

“Our Children are Gone”: Aboriginal Experiences of Family Court

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The *Civil Justice System and the Public* was a five-year collaborative action research project. Participants involved in the family law research make it quite clear: family court is not a place where anyone wants to be. People in family court are experiencing emotional trauma related to some form of family conflict which they have been unable to resolve in any other way. Sometimes the conflict concerns the ability of parents to care adequately for their children leading another family member or a child protection agency to seek either a temporary (TGO) or permanent (PGO) guardianship order. Sometimes abuse or neglect is involved, but often parents find themselves unable to care for their children properly due to lack of housing, insufficient income, or illness (including mental health and addiction problems). Families living in poverty, and especially Aboriginal parents and children, are significantly overrepresented in child protection cases.

Aboriginal participants in the *Civil Justice System and the Public* research identified child welfare and guardianship as the most pressing legal concerns for Aboriginal communities. Although some of these participants were, or had been involved in a family court case as a child or parent, most spoke to us from the perspective of court, child protection and community workers. Some lived and worked on First Nation reserves, others in large cities; some were Inuit, others Métis; but they all agreed that Aboriginal people faced court in a climate of serious social and cultural discrimination.

January/February 2007

LAWNOW

Aboriginal Families and the Law in Historical Context

Aboriginal research participants shared with us stories of their own varied childhoods. A Métis Elder spoke of her happy memories:

“There was no alcohol, no problems, no nothing. We had one policeman and he was our friend. We didn’t know what he was there for ... Well, nobody ever started any trouble ... And everybody had a strong family and it was big families. Those people worked hard ... So where did these things go wrong? Now, you tell me. Because ... you know, we were all happy! And I never knew anything until I come to this city in 1956 then I knew what was going on.”

Lack of space and poverty are not reasons to remove children from loving parents, as one court worker

pointed out, suggesting that “young social workers just coming out of university” should spend time living on a

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reserve in order to understand the culture. She described her own experience growing up as a member of a big family:

“I come from a family of seventeen. My mom and dad raised seventeen children. We used to live in a two-room shack ... But, hey, we survived that. And right now, the social workers that go out and see people living like that now — the first thing is they’re writing them up ... If they don’t smarten up it’s gonna be an apprehension.”

Other participants told us of the harm that has been done to Aboriginal families because of policies and laws that systematically remove Aboriginal children from their communities. Many Aboriginal people who are now parents were seized from their communities as children and forced to attend residential schools. Forced to forget their native language and their cultural heritage, they grew up in a harsh, often extremely abusive institutional setting that robbed them of any experience of nurturing parenting and community. One Aboriginal community worker spoke about residential school from personal experience:

“I’m a residential school survivor ... That’s a huge issue right now for our community. I don’t know if the justice system ... realizes the damage of residential school. What it did to our people, like it broke up the families ... We’re just making our way back. And ... [there] is the issue of ... 50,000 children that went through residential school and never made it back home.”

Growing Up With Social Discrimination

The generation of parents who grew up in residential schools struggle to make their way back and discover how to be nurturing parents. But Aboriginal child welfare and family court workers spoke emotionally of the continuing, and often avoidable, harm to Aboriginal children. Canadian legislation and court proceedings too often repeat the historical practice of removing children from their communities and placing them

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in culturally inappropriate settings, which even when physically *safe*, can be deeply abusive to mind and spirit. A Métis participant spoke, for example, of the racism she encounters within a large city:

“Myself growing up as a Métis [I faced] racism. And my children are facing this still to this day, and I can see it in the community itself, and I know it’s not just coming from community members. It’s coming from a lot of the agencies; it’s coming from our legal system here.”

When an Aboriginal child is taken from his or her community and placed with non-Aboriginal foster parents, loss of culture and community context is added to the loss of parents. The consequences may be extremely negative, as one participant illustrated:

“A man came up to me, he was white and his sister was a foster child and ... he was almost crying. He said, ‘my sister committed suicide ... She was a foster child in our home but she wasn’t treated right. She had different rules, different ways of handling her.’ And I said to him ‘Well, she didn’t know who she was’ and he said ‘yes’ ... He identified that his mother, father and brothers and sisters treated her differently and horribly just because she was an aboriginal woman.”

Facing Family Court Across a Cultural Divide

Legal language and the formal rules of court are bewildering even for people who are highly educated and whose first language is English. There are many Aboriginal languages and insufficient resources for translation and interpretation, which is made more difficult because there are few Aboriginal concepts that correspond to those of the legal system. Aboriginal research participants pointed out that Aboriginal parents face court proceedings across a deep cultural divide. Aboriginal parents must cope with their emotional trauma within a context of social discrimination that, as one participant put it, “assume because ... you’re an Indian you don’t know what you’re talking about and you don’t have feelings.”

Research participants emphasized that Aboriginal peoples have their own justice and conflict resolution traditions, and these are often at odds with the dictates of the Canadian legal system. For example, traditionally, Aboriginal cultures have made child guardianship arrangements informally among relatives and community members. There is an expectation that these arrangements are temporary — just until the parents are able to resume responsibility. This leads to confusion around guardianship orders in the court system because parents will agree to an option allowing adoption, not understanding what a permanent order really means in the court system. Before they understand what is happening, parents learn that their children have been taken away from them permanently.

Court and child protection workers offered many illustrations of the barriers to justice their Aboriginal clients face within the family court system:

“Well, a lot of times [clients] don’t even know why they are going to court.

Or the papers are wrong. I’ve read papers that are not even about the client, it

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is about the spouse of the client. And then the lawyers are very, very hard to reach because it is all legal aid ... I don't even have contact with them.”

“You know it's very difficult for children who get apprehended from a community ... they're flown out of the community, and the [parents] they don't know what to do ... So we just did a workshop with our community legal workers saying — okay here's the time frames. When somebody tells you their children have been apprehended — let us know right away, because we can ... at least mak[e] sure the answer gets filed so that they're on the record, and they're knowing what's happening.”

“A lot of Native moms, when they do come into [the city] to face [court], they just give up right then and there ... If they [were] dealing with the Reserve ... you would go and talk to them and say, go and get a lawyer and you will work this all out ...”

Creating Culturally Appropriate Alternatives

The *Civil Justice System and the Public* research also reveals the great dedication and inspiring strength of many Aboriginal people working within their communities and the justice system for spiritual healing and social justice. These participants bridge the two worlds of law and Aboriginal culture. They express both frustration with the contradictory and unrealistic nature of legislation and court orders, and hope that raised awareness within the justice and child welfare systems can lead to solutions. The following comments from participants underline current problems that need to be addressed, along with suggestions for solutions that are practical and socially just:

“What I find that children services often will do is they will say ‘Ok, you can get your kids back if you sign this 3-months TGO with us.’ But its 14-pages long and you get people that'll sit there going ‘I will do anything to get my kids home. I will do a parenting assessment, I will do a site assessment ... I will do this and this and this.’ When you look at it in the end, they can't make it to ... the visit with their kids because they've got so many other things on their plate. And so, how are you supposed to attend all of this counselling ... when you're supposed to obtain a job so you can have the money so you can have a home so you can feed your kids? And so, the measures of success are what's out of perspective.”

“But you're also asking what could be done. Is it just looking at what the laws are, in terms of guardianship of children? ... In Aboriginal country, the grandma looks after the children ... if somebody is sick, auntie looks after the baby ... They'll pay a perfect stranger to look after the children but they don't want to pay a family member. I mean, a family member still has to feed that kid, still have to buy them clothes ... one of the things you could look at, would be look at what the legislation is and ... what are the barriers to Aboriginal people looking after their own children. When you're already poor to not be able to get money to look after your sister's 3 or 4 children ... because I mean, children are the most important part of the community.”

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We also heard about initiatives across Canada where government, Aboriginal and non-Aboriginal stakeholders are working collaboratively to remove barriers to justice for Aboriginal families. The participants quoted above suggest that a *common sense* look at legislation and court orders in terms of real outcomes could achieve considerable improvement. There is, however, a great deal of work to be done. Aboriginal participants suggested the following challenges must be met in order to create meaningful change:

- Increase awareness and respect for Aboriginal cultures and customs.
- Acknowledge, confront, and address the context of social discrimination facing Aboriginal people.
- Work together to address root causes and establish more flexible and equitable process in all areas of the justice system.
- Build Aboriginal leadership and ownership in developing research, policy and programs.
- Make a commitment to providing the necessary resources to accomplish the above.

As one of our participants said,

“I really think that the system needs to hear from Aboriginal people that we are a group that are proud of what we’ve done ourselves and we have come a long way ... And I’ve never met anybody in the Aboriginal community that didn’t want their kids back, ever, ever, ever, ever.”

Ensuring Aboriginal parents and children can find justice in Canada’s family court system must be a priority for us all.

Mary Stratton is the Research Director of the Canadian Forum on Civil Justice in Edmonton, Alberta. This article is drawn from a longer report, Balancing the Scales: Understanding Aboriginal Perspectives on Civil Justice.

