



JUSTICE, EQUITY AND CULTURE: THE FIRST-EVER YICC GATHERING OF FIRST NATIONS YOUTH ADVISORS

Ashley Bach and Gabrielle Fayant



November 22, 2019



Contents

- 2 Summary
- 2 History of Discrimination in First Nations Child Welfare
- 4 Preparing for the Gathering
- 5 Creating a Safe Space
- 6 The PATH Planning Process
- 6 Themes for Child Welfare Reform
 - 7 Justice and Accountability
 - 7 Equity
 - 8 Cultural Revitalization and Restitution
- 8 Compensation and Settlements
 - 9 Recommendations for Compensation and Future Settlements
- 10 Next Steps
- 11 Appendix: Indigenous Child Welfare Information Sources

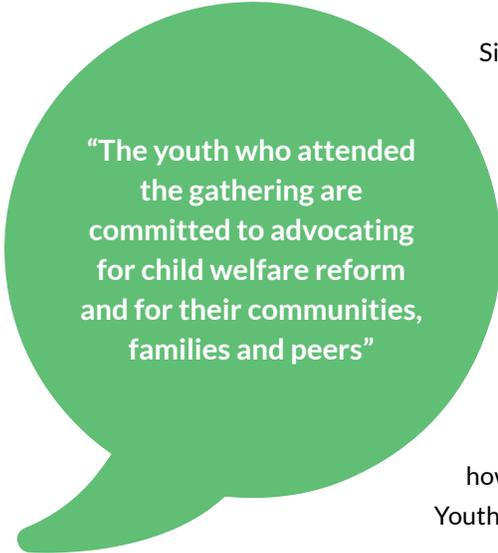
Youth in Care Canada exists to voice the opinions and concerns of youth in and from care. Our vision is that all young people in and from care across Canada receive standardized, high quality care that meets their diverse needs.

Youth in Care Canada would like to acknowledge and thank the Youth Advisors for informing this report and sharing their commitment to and advocacy for their communities, families and peers.

© 2019 Youth in Care Canada

Summary

Youth in Care Canada, with the support of the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations, organized a gathering of First Nations youth on October 25, 2019 on the unceded Algonquin territory now called Ottawa, Ontario.



“The youth who attended the gathering are committed to advocating for child welfare reform and for their communities, families and peers”

Sixteen First Nations youth with lived experience in child welfare systems across the country talked about their experiences in child welfare and how the system needs to improve, as well as their preliminary thoughts about the compensation for First Nations children and youth and their families that was ordered by the Canadian Human Rights Tribunal on September 6, 2019.

The youth who attended the gathering are committed to advocating for child welfare reform and for their communities, families and peers and they are referred to in this report as Youth Advisors. The report also describes historical discrimination in Indigenous child welfare systems, how the gathering was developed and the planning process used by the Youth Advisors to navigate through difficult conversations.

The Youth Advisors focused their discussions on child welfare reform and what it would take for Indigenous youth to feel heard and feel important. In addition to their recommendations for child welfare reform, their initial thoughts on receiving compensation and hoped for next steps are detailed.

History of Discrimination in First Nations Child Welfare

Significant research, inquiries and reports have documented the barriers currently facing First Nations youth in care. Many of these have called for the reform of Indigenous child welfare and detail needed changes. The extent of these problems and calls to action were clearly documented by the Truth and Reconciliation Commission of Canada (calls 1 to 5, p. 1)¹ and by the National Inquiry Into Missing and Murdered Indigenous Women and Girls Inquiry (calls for justice for social workers and those implicated in child welfare (calls 12.1 to 12.15, pp. 80–82)).²

In 2007, the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (AFN) filed a complaint with

1 https://nctr.ca/assets/reports/Calls_to_Action_English2.pdf

2 https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf

the Canadian Human Rights Tribunal (CHRT) against Canada for discriminating against First Nations children on reserves. The complaint was filed as a last resort after the Caring Society, the AFN and other First Nations organizations worked extensively with the federal department currently named Indigenous Services Canada to document the unequal provision of Indigenous child welfare services and to develop evidence-based solutions to stop the discrimination and improve outcomes for Indigenous children and youth.



“Canada knowingly failed to implement solutions”

The CHRT found that First Nations children and families living on reserve and in the Yukon are denied equal child and family services and are subject to unnecessary removal from their homes, families and communities as a result. Canada also discriminates against First Nations children by failing to implement Jordan’s Principle, a child-first policy agreed to by Canada when there are jurisdictional disputes with provincial/territorial governments over who should pay for services for First Nations children. The Principle states that the first government contacted is required to provide services equal to the level non-Indigenous children receive and to sort out reimbursement later so that children do not become victims of governmental red tape.

As Canada knowingly failed to implement solutions, the Tribunal issued its eighth non-compliance order on September 6, 2019 (subsequently referred to in this report as 2019 CHRT 39).³ The CHRT ruled that individual First Nations children and youth taken into child welfare care after 2006 are entitled to financial compensation for Canada’s “willful and reckless” discrimination. This ruling ordered \$40,000 in compensation for every First Nations child apprehended from their homes on reserve after 2006 and \$20,000 for parents or grandparents denied equitable services for education, child welfare, juvenile justice, mental health and disabilities, as defined by Jordan’s Principle.

The tribunal stressed that the compensation, which was the maximum amount the CHRT can order, will never be proportional to the pain suffered. However, to this day Canada fights against justice for Indigenous youth and denies them essential services. Canada has appealed to have the 2019 CHRT 39 ruling overturned⁴ to deny financial compensation for First Nations children and youth victims of willful and reckless discrimination. Canada is also fighting the certification of a \$6-billion class-action lawsuit filed by former youth-in-care Xavier Moushoom of Lac Simon Anishnabe Nation in Quebec for systematically underfunding on-reserve child welfare services between April 1, 1991 and March 1, 2019.⁵

3 https://fncaringsociety.com/sites/default/files/2019_chrt_39.pdf

4 <https://fncaringsociety.com/publications/notice-application-judicial-review>

5 <https://www.cbc.ca/news/indigenous/challenge-child-welfare-lawsuit-1.5343818>

For additional information on the systemic problems and racism inherent in Indigenous child welfare and details on the Canadian Human Rights' Tribunal compensation order, Jordan's Principle and Indigenous Services Canada's involvement in child welfare, please consult the links provided in the appendix to this report.

Preparing for the Gathering

Prior to the gathering, Youth in Care Canada sent questionnaires to the Youth Advisors to find out how much they knew about the Tribunal's compensation ruling as well as what they wanted to discuss, what kind of supports they wanted and what they hoped the outcomes of the meeting would be.

Regarding their level of knowledge of the 2019 CHRT 39 ruling:

- 11 said they had some knowledge but needed to know more
- 5 said they had a small amount of knowledge
- 3 said they had no knowledge at all

Youth Advisors were also asked what conversations they hoped would take place and if there were any specific topics they wanted to discuss. The following issues were mentioned:

- access to personal records
- aging out of child welfare and homelessness
- birth alerts (by social services leading to newborns being taken from their mothers)
- eligibility for and distribution of financial compensation
- engagement in child welfare policy and decision-making, including youth councils
- improving the foster care system
- intergenerational trauma, mental health, social justice and the environment
- learning how to help fellow children and youth in/from care.
- learning how to increase youth voices
- learning what is currently being done by governments, agencies, communities, advocacy groups and individuals
- northern and remote realities
- personal identity challenges
- sharing experiences of being in care

The Youth Advisors said cultural supports were very important to them. They asked for the following:

- a safe space to talk openly
- drums
- Elders
- knowledge keepers
- mental health and support workers
- prayer
- sharing songs
- smudging
- time between heavy topics to reflect and recover

Finally, in response to the question about anticipated outcomes from the gathering, the Youth Advisors said:

- building networks for future collaboration
- contributing to making a positive impact
- creating a vision for the future of child welfare
- experiencing feelings of accomplishment and excitement for the future
- gaining skills to help change systems as well as skills to cope with the impacts of those systems
- having meaningful discussion
- increasing youth involvement in legislation and policy
- learning more about child welfare and the 2019 CHRT 39
- making connections and friends
- sharing information about related youth-led initiatives
- sharing thoughts, ideas and experiences with peers



“A crucial part of bringing the Youth Advisors together was ensuring that they felt safe.”

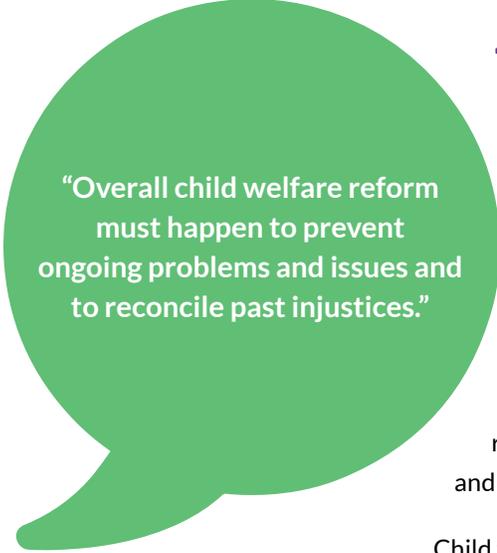
Creating a Safe Space

A crucial part of bringing the Youth Advisors together was ensuring that they felt safe. Having the event led by Indigenous organizers and facilitators and providing cultural supports such as songs, prayer and medicines were key. Also, a Knowledge Keeper/Elder recommended by the community and with knowledge of the child welfare system participated in the gathering.

Youth Advisors were able to share their lived experiences and recommendations based on their experiences without judgement, control or government interference.

The Youth Advisors developed the following values and guidelines to honour and respect each other while discussing their lived experiences and navigating decisions around child welfare reform.

- respect
- be friendly and kind
- be mindful of different experiences
- what's said in the room, stays in the room
- don't touch without permission/asking
- stay engaged
- brave space/safe(r) space
- courage to know that personal information will stay confidential
- you are not alone



“Overall child welfare reform must happen to prevent ongoing problems and issues and to reconcile past injustices.”

The PATH Planning Process

The Youth Advisors’ conversations were guided by a planning process called the PATH Method (Planning Alternative Tomorrows with Hope).⁶ This facilitation tool focuses on positive outcomes and solutions, both of which were especially important for youth who have experienced abuse and trauma through their experiences with the child welfare system.

The Youth Advisors created a Vision Statement by articulating responses to: “Indigenous youth will feel heard and feel important when...” and focused on outcomes that are positive and achievable in 10 years.

Child welfare reform quickly became the main focus of the discussions. While the CHRT compensation and Jordan’s Principle are milestones of justice and accountability, the Youth Advisors clearly expressed that overall child welfare reform must happen to prevent ongoing problems and issues and to reconcile past injustices.

Themes for Child Welfare Reform

The Youth Advisors saw child welfare reform happening with three major and interrelated themes: *justice and accountability*, *equity*, and *cultural revitalization and restitution*. These three major themes of child welfare reform would ensure the well-being of all Indigenous children and youth in care so the most

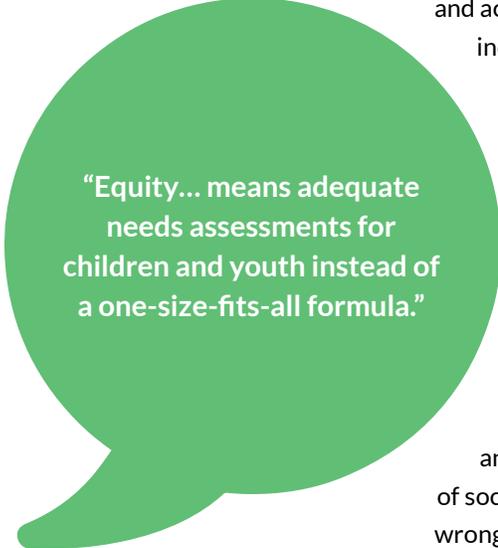
6 <https://inclusion.com/path-maps-and-person-centered-planning/path/>

marginalized children and youth could present themselves how they want to the world and be accepted by First Nations and in their communities.

Justice and Accountability

This theme means that Indigenous children and youth in care are treated lovingly by their foster parents. Social services have an obligation to nurture Indigenous culture and children and youth in care need to have access to their files. Justice and accountability also means adequate compensation for social services and individuals, which is also a part of the equity aspect. Proper screening of foster families is required and social workers must believe children and youth and ensure they have spaces to express mental health concerns. Immediate services for children and youth and adequate training and education for social service workers are part of this.

Youth Advisors were very clear that justice and accountability means the needs and wants of Indigenous children and youth in care must be prioritized. Currently, Indigenous youth in care face many layers of systemic racism and human rights violations, as is detailed in Volume 4 of the *Report of the Royal Commission on Aboriginal Peoples*. The systems and institutions that continue to oppress the most vulnerable segments of society must be held accountable and justice must be served for past wrongdoings.



“Equity... means adequate needs assessments for children and youth instead of a one-size-fits-all formula.”

Indicators of Justice and Accountability are:

- cultural competency of social services and follow-up audits of competency led by Indigenous youth in care
- accountability for foster families who are not treating youth well and liability for abuse experienced by youth in care
- more social workers with smaller caseloads
- a community notary (trusted Elder/community member) to help mediate family issues and tensions instead of restraining orders
- more engagement of youth by social workers
- more preventative measures (not just reactive or crisis management) as detailed in the *Report of the Royal Commission on Aboriginal Peoples*

Equity

This means adequate needs assessments for children and youth instead of a one-size-fits-all formula. There must be available and accessible education and services as well as affordable housing and access to mortgages so First Nations youth in care can live happy and full lives.

Funding should focus on:

- livable wages
- livable disability support compensation
- funding for post-secondary education and training
- funding for grassroots, youth-led cultural healing and other supports
- funding for First Nations child and family services



“Cultural revitalization and restitution... means that Indigenous culture is nurtured... encouraged and respected.”

Cultural Revitalization and Restitution

This means that Indigenous culture is nurtured and cultural teachings such as the medicine wheel, drumming and dancing are encouraged and respected. Indigenous youth are taught the ways of their ancestors, coming of age ceremonies and other rites of passage. Holistic approaches (spirit, mind, body, emotions) must be applied to programming, supports, policy and government because institutional programming often becomes too rigid.

Key elements of cultural revitalization and restitution are:

- grassroots, youth-led cultural healing and supports
- inclusion
- non-judgmental
- building healthy communities
- support for transitioning out of care
- land-based learning
- safe(r) spaces to open up
- supports and programs to break cycles of trauma
- supports for parents to help keep families together
- Elders and holistic guidance

Examples of the types of programming and supports envisioned by the Youth Advisors include:

- the revitalization of Indigenous economies
- training for Oskapewis (Indigenous cultural and educational helpers) and Oshkabewis (liaisons between healer and client)
- hunting and harvesting programs

Compensation and Settlements

Naiomi Metallic, a lawyer and professor with Dalhousie University, provided the Youth Advisors with information about First Nations child welfare and the CHRT ruling, Jordan’s Principle and the lawsuit filed by Xavier Moushoom on behalf of First Nation youth in and from care.



“The Youth Advisors strongly expressed the need for mental health supports”

The Youth Advisors discussed how they might use \$40,000 in compensation, such as making a down payment on a house where they could live with their children or resuming the post-secondary education they had to abandon for financial and other reasons. One Youth Advisor talked about how they could support their training and participation in amateur competitive sport. These are goals that other youth might get help from their families to accomplish but Indigenous youth in and from care don't get that kind of support.

They heard stories about the impact of financial settlements on the lives of residential school survivors. Some saw the settlements as an opportunity to improve their lives while others felt no amount of money could remedy their suffering or that the government was paying to abuse them. Experiences with such financial settlements are multifaceted and can trigger a lot of emotional hurt and repressed suffering. The Youth Advisors strongly expressed the need for mental health supports to be put in place before, during and after applying for compensation and settlements.

Recommendations for Compensation and Future Settlements

Most of the Youth Advisors said that they did not want to form an uneducated or rushed position on the 2019 CHRT 39 compensation, noting that Canada and the Crown have rushed or imposed major decisions on Indigenous Peoples throughout colonial history. Examples include treaty-making, the scrip system, the *Indian Act*, etc. Instead, Indigenous ways of decision making, consensus-building and holistic approaches should be applied this time.

The Youth Advisors want more time to learn about the 2019 CHRT 39 decision. They have much lived experience from being in care but little experience or knowledge of individual compensation settlements and how trusts or foundations could be utilized. Their lived experiences led the Youth Advisors to make the following recommendations:

1. There must be safety around compensation.
 - a. Healing circles, sweat lodge ceremonies, support for counselling or therapy, etc.
2. There must be mental health supports and navigational assistance to help youth apply for compensation.
 - a. Talking to lawyers and government employees can be very triggering for First Nations youth; therefore, having support to apply and fill out forms is essential.

- b. Getting access to files and birth certificates, for example, can be very challenging and trigger stressful emotions.
 - c. Along with navigational support, youth also need mental health supports to help with their experiences and challenges.
3. There must be continued support after compensation.
 - a. For example, at least one year of counselling or therapy must be covered. Indigenous Services Canada's Non-Insured Health Benefits coverage is limited and some First Nation youth do not have government-recognized status or access to their status cards.
 4. There must be restitution for children and youth who have died while in care or due to their experiences in the child welfare system.
 - a. Compensation should go to parents, grandparents or a trust fund.
 5. Financial training for youth receiving compensation should be offered.
 - a. Youth Advisors said this shouldn't be mandatory but rather an option for individuals receiving compensation.
 - b. Recipients should be offered awareness training about predatory banks and financial institutions, like those that swindled compensation from residential school survivors.

Next Steps

This was the first national level gathering of its kind for First Nations youth in and from care. The Youth Advisors said they want to continue to have the time and space they need to discuss important and pressing issues, including the following.

1. Become a collective of First Nation Youth Advisors in and from care
 - a. share best practices
 - b. share updates
 - c. continue advocating for reform
 - d. host more policy roundtables across the country
 - e. advise on court rulings, contribute to policy development, share testimonies, etc.
2. Continue to meet about compensation and settlements
 - a. learn more about options such as trusts, individual pay-outs, hybrid approaches, etc.
 - b. keep learning about trust funds, scholarships, pooling compensation, etc.
 - c. learn about best practices regarding settlements from other Indigenous communities

Appendix: Indigenous Child Welfare Information Sources

A Roadmap to the Truth and Reconciliation Commission Call to Action #66

(Indigenous Youth Voices, June 2018)

<https://static1.squarespace.com/static/599307a5f5e231b361442225/t/5c675b67e79c705013d3a8ae/1550277485617/FINAL+%282%29-+Indigenous+Youth+Voices+-+Roadmap+to+TRC+66+-+Compressed.pdf>

Death as Expected: Inside A Child Welfare System Where 102 Indigenous Kids Died Over 5 Years, by Kenneth Jackson

(APTN National News, September 25, 2019)

<https://aptnnews.ca/2019/09/25/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years/>

Dr. Peter Henderson Bryce: A Story of Courage

(First Nations Child and Family Caring Society Information Sheet, July 2016)

https://fncaringsociety.com/sites/default/files/dr._peter_henderson_bryce_information_sheet.pdf

Feathers of Hope: Child Welfare Youth Forum, by Karla Kakegamic

(*Journal of Law and Social Policy*, Volume 28, Re-Imagining child welfare systems in Canada, Article 10, 2018)

<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1303&context=jlsp>

First Nations Child and Family Service Agency Funding Changes per the Canadian Human Rights Tribunal

(Caring Society fact sheet related to Jordan's Principle, January 2, 2019)

https://fncaringsociety.com/sites/default/files/fncfsa_funding_changes_0.pdf

Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls

(see especially Chapter 5, The Need for a Systems-Level Approach to Transforming Child Welfare)

<https://www.mmiwg-ffada.ca/final-report/>

“Reimagining” the Child Welfare System, by Reina Foster

(*Journal of Law and Social Policy*, Volume 28, Re-Imagining child welfare systems in Canada, Article 9, 2018)

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1302&context=jlsp>

Report of the Royal Commission on Aboriginal Peoples

Volume 5: Renewal: A Twenty-Year Commitment (October 1996)

<http://data2.archives.ca/e/e448/e011188230-05.pdf>

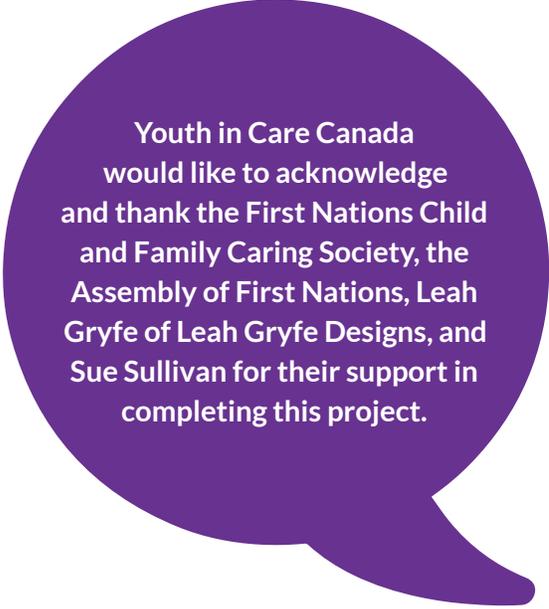
Truth and Reconciliation Commission of Canada: Calls to Action

https://nctr.ca/assets/reports/Calls_to_Action_English2.pdf

Whose Settlement Is It Anyway?

(Learning from the 60s Scoop and IAP Conference program and description, October 10–11, 2019)

<http://whosesettlement.ca/index.html>



Youth in Care Canada
would like to acknowledge
and thank the First Nations Child
and Family Caring Society, the
Assembly of First Nations, Leah
Gryfe of Leah Gryfe Designs, and
Sue Sullivan for their support in
completing this project.