and imagining a way forward, must be grounded, they argue, in an analysis of anti-Black racism, understood as the “pervasive, overarching climate of attitudes, beliefs, institutional practices, and policies that are embedded in Canada's White supremacist history and culture, that denigrate people of African descent, and is manifested in various forms of structural violence and racialized inequities in multiple social systems, including child welfare, racialized poverty, workplace, housing, education, and criminal justice.”⁴ As with Indigenous communities, African Canadian communities have experienced the lack of culturally relevant services, a denial of access to justice with limited means to challenge state child welfare decisions and systems, and the inadequate gathering of race-based data by child welfare organizations.⁵

Consistent with the clarion call from the Symposium, Clarke et al argue that community ownership and an emphasis on African-centred values are required in a new model, one that will enable “African Canadian community-based agencies to deliver preventative, culturally relevant, family-centred supportive services to African Canadians.”⁶ To this end, Clarke et al provide a detailed description of a community-led, multi-service delivery model, including the people at the centre; the purpose, vision, mission, and values; the structure; and the programs and services. The model they propose offers a compelling, community-grounded vision bursting with the potential to radically transform the way things are done in relation to child welfare.

Isaac Yoryor, a community activist, sets out in his Voices and Perspectives contribution, “How We Can “Bell the Cat”: African Canadian Perspectives of the Canadian Child Welfare System,” his own struggle to adapt to his new home of Canada after arriving as a refugee, and the struggles that other African refugee and newcomer parents encounter in the resettlement process. Echoing Clarke et al, Yoryor describes the gulf in understanding between child welfare workers and parents, and the devastating effects these misunderstandings can have for families and communities. He imagines a structure in which a parents' council plays an active role in enhancing communication across cultures, and between parents and state actors.

The contributions in volume 28:2 also pick up and explore another theme from the Symposium and touched on in several of the papers in volume 28:1—the structural failings,

² Sébastien Grammond, “Federal Legislation on Indigenous Child Welfare in Canada,” (2018) 28:1 JL & Soc Pol'y 132.

³ Metallic, *supra* note 1.

⁴ Jennifer Clarke, Julian Hasford, Leyland Gudge & Sonia Mills-Minster, “Imagining a Community-Led, Multi-Service Delivery Model for Ontario Child Welfare: A Framework for Collaboration Among African Canadian Community Partners,” this volume. On anti-Black racism and child welfare, see also Doret Phillips & Gordon Pon, “Anti-Black Racism, Bio-Power, and Governmentality: Deconstructing the Suffering of Black Families Involved in Child Welfare” (2018) 28:1 JL & Soc Pol'y 81.

⁵ Ontario Human Rights Commission, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* (February 2018), online: <www.ohrc.on.ca/en/interrupted-childhoods> [perma.cc/G27A-BTQ6].

⁶ Clarke, *supra* note 4.

poverty chief among them, that bring families to the attention of child welfare authorities and which all too often result in protection concerns being substantiated. As the papers by Sinha et al⁷ and Rothwell et al⁸ in volume 28:1 and Clarke et al and Metallic in this volume make clear, the high rates of poverty in Indigenous and African Canadian communities must be traced to their sources: White supremacy, colonization (past and ongoing), discrimination, stereotyping, racism, and anti-Black racism. Given this, it seems clear that efforts to transform child welfare systems and practices must pay attention to systems that distribute or redistribute resources. While this might call to mind systems such as social assistance, housing, and health, a system often overlooked is income tax. While on the one hand, the income tax system is a mechanism for the in-gathering of resources, it also plays a significant role in the distribution of social benefits. Importantly, among these benefits is the Canada Child Benefit (CCB). Jinyan Li and Jacklyn Neborak, in their article “Tax, Race, and Child Poverty: The Case for Improving the Canada Child Benefit Program,” argue that the CCB is the most effective anti-poverty tax instrument ever to be introduced by the federal government. And while the CCB has no doubt had a positive impact overall in poverty reduction, limited data renders it difficult to know the scope of its impact on racialized and Indigenous communities. Moreover, for a host of reasons including mistrust of government, the complexity of the tax system, and the need to file both a tax return and an application for the CCB, the evidence that is available points to concerns regarding take-up rates by eligible Indigenous parents, as well as parents who are newcomers to Canada. While the benefit is needs-tested, and those with lower incomes are entitled to higher benefit amounts, the redistributive and anti-poverty potential of the CCB will not be fully realized unless those with low or no income have access to information about the benefits and supports to apply.

Taken together, these contributions offer insight, wisdom, and pragmatic ideas that have the potential to transform approaches to child welfare, and in so doing, ensure the well-being of children, families, and communities.

⁷ Sinha et al, “Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations Children in the Child Welfare System” (2018) 28:1 *J L & Soc Pol’y* 10. Sinha et al note that maltreatment in the form of “neglect” associated with inadequate housing, lack of social supports, mental health, and addictions “suggest a pattern in which the overrepresentation of First Nations children is driven by cases involving chronic family needs, rather than urgent child protection cases,” bringing the need for systemic reform more sharply into focus.

⁸ David Rothwell et al, “Explaining the Economic Disparity Gap in the Rate of Substantiated Child Maltreatment in Canada” (2018) 28:1 *JL & Soc Pol’y* 39.