

# First Peoples Child & Family Review

An Interdisciplinary Journal

*Honoring the Voices, Perspectives and Knowledges  
of First Peoples through Research, Critical  
Analyses, Stories, Standpoints and Media Reviews*

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## Foreword

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Dear First Peoples Child & Family Review Community,

It is my great pleasure to present this issue of the *First Peoples Child and Family Review*, which includes six articles ranging from speeches to academic publications to personal stories. Thank you to all of the peer reviewers who provided thoughtful feedback and to the authors for sharing their knowledge, experience and stories!

The editorial team and I believe that meaningful reconciliation engages young people in learning about our collective past and thinking creatively about the future. **In this issue's** first article *Youth and reconciliation* it is our privilege to honour the voices of Erin Samant and Daxton Rhead, two outstanding youth advocates for Indigenous equity. Samant and Rhead share with us their understanding that education and community are critical components of reconciliation.

If you seek inspiration to stand up for the good things in this world, then look no further than **Nicole Flynn's** rousing speech *I can make a difference and so can you!* Flynn describes her experience as an advocate for people with development disabilities – drawing a parallel between **Canada's** horrible treatment of Indigenous peoples and those with developmental disabilities – and how her work has brought her to the office of the Prime Minister of Canada.

We are pleased to publish **Sébastien Grammond's** and **Christiane Guay's** article *Understanding Innu normativity in matters of customary "adoption" and custody*. In this article, which first appeared in French in the McGill Law Journal in 2016, Grammond and Guay present the preliminary results of a research project they undertook on behalf of the Innu community of Uashat mak Mani-Utenam. **Central to the purpose of Grammond's and Guay's research is the principle that** Indigenous communities know and can implement effective alternatives to Western interpretations of child welfare.

In *Ontario's history of tampering and re-tempering with birth registration records* Dr. Lynn Gehl reveals what appears to be a disturbing trend of intentional modification of birth registration records. Gehl argues that the practice of preventing or removing the birth fathers' **information from these records, in addition to Canada's 'Proof of Paternity' policy, which assumes all unidentified fathers are non-Status Indians under the Indian Act, puts Indigenous children in "double jeopardy"** of not knowing who their father is and being denied their treaty rights.

Adopting a framework based on the Two Row Wampum belt, Brittany Madigan, author of *Voices of youth: how Indigenous young people in urban Ontario experience plans of care*, shares the stories of two Indigenous youth and **their experiences in Ontario's child welfare system. Through interviews with** these youth, Madigan explores the relevance of certain provincially mandated documentation requirements for children in care. Madigan leaves us with nine recommendations to support positive experiences and well-being of Indigenous youth in care.

*The waters of sexual exploitation: understanding the world of sexually exploited youth* by Cathy Rocke and Laurie MacKensize is a visual tool designed to foster an understanding of the lived experiences of sexually exploited youth. Rocke and MacKensize point out that Indigenous youth are disproportionately involved in the world of sexual exploitation and argue that a better understanding of the experiences of these youth will lead to more effective interventions.

The editorial team is thrilled to announce that issue 12(2), which will be published in December, 2017, will be our second child and youth edition! Canada is celebrating its 150th birthday. However, the events of the past century and a half have not always been cause for celebration. **From the residential school system to the 60s scoop, to today's overrepresentation of Indigenous children in child welfare, it is** important to acknowledge the discrimination that Indigenous children continue to face. This special edition is a chance for children and youth across Canada to share their thoughts on the past 150 years, along with their hopes for the future.

In good spirit,

Marc St. Dennis

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## Youth and reconciliation

Erin Samant, Daxton Rhead<sup>1</sup>

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### Abstract

*On Monday, March 6, 2017, students from Glebe Collegiate organized a demonstration on the steps of Parliament Hill in Ottawa, Ontario. The students called on the Prime Minister and other elected officials to treat Indigenous peoples with dignity and respect and to immediately cease discriminatory practices. The students named this event Youth and Reconciliation. Erin Samant and Daxton Rhead helped organize and lead Youth and Reconciliation. What follows is a transcript of their statements to fellow students, allies, Members of Parliament, and Indigenous organizations that were present during the event.*

**Keywords:** *youth, reconciliation, Parliament Hill*

### Erin Samant

Bonjour et bienvenue. Avant que nous commençons, nous aimerions reconnaître que nous sommes, en ce moment, sur la terre traditionnelle du peuple Algonquin. Mon nom est **Erin et j'ai créé "Youth and Reconciliation" avec Daxton.** Ceci a commencée comme un projet de classe pour notre cours de "Native Studies", mais heureusement est devenu quelque chose de plus grande avec l'aide de la Société de soutien à l'enfance et à la famille des premières nations du Canada. Nous sommes très heureux de vous accueillir ici, sur la Colline du Parlement.

**Selon nous, l'éducation est la première** étape nécessaire pour atteindre la réconciliation. De nos jours, il y existe encore de la discrimination contre les peuples Autochtones. Malheureusement, plusieurs canadiens ne sont pas au courant du racisme et aux autres problèmes sociaux que les personnes autochtones doivent combattre à chaque

[Translation] Hello and welcome. Before we begin, we would like to acknowledge that we are, right now, on the traditional land of the Algonquin people. My name is Erin and I created "Youth and reconciliation" with Daxton. This started out as a class project for our Native studies course, but fortunately has become something bigger with the help of the First Nations child and family Caring Society of Canada. We are very pleased to welcome you here on Parliament Hill.

[Translation] We believe that education is the first step necessary to achieve reconciliation. There is still discrimination against Indigenous peoples today. Unfortunately, many Canadians are not aware of racism and other social issues that Indigenous people have to fight on a daily basis. We hope that by sharing our knowledge with you we

**jour. Nous espérons qu'en partageant nos** connaissances avec vous, on peut tous aider à créer un meilleur avenir pour tous les peuples du Canada.

Nous aimerions vous remercier tous d'être venus aujourd'hui pour apprendre à propos des problèmes dont les peuples Autochtones font face. Nous espérons que vous avez appris quelque chose de nouveau et que vous allez continuer l'éducation en apprenant aux autres ce que vous sachez. Nous aimerions aussi remercier tout le monde à la **Société de soutien à l'enfance et à la famille des** premières nations du Canada qui nous ont aidés à réaliser ce projet.

can all help to create a better future for all the people of Canada.

[Translation] We would like to thank you all for coming here today to learn about the problems that Indigenous peoples face. We hope that you have learned something new and that you will continue teaching others what you know. We would also like to thank everyone at First Nations Child and Family Caring Society of Canada for helping us with this project.

## Daxton Rhead

**To me, reconciliation is community. It's building bridges and mutual respect.** Reconciliation is not about divisions, it's bringing people together and finding common ground. In this world we need to stick up for one another. We need to recognize our differences and take responsibility for our Canadian history. It is each and everyone's duty to learn about the effects of colonization and the inter-generational trauma it has caused.

I was fortunate enough to learn about residential schools when I was quite young, but for many Canadians, this is new information. We need to spread awareness and stand together to move forward as a nation.

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## I can make a difference and so can you!

Nicole Flynn<sup>1</sup>

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### Abstract

*Nicole Flynn is a twenty-four year old advocate, artist and athlete with Down syndrome. Nicole began public speaking at eight years old when she would talk to various groups - such as classes at the University of Toronto and at Humber, Centennial and Seneca Colleges - about her achievements and goals. As she got older, she started to speak seriously about people who are different and how they want to be treated with equality. Nicole is also passionate about saving the environment. This speech was written for a Youth to Youth Summit in September, 2017.*

**Keywords:** *Down syndrome, developmental disabilities, human rights*



This is a photo of a Red Tailed Hawk. The hawk has impressive vision which means it can see very small details when soaring above the earth. It is unique to see a Red Tailed Hawk perched in the open where it is so clearly visible. Photo by Nicole Flynn.

When you hear things that happen in the news, do you feel emotional? Do you see things in your community and want to change it? Do you stand up for what you believe in? Do you like to understand things from different perspectives? Does debating an issue sound exciting to you?

Albert Einstein once said, **“I have no special talents. I am only passionately curious.”**

There are things; issues that happen today, that make my blood boil. I am a very passionate person. I feel things deep inside.

I want to make a difference in society and I have the attitude to make a change.

**According to Winston Churchill, “Attitude is a little thing that makes a big difference.”**

Maybe, he was talking about me!

I have many passions, but the two I am focusing on are: the environment and speaking up for people who have a developmental disability, like Down syndrome.

I am a nature lover. I respect our wildlife and their habitats. I am afraid that one day the only place we will see natural habitats and our wildlife will be in photographs or paintings; works of art. **We won’t see deer as we pass a field or forest. We won’t have turtles to watch as they sit on a log in the sun.**

Their habitats are being destroyed because of our desire to have more. Humans are taking over **and we don’t even recognize the negative impact this will have on future generations.**

There is a saying, **“We do not inherit the Earth from our Ancestors; we borrow it from our children.”**

I believe this saying. I take my responsibility to our environment seriously.

In May, 2017, I was in Winnipeg, Manitoba. I visited the Truth and Reconciliation Commission. I heard about the abuse, neglect and genocide that happened to the Indigenous children in residential schools. I heard about the children being scrubbed to make them white. I was told about the sterilization that occurred so they would not be able to reproduce.

Then I heard about the children who had a developmental disability who were at the same schools. The same starvation, physical and sexual abuse happened to these children too.

At the Canadian Museum for Human Rights, I read about children being tested and given a label that affected their entire lives. These children were labeled moron, imbecile, or an idiot and were put away in institutions.

### **Hidden.**

Like the Indigenous children, they were sent to residential schools.

Not a lot has changed for the Indigenous population or for people who have a developmental disability.

Neither population is provided with proper education services.

Limits are placed on people. For example, when I attended high school I was not permitted to **take credit courses. I wasn’t allowed to complete the requirements for the diploma.**

Not having an education leaves people on the fringe of society and a life of poverty.

There are not even enough homes for people who have a developmental disability. Many of us are living in institutions like jails, hospitals and long term care facilities.

Like the Indigenous people, we are still being abused.

I have Down syndrome. In 2013, the World Health Organization had to remind the world that people who have Down syndrome are indeed human.

WOW!

In Canada, 90% of the babies identified as having Down syndrome are aborted. They are not permitted to live.

Those who do survive are treated as second class citizens. They are not provided with quality speech therapy that will help them learn to communicate.

They do not receive an education that will help them with employment opportunities.

People with Down syndrome do not gain employment at a fair wage that will support them above the poverty line.

**This doesn't just happen to people who have Down syndrome, but to all people who have a developmental disability.**

It is assumed they are not able to work.

They are!

They want to work. I want to work!

It may just take more time, but we are employable and able to participate fully in our communities. When people take the time to get to know us, they realize we are the same as everyone else. We want the chance to try.

**Having Down syndrome doesn't stop us... society does.**

**It's the pressure society puts on us that doesn't allow us to reach our full potential.**

**I didn't want to sit around debating and complaining about life.**

I wanted to make a difference.

In 2015, **I became involved with the "We Have Something to Say" event with the Ontario Ombudsman for youth and children.**

In 2016, a section of my submission was printed in the **Ombudsman's** report. I presented a copy of this report to the Mayor of my town, Tom Deline, who asked me to make a presentation to the Council. He also advised me to take my presentation to our Member of Provincial Parliament (MPP), Todd Smith and our Member of Parliament (MP), Mike Bossio.

I did and I was excited by the response because I felt that I was heard. I felt that I was starting to make a difference.

**MP Mike Bossio asked me if I'd like to meet the Prime Minister. I don't know how I responded out loud, but inside I was yelling, "HECK YEAH!"**

**I didn't think any more about it, and then one day I received an invitation to have a tour of the Parliament Buildings in Ottawa with Mike Bossio. I was so excited I couldn't sleep. I began counting down the days. Finally, it was here and my parents drove me to Ottawa.**

**Being at the Parliament Buildings was amazing. I'd been there before, but it meant so much more to me this time because I saw it as a place where changes can happen, where people make a difference in the lives of Canadians.**

After a nice lunch, we went along a hall and this is when I learned that I was going to be able to meet Justin Trudeau in his office. I was so excited, my palms were sweating. I was going over what I wanted to say to him in my mind. I had my poem in both English and French to give him.

Suddenly, it was my turn and there he was, so tall and friendly. He said he was very pleased to meet me and he thanked me for being a leader and that he was proud of all the things I was doing.

WOW!

**I couldn't get over the fact that he was thanking me. He's the Prime Minister.**

**I'm me.**

Later, I received a photograph of Justin and myself which he had signed, and again he made a comment about my leadership in the community. People wanted to talk to me about meeting Justin. People in my town were proud that I had met the Prime Minister.

I felt like I was making a difference. I felt that I was being seen as a person who stood up and demonstrated ability.

I realized there are things that I can do. I can meet my goal and live my dream of being involved in politics. I can make the lives of people who have a developmental disability better. I can advocate for our environment, and I can be a voice that is heard where it matters.

I realized that I needed more education. Through Quinte Adult Education I was able to graduate with the Secondary School Graduation Diploma and I am now attending Loyalist College. I am taking my time so I can learn as much as possible.

I have started a People First chapter in Central Hastings. This is a group for people who have a developmental disability. We talk about issues in our community that affect us, like housing, employment and social opportunities.

I am also on the pool committee in Madoc. Our pool is getting old and needs to be replaced so I am working with the committee to make decisions as to the type of pool that is best for our community. I am learning a lot about how a meeting is organized.

I am also learning how to accept different views.

Most of all, I am learning that I can make a difference.

And so can you!

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## Understanding Innu normativity in matters of customary “adoption” and custody<sup>1</sup>

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### Abstract

*This article presents the preliminary results of a research project on customary custody and “adoption” in the Innu community of Uashat mak Mani-Utenam in northeastern Québec. From a legal pluralist perspective, the authors used a biographical method to understand the workings of the ne kupaniem/ne kupanishkuem Innu legal institution, which can be compared in certain respects to adoption in Western legal systems. The authors present certain characteristics of this institution in order to expose the limits of bills that seek to recognize “indigenous customary adoption” in Québec law. Innu “adoption” stems from an agreement between the concerned persons, which can crystallize gradually, which never breaks the original filial link, and which does not immediately create a new filial link. In theory, this type of adoption is not permanent. As such, a Québec law that only recognizes indigenous adoptions that create a new filial link runs the risk of either being ineffective, or of distorting the Innu legal order.*

**Keywords:** *customary adoption, Innu law, ne kupaniem/ne kupanishkuem*

### Introduction

The phenomenon that anthropologists refer to as “child circulation” exists in every society in various forms and under different names, such as adoption, custody transfer or fosterage. In the case of the Indigenous peoples, the human stakes inherent in this phenomenon are amplified by colonial issues: the State regulates child circulation in a manner that leads to negative consequences for Indigenous communities. Whether pursuant to the child welfare system or to the rules on adoption, the State claims the right to remove Indigenous children from their families and to determine the orientation that best suits the interests of the children. Where such a measure is implemented, the child in question is often placed with a non-Indigenous foster family. The devastating impacts of this system on Indigenous peoples were recently recalled by the Truth and Reconciliation Commission, which asserted that “Canada’s child welfare system has simply continued the assimilation that the residential school system started” (TRC

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<sup>1</sup> This paper originally appeared in French in the McGill Law Journal, Vol. 61(4), pgs. 885 – 906, (2016).

2015, pg. 138).

This article presents the preliminary results of a research project seeking to identify alternative means of ensuring the security and development of Indigenous children. More specifically, this project deals with the recognition of Innu law in matters which Western legal scholars refer to as custody and the customary adoption of children. In collaboration with Uauitshitun, the social services centre of the Innu community of Uashat mak Mani-Utenam, in northeastern Québec, we sought to understand how, today, these issues are subject to Innu norms, independently of any attempt on the part of Québec law to regulate them. Our ambition is that these Innu norms will enable the resolution of problematic situations without requiring the involvement of the Québec system.

Our research project is not complete; however, we believe that it is useful to publish certain preliminary results and observations regarding the mindsets and attitudes that must be changed in order to ensure an adequate recognition of Innu norms regarding the custody and adoption of children. Hence, after having set out the general outline of our research methodology, we will analyse how certain rules or principles of Québec law stand in the way of the recognition of certain Innu norms that we have tentatively established.

## Innu law as an alternative

Like many other Indigenous communities facing the impacts of the child welfare system, Uashat mak Mani-Utenam is looking for alternatives. One potential solution is found in section 37.5 of the *Youth Protection Act*. This provision authorizes the Government of Québec to enter into an agreement with Indigenous communities for the establishment of a parallel child welfare system, which may be subject to different rules than those set out in the Act.

With a view to preparing for the negotiation and implementation of such an agreement, Uauitshitun (the social services centre of Uashat mak Mani-Utenam) asked us to undertake research on certain Innu practices, specifically parental practices, customary adoption and land-based healing practices. This article will only deal with customary adoption. We aim to highlight the existence, and to analyse the contents, of Innu adoption practices and to determine which legal and institutional frameworks promote a respectful dialogue (Otis 2010, pg. 22) between the Innu and the State legal order. In other words, this will enable an Innu child welfare system to be grounded in Innu knowledge. Actions taken in respect of Innu children can therefore be in keeping with the distinctive features, values and history of Innu society.

Our perspective is that of legal pluralism (Grammond 2013, pgs. 30-35, 365-91), which means that we consider that laws exist in each society, even if they take on different forms. Hence, law is not only made up of written laws or decisions handed down by State courts, it also consists of norms that regulate the social life of the Indigenous peoples. John Borrows has shown that these norms may originate from various sources, including not only sacred or natural sources, such as stories describing the creation of the world or the interaction between human beings and their environment, but also human sources, such as ceremonies or deliberative processes or customary law in the strict sense, namely a constant practice that is deemed to be compulsory (Borrows 1996, 2010; Webber 2009).

**That being said, the occasional use of the word "tradition" to describe Indigenous legal systems**

must not make it sound like these systems are stuck in the past. As Glenn (2014) has clearly shown, **tradition is not impervious to change. We are interested in those norms that govern today's Innu family.** We are not seeking to implement the approach set by the courts to identify Aboriginal rights based on practices that were in effect a long time ago. In this sense, we recognize that Indigenous legal systems are dynamic, that is to say that the content of Indigenous norms is liable to evolve, either by way of an express decision made by an Indigenous authority or by way of some sort of tacit deliberation which, according to Webber (2009), characterizes custom as a source of law. The legal sphere is therefore one of the places where the historical action of Indigenous peoples can take place. In sociology, historical action is the conscious action of the members of a society to direct the historical development of that society. According to Martin (2009), Indigenous peoples are no less capable thereof than any other society. They do not, in a passive and deterministic fashion, suffer the influence of Western society. Rather, through their actions, they seek to alter the course of events and to create a form of modernity that is consistent with their interests, culture and values.

To pursue this project, we adopted the biographical approach, based on the telling of each **participant's life story in connection with the theme under study. This approach allows the researcher to avoid imposing his or her theoretical framework or worldview, since participants are entirely free to frame their discourse as they wish. Indeed, it is up to the participant to decide what to share with the researcher, and how. In addition, this method recognizes the participant's voice and affords him or her legitimacy, as it recognizes that the participant possesses knowledge and expertise from which new knowledge can be drawn. Finally, the biographical approach has the advantage of not decontextualizing the practices on which the research is focused and of taking into account the time dimension, that is to say the history of colonization and its repercussions on the reality under study (Guay 2016).**

We therefore recorded life stories with a dozen participants from Uashat mak Mani-Utenam by way of non-directive interviews. The interview plan was divided into three major themes: the socio-cultural aspects in relation to the community of origin, the significant events of the participant's personal life path and aspects regarding his or her experience as an adoptee or adopter. The stories were transcribed verbatim, and then put in narrative form. They were then validated with the participants. **These stories represent "a type of analysis that is just as relevant and legitimate as the analysis performed by the researcher" (Guay 2016). A reading thereof is replete with valuable teachings regarding customary adoption and the reality within which it takes place. That being said, the stories are also subjected to analysis by the researchers with a view to condensing them based on an analytical grid devised in an iterative manner in light of the research questions and a preliminary reading of the stories. Subsequently, the research results will be subjected to a community consultation with a view to obtaining a consensus as to Innu normativity regarding adoption. At that time, it will be possible to resort to the methodology developed by the Indigenous Law Research Unit at the University of Victoria in order to extract the Indigenous law based on life stories, current practices, traditional tales or legends (Friedland & Napoleon 2015).**

We must specify, **at this juncture, what our notion of "law" and "Innu law" is. Québec legal practitioners usually have a positivist concept of law. In this view, the law is made up of a set of rules pre-determined by the authorities recognized as having the power to enact them (or to "posit" them, hence the phrase "positive law"). These authorities include the National Assembly, municipal councils, certain**

regulatory agencies, etc. In some cases, according to the common law tradition, the courts may also participate in the definition of what the law is.

On the other hand, such a concept is wholly useless in traditional Innu society, where there were no specialized authorities tasked with enacting laws or handing down judgments. This does not mean Innu society is lawless or devoid of norms. Rather, Innu normativity does not follow the same form of law as in Western societies, so much so that there is no expression in the Innu language to translate the word "law" (Lacasse 2004, pgs. 23, 47, 71). As in the case of other Indigenous peoples, Innu normativity is not necessarily made up of rules, prohibitions, powers or duties, but rather emphasizes values and their transmission, as well as dispute resolution processes (Law Commission of Canada 2006).

**The use of the term "law" to describe this form of normativity is not dictated by any purportedly objective definition. Instead, it is a choice that aims to ensure a more egalitarian dialogue between the normative traditions of the two societies examined. Indeed, Innu normativity is of no less value, and does not deserve lesser recognition, just because it does not have the same form as Western positive law. This choice is also consistent with Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples, which asserts the right of Indigenous peoples to promote, develop and maintain their "juridical systems or customs."**

Moreover, one must also refrain from the temptation of looking to Innu law for norms of general application that would apply to individuals without any possibility for adaptation. As we shall see below, Innu law in matters of adoption is characterized by the very broad freedom given to individuals to reorganize their family relations. Under such circumstances, legal research cannot disregard the manner in which individuals usually exercise their freedom.

## Overcoming hurdles to the recognition of Innu law

Since at least 30 years, the Indigenous peoples of Québec have sought official recognition of customary adoption. A bill to that effect, Bill 113, was recently tabled before the National Assembly and we do not know, at the time of writing, the exact shape of the mechanisms that will enable the recognition of customary adoption in Québec law. Whatever the outcome of that process, it is worthwhile reflecting about the hurdles resulting from differences in structure and content between the Québec and the Innu legal systems with respect to family relations. This exercise might allow for potential solutions to emerge that do not require the enactment of legislation or that might form part of an Innu child welfare system. Whatever its practical repercussions may be, such an analysis will also bring into sharper focus certain theoretical challenges arising from the will to foster a respectful dialogue between two legal orders that are so different.

Hence, we will, in turn, present three features of Québec law: the fact that issues of filiation and adoption are deemed to be matters of public order (or public policy); the permanent nature of adoption or, in child welfare matters, the search for permanent solutions; and the fact that the State intervenes as the compulsory guardian of the best interests of the child. Finally, we will illustrate, using our preliminary results, why these features of Québec law cannot be transferred to Innu law and how insisting on these features hampers the application or recognition of Innu law.

## Filiation and adoption, matters of public order

The *Civil Code of Québec* ("CCQ") contains a set of rules regarding filiation (a civil law term that describes the legal link between a person and the person's parents) and adoption. These rules allow for a determination of who the father and mother of a child are, for proof of paternity where it has not been declared and for change of filiation by way of adoption. The information regarding a person's filiation must be recorded in a register maintained by a State official, the Registrar of Civil Status, who has sole authority to issue certificates evidencing a person's filiation. Once filiation has been established, certain rights and obligations flow from the Code, specifically as regards parental authority, the duty to pay alimony or estates.

One feature of these rules is that they leave little room for the exercise of individual choice. On the contrary, the dominant ideology underlying these provisions of the Code is that legal filiation is intended to reflect biological reality (Bureau 2009), even if the reforms made in 2002 regarding assisted procreation and LGBT parenting have somewhat relaxed this principle. Hence, civil status is a "matter of public order" or is "unavailable" (*indisponible*), meaning that individuals cannot agree, for instance by way of contract, to change a person's filiation or, in any other way, to transfer a child from one family to another. This principle is so deeply engrained in the mindset of jurists that it is not even expressly set out in the relevant provisions of the Code; it must be inferred instead.

Similarly, private adoptions or adoptions by way of contract are prohibited. Adoption must be sanctioned by the court (CCQ art. 566) and the Code sets out the procedure to be followed. The rigidity of this principle is even reinforced by penal sanctions: section 135.1 of the *Youth Protection Act* makes it an offence to adopt a child contrary to the applicable legislative provisions. As the Court of Appeal recently underscored in a decision, "If the only requirement to obtain adoption [...] was consent, then there would be a total absence of judicial control over such adoptions, and filiation would risk becoming an amorphous if not volatile legal institution" (*Adoption — 152*, 2015 QCCA 348 at para. 98). The public order nature of filiation and adoption is therefore closely associated with the involvement of the courts, which represent the power of the State, in order to approve any change to civil status.

These features, however, differ from those we were able to observe in Innu law. Indeed, our main finding is that Innu law is based on individual freedom to restructure one's family relations in a manner which, ultimately, but not in all cases, may lead to the creation of new bonds of filiation. In particular, Innu law recognizes the freedom of individuals to agree to entrust the custody of a child to persons other than its biological parents. As one participant stated, "The agreement between us is that I leave her my daughter to raise." In the majority of cases, the persons are the grandparents of the child (often, the mother still lives with her parents), but it may also be other more or less remote relatives or, sometimes, unrelated persons.

Let us stress from the outset that the Innu do not use the term "adoption", but rather that of "custody" to describe this reality. As one participant put it:

Customary adoption doesn't exist, it doesn't resonate, it is not in our language; I don't even know what word to use in Innu to define it. I dare not say lend the child to the elder or keeping the child for some time when there are family problems between the mother and the grandmother.

The term “adoption” is generally used to refer to a legal adoption in accordance with Québec law. In the Innu language (*innu aimun*), children who are adopted (or cared for by someone else) are designated by the terms *ne kupaniem* (in the masculine) and *ne kupanishkuem* (in the feminine), which literally mean “a child cared for temporarily.” That said, despite the use of these concepts, in many cases, people speak of children under their custody as being their own children and they do not make this terminological distinction.

Since traditional Innu society did not have any hierarchical authority, such agreements are made between the persons concerned and do not require the involvement of any third party. Today, such agreements are entered into without any involvement on the part of state authorities and in the absence of any official requirements, even if, in some cases, the parents ultimately choose to carry out a legal adoption or to resort to tutorship in order to facilitate interaction with Québec institutions.

All the participants describe these transfers as an informal, paperless process, resulting from an agreement or a consensus among the parties involved. Contrary to some Indigenous nations in British Columbia (Atkinson 2010, pg. 48), there is no adoption ceremony.

In some cases, it is even difficult to determine the precise timing of the agreement between the parties. Hence, one participant who was experiencing personal hardship at the time of the birth of her child said that she left her child with her sister on weekends. When her problems worsened, she and her sister ultimately agreed that the child would be better off with her sister. Adoption, in this case, is a *de facto* situation that crystallizes gradually. Another participant even said that, as far as one of her daughters was concerned, the adoption happened “automatically”, which suggests that the parties’ wishes are not expressed at a specific point in time but rather progressively.

In short, even if non-Innu people often refer to it as a customary adoption, the Innu legal institution of *ne kupaniem/ne kupanishkuem* does not mirror adoption in Québec law. It does not have the same features. Those differences cannot be ignored in the design of an interface between Québec and Innu law.

## The search for permanence

In current Québec law, an adoption breaks the original bonds of filiation and it is confidential (arts. 577, 582 CCQ). It is also definitive, in the sense that an adoption, as opposed to tutorship, is considered a permanent change in filiation, which can only be changed again by a new adoption of the same child, which rarely, if ever, happens. The rules governing adoption therefore seek to guarantee permanence in the new circumstances of the child by wholly breaking off bonds with the original family.

The law governing youth protection seeks to achieve the same objectives. Basing itself on the bonding theory in psychology, the *Youth Protection Act* was amended in 2007 to reduce the “bandying about” of children between various foster families and to set maximum placement periods, following which a permanent solution must be found (Ricard 2014 pgs. 39-40). Within Indigenous communities, one of the effects of this mindset is to increase resort to adoption or placements in non-Indigenous foster families until the child reaches adulthood (Guay and Grammond 2010, pg. 105). In addition, youth protection orders may require contacts between the child and his or her original family to be supervised or may, in certain exceptional cases, prohibit such contact altogether.

Although it forms part of a broader reform that would acknowledge certain forms of adoption that would give some recognition to original filiation, the recognition of customary adoption proposed in Bill 113, as it stands at the time of writing, nevertheless still pursues the goal, at least implicitly, of ensuring that the Indigenous child has a new permanent filiation. Bill 113 would add a new article 543.1 to the Civil Code, which would only recognize “adoptions” that create new bonds of filiation at a set date. There is no provision for a termination of such an “adoption”.

In Innu law, agreements with respect to the care of a child do not displace original filiation. These agreements are not confidential; the small size of the communities would, in any event, make any such confidentiality illusory. The child still knows who his or her biological parents are and will usually continue to maintain contact with them. In fact, it is quite possible that the maintenance of contacts with the original family may be considered to be a compulsory rule that restricts the freedom of the parties to restructure their family relations. This rule is illustrated by the story of one participant to whom the Director of Youth Protection (“DYP”) proposed a life plan for a child she had been caring for for some time. She stated that she accepted, adding however that she had told the DYP that she would never accept a contract prohibiting any contact with the birth mother. This would, therefore, be a case where an Innu actor **apparently insisted on the rules of “her” legal order prevailing.**

Do these agreements create new bonds of filiation? The words used by the participants to describe kinship, as well as their statements on the relative weight of biological and social kinship, lead to the conclusion that, with the passage of time, very strong emotional ties are created and the child can consider himself or herself to be a full-fledged member of the adoptive family. He or she may refer to his or her adoptive parents as being his or her “real parents” or call the adoptive mother “Mommy”. **In certain cases, the child will use words such as “Mommy” to refer both to his or her biological mother and his or her adoptive mother, with variations reflecting the degree of contact with each.** In other instances where **contact with the original family is more frequent, the child may continue to use the term “grandparents”** to describe those who raised him or her, explaining, **“I rather saw them as my parents; I never called them Daddy and Mommy because I knew they were my grandparents, but they were the ones doing the parenting.”** Ultimately, it appears that the persons involved in each situation attempt to combine the (French) vocabulary of terms of kinship to describe nuances in their own circumstances and the relationship between biological parents and social parents. Hence, one participant stated, **“In the end, I had two mommies: my aunt and my mother.”** Finally, one adoptive mother referred to herself as **“mémère” with her adoptive children whereas she used the term “môman” to refer to their biological mother.**

One participant asserted that the prohibition on incest would apply equally to the natural and adopted children of the same family, which tends to show that true bonds of filiation flow from the institution of *ne kupaniem/ne kupanishkuem*, at least where it lasts for a long time. However, one should stress that this issue does not arise frequently, since most adoptions take place within an extended family, resulting in uncles and aunts of the adopted child becoming his or her brothers and sisters. Other stories also allude to the principle of equal treatment of natural and adopted children, which tends to show that certain adoptions create true bonds of filiation.

Contrary to adoption in Québec law, agreements with respect to the care of children or adoption are considered to be temporary. The return of the child to his or her original family is considered to be a

normal, if not desirable, event. However, in most cases, this return is left up to the child and it was found that the child often tended to return to his or her adoptive family after a brief stay with his or her original family. Other children refused outright to return, even if urged by the adoptive mother. In point of fact, our findings were that adoptions were more permanent than the statements of the participants seemed to imply.

**In brief, what one may refer to as "customary adoption" in Innu law is much more fluid than an adoption under Québec law, even if it may lead to the creation of true bonds of filiation. The creation of these bonds, however, does not take place at a specified moment in time; rather, it crystallizes gradually. Theoretically, it is temporary and reversible, although a child that has stayed a long time with his or her adoptive family will often refuse to return to his or her original family. This flexibility will no doubt stand in the way of its recognition under Québec law, since it will be difficult to determine the "date of adoption," or the time as of which one can state that new bonds of filiation have been created. The participants we met simply do not approach the issue in these terms.**

## The state as guardian of the best interests of the child

For several decades, the child's best interests have become the overarching principle that informs all legislation with respect to children. Article 33 of the **CCQ provides that "[e]very decision concerning a child shall be taken in light of the child's interests,"** a statement that is echoed in section 3 of the *Youth Protection Act*. This includes decisions regarding adoption, which, theoretically, cannot be made taking into account the interests of the parents or the community, but only those of the child. Yet, it has been observed that Québec law on filiation, including adoption, is increasingly making room for the wishes of adoptive parents to have children and has incidentally been criticized for this reason (Pratte 2003). The safeguarding of the best interests of the child is no doubt the main rationale for the public order nature of filiation and of adoption: if the State supervises individual conduct and prohibits private agreements, it is to ensure that parents are not making decisions based only on their personal interests, to the detriment of **their children's**. Thus, the State evaluates adoptive families and, in child welfare matters, foster families, to ensure their ability to raise children.

In its current form, Bill 113 would reiterate the gist of this principle, by requiring that the Indigenous authority certifying a customary adoption make sure, **"in light of an objective appraisal, that the adoption is in the interest of the child."** It is difficult not to see in this requirement for an "objective" appraisal an expression of distrust on the part of Québec child welfare authorities towards customary adoption. The Bill would also add section 71.3.2 to the *Youth Protection Act*, which would prohibit the issue of any Indigenous customary adoption as of the time the Director of Youth Protection receives a report on a child, **except with the Director's advice. Such a provision could have the practical effect of subordinating customary adoption to the child welfare system.**

These restrictions on the recognition of customary adoption assume that the latter does not guarantee the best interests of the child in question. Is this in fact the case? Our preliminary results highlight the fact that Innu law contains mechanisms that allow for the consideration of the best interests of the child. Hence, parents entrust the care of their child to another person chiefly because they realize their own inability to care for them adequately, often due to personal problems (alcohol or drug use, teenage motherhood, etc.), to the death of one of the parents, sometimes also because it is difficult to

bring a very young child in the bush, or for employment-related or education-related reasons. One participant described this situation as follows:

**[S]ometimes it is precisely because the child's parents are aware of their inability to** adequately care for him or her that they decide to place him or her with people who will better be able to do so. A mother cannot give what she does not have. Sometimes, she does not have the requisite health or psychological balance to raise the child adequately. It is an **act of love and humility to admit one's inability to care for one's child. It is often** because the mother is not able to care for herself that she acts this way.

It appears that these reasons justifying a transfer of custody represent one way to give concrete **effect to the child's best interests principle. In this respect, the institution of *ne kupaniem/ne kupanishkuem*** would somehow represent a manner for Innu society to ensure the protection and welfare of its children.

Moreover, the participants assert that the transfers of the child between his or her original family **and adoptive family take place in keeping with the wishes of the child. The child's autonomy and respect** for his or her decisions (Guay 2015) actually constitute important values, as can be seen from our interviews. They are related to the broader principle of non-interference, which is common to many Indigenous societies (Lacasse 2004, pgs. 58-60). Pursuant to this principle, it is inappropriate to prescribe a course of conduct or to criticize the actions of another person; a certain amount of deference is therefore necessary when one seeks to influence the conduct of another.

This is especially apparent in the case of a return to the original family, as discussed above. This return often takes place at the end of childhood or at the beginning of adolescence and the child is then in a position to assess what is most suitable, which no doubt explains the fact that many children prefer to remain with their adoptive family. Even where children are younger, their parents will take into account the preferences of the child: for example, where a child of tender years reacts poorly to a return to his or her original family, the original parents take note thereof and return the child to the family that cared for **the child for some time. One participant described the circumstances of her "adoption" by her** grandparents in the following manner:

When I was born, my parents lived with my grandparents. When I was one year old, they got their house and moved, taking me with them, but, apparently, I kept returning to my **grandmother's. When my grandparents saw that I did not want to live with my true** parents, I stayed with my grandparents. I even believe that I was the one to ask my grandmother to adopt me!

One participant claims to have **"decided" to stay with her adoptive parents, even though she was only a few months old at the time. Even if this seems implausible, it reflects the Innu's belief in the** autonomy and decision-making power of the child. We even witnessed a case of an eight year-old girl, who, upon seeing the social worker coming to her house, herself arranged her own adoption by her aunt.

Whatever one may think of a child who cannot yet speak making a choice or expressing his or her wishes, these assertions no doubt reflect the main concern of Innu parents for the welfare of children. Stating that a one year-old child has decided to stay with his or her grandparents is tantamount to **acknowledging that it is in the child's best interests to remain with** the grandparents. Statements to the

effect that the child made a choice and that the parents respected that choice are actually statements about the best interests of that child.

One of the objections sometimes voiced to the recognition of Indigenous customary adoption is **the fear that it might be carried out exclusively in the parents' interests as opposed to those of the child.** This raises the issue of the motives for the adoption. Yet, the motives mentioned by most participants are related to the values of sharing and mutual aid. In this sense, adoptive parents care for children in order to help the original parents who are unable to do so (whether due to personal problems resulting from alcohol or drug addiction, a parent moving away for employment or educational purposes, even the death of one of the parents, etc.) and in order to help the children themselves. One participant claims that mutual aid is one of the greatest values that inform her life and that it was handed down to her by her grandmother, who raised her. The significance attaching to sharing and mutual aid is compatible with the existing literature about the Innu (Lacasse 2004, pgs. 56-57, 78-80).

Based on fieldwork conducted in the early 1970s, Robert Lanari asserted that adoption among the Innu resulted from the **"social duty to give back,"** within a general system of reciprocity. In this sense, adoption supposedly enabled adopters to enhance their social status; it would also allow infertile couples to have children (Lanari 1973, pgs. 141-145). According to Lanari, adoption was chiefly for the benefit of adopters. However, the stories we have collected make no mention of such motives. Some participants refer to the existence of a tradition whereby a woman would give her firstborn to her own mother. The story of one participant, who was the eldest of her siblings and raised by her grandparents, might be consistent with this tradition, although the participant made no mention of it. Aside from this exception, no participant was adopted for this reason and this tradition was referred to as being a thing of the past.

Therefore, we can see that the Innu legal institution of *ne kupaniem/ne kupanishkuem*, in its own way, ensures the consideration and protection of the best interests of children. It is therefore unwarranted to exclude its application outright where a child has been brought under the Québec child welfare system.

## Conclusion

The preliminary results of our research already allow us to take note of the originality of the Innu legal institution of *ne kupaniem/ne kupanishkuem*, that non-Innu persons call customary adoption, and of its irreducibility to an adoption under Québec law. Indeed, at the risk of grossly oversimplifying, one could assert that Innu customary adoption is a gradual process, based on a tacit or explicit agreement between the original and adoptive parents, that may or may not lead to the creation of additional bonds of filiation, but never to a severance of the original bonds of filiation.

The enactment of legislation recognizing customary adoption is a welcome development. However, the tendency to seek an equivalent of an adoption under Québec law and to set conditions in order to guarantee compliance with the best interests of the child leads to a system that risks rendering such recognition illusory or forcing Indigenous peoples to change their laws with respect to family relations so as to make them consistent with the interface that Québec law will provide. Will the Innu want to embark on the latter path? That is a matter for them to decide.

Other solutions can, however, be contemplated. It is not necessary to make customary adoption fit into the mould of Québec adoption governed by the Civil Code. One could, in this respect, follow the

model of Aboriginal rights to land. The latter do not fall within the categories of the Civil Code in matters of property rights. Instead, they are overlaid on the rules of the Code and even take precedence over the latter due to their constitutional protection. Hence, the rules of Québec law are required to adapt to the existence of Aboriginal rights, and not the other way around. In family matters, that would mean that concepts such as parental authority or tutorship could be resorted to to reflect the Innu legal institution of *ne kupaniem/ne kupanishkuem* where the latter does not, or does not yet, result in the creation of new bonds of filiation.

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**An Interdisciplinary Journal** *Honoring the Voices, Perspectives and Knowledges of First Peoples through Research, Critical Analyses, Stories, Standpoints and Media Reviews*

## Ontario's history of tampering and re-tampering with birth registration documents

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### Abstract

*This article opens a discussion on the matter of Ontario administrators', hospital and government employees' history of tampering with long form birth registration documents in situations where birth mothers were unmarried or separated. Relying on Indigenous methods, such as listening to personal stories, and experts, the author explores how the practice of tampering with birth documents places Indigenous mothers and children in double jeopardy of not only being denied the information of who their biological father is or was, but also potentially being denied Indian status registration. Mothers and their children are deserving of more. This article ends with arguing additional research and funding are needed for a comprehensive understanding of the issue.*

**Keywords:** *Vital Statistics Act, birth certificate, birth registration, proof-of-paternity*

### Introduction

The rituals and practices associated with the celebration of motherhood and childbirth must be preserved as sacred because fundamentally they serve to shape and guide who the child is and where their life journey will take them, and they also serve the special relationship between mother and child. In the context of imposed secularism the process of registering a child's birth through registration documents has taken on enormous meaning for both mother and child. When state officials interfere with the process of recording a child's birth, through standard operational procedures of administration, policy, and legislation, ways that deny dignity to a mother and her child, this is unfortunate. The health and well-being of mothers and children are crucially important to a healthy society; as such they must be at the forefront of all cultural practices, foremost during the process of recording the miracle of birth.

I have written in abundance about Indigenous and Northern Affairs Canada's ("INAC") Proof of Paternity ("POP") policy.<sup>2</sup> Succinctly, INAC's POP policy applies a negative presumption of paternity

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<sup>2</sup> In April, 2017, through *Gehl v Attorney General of Canada*, the Ontario Court of Appeal struck down INAC's POP policy arguing it was unreasonable in its sex-discrimination. Subsequently, through Bill S-3, An Act to amend the Indian Act (elimination of sex-based inequities in registration), two remedial clauses were added whereby INAC can no longer assume

**when the father's information is not recorded on the long form birth document.**<sup>3</sup> What I mean by this is that INAC's POP policy assumes all unrecorded fathers are non-Indian as defined by the *Indian Act*. The result of this POP policy is that it denies Indian status to a child whose mother is registered under section 6(2) of the *Indian Act* (Gehl 2013a, 2013b, 2012) and assigns a lesser form of Indian status when the mother is registered under section 6(1). This INAC policy was suspiciously created in 1985 after Canada removed the protective provisions that once existed in law in the *Indian Act* regarding children born of unknown and unstated paternity. As I have explained elsewhere, this POP policy also applies in situations of sexual violence such as rape and sexual slavery. Further, it applies in situations where the mother is Indigenous or non-Indigenous. The creation of this policy was a step backwards in that the stated intention of the 1985 amendment to the *Indian Act* was to remove sex discrimination. Without a doubt **sex discrimination is inherent in INAC's POP policy in that it is a policy that affects mothers more than fathers** because more often than not it is fathers who are unknown and unstated. It is in this way that **INAC's POP policy is contrary to** the Canadian Charter of Rights and Freedoms, in particular section 15 which states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

I could go through a lengthy process of summarizing everything previously offered about the topic of **INAC's POP policy**, but my preference in this article is to remain focused on a new yet related topic that requires discussion all its own. It is for this reason that this article will remain with offering an important **aspect of INAC's POP policy and the *Indian Act*** that I have not yet addressed: Administrators in the province of Ontario have tampered with birth registration documents. It is my thought that all practices that harm mothers and their children, or harms the relationship between mother and child, are immoral or questionable at best.

## Goal and methods

It is important for me to stress at the onset that this article is an entry into understanding a topic not yet addressed in the literature. It is not a comprehensive analysis. Indeed more research is required on this topic.

**A person's methods are always important to reflect on when reviewing any or all knowledge productions** as they serve to shape and guide the research and analysis. The methods of obtaining this knowledge and giving it back to the broader community consist of listening to first person accounts of the birth stories; a review of a sample of birth registration records; thinking critically; community responsibility in terms of listening to and giving back meaningful knowledge; interviewing an expert; and

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unknown and unstated fathers are non-Indians. At the time of writing this paper, Bill S-3 is moving through parliament where as such these clauses were not yet law and they may not be for some time. Further, although these clauses are slated to become law at this point there is little understanding of how INAC will administrate situations of unknown and unstated paternity.

<sup>3</sup> It is important to qualify here that "father" may not be the best way to refer to a man who impregnated a woman through sexual violence.

the process of writing this article in an accessible form. It is also important that I qualify here that I do not offer an analysis of *Vital Statistics Acts*; rather I rely on a secondary source for this knowledge (see Henderson 2012; see Mann 2009). This article also represents a collaborative effort in the sense that after it was complete I asked stakeholders such as Karen Lynn as well as a person whose identity is protected if they would read the article, and offer their ideas, thoughts, and comments. It is important to note here **that aspects of the personal stories have been changed as a mechanism to respect people's privacy.**

## The Ontario Vital Statistics Act

In Ontario the *Vital Statistics Act* came into being in 1869. Despite this early date of inception it was not until more recently, in 1986, when the birth registration process changed from a one name informant or parent signature requirement to a two parent signature requirement. Confirming this, and extending the knowledge more broadly, Michelle Mann (2009, pg. 35) **offers, today “where parents are unmarried, Vital Statistics in most jurisdictions require the father's signature on the birth form.”** In this way, while birth registration forms before this time asked for the signature of an informant or parent, in its latest incarnation the form requires the signature of both mother and father.

Most people are familiar with wallet sized birth certificates. These consist of a shortened form extraction of the information recorded on original long form birth registration records. They contain the **person's name, date of birth, the certificate number, birthplace, and sex.** The information of the parents is not recorded on this version.

A long form birth certificate is referred to as a *certified copy* of the original birth registration record and it contains the **person's name**, both their surname and given name(s), date of birth, birthplace, sex, location of birth, as well as important details about the parents such as the parents' names and their dates of birth and birthplaces.

Prior to 1986, when the *Vital Statistics Act* only required one informant or parent signature, in many instances where the mother was either not married or separated, she was actively prevented from **recording the father's information** – his name, age, place of birth, and citizenship – **on her child's birth registration form.** Cathy Henderson (2012) has written on the topic of tampered documents and submitted a report to the United Nations. Henderson argues in the province of Ontario, from 1960 **through 1980, “unwed father's names were illegally deleted from original birth registrations. During these decades provincial law stated that the Registrar General did not have the legal authority to alter information on these documents.”**

While the *Vital Statistics Act in the past has stated*, “the birth of a child of an unmarried woman shall be registered showing the surname of the mother as the surname of the child, and no particulars of the father shall be given,” **Henderson argues that in fact there** were additional provisions that further guided the process of birth registrations.

Henderson cites sections of the 1960 *Vital Statistics Act*:

3.(2) Where it is found upon examination that any registration received from a division registrar is incomplete as to the required signatures, the Registrar General shall cause the registration to be returned by registered mail to the proper division registrar in order that the signatures may be obtained.

32.(1) If, while the registration of any birth, death or still-birth is in the possession of a division registrar, it is reported to him that an error has been made in the registration, he shall inquire into the facts and, if he is satisfied that an error has been made in the registration, he may correct the error according to the facts by a notation on the registration without any alteration being made in the registration.

32.(3) If, after a registration has been received or made by the Registrar General, it is reported to him that an error has been made, the Registrar General shall inquire into the facts and, upon evidence satisfactory to him, supplemented by statutory declaration in the prescribed form, he may correct the error by a notation on the registration without any alteration being made in the registration.

Henderson argues these clauses directed the Registrar General's responsibility to ensure birth registrations were as complete as possible, such as obtaining the required signatures of unwed fathers. Further, she argues, as per the *Vital Statistics Act*, in the event that an error was made the Registrar General only had the authority to add a notation on the birth registration, nothing more. The deletion of fathers' names was not allowed; clearly this was not the jurisdiction of the Registrar General.

## Standard procedure prevented mothers from recording fathers' information

Genealogical research, family history research, the examination of certified original birth records, and the oral tradition has informed me that in some instances where an unmarried mother attempted to **record the father's information** on birth registration records, hospital personnel such as nurses, social workers, adoption personnel, and medical doctors actively prevented the information from being recorded. These measures consisted of orally chastising mothers and sometimes tearing up or destroying the registration document, forcing mothers to complete another form. When all else failed and the mother **did record the father's information**, another tactic relied on was a process of marking over the information to mask it. In short, the documents were tampered with. Surely this practice of interference was not in the best interest of the mother or child. Rather, it was in the interests of the patriarchal order that continues to seek control of women and their reproductive roles and responsibilities.

## Tampered documents

In the work I do regarding INAC's POP policy I have listened to many personal and private stories about this system of denial and disenfranchisement. People have shared with me their stories of ordering their certified copy of birth registration records, again also known as their long form birth certificates. **One person stated their father's information was not on their birth record because their** mother recorded herself as "single." Another person explained to me that they filled out the application form, sending it away to The Office of the Registrar General located in Thunder Bay, Ontario, adding the \$45 cheque (this amount has changed over time) where weeks later the document finally arrived in the mail. Upon its arrival they eagerly opened the envelope **only to learn that their father's information was missing** from their certified copy. In this latter particular incident **this person's** mother recorded herself as "separated."

There is more. Upon close inspection of three birth records that I personally have come across there was something that seemed odd or unusual in that the lines and the section numbers on the forms

were misaligned, where parts of the lines were also inconsistently masked or created. Intuitively one person knew that this was not right in that her own reasoning informed her that official forms would never be this poorly and messily constructed. In the work I have completed assisting several people gain Indian status, I have had the responsibility and privilege of looking at several certified copies of birth registration records. I too noticed a similar pattern of sloppiness when the mothers are recorded as unmarried or for that matter separated (see figure 1 below).

**SPECIAL NOTICE**  
THIS FORM TO BE MAILED TO THE MUNICIPAL CLERK OF THE MUNICIPALITY IN WHICH THE CHILD WAS BORN. Family Allowance must be applied for on a Family Allowance application form obtainable at any Post Office. If the application is made at a Post Office, the application must be accompanied by a photograph of the child.

**7. WEIGHT OF CHILD AT BIRTH** (See note 1) (In and up to 494 lbs)

**PARTICULARS OF HUSBAND**  
(Before completing items 9 to 15, both inclusive, read Note 15)

**9. PRINT NAME IN FULL**  
(Surname)  
(Given names)

**10. PERMANENT ADDRESS**  
(Street address if any)  
(Township or Municipality)

**11. CITIZENSHIP** (See note 2)

**12. RACIAL ORIGIN** (See note 3)

**13. AGE** (At time of this birth) **14. PLACE OF BIRTH** (Province, State or Country)

**OCCUPATION**  
**15. (1) TRADE, PROFESSION OR KIND OF WORK** (See note 4)  
**(2) TYPE OF INDUSTRY OR BUSINESS** (See note 5)

**21. HOW MANY CHILDREN BORN TO THIS MOTHER BEFORE THIS BIRTH:**  
(a) were born alive? (b) are now living?  
(c) were born dead after the mother was pregnant at least 28 weeks?

**22. MEDICAL PRACTITIONER (NURSE ATTENDING THIS BIRTH)**

Figure 1, 1960 tampered birth record

One individual proceeded to tell me more of their story which stands as a case study of what other people may be experiencing and going through. Suspicious at what they were looking at when they received their certified copy of their birth certificate, and desiring to know who their father was, they contacted the Office of the Registrar General insisting that they see their original birth registration record, rather than the certified original copy that they paid for. This person wanted to hold their birth record in their own hands and look at it with their own eyes as a means to get answers to what was done to their original birth document. **In their own words they were determined to, “get to the bottom of things.”**

After several weeks passed, sometime in 2002 the Office of the Registrar General set up an appointment where this impassioned person travelled to the Toronto office. They were “summoned to a room, told to put on white gloves, and I was handed a file folder that contained my original birth registration record.” **Upon opening the file, and to their shock, they discovered that their original birth record had a *blank* piece of white paper glued on top of the section dedicated to their father’s information,**

thereby masking the very information their mother inscribed and the very knowledge they sought. This realization once again horrified the individual.

**As I listened to this person's story and reflected**, eventually I realized that in actual fact their birth registration record was tampered with two times: first, when an administrator took the time and glued a blank piece of white paper on top of the **father's** information her mother put on the record; second, when the Office of the Registrar General took the time and cut out a blank version of the father section of a form and placed it on top of the first white piece of paper that masked the original information. While the first time the document was tampered with was at the time of birth, the Office of the Registrar General tampered with it a second time some time later when a copy of the certified original was requested. Based on my work and observation this practice of tampering with documents a second time appears to be ongoing and current.

At first I was inclined to think this tampering process occurred to all birth registration records where the informant or parent who signed them was not the father, married or not married. But this is not so. From the several birth registration records that I have seen, it appears that from the early 1930s through the 1960s it was the marital status of the mother that was the determining factor of whether the **father's information remained intact**. For example, I do know of a situation in 1967 where a married woman was the signatory and the father's information remained untouched. In sum, from what I understand if the mother was married, the **father's** information remained; if she was single, separated, and possibly in situations of divorce, the information would be removed.

## Reflections of the President of the Canadian Council of Natural Mothers

Not surprisingly, this past **practice of removing the father's information has huge implications for many children, especially children of adoption**. In June, 2009, when the province of Ontario opened 250,000 adoption records, adoptees were eager to learn who their biological parents were. Many mothers and fathers were also eager, yet anxious, to find their children. The problem, though, is that less than 10% of adoptees' birth registration records had the father's information inscribed (Baute 2009). It appears that in many cases the information was removed due to an inadequate interpretation and understanding of the rights of parents and subsequent hospital and social work administration practices that forbid mothers from recording who they knew the father of their babies were.

In 2015, I interviewed Karen Lynn, president of the Canadian Council of Natural Mothers (K. Lynn, personal communication, 2015). She is very much familiar with this issue of tampered birth documents and argues this practice of removing information has caused much heartache and anguish to both the children of adoption and the mothers and fathers who surrendered their children for adoption so the children could have better lives. Lynn argues it stands to reason that **the information on a person's** original registration of birth has huge emotional significance. This is especially true for adopted people as it is the beginning of discovering their personal histories. Lynn explains, many people of adoption are devastated to find their fathers' names missing, where they then turn to and blame their birth mothers, not authorities, who they would much rather build a loving relationship of trust with. Further, mothers too are outraged when they learn that this important document that they filled out and signed in good faith was altered without their permission or notification. **Lynn argues, "This was a betrayal to both**

mother and child that manifests in a harmful way in what should be the beginning of a good relationship.”

Lynn continues, “**There** was no reason for this to happen. Issues around the financial responsibility of potential fathers could be resolved through some other process, such as mothers swearing an oath of truth or fathers offering contrary evidence.” She adds, “**Today, the process is not much better.**” She continues, “**While it may be true that the birth registration process changed in 1986, the father’s information is still not preserved when his signature is not on the record.**” Furthermore, “when a father does not sign, the Registrar will not accept the document as the mother recorded the information, and the mother is instructed to issue a new record.”

Lynn then asks, “One has to wonder what do they do today with the original? Do they throw them in the trash can?” She adds, “**There** is no reason that the record, and the information contained, cannot be accepted as is,” **in that today** “matters related to child support payments and estates can be addressed through genetic testing or some external structure such as the court system.” Drawing on her experience with mothers and children who have experienced adoption, Lynn speculates that many of the children harmed by these laws and the practices are probably Indigenous. Many do not know who they are and they are also denied their treaty rights. This places Indigenous children in double jeopardy and this is a form of cultural genocide, she argues.

## How does this relate to Status registration?

It is indeed a tragedy that Ontario has denied children the right to know who their father is by tampering with their birth registration records. **INAC’s POP policy, that is relied on when administrating** Indian status registration, is another blow to Indigenous children and nations. This policy assumes all unknown, unstated, and unrecognized fathers are non-Indian and it applies in cases where the child is born through sexual violence.

Children born to status Indian mothers registered under section 6(1) of the *Indian Act*, and whose father is not on their birth record, are assigned section 6(2) status at birth which is a lesser form of status. As a result, these children will be prevented from passing on status to their children in their own right. And children born to status Indian mothers registered under 6(2), and whose father is not on their birth record, will not be assigned Indian status at all.

Stewart Clatworthy (2003) reported that between 1985 and 1999 as many as 37,300 children were born to status Indian mothers registered under section 6(1) of the *Indian Act* with unrecorded fathers. During this same time period, as many as 13,000 children were born to status Indian mothers registered under 6(2) with unrecorded fathers. As stated above, through **INAC’s POP policy** that assumes all unknown and unstated fathers are non-Indian as defined by the *Indian Act*, these latter 13,000 children were denied Indian status registration and their treaty rights.

**As we consider Clatworthy’s numbers, we need to value that they are not representative of the births prior to 1985. INAC’s POP policy is being applied retroactively to all new applications for Indian status registration.** Of course, the number of children and grandchildren born prior to 1985 and denied through this POP policy will increase the number of people impacted.

In thinking further, one has to wonder, as I do, how many Indigenous children have been denied

their identity and treaty rights because of an inadequate understanding of Ontario's *Vital Statistics Act* and subsequent practices that prevented mothers from recording the father's names? More research and funding dollars are required.

## International conventions and declaration violated

It should come as no surprise to learn that this process of tampering with birth registration records, and for that matter the process of re-tampering which continues today, violates several international conventions and declarations, some particular to Indigenous people. I offer a numbered list here:

1. The *Universal Declaration of Human Rights*, adopted by the United Nations 1948

**Article 12(2):** "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

2. The *Convention on the Rights of the Child*, adopted by the United Nations 1989

**Article 8(1):** "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

**Article 8(2):** "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

**Article 30:** "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

3. The Declaration on the Rights of Indigenous Peoples, adopted by the United Nations 2007

**Article 33(1):** "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of Indigenous individuals to obtain citizenship of **the States in which they live.**"

Article 22(2): "Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures."

4. The *Convention on the Prevention and the Punishment of the Crime of Genocide*, adopted by the United Nations 1948 includes in its definition of genocide:

**Article 2(e):** "forcibly transferring children of the group to another group."

## Summary conclusion

Based on my work I have identified that at the level of practice, unmarried and separated mothers **were actively prevented from recording the information about their child's father on birth registration** records. Experts have informed me that hospital personnel and administrators incorrectly instructed mothers to leave the information off the record. As I have argued in this article, in one situation the birth registration record was tampered with, where a piece of paper was glued on top of the knowledge. In this same situation, The Office of the Registrar General tampered with a birth registration record a second time as a way of disguising the first process of tampering when a certified copy was ordered.

**It stands to reason that the process of preventing mothers from recording the father's information** occurred more with children who were placed up for adoption. This includes Indigenous children. While certainly it is a violation to deny children the knowledge of who their father is, Indigenous children face a double jeopardy when Indigenous and Northern Affairs Canada assumes that in all situations where a **father's signature is missing, the father is a non-Indian** whereby many are potentially denied their treaty rights.

In terms of future direction, additional research and funding dollars are required to determine the prevalence of the practice of birth document tampering. Many questions remain: did this happen to mothers who were divorced and widowed, does the Office of the Registrar General continue to tamper and re-tamper documents today, and are the children who request to see their original birth registration records treated with respect and dignity? In addition, how many of the children denied Indian status registration are the result of **a practice that denied mothers the right to record the father's information?**

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## An Interdisciplinary Journal

*Honoring the Voices, Perspectives and Knowledges of First Peoples through Research, Critical Analyses, Stories, Standpoints and Media Reviews*

# Voices of youth: how Indigenous young people in urban Ontario experience plans of care

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## Abstract

*The plan of care is a document completed regularly for every child and youth in the care of Children's Aid Society in Ontario. Using a mixed methods approach with a strong emphasis on Indigenous Methodologies, a key informant and two Indigenous young people who have been in care share their thoughts about how plans of care can be improved. The youth describe how their plan of care was impacted by the relationship with their worker and level of participation in goal setting. It is discussed that the plan of care presents as a standardized, bureaucratic tool that does not inherently reflect Indigenous culture. These findings lead to recommendations for change including greater opportunities for relationship-building between workers and youth, space for young people to participate in planning, integration of Indigenous culture in plans of care, and the need for reconciliation at the macro level.*

**Keywords:** *plan of care, Children's Aid Society, Indigenous culture, reconciliation*

## Introduction

The Mohawk creation story as I know it begins with a pregnant woman who lived in a world above the one we know today. While digging at the roots of the Sacred Tree, she fell down towards a large body of water. Large birds saw her falling and gently carried her down to rest on the back of a sea turtle. Many animals tried to bring pieces of dirt from underneath the water for the woman to stand on. The otter was finally successful but gave his **life in the process. The woman placed the dirt on the turtle's back and it** began to expand. As she walked around, the earth grew until it became what we now know as Turtle Island (Taylor, 1994).

Like the creation story, this project had small beginnings but grew into something bigger with the contributions of others. This project originates from the privileged life I was born into, where I look back on happy childhood memories. It is rooted in my dual identity as a Mohawk and Canadian woman. This project also begins with my job as a child welfare worker where I worked with Indigenous young people in an Indigenous branch of a mainstream agency. This is where I began to question the efficacy of the documentation for children in care. Indigenous children in care often struggle with their identity and may not have their childhood documented with the warmth and fullness of mine. Instead, their life stories are

documented with standardized plans of care that leave little room to portray their true selves.

The plan of care is completed on a regular basis and is one of the main planning tools for children in care in Ontario.<sup>2</sup> It is intended to compile insights from the child, their caregivers, band representatives, family members, and community supports. It is the **responsibility of the child's social worker** to write the plan of care. The document reviews Ontario Ministry of Children and Youth Services **(Ministry) standards such as dates of doctor's appointments and private visits between the child and their worker**. The plan of care then explores seven dimensions of the child: health, education, identity, family/social relationships, social presentation, emotional/behavioural development, and self care skills. There are goals attached to each dimension and a narrative section where the worker describes events in **the child's life**.

This article is a condensed version of my thesis that was completed for my Master of Social Work at McMaster University. This article is intended to inform front-line workers, management, researchers, and policy makers in child welfare, as well as foster hope for Indigenous youth in care. This project asks: how do Indigenous young people experience plans of care? In particular, do Indigenous young people think plans of care are meaningful? What improvements can be made to the plan of care to enhance their experiences?

## Literature review

To fully understand these questions, it is important to review the historical and political context in which Indigenous communities are situated in Canada. Since the beginning of colonial contact, the Canadian government has attempted to eliminate Indigenous people by forcing children into residential schools, enforcing racist laws, and contributing to the suffering and deaths of countless Indigenous people (Blackstock & Trocmé, 2005). When compared to the non-Indigenous population, Indigenous communities today generally experience greater poverty, less access to resources/stable housing, more drug and alcohol abuse, and more violence (Trocmé, Knoke, & Blackstock, 2004). The child welfare system is no innocent institution; the Sixties Scoop removed thousands of Indigenous children from their home communities and adopted them into non-Indigenous families (Blackstock & Trocmé, 2005; Waterfall, 2002). Presently, Indigenous children are vastly overrepresented in care (Trocmé, Knoke, & Blackstock, 2007).

Youth in care from all backgrounds in Canada report feeling invisible, worthless, and disregarded (Office of the Provincial Advocate for Children and Youth, 2012; Winter, 2010). They want to be listened to, participate in their life planning, and have a positive relationship with their worker (Jones & Kruk, 2005; Mitchell, Kuczynski, Tubbs, & Ross, 2010; Representative for Children and Youth in British Columbia, 2013). This mirrors the experiences of children around the world who also feel unheard by their workers and tend to suffer from low self esteem (Aubrey & Dahl, 2006; Bessell, 2011; Buckley, Carr, & Whelan, 2011; Leeson, 2007; Munro, 2001). The literature notes how a good relationship between the worker and the client can contribute to positive experiences with the system (Tregeagle & Mason, 2008;

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<sup>2</sup> While all provinces and territories in Canada document plans for children in care, there may be variance in the plan format across jurisdictions.

Dale, 2004; Dumbrill, 2006). Access to culturally relevant services, particularly Indigenous child welfare agencies, can also lead to more positive experiences (Anderson, 1998). Indigenous youth have a particularly difficult time in care as they navigate a euro-centric system that often lacks a holistic, flexible, and culturally safe model (Lafrance & Bastien, 2007). Indigenous youth in care are also faced with unique structural issues including inadequate funding for resources, as well as the effects of colonization and intergenerational trauma (Roy, Noormohamed, Henderson, & Thurston, 2015; Varley, 2016).

The plan of care **is an important part of a child's experience. The document, however, tends to** represent young people in the context of Ministry standards rather than reflecting the complex identity of each child (Clowes Chisholm, 2013; Thomas & Holland, 2009). It is uncommon for children to have a voice in their own plan of care (Roose, Mottart, Dejonckheere, Nijnatten, & De Bie, 2009) as the documentation is designed with the interests of the Ministry in mind (Rasmussen, Hyvonen, Nygren, & Khoo, 2010). The amount of paperwork continues to increase, leaving less time for workers to develop meaningful relationships with children on their caseload (Parada, 2004; Thomas & Holland, 2010; Iglehart, 1992). High workloads can lead to inadequate cultural planning for Indigenous young people, or sometimes plans of care that are not completed at all (Representative for Children and Youth in British Columbia, 2013).

Fortunately some Indigenous nations have been mandated to provide their own child welfare services (Sinha & Kozlowski, 2013). Indigenous agencies are better equipped to handle child protection issues from a holistic and cultural approach (Long & Sephton, 2011). After all, in order to move towards an improved child welfare system we must return to traditional Indigenous principles (Blackstock, 2007; Blackstock & Trocmé, 2005; Blackstock et al, 2006; Waterfall, 2002). We must also engage in decolonization, which is the process of unlearning colonial culture and reclaiming our Indigenous ways of knowing, being, and doing (Bennett et al., 2011). It involves disengaging from the dominant culture on social, economic, and political levels (Waterfall, 2002). Social workers can decolonize themselves by learning about Indigenous teachings and recognizing their privilege (Harms et al., 2011). The literature also calls for the government to support Indigenous child welfare agencies and balance the unequal resources given to Indigenous and non-Indigenous communities (Blackstock, 2007; First Nations Child and Family Caring Society of Canada v. Attorney General of Canada, 2016).

## Frameworks

My theoretical lens incorporates aspects of Indigenous Methodologies, Critical Social Science, Anti-Oppressive Practice, and Narrative Theory. In contrast with Western research methodologies, Indigenous Methodologies can derive knowledge through storytelling, ceremonies, the medicine wheel, dreams, and relationships (Poonwassie & Charter, 2001; Smith, 1999). Indigenous Methodologies involve much self reflection and critical thought about privilege and colonial assumptions (Kovach, 2009). Storytelling is an integral part of this work and I engaged in self reflexivity regarding my own power and beliefs throughout this project. The contrast between Indigenous Methodologies and mainstream approaches can be conflictual; for example, the **time-limited nature of a Master's thesis prevented me** from engaging the community or allowing research participants to be a larger part of the project, which would have truly reflected the values of Indigenous Methodologies.

I use the Two Row Wampum belt as a framework for balancing Indigenous and mainstream

frameworks. This is a beaded belt with two parallel rows of purple wampum beads on a white background. The purple rows symbolize a canoe and a ship, representing the agreement that Haudenosaunee and **European settlers will travel beside one another without steering each other's vessels. They co-exist as separate but equal entities** (Hill, 1990; Keefer, 2014). I travel in both the canoe and the ship throughout this work and attempt to strike a balance between the two approaches.

## Methods

To begin, I presented a proposal to the Hamilton Executive Directors Aboriginal Coalition (HEDAC), a group of Indigenous leaders in Hamilton, Ontario. HEDAC supported the project and provided suggestions for my research. This contributed to ethical clearance from the McMaster Ethics Review Board.

I hung posters in the community requesting people between the ages of 18 and 25 who self identify as Indigenous and had recently been in care. I was hoping for up to 5 participants, however only 2 replied to the posters. It is unclear why only 2 youth responded. Due to the limited time constraints of a **Master's thesis, I was unable to extend the recruitment time to allow for more participants. I also** approached an Indigenous key informant, who preferred to remain anonymous, to comment on the plan of care from an Indigenous perspective. This person is well known in a particular First Nation in Ontario for living with a Good Mind, having much cultural and Indigenous knowledge, and knowledge of the child welfare system.<sup>3</sup> I conducted individual interviews in person with each participant. The interviews lasted between 50 to 90 minutes in length and were recorded with permission. I brought a blank plan of care to each interview for the participant to review and discuss. I thanked participants with a tobacco tie, light refreshments, and a gift card (Anna, Sam, & key informant, personal correspondence, 2014).

I transcribed the interviews and analyzed the data through open coding, which involves reviewing the data multiple times and taking note of themes that emerge organically in the data. I was careful to remain thoughtful about my biases and assumptions through conversations with my thesis supervisor, journaling about the research process, and self reflection on what personal beliefs or experiences may have impacted my interpretation of the information.

**To deepen my understanding of a youth's experience, I asked a coworker to write a plan of care** about me. I reflected on this experience and how it informed my interpretation of the results. Finally, I provided the results of the research to the participants, presented my findings to HEDAC, and placed physical copies of the research in accessible community locations.

## Findings

The experiences of the young people, Sam and Anna (whose names have been changed as requested), are very different but share common themes. Sam was very familiar with his plans of care, however Anna had never seen the document before our interview. The key informant was familiar with

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<sup>3</sup> My understanding of a Good Mind involves a peaceful, compassionate, nonjudgmental state of mind cultivated by practicing self awareness and respect towards all of our relations. This understanding comes from my experiences with Elders, time spent in Indigenous communities, and my ongoing personal healing journey.

the child welfare system. The participants highlighted a number of areas which will be explored in this section: the plan of care structure, goals, conference, culture, and relationships. In addition, I will review findings from my own plan of care.

## Plan of care structure

Anna and Sam felt that the plan of care was structured well and the seven dimensions were logical. They felt that the Ministry standards listed at the beginning of the document were important. Both participants, however, recalled that some of the standards were not met during their time in care such as having a Life Book or having their rights and responsibilities reviewed by their worker.<sup>4</sup> Sam stated that some of the standards in the plan of care are simply in place to appease the Ministry.

**All the participants noted the need to look at a child's life from a holistic perspective. The key informant felt that workers need to go beyond the questions in the document to connect the dimensions. He wondered if some youth disengage from the "ticks and boxes" as well as the "cut and dry" language. Specific suggestions from the youth include addressing a child's social and emotional health alongside their physical health and stating whether a child needs a tutor or is participating in any extracurricular activities.**

**Anna and Sam appreciated that the plan of care addresses the child's family relationships, their understanding of their situation, the need for permanency, the child's cultural background, and their budgeting skills. The youth emphasized the importance of the positive, long term relationships in their lives. Anna noticed that the document does not specifically ask about the young person's relationship with their foster parents. Anna did not have a positive relationship with her foster parents and her worker was unaware of the situation: "When my worker came around, my foster parents would act like... they've done nothing wrong and that they're treating me perfectly fine. But then they leave and it all goes back to normal." She wondered if this issue would have been brought to light if the plan of care prompted the worker to ask about this relationship.**

The youth felt that the emotional/behavioural section was very important. Anna struggled with mental illness during her time in care however this was never addressed until it escalated into a crisis. She wondered if she would have received help sooner if it was discussed in her plan of care.

## Goals

Anna was unaware of the goals her worker listed in her own plans of care, however she appreciated the concept. She wished she could have participated in her plan of care goals so that her worker could help her achieve them.

Sam recalled some of the goals in his own plan of care such as attending medical appointments, having a tutor, and participating in music lessons. He felt that assigning a deadline to some of the abstract goals was silly, but appreciated having his goals on paper:

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<sup>4</sup> A Life Book is supposed to be created while a child is in care to document their milestones, achievements, life events, and important people in their lives. They are meant to be given to the child upon leaving care.

**At the time I didn't realize it but looking back it did help me. It's the whole psychological** thing of writing it down, and then my worker was on me for those goals. My worker focused a lot on the goals that we set up.

The key informant pointed out that the worker needs to consider how the age and ability of the young person impacts their ability to participate in the plan of care conference and achieve their goals.

## Plan of care conference

Neither Anna nor Sam could recall a plan of care conference, with the exception of a meeting that took place when they turned 18 and transitioned to Continued Care and Support for Youth (a voluntary program that services youth in care until the age of 21).

Anna wished that she could have participated in her plan of care conferences. She would have wanted just her worker present so that she could share her true feelings:

**I think I'd just have my worker there to be honest. So I can be as honest as I want to be without worrying what other people are going to say or what's going to happen when I say it in front of my foster parents. What are they going to say after she leaves?**

Anna also felt that the plan of care could be completed by youth if they have the skills to do so, which would allow for complete honesty. Sam asked to write parts of his plan of care as this was easier than talking. His worker incorporated his writing into the plan of care and reviewed the final document **with him. This facilitated Sam's participation in the plan of care and he appreciated having his own words** in the document.

**The key informant echoed the youth's concerns regarding privacy and participation:** when various people attend a plan of care conference the worker needs to consider how the information being shared **will impact the youth's relationship with those present. He noted there is a difference between what a worker *wants* to know versus information that a worker *needs* to know. The worker should respect this distinction and protect the young person's privacy. The key informant also stressed the importance of the young person's right to participate in the plan of care and know what is being said about them. The worker needs to be flexible to accommodate each young person's comfort level and ability.**

## Relationship with the worker

**The youth's relationship with their worker appeared to be the deciding factor in how they** experience plans of care. Anna had to change workers and found it difficult to explain everything to a new person. She felt that her voice was not heard by her second worker when she asked for help, so she **stopped sharing her true feelings: "I usually put a front on for her so she thinks everything's okay."** As a result, she felt it was unlikely that the information in her plan of care was accurate. Anna and her worker met privately on a regular basis however Anna did not feel that her worker reviewed many aspects of the plan of care during these visits.

**Sam's experienced a great deal of support, care, and encouragement from his worker. His worker** listened to him and made sure that he was happy. Sam appreciated his worker helping him explore his Indigenous identity and meet his goals:

It all came down to the worker for me - I got lucky with how my worker was. I know **there's a lot of different workers that wouldn't have done what my worker did, so the worker was definitely the factor [that] made [me] work towards those goals.**

The key informant shared that a good working relationship with young people is founded on trust and respect. The worker should attempt to remedy the power imbalance whenever possible by providing opportunities for participation, being honest, and respecting the **young person's privacy. Some Indigenous** young people may be hesitant to connect with a social worker, so patience is needed. The worker also needs to be critically reflective about how their own biases and assumptions affect their work.

## Culture

Both Anna and Sam connected with their Indigenous culture as young adults. Anna would have appreciated more opportunities to explore her Indigenous culture, however this was never addressed by her worker. In contrast, Sam was well supported in exploring his Indigenous identity and had goals in his plan of care such as obtaining his spirit name and his status card. Sam expressed how important it is for youth in care to have a connection to their culture, especially if they live in a foster home with a different cultural background. The key informant discussed that culture is more than just something on paper; it **involves a person's beliefs and how they see the world.**

Both Anna and Sam agreed that the plan of care document itself does not inherently address the cultural needs of an Indigenous child. Anna suggested that the education section could include a piece **about learning one's cultural identity. Sam noted the need for Indigenous teams and cultural training for workers as it is the worker's responsibility to make the plan of care culturally appropriate.** All three research participants stressed the need to utilize an Indigenous perspective with the plan of care, such as incorporating the medicine wheel into the narrative sections.

The key informant discussed how the plan of care appears to prepare young people to be productive members of society. He wondered who gets to decide what that means. He noted the struggles of working within a colonial system and how creativity is needed to make the system work for Indigenous people.

## My plan of care

Having a co-worker complete a plan of care about my life allowed me to put myself in the shoes of children in care. During the plan of care meeting I felt comfortable and understood. Despite our positive relationship, however, there were times when I chose not to share certain pieces of information regarding my health and social relationships. I felt that some things were too private to share, even with a friend. Overall, however, it was a positive experience because my coworker and I share equal power and my privileged life allows me to have positive things to say in each section. I suspect a child in care would have a different experience if they did not have a good relationship with their worker or were struggling in some domains of the plan of care.

## Discussion

### Relationships

While Anna and Sam's stories cannot be generalized to all Indigenous youth, they provide insight into the importance of relationships and culture, the struggle of bureaucracy, and the need for change. Anna had a poor relationship with her social worker and lacked participation in her plan of care while Sam had a positive relationship with his worker and was deeply involved in his plan of care. I also feel that my personal plan of care was a positive experience due in part to my friendship with my co-worker. The key informant shared how a positive relationship is created when the worker demonstrates respect, honesty, flexibility, and self-reflection. The literature agrees that a positive relationship is fostered when **the worker is sensitive to the client's privacy, understands their culture, and puts the client's needs first** (Harms et al., 2011).

Due to the very small sample size, it is impossible to draw concrete conclusions about the connection between relationships and experiences with the plan of care. However the youth's stories echo findings in the literature from other young people about the importance of relationships (Jobe & Gorin, 201; Bennett, Zubrzycki, & Bacon, 2011; Pritchard, Cotton, Bowen, & Williams, 1998; Bell, 2002; Iglehart, 1992; McMurray et al., 2010; Bell & Romano, 2015). This is especially true for Indigenous youth, as relationships are a central part of Indigenous culture. Having healthy relationships with other people, oneself, the land, and **one's spirituality are necessary to have a balanced life (Simard & Blight, 2011)**. A positive relationship between a young person and worker can create a culturally safe environment where their culture is understood, respected, and integrated into interventions (Roy, et al., 2015). In a child welfare system that is built upon colonial values and worldviews, working with Indigenous children from a holistic, culturally respectful approach can help mitigate the struggles in navigating a mainstream system and provide a solid foundation for Indigenous children to heal and thrive. Opportunities to explore and connect with their culture is paramount to an Indigenous child's success.

Fostering positive relationships requires non-Indigenous workers to engage in decolonization to understand how colonialism impacts their understanding of the world (Bennett et al., 2011). Decolonization involves acknowledging the historical trauma Indigenous people have endured, reconciling effects of harm where possible, and relating to one another with newfound respect and understanding. Decolonization for Indigenous workers involves reclaiming our Indigenous culture, identifying our internalized colonialism, and navigating the divergence between Indigenous and colonial worldviews (Little Bear, 2000). Presently, caseloads are high (Representative for Children and Youth, 2013) and workers have little time to reflect on themselves, their power, or how the child is portrayed in documentation (Munro, 2001; Bell & Romano, 2015). However this critical self reflection is inextricably linked to creating positive relationships with Indigenous young people (Bennett et al., 2011; Roy, et al., 2015) and may lead to plans of care that reflect not only how the young person is cared *for*, but how they are cared *about* by compassionate and dedicated workers.

### Bureaucracy and Standardization

The literature suggests that the plan of care functions to assist the Ministry in supervising workers and children in care as it is assumed that increased supervision of workers leads to better outcomes for

children (Jones et al., 1998; Lafrance & Bastien, 2007). However, Anna's struggle with mental health demonstrates that the plan of care does not lead to better outcomes when the young person is not included in the process. The fact that neither Anna nor Sam had a Life Book also reflects the lack of compliance with basic standards. The plan of care, therefore, does not guarantee that the needs of the child are being met. In fact, the struggle for workers to keep up with the increased documentation can potentially decrease the quality of service to young people (Bell & Romano, 2015; Lafrance & Bastien, 2007).

**The plan of care reflects the increasingly bureaucratic nature of social work. It classifies a child's life into standardized categories and measurable outcomes instead of focusing on a child's rights or true identity** (Munro, 2001; Clowes Chisholm, 2013; Garrett, 1999; Gharabaghi, 2008; Thomas & Holland, 2009). Indeed, during my personal plan of care it felt unnatural to fragment pieces of my life into categories. I would have preferred to tell a story that flows smoothly between the various aspects of my life.

Shifting from a place of standardization and bureaucracy to a holistic model may produce more meaningful plans of care for the children they represent. Flexibility in the plan of care is beneficial for all youth, however Indigenous youth are set apart in this regard due to the historical trauma and tensions in navigating a euro-centric system as an Indigenous person (Ungar, Brown, Cheung, & Levine, 2008; Filbert & Flynn, 2010). When approached from a holistic, culturally competent way, the plan of care has potential to be an Indigenous cultural resource that views the child in the context of the medicine wheel and considers all of their relations. It can be a vehicle to integrate Indigenous culture throughout the entire child welfare system (Roy, et al., 2015; Simard & Blight, 2011). Young people of all backgrounds want to be connected to their culture (Office of the Provincial Advocate for Children and Youth, 2012) and this is especially important for Indigenous youth battling the impacts of colonialism and intergenerational trauma (Waterfall, 2002; Laenui, 2000).

## Reframing

All the participants and the literature agree that child welfare practices need to be reframed as **tools to support a child's right to participation** (Aubrey & Dahl, 2006; Jones & Kruk, 2005; Munro, 2001; Office of the Provincial Advocate for Children and Youth, 2012; Representative for Children and Youth in British Columbia, 2013; Roose et al., 2009; Winter, 2010). When a young person can express themselves in their plan of care it can contribute to higher self esteem and empowerment (Leeson, 2007). As Sam experienced, it can also contribute to the completion of goals and the gratification of being heard. Indigenous youth in particular benefit from experiences of power and control as it contributes to greater resilience (Ungar, et al., 2008) and allows them to incorporate their culture into the plan of care in a way that is meaningful for them. For example, the plan of care often assumes there is a common sense **understanding of certain concepts, such as "culture" or "spirituality". This can be advantageous in allowing the young person to attach their own meaning to these words. However Anna's experience and the literature** (Aubrey & Dahl, 2006; Jones & Kruk, 2005; Munro, 2001; Office of the Provincial Advocate for Children and Youth, 2012; Representative for Children and Youth in British Columbia, 2013; Roose, et al., 2009; Winter, 2010) demonstrate that young people are not always active participants in their plans of care. If the worker interprets these concepts on behalf of the child they risk misrepresentation and imposition of Eurocentric views on the meaning of culture and spirituality.

Supporting space for youth participation and the development of positive relationships requires funding to lower caseloads, the creation of Indigenous teams, and training for staff about Indigenous history and culture (Blackstock, 2007; Blackstock & Trocmé, 2005, Blackstock et al., 2006; D'Souza, 1994; First Nations Child and Family Caring Society of Canada, 2005; Palmater, 2011; Representative for Children and Youth, 2013; First Nations Child and Family Caring Society of Canada v. Attorney General of Canada, 2016). Although Indigenous worldviews cannot be learned in a few training sessions (Hart, 2003) it is a step towards more meaningful relationships with young people and can assist with integrating Indigenous culture into the plan of care (Long & Sephton, 2011; Representative for Children and Youth, 2013). Indigenous agencies will need equitable funding to meet these needs, as they are typically underfunded by the government (Blackstock, Brown, & Bennett, 2007). Reconciliation must take place at the macro level to address the structural factors that play a major role in the overrepresentation of Indigenous children in care (Blackstock, et al., 2007).

Reconceptualizing plans of care through the framework of the Two Row Wampum can promote respect and meaningful interactions with Indigenous young people (Montour, 2000). This framework can be extended the macro level to support reconciliation on a structural level and the continued revitalization of Indigenous culture as a whole. When Indigenous communities have opportunities to heal from the wounds of colonialism, there are fewer children in need of protection (Blackstock & Trocmé, 2005). In other words, there is greater success when Indigenous people are able to travel in their own canoe.

## Limitations of the research

While this project shares the important stories of two Indigenous young people, the findings are not necessarily generalized to the larger Indigenous community. This is because of the small sample size and the fact that every child will have a unique experience in care. Due to the lack of funding, time **constraints, and the limited scope of a Master's thesis, I was unable to develop long-term** relationships with the participants or involve the participants more deeply in the project. Unfortunately, this replicates the power dynamic often present between a young person and their social worker. It is my hope that sharing the results with the participants, remaining self reflexive, and being accountable to the Indigenous community through HEDAC helped to offset this power dynamic.

## Concluding thoughts

Plans of care are one of the main tools to represent children in care in Ontario and plan for their future. We owe it to the young people we serve to ensure these plans are meaningful and beneficial. Implementing the recommendations in this research requires a great deal of work however it is necessary to support our young people who are strong, resilient, creative, intelligent, and deserving of the best possible care.

Recall the Mohawk creation story shared at the beginning of this research. The woman needed a team of kind animals to help her establish a space where she could start a new story. Like the woman, sometimes children and families need others to catch them when they fall. When a strong foundation is made with care and compassion, Indigenous young people can have opportunities to let their strengths **flourish. Plans of care are a piece of earth that we need to place underneath our young people's feet to let them grow, thrive, and exercise power over their lives.**

## Recommendations

These recommendations originate from the participants and the literature. They are listed in no particular order.

- **View the young person in a holistic fashion.** An Indigenous child should be considered within the context of their physical, emotional, spiritual, and mental health.
- **Add information about tutoring, extra-curricular activities, and previous placements.** The participants felt that these elements should be considered for every child and could provide more context to the plan of care.
- **Support every young person's right to participate in their plan of care.** This requires creativity and flexibility to support the young person in accordance with their age, ability, and comfort level.
- **Ensure that Life Books are created for every child and youth in care.** This is an important Ministry standard that documents a young person's milestones, interests, and relationships.
- **Add a piece about culture in the education section.** This places responsibility on the young person's support network to ensure that there are resources in place for them to learn about their particular culture.
- **Create Indigenous teams in each child welfare agency that will focus on Indigenous youth and provide training on Indigenous culture and history.** Understanding the context in which Indigenous young people are situated can potentially assist workers in building meaningful relationships.
- **Increase funding to child welfare agencies to address high caseloads.** Lower caseloads would provide more time for workers to engage in critical self reflection, develop positive relationships with young people, and improve the quality of their documentation.
- **Provide more opportunities for Indigenous young people to share their stories.** Due to the limited scope of this project, only a small part of the youth's experiences were explored. More voices will strengthen the call for changes to the system.
- **All workers to undergo a plan of care about themselves.** This can provide the experience of having someone else write about their life and help them understand the challenges with fitting their life into prescribed sections.

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*Honoring the Voices, Perspectives and Knowledges  
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## **The Waters of Sexual Exploitation: Understanding the World of Sexually Exploited Youth**

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Visual illustrated by Bram Keast-Wiatrowski

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### **Abstract**

The sexual exploitation of youth is a complex and multidimensional social problem. Understanding the antecedents and factors that entrap youth into the world of sexual exploitation is imperative for effective interventions. This article presents a visual entitled the Waters of Sexual Exploitation that is used as a training tool for social service personnel to understand the world of sexually exploited youth. The visual was developed through an extensive review of the literature as well as in consultation with the Sexually Exploited Youth Training Committee with a specific focus on the overrepresentation of Aboriginal youth who are sexually exploited. The Waters of Sexual Exploitation visual helps to capture the complex relationships that develop between sexually exploited youth, the people that exploit the youth, and the helpers working with youth exiting this world. The visual is enhanced by the inclusion of the lived experience of a survivor of this world.

*Keywords:* sexual exploitation, sex trade, social service, Aboriginal youth

## WATERS OF SEXUAL EXPLOITATION



Illustrated by Bram Keast-Wiatrowski

## Introduction

The sexual exploitation of youth is a complex and multidimensional social ill. There are a number of factors that impact the vulnerability of sexually exploited youth and predispose them to sexual exploitation. These factors also work to entrap youth and make exiting the sex trade a challenging task for both the youth and helpers. The visual, dubbed the Waters of Sexual Exploitation, presented in this article seeks to capture this complexity by explaining the world of the sex trade, giving voice to the experience of the youth who are being sexually exploited, describing people who exploit the youth, and highlighting challenges faced by people who try to intervene. This visual was originally conceptualized by the author, Roche, in 2005 while re-developing a training curriculum (Berry, 2005) aimed at individuals working with this population. The re-developed training has since been delivered to over 1,000 social service personnel and has had largely positive reviews and consistent anecdotal comments from experiential individuals that the visual reflects the world of sexual exploitation (K. Hallick, personal communication, May 18, 2015; J. Runner, personal communication, June 19, 2017).<sup>1</sup> Within this paper, the second author, MacKenzie, shares her own story from entrapment to freedom from the sex trade to enhance the salience of the visual.

The Waters of Sexual Exploitation visual depicted in this article seeks to highlight the complexity of the sex trade world and advocate for a more comprehensive understanding in order to support holistic responses to those individuals that wish to exit this world. This visual will be of particular interest to students and practitioners in both understanding the world of sexual exploitation but to also plan appropriate interventions for the children and youth trapped within this world. This article will also be of interest to those individuals that work with Indigenous youth, as the sad reality is that within Western Canada over 80% of sexually exploited youth are of Aboriginal descent (Lowman, 2011; Scheirich, 2004).<sup>2</sup>

## Context

This paper has adopted the definitions utilized by the Province of Manitoba (Canada) Sexually Exploited Youth (SEY) Strategy to address child and youth sexual exploitation. The Province of Manitoba SEY Strategy was developed in 2002 and is commonly known as *Tracia's Trust - Front Line Voices: Manitobans Working Together to End Child Sexual Exploitation* (Manitoba Family Services and Housing, 2008). The SEY Strategy was named after Tracia Owen who tragically took her own life at the age of 14 after being sexually exploited. The SEY Strategy defines child and youth sexual exploitation as

the act of coercing, luring or engaging a child, under the age of 18, into a sexual act, and involvement in the sex trade or pornography, with or without the child's consent, in exchange for money, drugs, shelter, food, protection or other necessities (Scheirich, 2008, p. 1).

In contrast, a sex trade worker is understood to mean an adult who trades sex for money or goods, whereas a child or youth who exchanges sex for money or goods is understood as being sexually exploited (Scheirich, 2008). However, many consider the sex trade as inherently exploitative:

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<sup>1</sup> This training used the term *experiential* to refer to individuals that either continue to or have worked in the sex trade.

<sup>2</sup> Western Canada includes the provinces of Manitoba, Saskatchewan, Alberta, and British Columbia.

The definition of sexual exploitation is best conceptualized on a continuum . . . from female sexual slavery . . . to survival sex . . . through to more bourgeois styles of sex trade . . . where both adults are consenting, albeit in a way that is shaped by their gender, occupation, ethnicity, socio-economic status and cultural values (Gorkoff & Runner, 2003, p. 15).

Civil society remains conflicted over whether prostitution should be legalized (Bazonmay, 2016), however, despite the international debate about the sex trade there appears to be universal agreement that the sexual exploitation of children and youth needs to be eradicated.

## The Waters of Sexual Exploitation

The Waters of Sexual Exploitation visual depicted in this article attempts to capture this complexity while supporting the perspective that interventions must also be flexible enough to address the differing circumstances that individuals wishing to exit the sex trade find truly helpful. In the development of the Waters of Sexual Exploitation visual, the author, Rocke, utilized the metaphor of the “murky waters” to explain the world that sexually exploited youth inhabit. Although many Indigenous beliefs understand water as both sacred and healing (Anderson, Clow, & Haworth-Brockman, 2013) the Waters of Sexual Exploitation depicts water that has been polluted by the sexual exploitation of youth. For the Indigenous experiential individuals who utilize the Water of Sexual Exploitation visual during training, the metaphor of murky waters reflects the reality of several murdered sexually exploited youth whose bodies have been found in the Red River in Manitoba.<sup>3</sup> The tragic death of Tina Fontaine, whose body was pulled from the Red River after being sexually exploited and murdered (Blaze Baum & D'Aliesio, 2015), is one high profile example. As a result, community volunteers began an initiative entitled Drag the Red (Lambert, 2016) in which local residents volunteer their time and resources to search the Red River for murdered and missing Indigenous women.

The visual was originally created after the completion of an extensive literature review and in consultation with the SEY Training Committee, established by the Manitoba SEY Strategy (Manitoba Family Services and Housing, 2008). The six-day training was re-developed from an original 16-day training that included extensive consultation with experiential individuals and service providers (Berry, 2005). A visual was originally developed for the six-day training (Berry, Hallick, Rocke, Runner, & Scheirich, 2005). However, an artist (Bram Keast-Wiatrowski) was subsequently contracted to recreate the visual that appears in this article. The Waters of Sexual Exploitation visual describes the sex trade world with specific focus on the sexual exploitation of youth. The world of youth sexual exploitation is depicted as existing in the murky waters below the surface that cloud the view of most individuals living within conventional society.<sup>4</sup>

Conventional society is shown as existing above the water where many inhabitants remain unaware of the experience of sexually exploited youth. To understand the murky waters of sexual exploitation, the world is visualized as a whirlpool within the waters; with street sex at the bottom of the waters and the more “accepted” forms of the sex trade closer to the surface of the waters.

<sup>3</sup> The city of Winnipeg was built around the confluence of the Red and Assiniboine rivers. This point is now known as The Forks and was historically a meeting place for many Indigenous groups for thousands of years before the European settlers arrived (Newton, 2016).

<sup>4</sup> Conventional society refers to those individuals that have limited knowledge or contact with the sex trade.

## Entry Into the Waters of Sexual Exploitation

The average age of entry for sexually exploited youth is 13.5 years-of-age (McDonald, Gardiner, Cooke, & Research Department of Wood's Homes, 2007; Seshia, 2005). Both systemic and individual factors make youth vulnerable to sexual exploitation. The systemic factors include involvement in the child welfare and/or correctional systems, poverty, and racism/oppression (Canadian Women's Foundation, 2014; Ferland, Denby, Neuman, & Bruce, 2012; Gorkoff & Runner, 2003; Kingsley & Mark, 2000; McDonald et al., 2007). The author, MacKenzie, explains how her own experience of being part of the 60s Scoop made her vulnerable:<sup>5</sup>

I think there were a few systematic factors that made me vulnerable. One of them being of Aboriginal descent, one of them being born an Aboriginal child during that period of time where they had policies in place that removed Aboriginal children from their homes and communities to give them a better life . . . that me being adopted in the 60s Scoop into a non-Aboriginal home would give me a better opportunity to succeed in life. To 'de-Indianize' the child.

The individual factors that make youth vulnerable to sexual exploitation include a history of physical/sexual abuse, limited education, learning disabilities (including Fetal Alcohol Effects/Fetal Alcohol Syndrome), dysfunctional family of origin, and little or no access to family and friends (Canadian Women's Foundation, 2014; Ferland et al., 2012; Gorkoff & Runner, 2003; Kingsley & Mark, 2000; McDonald et al., 2007). The author, MacKenzie, describes how her history of child sexual abuse set the stage for later sexual exploitation:

Childhood sexual abuse began with my adoptive grandfather who, in exchange for the games that he taught me, would give me small amounts of pocket change, candies, barrettes for my hair and I would do sexual favours for him. And the first time he didn't have a treat for me after we played this game – I was upset being a child probably around five – I didn't keep the secret . . . I ran to grandma and told but from that day forward I was blamed, I was shamed. I was taken to the church and the whole congregation prayed for the little girl that seduced a grown man with my devilish, sinful, lustful advances. I was made to feel dirty. I was made to feel used . . . I now realize that this was the beginning of the grooming process they had put in place for me . . . and then he began introducing me to his now perverted friends. And the game began. And I performed sexual things for all of his friends.

One of the highest risk factors that predispose youth to become involved in the sex trade is homelessness (Lutnick, 2016; Scheirich, 2004), which often occurs when the youth can no longer live at home and do not find the services provided by the child welfare services meet their needs.

During the indoctrination process into the sex trade, the youth learn the rules of this world. The longer the youth remain involved in the sex trade, the more distant the connection to conventional society

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<sup>5</sup> The 60s Scoop is a term describing the removal of Indigenous children during the 1960s away from their families and communities under a belief that it would be in their best interests to be placed in homes away from the poverty found on reserves. Approximately 75% of these children were adopted into non-Indigenous homes in Canada and the United States (Walmsley, 2005).

becomes and the more difficult it is for youth to reintegrate into conventional society. Helpers often experience an inability to communicate and relate to youth entrenched in the sex trade world. It is therefore critical that helpers learn the unique aspects of the sex trade within their community in order to both assess the dynamics accurately and develop successful interventions. Working with and allowing experiential individuals to take a leadership role is the key to successful interventions with sexually exploited youth (Canadian Women's Foundation, 2014; Cook & Courchene, 2006). Experiential individuals have been, and continue to be, part of the Manitoba training teams to ensure that the changing dynamics within the local sex trade are continually reflected.

There is a well-established process rooted in proven psychological techniques that essentially traps victims in the Waters of Sexual Exploitation (Perrin, 2010). The first steps of recruitment include seeking out vulnerable youth to exploit. The recruiters are well aware of the individual and systemic characteristics that make youth vulnerable to sexual exploitation. For example, the author, MacKenzie, highlights how her vulnerability began at a very early age:

When I was five, I made my first disclosure of my first abuser. If my grandmother would have picked up the phone or put me in the car and taken me to the police maybe my life would have been different from that point. I would have been protected from the initial abuse. But because I wasn't protected from the initial abuse from the adopted family, and the other people watching the big picture saw that, the other abusive people stepped forward because they saw that 'nobody did nothing to grandpa' . . . and that's how predators look for that vulnerability.

When youth are identified, a recruiter will begin the process of engagement by building an intimate relationship with the victim (Hammond & McGlone, 2014). Pimps and gang members have been known to have playbooks to help each other with successful recruitment techniques (Perrin, 2010). Once a relationship has been established, either coercion or manipulation is used to get the victim sold for sex for the first time (Hammond & McGlone, 2014; Perrin, 2010), as described by the author, MacKenzie, in her story:

A pimp who is in on the scene, knows what's going on, had been watching me. And saw my youth and my naiveté. And he was introduced to me. And he sweet talked me and they know how to groom and what to say to coerce and charm their ways into your life. For myself, it was a sense of belonging and love. This man told me how beautiful I was. How he felt sorry for me that people were taking advantage of me. I thought at that point no one is taking advantage of me. I'm getting things out of this. And then he explained that we could make money off of this. And I wouldn't have to go back home, I could run away. And he would take care of me. And I thought 'wow,' this guy really likes me, thinks I'm sexy, I don't have to be with my grandpa's old creepy friends. And I am going to start cashing on this. And when I went from lollipops and pocket change to a five hundred dollar fee, my self-esteem rose along with my status.

It is common for sexually exploited youth to feel a sense of empowerment when they are initially involved in the sex trade, based on their perception that they now have some control over their bodies through the exchange of sex for money when contrasted with their earlier experiences of abuse and rape (Campbell, Ahrens, Sefl & Clark, 2003). Once involved, however, many youth will eventually feel trapped within the Waters of Sexual Exploitation and find it extremely difficult to exit the sex trade world.

As part of the grooming process, youth are encouraged to disassociate from their biological family and become part of a new family which they are told will provide the love and acceptance that they did not receive in their family of origin. The author, MacKenzie, outlines her own need to have a family and how she initially was convinced that she would find this in the sex trade:

So he [my pimp] knew I was on the street and he knew my child had died and he, using that tactic of Maslow's Hierarchy 'belonging,' knew I needed and wanted a family. And that's what he offered me. He offered to take me off the streets. So, I believed him . . . and he internationally human trafficked me all across Canada, throughout the USA, and even from Florida to the Bahamas. By age 17 I had been a survivor of human trafficking of 3 different countries. And I am a child of CFS . . . taken away from my Aboriginal peoples to be given a better life!

Youth are told by their recruiter or pimp that the conventional world considers them as disposable and unwanted (Tutty & Nixon, 2003). In the end, youth begin to accept that their worth is only valued by their pimp or gang members.

Lutnick (2016) challenged the dominant narrative of youth being forced into sexual exploitation by a pimp. Her research found that there are a number of ways that youth can become sexually exploited including an introduction by family, friends, and acquaintances. Ferland et al. (2012) also found that it was common for youth to be initiated into the sex trade by other family members and friends as a viable way to make money and escape poverty. This more nuanced understanding of how youth become sexually exploited points to the need for interventions to go beyond the victim/offender dichotomy.

The use of the internet to sexually exploit youth is becoming increasingly common (Canadian Women's Foundation, 2014; Sinclair, Duval, & Fox, 2015). The grooming process used by Internet predators is similar to those used by recruiters who also seek out vulnerable youth and then work towards building a trusting relationship before the sexual exploitation (Kloess, Beech, & Harkins, 2014). Mitchell, Finkelhor, Jones, and Wolak (2010) found that there has been a 280% increase in the arrest of offenders who sexually exploit youth over the Internet between the years 2000 and 2006. Children and youth can also be solicited for virtual sex acts which may then be used for the production of child pornography to be later shared with other offenders worldwide (Kloess et al., 2014).

## Hierarchy in the Waters of Sexual Exploitation

There is a very distinct hierarchy within the sex trade world between "high-track," "mid-track," and "low-track" (Lowman, 2000). At the bottom of the sex trade world are the sexually exploited people involved in survival sex; this includes the sale of sexual services on the streets by homeless youth and women in poverty who have few other options. Those at the bottom of the hierarchy are looked down upon by others in the sex trade world and are often referred to as "crack whores" – a reference to the fact that many suffer some form of drug addiction. Drug-using women are of the "lowest" status among anyone working the streets. These are the most vulnerable sex trade workers as they often do not have any "protection" from pimps and are targeted by predator Johns (Lowman, 2011). In Western Canada, 80% or more of these women and youth are of Aboriginal descent (Lowman, 2011; Scheirich, 2004).

The middle of the hierarchy is the hidden sex trade which occurs in trick pads, gang houses, drug houses, or on the Internet. Youth exploited in the sex trade primarily work in gang houses, trick pads, or

drug houses and are depicted at the next level of the whirlpool known as mid-track. The youth are held captive and treated like slaves where they are given drugs and food in exchange for sexual services (sexual exploitation). In Western Canada, youth living in trick pads, gang, and drug houses are almost exclusively of Aboriginal descent (Kingsley & Mark, 2000). Within Western Canada, Aboriginal youth and women are disproportionately represented in both the low and mid-track areas of the sex trade world (Cook & Courchene, 2006; Kingsley & Mark, 2000; Lowman, 2011; Lynne, 1998). It is estimated that only five percent to twenty percent of sexually exploited youth are visible on the street, whereas the majority of the exploitation occurs behind closed doors (Kingsley & Mark, 2000).

The highest level of the hierarchy (closest to the top of the Waters of Sexual Exploitation) is afforded the highest status in the sex trade world and includes adult pornography, Internet sex chat rooms, massage parlours, exotic dancing, and escort services. According to anecdotal information, most (if not all) are female and 80% are middle-class Caucasians (Lowman, 2011). All of the sex trade activity at this level occurs indoors. Many of these women have fulltime paid day jobs and jump off the "choice pier" that is floating above the Waters of Sexual Exploitation in the evening and rarely become involved in other aspects of the sex trade world. High track women have verbalized that they entered the sex trade of their own free will and their experience has become the basis for many that advocate for the legalization of prostitution (Canadian Alliance for Sex Work Law Reform, 2014). However, others argue that this choice is often made when other viable options are not available (Canadian Women's Foundation, 2014).

## Levels of Violence Within the Waters of Sexual Exploitation

The level of violence that is experienced by individuals at the lower-level and mid-level of the sex trade world is a constant reality and is normalized for sexually exploited youth (Nixon & Tutty, 2003). Almost 100% of the women and youth working at the lower levels will have experienced violence from Johns, pimps, and other sex trade workers (Ferland et al., 2012; Lowman, 2011). The author, MacKenzie, explains that violence is endemic in these levels of the sex trade world:

The girls themselves will fight amongst each other. Violence is a way of improving your status. If you could take a damn good beating and continue on with what you're doing, your status increases – at least it did on my behalf.

For youth that are involved with a pimp or gang member, experiencing violence is often paradoxically viewed as a sign of love and caring as demonstrated by the author, MacKenzie, in her own experience:

Because it showed [my pimp] that I was loyal to him. One time he beat me so bad that I ran out of the house [onto the street] straight into the traffic and I collapsed in front of a car. The ambulance came and the cops came and [my pimp] was in the house. I remember the cops had him and they said, "Did he hurt you?" I was visibly beaten and I said, "He didn't do nothing to me." They said, "We know he did this – there's only the two of you – someone seen you running." At that point, there was no way I would talk or say anything. Two minutes before the cops came I was running for my life from [the pimp]. But when the cops were there to save my life from further violence I knew how to keep my mouth shut.

This type of violence has powerful controlling aspects that keep the youth entrenched within the sex trade world (Lutnick, 2016).

Within the Waters of Sexual Exploitation, there are different levels of violence. At the bottom echelons, the youth and women can expect a high degree of violence from the pimps, Johns, and other sex trade workers. This violence can often be deadly, as predator Johns frequently target the youth and women working on the street, as their level of protection from pimps and other sex trade workers is diminished, especially if they are drug addicted. Historically, the police response to the level of violence experienced by sex trade workers on the street has been glaringly absent, as demonstrated in the unchecked murder of almost 50 sex trade workers by Robert Pickton in the downtown eastside of Vancouver, Canada (Oppal, 2012). In contrast to street-level prostitution, where various studies have shown that 80% to 100% of the women have experienced extreme violence (Nixon & Tutty, 2003), the level of violence experienced by sex trade workers at the upper echelons involved with escort, call girl, and Internet services is substantially less (Lowman, 2011).

## Physical and Mental Health Risks in the Waters of Sexual Exploitation

Substance use and abuse are also considered to be a normal fact of life in the sex trade. A high percentage of sexually exploited youth are addicted to some form of substance (Chettiar, Shannon, Wood, Zhang, & Kerr, 2010). The “relationship between substance abuse and prostitution is somewhat circular and co-determinate” (Goroff & Runner, 2003, p. 18). In other words, some sexually exploited youth enter the sex trade already addicted, whereas other sexually exploited youth become more entrenched in their addiction as a way of coping with the sex trade. Many sexually exploited youth are deliberately set up to become addicted by the individuals enticing them into the trade (e.g., boyfriends, pimps, gang members) as a means of further controlling the youth (Perrin, 2010). The author, MacKenzie, describes how drug use becomes a vicious cycle for sexually exploited youth:

Getting them hooked on the drugs is a good thing because it fools you to go out and get some money 'cause you need more crack. So you're a bit more serious about finding that money. If you're just straight, standing on a corner you might be timid and not easily approachable. But if you're stoned out of your mind looking for your next hit, you'll be bending over looking over into every car smiling, waving. Trying to attract any attention to flag down your next hit. That's the way it works.

Many of the youth living on the street suffer from a myriad of mental and physical ailments that are intertwined (e.g., addictions, depression, general ill health as well as higher risk for sexually transmitted infection). When combined with the violence and homelessness (lack of shelter, food, and sleep) that many of these youth experience, these health issues result in feeling chronically “sick and tired” (Downe, 2003b, p. 92). In contrast, many of the women at the higher levels of the sex trade world are less entrenched in addiction, as this can be viewed by the recruiters and pimps as bad for business (Lowman, 2000; 2011).

## Systemic Risks in the Waters of Sexual Exploitation

Systemic factors that predispose many youth to sexual exploitation are also identified in the Waters of Sexual Exploitation visual. These include a dysfunctional family of origin (Downe, 2003a; Ferland et al., 2012), the sexualization of children within our society (Canadian Women's Foundation, 2014), being of Aboriginal descent with the experience of colonization and racism (Bourgeois, 2015; Jacob & Williams, 2008; Kingsley & Mark, 2000), and the failure of the child welfare system. The dysfunctional family of origin is depicted as a boat capsizing that results in the child or youth falling into the Waters of Sexual Exploitation. Sexually exploited youth often have histories of family dysfunction that include sexual and/or physical abuse (Nixon & Tutty, 2003; Sethi, 2007), witnessing domestic violence, parental substance use/abuse, parental involvement in the sex trade, and experiencing neglect and poverty (Sethi, 2007). As a result, youth are set adrift from the capsized boat (home) but without any skills to survive in the conventional world. Once on the street, many of the youth become involved in survival sex as their first introduction into the Waters of Sexual Exploitation (Scheirich, 2004). The child welfare system is visually represented as a tattered net that is floating in the water. However, the net is full of large holes where many high-risk youth fall through into the Waters of Sexual Exploitation that are waiting to claim them.

Most sexually exploited youth have been involved in the child welfare system at one or more points in their young lives (Bittle, 2002; Brannigan & Van Brunschott, 2004; Coy, 2009; Gorkoff & Runner, 2003; Kingsley & Mark, 2000, McDonald et al., 2007; Perrin, 2010; Scheirich, 2004; Seshia, 2005). Historically, child welfare interventions aimed at youth experiencing sexual exploitation have not been successful; most sexually exploited youth run away from their assigned placements and in doing so further ostracize themselves from the very system that is designed to help them (Coy, 2009; Nixon & Tutty, 2003; Sethi, 2007). Traditional child welfare placements do not meet the needs of these youth as they simply "don't fit" into the rules and structure of most residential placements (Coy, 2009; Gorkoff & Runner, 2003). Entry into addiction treatment facilities is also difficult as staff are generally ill-equipped to deal with a history of sexual exploitation (Berry, 2003). As mentioned earlier, homelessness has been identified as one of the highest risk factors for sexual exploitation (Lutnick, 2016; Scheirich, 2004) and for many youth the harsh realities of street life (e.g., hunger, weather, exhaustion, loneliness, illness, and assaults) results in the sex trade being seen as a viable option for obtaining money.

Racism, sexism, colonialization, and poverty are also depicted as bubbles within the Waters of Sexual Exploitation visual to highlight that Aboriginal youth and women are most vulnerable to sexual exploitation based on the history of colonization and cultural genocide that has had the most devastating impact on Aboriginal women and children (Bourgeois, 2015; Jacobs & Williams, 2008; Lynne, 1998; Sethi, 2007). This history has also resulted in Aboriginal women being five times more likely to die from violence than other Canadian women (Native Women's Association of Canada, 2009). The level of violence against Aboriginal women within Canada has drawn international attention (Jacobs & Williams, 2008), with Amnesty International taking special notice in a number of recent reports of missing and murdered Aboriginal women (Amnesty International, 2008; 2009).

## Johns and Predators in the Waters of Sexual Exploitation

The Waters of Sexual Exploitation depicts Johns as either fishermen above the water with a fishing rod or as scuba divers with a spear below the water. These different types of Johns reflect the experience of many in the sex trade world (Lowman, 2000; Malarek, 2011). Johns who are symbolized as fishermen and living above the water in the conventional world are viewed as men who cannot control their sexual urges and/or are not getting their sexual needs met in current relationships. These Johns "fish" the youth out of the Waters of Sexual Exploitation to buy sexual services while psychologically convincing themselves that the youth or woman choose this lifestyle and the purchase of sex is a harmless act (Malarek, 2011).

In contrast, predator-Johns are depicted as scuba divers that use spears to capture their prey and are the men who act out their violent tendencies during the purchase of sex (Lowman, 2000; Malarek, 2011). It is well documented that working in the sex trade is extremely dangerous and often deadly (Lowman, 2011), as depicted by the words "death" embedded in the reeds at the bottom of the Waters of Sexual Exploitation. Pimps and gang members are depicted as sharks that inhabit the Waters of Sexual Exploitation visual and reflect the level of violence often used towards sexually exploited youth.

## Exiting the Waters of Sexual Exploitation

The people and resources that try and help sexually exploited youth are visually depicted in the Waters of Sexual Exploitation as part of the conventional world, located in a safe boat floating on the water. Interventions often occur during a time of crisis for the sexually exploited youth: the arrest of the perpetrator, the family is told, the child welfare system becomes involved, or the youth seeks medical attention for a sexually transmitted infection or physical assault. At this point, the youth is faced with a dilemma to either attempt to escape or remain in the Waters of Sexual Exploitation. Many of the youth may still feel a sense of power and control that make the Waters of Sexual Exploitation appear better than the abuse they have experienced at home or within the system (Perrin, 2010). The re-socialization process is very difficult for a young person to make. The longer the child or youth is immersed in the Waters of Sexual Exploitation, the harder it is to remove themselves from it and return to conventional society. The author, MacKenzie, reflects on her own work trying to help sexually exploited youth exit the sex trade:

Unfortunately, we wait until the children are entrenched before our systems and plans come into place. When they're transitioning in [to the sex trade], if we could have a spot just for them where there's no entrenched youth, or maybe just at-risk youth with them. And line them up with some realities of where this is headed.

For many youth, the sex trade world fills unmet needs that the conventional world has failed to meet. Further, sexually exploited youth can experience hostility (shaming/blaming behaviours) by members of conventional society, which in turn often leads to further entrenchment in the sex trade. In the event that a child or youth decides they wish to exit the Waters of Sexual Exploitation, the financial insecurity due to the inability to secure employment (Ferland et al., 2012) and adequate housing are often hurdles that are too difficult to overcome, resulting in further entrenchment in the sex trade.

Public awareness of the sexual exploitation of youth is increasing. The recognition of the need for coordination of all types of responses, including prosecution of offenders, the protection of victims and

preventative programs are also being acknowledged (Bruckmüller & Schumann, 2012; Canadian Women's Foundation, 2014). As Downe (2003a) argued, interventions need to "provide opportunities where supportive and complex relationships akin to street relationships can be cultivated, but in contexts that promote self-confidence rather than exploitation" (p. 61). The final report of the Truth and Reconciliation Commission of Canada (2015), that examined the history and effects of the residential school system, identified how the 60s Scoop continued these devastating impacts on Aboriginal children and their families. It is imperative that interventions for Aboriginal children and youth acknowledge this history and utilize traditional healing practices. The continued sexual exploitation of youth challenges us all to develop a more nuanced understanding of their reality, which will result in more effective interventions.

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