



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Aboriginal Children: Human Rights as a Lens to Break the Intergenerational Legacy of Residential Schools

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**Submitted by:
The Representative for Children and Youth
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Preface

The impact of residential schools on several generations of First Nations children and families has been significant. How we come to understand that depends so much on our lens, our ability to stand back, and our capacity to look forward. The important work of the Truth and Reconciliation Commission (TCR) has reflected the deep concern and commitment of survivors and their families for a better future for their children. Children themselves are speaking to their sense of not being heard. As one youth so eloquently said:

"In reality, one the of the biggest reconciliation processes that had been undertaken to date is the residential school survivor payouts. However, money cannot buy back the experiences and fix or heal the people who have endured residential schools, including addressing intergenerational impacts and the effects on their peers, family and community. Money is a dominant cultural concept that Inuit and other Aboriginal people have bought into, and have come to value so much that it has replaced the true meaning of healing and reconciliation." (Pg 318, Truth to Reconciliation: Transforming the Legacy of Residential Schools, Aboriginal Healing Foundation Research Series (2008))

We must come to grips with the fact that through successive families, back to our children's great, great-grandparents, residential schools have left an indelible mark and in many ways diminished the transmission of culture, language and understanding of First Nations knowledge and practice. The concern, indeed even despair, expressed regarding the tools and supports community members and Elders have to ensure that the transmission of their languages, cultures and traditions continues to future generations was evident at your hearings, and is a constant theme in my work with Aboriginal families and children. They have started on a journey of reconciliation with very few supports from a practical sense of endorsing and building healthy space to provide the best support to children.

I was pleased to support your hearings at the community event you held in Victoria on April 13 and 14, 2012, and to participate in a discussion of ongoing human rights issues for current and future generations of children and youth. While this issue has a real impact for me in my professional life as an advocate for children, it has personal resonance for me as a parent, raising four school-aged children with my husband George E. Lafond, who in his own work as the Treaty Commissioner for Saskatchewan must consider the impact of residential schools on treaties, and the limited economic prosperity faced by First Nations students, perhaps as a result of these policies of the past.

I particularly reflect on how our children's great, great-grandparents were students 001 and 002 (literally the first two recorded students) at St. Michael's Indian Residential School in Duck Lake, Saskatchewan. How has this impacted us as parents, and how our children will see their own education and opportunities? How much of our work today is that of recovery and resilience after being deprived of family policy and normal childhood development for so many generations?



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What can we celebrate as the strengths of families continuing? I confess I do not have answers. But we need to consider and respect the process within our families and communities, and the need to engage our children and listen to their views and questions.

Following your hearings, I decided that it would be valuable to reflect more formally on the issues raised by the evidence you have been hearing, and the particular way in which the rights of children and youth have been impacted over time and across generations. Hence, I offer to you a more formal submission that might be of assistance to your work. I hope you will probe more deeply in your final report the impact on current Aboriginal children. I certainly see the continuing need to rectify the past, rebalance, and boost the resilience of First Nations children and youth. I hope you might promote effective approaches to provide support and non-judgmental assistance to families and communities as they take on the mission of making reconciliation meaningful as part of their efforts to deal with trauma and reclaim a strong voice in their own lives and in their communities.

A corollary of that pertains specifically to education and whether we are effectively changing education by building a strong First Nations system. Education, at heart, is about personal fulfilment and personal courage. Parents and families want the best for their children. Education is the process by which we help children gain the capacity as they mature to choose their own best destiny, to acquire the talents and capabilities to pursue effectively that destiny, to know themselves, their sense of belonging and their social bearings so deeply that they can proceed with confidence to fearlessly pursue their dreams. Education systems fail when they teach children they should not aim high or expect much; education systems succeed when they lead children to understand that their future is in their hands and that no powers, no conventions, no social expectations and no established privileges can or should frame for them their place in the world. Any education system not driven by that moral vision of autonomy and personal capacity requires improvement because it does not align with our greatest expectations for the human development of children and youth.

We know well that this belief in the best development and chances for children and their education was not the vision of the residential school policy, and has not been clearly put in place for First Nations education for successive generations. First Nations education continues to function under the *Indian Act*, without any clear legal or policy orientation anchored in the best chances for children to develop and learn. Children have paid a dear price in Canada for this remarkable gap, and it is a situation that must change as part of the process of reconciliation and renewal. This is clearly connected to the work of the TRC. Reconciliation requires fixing this flawed system.

I respectfully suggest that one foundation required to make that change meaningful and effective in education is a new approach in law and policy based on the rights of children, encompassing their individual and collective rights. This will ensure that never again do we go in the direction of a paternalistic and harmful approach to breaking up families, and creating such discontinuity and disharmony in the process of passing along knowledge, culture and language among generations.



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Some key fundamental human rights of children are central to that process of change for the future. A basic recognition at the federal level of at least the following human rights would be of real significance to ground any new approaches, and provide a framework to ensure we take a large step away from the approaches of the residential school era. Canada could clearly and unequivocally recognize that First Nations children enjoy:

- the right to learn
- the right to a safe and secure school environment in order to learn
- the right to be supported when there are special needs, including developmental disabilities, medical needs, and mental health challenges including the intergenerational trauma experienced in their families and communities through the residential school era to present
- the right to learn their indigenous languages, culture and traditions
- the right to directly participate in the governance and administration of their schools
- the right of the parents, family and community to shape their school experience and govern schools
- the right to be heard when they have concerns about how they are treated by teachers, school staff or other students, especially when they feel they have been treated unfairly, abused or harmed, and the right to redress
- the right to receive counseling, direction and support to plan a future so they can obtain skills and training to support their dreams and chosen occupation
- the right to maintain their strong connections to their family, community and nations so that they can pass along their knowledge and values to future generations, secure in their place
- the right to have adults in their lives who will nurture their learning spirit and be a positive force to encourage them along by spending time sharing their knowledge, encouraging reading, and working to see them reach their full development.

I highlight some of these fundamental rights for children because I believe human rights concepts provide a stable and solid framework for recovery from the residential school era, and can ground what we call "reconciliation." I also use a human rights lens because it is so evident how the absence of that lens allowed an education system to take root that created harm to children, intergenerational trauma for families and communities and resulting shame for Canada.

I also emphasize in this submission how crucial records and a complete and thorough historical project is for the human rights of children. This issue requires efforts and careful attention.

I am grateful for the opportunity to submit this more detailed formal submission on the rights of children and youth and would be pleased to provide any further support to the Commissioners and staff of the Commission as you complete your important task.

Future generations of children and youth will look to your work. I am confident they will see the wise choices you made in recording and "truth-telling" in your reporting on the residential school era and your care in setting a path forward to reconciliation.



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1. Introduction

It is within the spirit of support for residential school survivors, their families and communities that the Representative for Children and Youth for British Columbia (the Representative) makes this submission centred upon those Aboriginal children today who are living the residential school system's negative and destructive impacts.

Aboriginal children in British Columbia are significantly over-represented in British Columbia's child welfare and youth justice systems. The myriad of issues that set the stage are therefore front and centre in the Representative's work, and provide the impetus for this submission and inform its content. What happened to Aboriginal peoples happened because they were Aboriginal *and* because they were children. This submission, therefore, offers a child-centred, human rights perspective on children's historical experiences in residential schools and relates those experiences to the everyday world of Aboriginal children today.

As this understanding about Aboriginal peoples' past historical experiences needs to be accompanied by a commitment to improving the lives of Aboriginal children, their families, and communities, this submission intends to contribute to the residential school dialogue in a way that:

- fosters a broad, child-centred understanding about what happened and why
- links historical experiences to the present and refers to underlying root causes that continue to affect Aboriginal children's lives
- recognizes the importance of a human rights approach that identifies duty bearers and that holds them accountable for ensuring the realization of Aboriginal peoples' fundamental human rights, such as the right to be treated with dignity and respect
- promotes looking to the future with practical, informed recommendations for change and hope for reconciliation.



2. Historical Context

The vast European colonizing agenda imposed itself upon Aboriginal and Canadian history in ways that challenge us as a nation that respects human rights. It is within this context that this submission makes its contribution. The following section, with its focus on children, adds to the already extensive discourse about colonialism and its effects on Aboriginal peoples in general, Canada as a nation, and other international communities and their indigenous communities.

To understand Aboriginal children's historical experiences at residential schools *from their perspectives*, it is critical that we hear the testimonies of Aboriginal peoples. By placing those testimonies within their historical and social contexts, it is possible to see how adult attitudes and understandings about children have shaped Aboriginal children's residential school experiences as well as the experiences of their families and communities, and left a legacy of damaged Aboriginal lives. This submission joins the TRC and others in revisiting our historical perceptions and learning from the past.

2.1 Euro-Canadian attitudes toward children

Throughout the residential school years, Aboriginal children stood at the intersection of divergent attitudes toward children as reflected by their Aboriginal families and communities, Euro-Canadians, and church representatives. Euro-Canadians, including church representatives, introduced their personal experiences and standards of childhood to Aboriginal societies that held different concepts of childhood (see Truth and Reconciliation Commission, 2012a). At the same time, adult attitudes toward children were historically, socially and culturally influenced, as well as changing as years progressed.

Attitudes towards Aboriginal people and students changed over time. Furthermore, it is apparent that at any given time, different teachers took different approaches to their students... (TRC, 2012a, p. 73)

Enduring political and economic influences shaped these views, with the result that children were, and sometimes are, seen as "...the victim, investment or threat" (Tomlinson, 2008, p. 37). During the 20th century, improvements in standards of living, the rise of new psychological understandings, and the decline of strict religious views that saw children as being culpable brought new approaches within Euro-Canadian society to children's education. There was also a growing interest in children's rights within westernized societies (see following section). Despite this growing interest, attitudes toward children vacillated between perspectives that saw children as requiring special attention and those that saw children as without a voice and subject to exploitation.



Mayall (2002), writing from a Eurocentric position, claims that power inequalities between adults and children have always existed. She and others (see Franklin, 2002; John, 2003) have suggested that adults have used their power to advance their own interests at the expense of children. This power imbalance led to the use of physical punishment and other forms of violence against children (Pinheiro, 2007). Although there was inequality between adults and children based on age, children who were vulnerable through a range of circumstances, such as Aboriginal children, were additionally disadvantaged.

Identifying dominant Euro-Canadian attitudes toward children from the 1960s through to the 1980s is difficult. Although there were media and government concerns about child abuse during this period, these concerns did not necessarily have a central focus on children. Research about children in the 1960s and 1970s was largely based upon quantitative research and informed by adult understandings, or perceptions, of children and childhood in the westernized world. Research did not include children participants, let alone Aboriginal children. It is only in recent years that children have become research participants and, in some instances, researchers themselves.

During the 1970s and 1980s, researchers began to challenge traditional westernized notions of children. In Britain, James and Prout (1997) argued several points: childhood is socially constructed; children's experiences are shaped by the cultural and structural context; children actively contribute to their social worlds; and childhood experiences are affected by factors such as gender, ethnicity and class. These changing conceptions of children have led some child researchers to claim that it is essential to situate children at the centre of political and economic agendas, to identify what contributes to their well-being, and to use concepts of childhood properly to shape service provision for children (Welch, 2008).

It is reasonable to conclude that during the residential school years, Euro-Canadians relied upon their concepts of children and childhood to inform policy development and to further their political and economic agendas. Laws, policies and Christian religious beliefs – informed by prevailing Euro-Canadian attitudes towards children – determined how adults directly responsible for children would do their work, how non-Aboriginal adults envisioned Aboriginal children's futures, and how Aboriginal children, their families and communities would experience the effects.

2.1.1 The churches

Adults working for churches managing residential schools also participated in imposing dominant Euro-Canadian attitudes toward children on Aboriginal children, their families, and communities. The churches' agenda complemented government policy to use residential schools to "civilize and Christianize Aboriginal children" (TRC, 2012a, p. 10). This approach led to the churches' attempt to eradicate Aboriginal children's spiritual and cultural traditions along with their sense of identity (TRC, 2012a).



While there is evidence to indicate that some adults working at residential schools were concerned for Aboriginal children, and complained on their behalf, religious adults' own childhood experiences and commitment to religious doctrine, demanding obedience and self-sacrifice in some instances, would have informed their own attitudes and approaches to children (TRC, 2012a). In recent years, domestic and international investigations into historical child abuse in institutions have revealed that many persons within churches responsible for managing residential schools saw their loyalties to religious doctrine superseding children's fundamental human rights, such as rights to be treated with dignity, to be protected from harm, to express their views, to choose their own spiritual direction, and to have decisions made that reflected their own best interests.¹

2.1.2 Laws, policies, and Aboriginal children

Euro-Canadian attitudes towards Aboriginal peoples, including Aboriginal children, were embedded in laws and policies throughout the residential school years. In 1994, the Assembly of First Nations identified that federal government policy – and attitudes – toward Aboriginal children changed as reflected in these four stages:

1840s – 1910: Assimilation

Teaching Indian children the skills needed to participate as labourers in the mainstream Euro-Canadian economy, so that they would become "amalgamated with the white population" and "self-supporting members" of society.

1911 – 1951: Segregation

Teaching Aboriginal children, separated from their communities, about the civilised ways of white society, so that they would return to their own communities as "good Indians."

1951 – 1970: Integration

Educating Aboriginal children in the same schools as other Canadian children, since this approach offered "the best hope of giving the Indians [and other Aboriginal People] an equal chance with other Canadian citizens to improve their lot and to become fully self-respecting."

1971 – present: Self-determination

As part of the movement toward Aboriginal self-government, Aboriginal peoples assume control over the education of their children. (Law Commission of Canada, 2000, p. 13-20)

Euro-Canadian attitudes towards Aboriginal children were implicitly embedded in these historical government policies. These attitudes visualized Aboriginal children as limited in employment capacity, "uncivilized", "bad" Indians, and not fully "self-respecting" for a period exceeding 130 years.

¹ There are a myriad of investigations into child abuse within institutions managed by churches throughout the world. See, for example, Ireland, Commission to Inquire into Child Abuse (n.d.).



2.2 Child abuse

Historical, social, and cultural norms can determine what is considered child abuse. During the residential school years, Euro-Canadian concepts of child abuse were interwoven with concepts of childhood and attitudes toward children within European and Canadian societies. As Euro-Canadian attitudes toward children altered throughout the years, so did attitudes about what constituted child abuse.

In Britain, new child labour laws to protect children from exploitation were enacted in the 19th century, although children continued to experience abusive working conditions. Also in the late 19th century in Britain, societies for protecting children from harm or neglect by their parents emerged. The Victorian middle classes, which began to intervene in the lives of poor families perceived as mistreating their children, supported these societies. Residential schools and large children's homes emerged in response and many children whose parents were unable or unwilling to care for them were placed in those institutions.²

Within European and Canadian societies, the corporal punishment of children was widely accepted until changing norms and attitudes toward punishment made that earlier acceptance seem inappropriate. Into the 20th century, it was common in Britain and Euro-Canadian societies for children in schools to be subjected to corporal punishment for perceived misdeeds by teachers, and other adults, who used such punishment for discipline purposes. During those years, dominant Euro-Canadian approaches to children tended to focus on delinquency, neglect and the "problem family."

Until the late 1940s, there was little recognition of child abuse in the public consciousness. In the 1950s, the welfare state became more pronounced with increasing focus on society's social as well as economic health. As a consequence, the work of psychologists and psychiatrists began to inform approaches to children in general and the term "battered baby syndrome" emerged. Much work on child abuse in Euro-Canadian society during the 1960s and 1970s continued to have a family focus and there was little understanding about child abuse within residential institutions. This family focus influenced social policy that led to the "60's Scoop" – the adoption of Aboriginal children by non-Aboriginal families in Canada between 1960 and the mid-1980s.³

In the 1970s, Euro-Canadian understandings about the broad dimensions of child abuse began to emerge with growing awareness of child sexual abuse emerging in the 1980s. During the 1980s and 1990s, allegations of child abuse in institutions moved into the public realm. Allegations of institutional child abuse, for example, arose in the early 1980s in British Columbia (i.e., Jericho Hill School for the Deaf), and in 1994 the Assembly of First Nations published its report on residential school's damaging impact on Aboriginal children, their families, and communities.

² The same umbrella churches that managed residential schools in Canada for Aboriginal children also managed those residential schools and children's homes in countries such as Britain, Ireland and Australia.

³ This was also happening in Australia to their Aboriginal population.



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Since the 1980s, understandings about child abuse have continued to evolve with definitions for "institutional child abuse" emerging and predating the UN Convention on the Rights of the Child (UNCRC). The term "institutional child abuse" has been used to extend child abuse definitions to a broader one incorporating overt or direct abuse, program abuse, and system abuse (Gil, 1982; Kendrick, 1998; Sen, Kendrick, Milligan, & Hawthorn, 2007). Gil (1982) places institutional child abuse within a wide spectrum of possibilities and defined it as:

...any system, programme, policy or procedure or individual interaction with a child in a placement that abuses, neglects, or is detrimental to the child's health, safety, or emotional or physical well-being, or in any way exploits or violates the child's basic rights. (Gil, 1982, p. 9)

Program abuse is internal to an institution (Gil, 1982) and, while viewed as acceptable to staff, may be seen by outsiders as abusive (Barter, 2003). System abuse is perpetuated by a large, complex child care system that is under-resourced, stretched beyond capacity, and unable to guarantee safety to all children in State care (Gil, 1982). Despite these three categories, public inquiries and research have tended to focus upon direct abuse to individuals rather than system or program abuse (Barter, 2003). Other types of abuse that may occur within residential environments include peer abuse and organised abuse, characterised by the purposeful, targeted abuse of children in institutional settings (Barter, 2003; Sen et al. 2007).

In 2007, a United Nations report on violence against children equated child abuse with "violence" against children and relied upon a definition expressed in UNCRC Article 19 prohibiting "all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" against children (Pineiro, 2007). Today, we do not know the full extent of historical child abuse in institutions and elsewhere, although adults throughout the world continue to come forward to talk about their experiences as children in residential institutions and the human rights abuses that they experienced.



2.3 Children's human rights

During the residential school years, there was growing international interest in children's human rights and the concept of granting special considerations to children. Evolving child rights discourse within the international community, paralleling other evolving human rights initiatives, encouraged a shift from predominantly child protectionist language to one that reflected children's broader entitlements. The evolution of human rights discourse also prompted a broadening awareness, defining, and reframing of violations against children. The following represents an example of the international movement towards recognizing children as active rights bearers:

- 1796 Thomas Spence published the *Rights of Infants*, one of the earliest English-language assertions of child rights
- 1924 *Geneva Declaration of the Rights of the Child, Assembly of the League of Nations*
- 1927 Janusz Korczak published the *Child's Right to Respect*
- 1959 *UN Declaration of the Rights of the Child*
- 1965 *UN Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples*
- 1986 *UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*
- 1989 UNCRC (and subsequent protocols)
- 1990 *UN Declaration on the Survival, Protection and Development of Children*
- 1990 *UN Standard Minimum Rules for the Administration of Juvenile Justice*.

Other international human rights treaties, relevant to indigenous children, also emerged during the residential school years. Those treaties included the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), the *International Covenant on Civil and Political Rights* (1966), and the *International Covenant on Economic, Social and Cultural Rights* (1966).

2.4 Canada and children in institutions

Adults have placed vulnerable children in institutions for centuries. Until the 1980s and 1990s, governments paid little attention to children's experiences and children's heightened vulnerability within those institutions. In the 1980s and 1990s, governments and public discourse began to acknowledge the physical and sexual abuse of children in institutions, with emotional and other abuses becoming more prominently recognized in later years. Canadian inquiries into the historical experiences of these children have found that widespread systemic emotional, physical, spiritual, cultural and sexual abuse took place in institutions where children resided.⁴

⁴ In the 1980s, former students at Jericho Hill School for the Deaf, a residential school, made child abuse allegations leading to Thomas Berger's report in 1995. In 1994, the Nova Scotia government received allegations of child abuse within youth custody centres and in 1999 Fred Kaufman conducted an independent review of government's response to institutional abuse. During the 1990s, the Law Commission of Canada and the Assembly of First Nations also investigated and reported on abuse.



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Historically, children placed in institutions included: Aboriginal children in residential schools; children with mental disabilities (who were subjected to debilitating medical experimentation); children with developmental disabilities; children who were deaf; children of ethnic, racial and religious minorities; children whose behaviour was considered "socially unacceptable"; children with offending behaviours; children who were truant; and children requiring protection.⁵ "Socially unacceptable" children included young teenage mothers, who were placed in institutions with their babies.

In 1998, the Law Commission of Canada⁶ began to investigate child abuse in institutions. Their ensuing report arose pursuant to the federal Minister of Justice's 1997 request to "...assess processes for redressing the harm of physical and sexual abuse inflicted on children who lived in institutions that were run or funded by government" (Law Commission of Canada, 2000, xiii).⁷

Over the past ten to fifteen years, child abuse has surfaced as a painful issue for Canadians. With greater public discussion has come greater awareness that children have been abused not only in their homes and communities, but also in institutions where they were placed for their education, welfare, rehabilitation or even protection. Many of these institutions were run by, or on behalf of, federal, provincial and territorial governments. As increasing numbers of survivors of institutional child abuse reach adulthood and achieve a clear understanding of the harm done to them, they are finding a public voice to describe their experiences, to express the pain they have suffered, and to seek an accounting from those who they claim are responsible. (Law Commission of Canada, 2000, p. 1)

The Law Commission of Canada focused on child abuse in government-run, government-funded, or government-sponsored institutions, and included residential schools for Aboriginal children.⁸ Their report examined why abuse occurred within institutions where children resided and identified three critical factors that led to abuse. The *first factor* related to the vulnerability of children placed in institutions.

Generally, they come from groups or communities that are now referred to as "marginalised." This means that they are members of society's most powerless groups; those who have neither the financial resources nor the political clout to make themselves heard and to exercise control over the course of their lives...

⁵ See Law Commission of Canada (2000) report.

⁶ Established in 1997 by Act of Parliament in Canada, the Law Commission of Canada is an independent federal law reform agency. The Commission provided advice to Parliament on reforming and modernizing Canada's laws.

⁷ A human rights approach would have required the Law Commission to investigate 'children's human rights violations', including possible breaches of children's right to education, healthcare, family, justice, traditional spiritual and cultural upbringings, and so on. In other words, how investigations are framed determines what we learn about what happened to children.

⁸ The Government of Canada responded to the Law Commission report in its own report entitled *Safeguarding the Future and Healing the Past*. See Department of Justice (2011).



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The very factors that caused society to view residential institutions as a response to the perceived needs of these children, contributed to their vulnerability. These same factors also made it easier for officials to discount, disbelieve or deny the children's complaints of the treatment they received or witnessed. They also made it easier for society in general to regard these complaints as unimportant. (Law Commission of Canada, 2000, p. 4-5)

According to the Law Commission's report, a *second factor* was the "enormous" power imbalance between the children and adults responsible for managing the institutions. Those adults worked for governments and churches, which typically were viewed as significant "authorities" within broader societies (Law Commission, 2000). In contrast to the children placed in institutions, "...those who ran the institutions often came from groups that were powerful and respected: government; churches; and their lay orders" (Law Commission of Canada, 2000, p. 5).

For many communities, the idea that ministers, deacons, priests, nuns, or members of lay orders could commit acts of physical and sexual child abuse was unthinkable. Even today, to accept the extent of the abuse that was committed, and the failure of those in charge to prevent or stop it, is to have one's faith in governments and churches seriously undermined. Many would rather believe that the abuse did not occur, or that the reports have been wildly exaggerated. The extent of the deference accorded to governments and churches made it difficult for anyone to effectively challenge the policies and acts of officials at the time. (Law Commission of Canada, 2000, p. 5)

The *third factor* related to the isolation of children placed in institutions and their lack of visibility within their communities. The Law Commission's report noted the significant role of external and independent oversight when children were placed in institutions.

Too often, however, there was little oversight of any kind brought to bear on the daily activities, the level of discipline and the quality of care that children received. In some cases, an institution or its sponsor responded to documented evidence of abuse by simply transferring or dismissing the employee without seeking the involvement of police, offering counselling to the children or even seriously reviewing its hiring and supervisory policies. (Law Commission of Canada, 2000, p. 6)

The government of Canada subsequently responded to the Law Commission's report:

The well-being of children and young people in Canada is a top priority for the Government. We are committed, as the January 2001 Speech from the Throne made clear, to ensuring that this country is a place where children can grow up in safety and where the laws, policies and programs that affect them are grounded in their best interests. (Department of Justice, 2011)



2.5 Children in the international world

The Commissioners also recognize it is important to place Canada's residential school system within the international context, particularly now that the world community, including Canada, has endorsed the United Nations Declaration on the Rights of Indigenous Peoples. (TRC, 2012b, p. 10)

By placing Canada's residential school system within the international context, it is possible to see that beyond colonial oppression of indigenous peoples throughout the world, disadvantaged children living in European countries also experienced oppression and human rights violations under government policies. There has been a plethora of allegations made by adults who experienced those violations as children, with government and other investigations taking place throughout the world.

2.5.1 Children in institutions

Similar government policies of institutionalizing children for serving political, economic and religious agendas were enacted simultaneously in countries such as Britain, Ireland, the Netherlands, and Australia. Many vulnerable children in westernized societies were removed from their families and placed in State-sponsored, church-run residential schools/children's homes because their families were poor. Churches and voluntary organizations, such as large children's charities, managed those residential schools and children's homes. These church and voluntary organizations were united in their implementation of government policies that placed disadvantaged and marginalized children in institutions and sent children away from their home communities to other countries.

In Scotland, a 2007 independent review reported on systemic factors contributing to the historical abuse of thousands of children placed in residential schools and children's homes prior to 1995.⁹ The review found that children experienced human rights violations in government-sponsored institutions managed by churches and voluntary organizations. In response to the review, the Scottish Government announced it would establish a truth commission for survivors of historical abuse and amend its public records legislation. Subsequently the government launched a pilot project entitled "Time to be Heard" for residential school survivors while concurrently passing new public records legislation.

In England and Wales, during the late 1990s and early 2000s many police forces were involved in investigating allegations relating to historical child abuse in institutions. A government Select Committee on Home Affairs followed with an inquiry into possible miscarriages of justice arising from those investigations, drawing conclusions and making several related recommendations.¹⁰ Allegations of historical child abuse in institutions continue to be made throughout Britain, as well as allegations of child abuse by individuals associated with the churches.

⁹ See Shaw (2007).

¹⁰ See United Kingdom, Home Affairs Committee (2002) report.



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In Ireland, government placed more than 105,000 children in industrial schools and children's homes from the mid-1900s to 1969 (Raftery & Sullivan, 1999). Catholic religious orders and Protestant churches managed these institutions intended to "save souls" and require children to become Catholics or Protestants. The industrial schools had associations with the Magdalen laundries, where unmarried pregnant young women were sent and from which many of their children were moved to industrial schools. These children were used as child labourers. They were physically, emotionally and sexually abused, separated from their siblings, prevented from seeing their families, and perceived as "socially unfit" (Raftery & O'Sullivan, 1999). The Government of Ireland initiated an inquiry into institutional child abuse in 1999 and completed their inquiry in 2009.

In 2010, the government of Northern Ireland announced it would begin an inquiry into historical institutional child abuse dating back to 1945. The organizations responsible for managing institutions where children resided included Catholic religious orders, voluntary organizations, and government departments.

In 2011, a Netherlands commission report¹¹ identified extensive child sexual abuse occurring within the Catholic Church and also reported on the existence of institutional child abuse, as well, over a 40-year period. Individuals in the Netherlands subsequently criticized the report for failing to include evidence indicating that church priests had castrated children for reporting abuse by priests and for not adequately identifying associations among the church, politicians, the police, and justice system – associations that may have prevented child abuse from being fully disclosed.¹²

In Australia, the "Forde Inquiry" investigated thousands of individuals in 159 institutions from 1911 to 1999 (Queensland Commission of Inquiry, 1999). In 2004, Australia's Senate inquiry¹³ into children placed in institutional care estimated that up to 500,000 children grew up in orphanages and other homes run by governments and church organizations. The Senate report identified neglect and abuse suffered by many children in institutional care from 1920 until the 1970s. In 2010, the Australian prime minister apologized to "Forgotten Australians" who include children brought up in orphanages, children's homes, institutions or foster care in Australia, including child migrants. The Australian government later supplemented the British government's travel fund for child migrants.

¹¹ See the Netherlands, Commission of Inquiry (2011).

¹² See Radio Netherlands Worldwide (n.d.).

¹³ See Australia Parliament Senate Community Affairs References Committee (2004).



2.5.2 Children in alternative care

For children in institutions, the government assumed an "in loco parentis" role, which meant government and their agents acted in place of children's parents and had legal responsibilities to properly care for those children. Assuming that role, governments removed children, including Aboriginal children, from their families and placed them in institutions, large children's homes or with foster families. Governments often moved children from placement to placement, making some children eligible for adoption (although some children were sent away as child migrants). These children also endured human rights violations, including child abuse.

Between approximately 1869 and 1969, for example, Australian governments and churches removed children of Australian Aboriginal and Torres Strait Islander descent from their families. *The Aborigines Protection Amending Act 1915* enabled the Aborigines' Protection Board to remove Aboriginal children from their parents without having to establish that children were neglected or mistreated. The Australian Human Rights Commission (1997) conducted an inquiry,¹⁴ which led the Australian prime minister to make a formal apology on behalf of the Australian Parliament in 2008. State and Territory governments offered previous apologies in the period 1997–2001.

In 2004, the Parliament of South Australia enacted legislation to establish a Commission of Inquiry into Children in State Care and later into Children on APY Lands. The APY lands – Anangu Pitjantjatjara Yankunytjatjara – are Aboriginal lands in a remote area in north west South Australia. The Mullighan Inquiry reports – *Children in State Care Commission of Inquiry and Children on APY Lands Commission of Inquiry to the South Australian government* (2008) – examined allegations of child abuse and death for the period 1910 to 2004,¹⁵ substantiating allegations and making recommendations for changes in child protection legislation. The government of South Australia responded to the inquiries through a series of reports between 2008 and 2011.

2.5.3 Child migrants

During the late 1600s until the 1970s, the British government began its policy of forcibly sending poor and vulnerable children to Canada, New Zealand, Australia and the former Rhodesia (some as young as four years old) to "populate the colonies" and, in some instances, to be used as child labourers. For example, in the 1860s, Christian philanthropists decided to "save children" from appalling child labour conditions in Britain and sent thousands of children to distribution centres in countries such as Canada where they intended that children would have a better quality of life.

¹⁴ See Australia Human Rights Commission (1997).

¹⁵ See South Australia Commission of Inquiry (2008a) and South Australia Commission of Inquiry (2008b).



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"It was barbaric; it was dreadful. We look back on it in our organisation with shock and horror." This was the comment on the child migration programmes made by the Chief Executive of Barnardo's when he, along with representatives of other sending agencies, gave evidence to us on 11 June 1998. Child migration was a feature of British social policy for many years. Legislation allowed children in the care of voluntary organisations to be transported to Commonwealth countries. In total it is estimated that some 150,000 children were dispatched over a period of 350 years – the earliest recorded child migrants left Britain for the Virginia Colony in 1618, and the process did not finally end until the late 1960s. Exact statistics are difficult to come by. Today many former child migrants continue to face serious difficulties in establishing their actual identities and contacting members of their natural families who are still alive. The absence of a medical history is also a significant problem for some. In many cases child migrants suffered emotional and physical hardship and abuse, of a kind which has had damaging consequences for their health and well-being for the remainder of their lives. (United Kingdom, Health Committee, 1998).

The British government's social and economic policy intersected with churches and voluntary organizations' agendas. The British government, churches and voluntary organizations worked together in sending generations of children from residential schools and children's homes in Britain to countries abroad. At certain historical periods, the British government considered that emptying residential schools and children's homes was an economical way to save money. The government also viewed child migration as a way to rid Britain of "lower social classes" while populating the colonies with white people – a practice that coordinated with Australian government policies (United Kingdom, Health Committee, 1998).

Government, churches and the voluntary organizations sent these children – sometimes referred to as "British Home Children" – without their consent or their parents' consent and knowledge. Upon arrival in foreign countries, child migrants were adopted or lived in children's homes, institutions, orphanages or foster care. Child migrants claim that they suffered years of neglect, physical and sexual abuse by the religious orders and voluntary organizations that were supposed to care for them. Child migrants also reported that they had their names changed and records withheld, that they were denied adequate housing, that they were prevented from obtaining a proper education, and that they were not allowed to socialize with other children in their communities. These children were also denied religious and spiritual freedom (United Kingdom, Health Committee, 1998).



Child migrants lost all association with their families, their communities, their countries, and their past. They were separated from their siblings and told their parents had died. Many parents, destitute after WWII, were alive and believed that their children lived in temporary care. When parents wanted to reclaim their children, they were told their children had been adopted and not told their children were sent abroad (United Kingdom, Health Committee, 1998). In 2010, the British prime minister issued an apology to child migrants and established a compensation programme, including a travel fund for former child migrants to visit their families in the UK.

In Australia, the Senate Community Affairs References Committee published a report on child migration in 2001,¹⁶ followed in 2004 by their "Forgotten Australians" report (this report did not specifically refer to child migrants or Aboriginal children in Australia). The ensuing government apology included an apology to child migrants. Australia's Roman Catholic Church had publicly apologized in 2001 to British and Maltese child migrants who suffered abuse, including abuse in religious institutions.¹⁷ In recent years, the Australian government has established the "Find and Connect" website to help child migrants find their families, locate records, and learn about the historical context within their experiences.¹⁸

Between 1869 and the late 1930s, Canada received thousands of child migrants. While the Canadian government decided not to conduct an inquiry into child migrant experiences, or to apologize to child migrants, they proclaimed 2010 the Year of the British Home Child. In Ontario, there is a *British Home Child Day Act* (2011), which on September 28 recognizes British home children's contribution to Ontario.

2.6 Relationships and connections

There is a relationship between understandings of children, attitudes toward children, cultural contexts, and the development of law, policies, and practices, including religious practices. Historically in Canada, there were connections between Euro-Canadian government representatives, churches with an international presence; voluntary organizations in Britain, and Aboriginal peoples. Euro-Canadian and religious adults' own experiences of childhood would have informed their attitudes towards Aboriginal children, which they, in turn, embedded in religious and government laws, policies and practices in locations throughout the world.

These laws, policies and practices, imposed on Aboriginal peoples, failed to take a holistic view of Aboriginal children's lives, and failed to respect Aboriginal peoples' cultures and traditions. This effect has left a legacy endured by many Aboriginal children today who are not fully realizing their entitlements to the same opportunities and outcomes realized by other Canadian children. The impact has also resulted in damaged relationships, leading to the TRC and its focus on hearing, healing and reconciliation.

¹⁶ See Senate Community Affairs References Committee Secretariat, Parliament of Australia (2001).

¹⁷ See "Australian church apologies" (2001).

¹⁸ Available at: <http://www.findandconnect.gov.au/>



3. Human Rights

Understanding human rights, from a historical and contemporary perspective, makes it possible for us to recognize the full spectrum of human rights violations that Aboriginal peoples, including Aboriginal children, have experienced in the past and continue to experience. Applying a human rights lens to Aboriginal children's lives encourages us to expand our understanding about past injustices, to recognize the full extent of abuses of their human rights, and to seek ways to remedy those abuses.

Human rights are defined as those rights marked by key characteristics that cannot be waived or denied, impose obligations, are universal, and "focus on the inherent dignity and equal worth of all human beings."¹⁹ Children have human rights which "are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation" (Robinson, 2005). Situating Aboriginal children's human rights abuses within their larger context of Aboriginal relations with government, demands recognition of Aboriginal children as social agents within their own right, and not as "possessions" of parents or instruments of government.

Taking a human rights approach encourages us to adopt a *holistic* view of Aboriginal children's lives and to reframe language used when awareness about institutional child abuse entered the public consciousness. It is a complex task, as a full and proper human rights analysis expects that we acknowledge the full complement of Canada's ratified human rights treaties and protocols, their implementation requirements, and Canada's duty to report to various respective bodies with oversight responsibilities.

Domestic human rights legislation, such as the *Canadian Charter of Rights and Freedoms* (1982) and federal and provincial human rights legislation are also relevant to Aboriginal children's lives. This legislation reflects certain human rights principles that may be compatible with principles in the *UN Declaration of Human Rights* (1948) and other UN human rights treaties important to Aboriginal children. UN human rights treaties that have particular relevance to Aboriginal children include the:

- *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965
- *International Covenant on Civil and Political Rights*, 1966
- *International Covenant on Economic, Social and Cultural Rights*, 1966
- *UN Convention on the Rights of the Child*, 1989
- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 1993
- *UN Declaration on the Rights of Indigenous Peoples*, 2007.

¹⁹ See United Nations Human Rights. Office of the High Commissioner for Human Rights (n.d.).



The UN treaty reporting process is significant in that it can highlight strengths and weaknesses in Canada's past and current human rights obligations to Aboriginal children, their families, and communities. The *UN Declaration on the Rights of Indigenous Peoples* (2007) has particular relevance for indigenous peoples, including children. In 2001, the UN Commission on Human Rights appointed a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, subsequently confirmed by the Human Rights Council in 2007. As the Council requested that the Special Rapporteur pay particular attention to indigenous children, he has focused several recommendations on children in his annual and mission reports. Canada is expected to implement all recommendations relevant to its domestic situation.

3.1 Children's human rights²⁰

States and other duty bearers have ongoing obligations to implement Aboriginal children's human rights. These rights, reflected in numerous international and domestic legal instruments, are rights that afford special considerations to children on the basis of their unique and vulnerable status. There are societal, moral, legal and practical justifications for promoting and protecting children's human rights (Hodgkin & Newell, 1998).

Children's rights are an integral part of human rights. The whole human rights program of the United Nations is of direct relevance to children inasmuch as the ultimate aim of the program is the well-being of every individual person in national as well as international society. But even more, the whole human rights endeavour may be said to be built on the foundation of care and love for children and respect for their rights. (van Boven, 1982, p. 157 as cited in Koren, 2001)

The special place of children in society, reflected in the original *Universal Declaration of Human Rights* (1948), pervades the entire framework of international human rights standards, including the UNCRC. Moral obligations require societies to recognize that children have "equal status to adults as members of the human race. They are individuals – not possessions of parents, not products of the State, not people-in-the-making" (Hodgkin & Newell, 1998, p. 271). It is incumbent upon governments to recognize the human rights of children as individual citizens and to ensure the full implementation of those rights.

²⁰ This section is reproduced from Canadian Council of Child and Youth Advocates (CCCYA) (2011) Special Report (See Appendix A).



3.2 UN Convention on the Rights of the Child

The UNCRC, a core UN human rights treaty took many years and discussions to materialize. While the UNCRC did not exist for most of the period that Aboriginal children resided at residential schools, international awareness about children's rights was growing and leading to the emergence of the UNCRC in 1989 (see Section 2.3). Other human rights instruments, such as the *UN Declaration of Human Rights* (1948), did exist for the latter residential school years, becoming a preeminent international human rights treaty due to atrocities committed during WWII. Canadians played a central role in drafting the *UN Declaration of Human Rights* (1948) and in 1991 Canada was one of the first countries to ratify the UNCRC, which is considered an international benchmark against which to measure how our societies treat children and how children are doing.

The UNCRC is organized according to four predominant principles: non-discrimination, best interests, survival and development, and participation. The UN Committee on the Rights of the Child (UN Committee) has emphasized that States implementing the UNCRC must have regard for the entire UNCRC, with no hierarchy of rights attributed to particular articles (Hodgkin & Newell, 2002). The UNCRC articles can be placed within several key areas: general rights (including the right to express one's views and information), protective rights, civil rights, development and welfare rights, and 'special circumstances' rights (Freeman, 2002).

Applying a retrospective UNCRC lens allows us to see the full extent of gross injustices to Aboriginal children and how the international community has come to recognize what happened to Aboriginal children, their families and communities as human rights violations. Taking a human rights approach also encourages us to recognize how 'good intentions' can go seriously awry when interspersed with dominating economic agendas that see children as a means to an end and that lack independent oversight and accountability. Applying a UNCRC lens to the residential school years explicates how the abuse of power diminished children's voices, interests and entitlements with the result that children failed to realize their most fundamental human rights predating formalized human rights law.

3.3 UN Committee on the Rights of the Child²¹

Canada is required to report to the UN Committee about its implementation of the UNCRC for all children, including Aboriginal children and other children who may be disadvantaged. The UNCRC requires all signatory States to fulfill their obligations and implement its provisions, with the UN Committee monitoring such implementation through periodic reports (although States are expected to monitor through internal measures as well). Canada made its first report to the UN Committee in the early 1990s and the UN Committee is reviewing Canada's UNCRC implementation in 2012.

²¹ This section is extracted from an internal background paper initially prepared for the CCCYA. It is a condensed and amended version.



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As part of the reporting process, the UN Committee may invite NGO/specialized agencies and child involvement through reports and "pre-sessional" working group processes. UNICEF may also contribute to the UN Committee's monitoring processes, which include consideration of evidence submitted by individual States. The UN Committee releases its reports as "Concluding Observations" regarding each State that it has evaluated for UNCRC compliance.²² In its 2003 Concluding Observations for Canada, it expressed concern about Aboriginal children and their dire circumstances, encouraging Canada to become more compliant implementing Aboriginal children's rights (United Nations Committee on the Rights of the Child, 2003).

To ensure a State's proper UNCRC implementation – as the UN Committee intends the UNCRC to be interpreted – the UN Committee has produced guidelines for State reports and the participation of partners. For example, domestic legislation must be fully compatible with the UNCRC and its principles and provisions directly applied and appropriately enforced. The UN Committee has identified a wide range of measures needed for effective implementation, including the development of special structures and the "monitoring, training and other activities in government, parliament and the judiciary at all levels" (Hodgkin & Newell, 2002).

3.3.1 Days of General Discussion

In response to its concern about indigenous children throughout the world, in 2003 the UN Committee held a Day of General Discussion to discuss issues pertinent to indigenous children. The UN Committee holds these days to address how certain UNCRC articles must be implemented and to promote awareness about children's rights, making recommendations after discussions with those who want to participate such as "... Representatives of governments, United Nations human rights mechanisms, United Nations bodies and specialized agencies, non-governmental organizations, national human rights institutions as well as individual children and experts" (United Nations Human Rights Office of the High Commissioner for Human Rights, n.d.).

Subsequent to the Day of General Discussion for indigenous children, the UN Committee issued General Comment No. 11 to guide States, such as Canada, in promoting and protecting indigenous children's human rights. This General Comment "...encourages the use of community-based interventions in order to ensure the greatest possible sensitivity to the cultural specificity of the affected community. Particular attention should also be paid to the variety of situations and conditions in which the children live" (UN Committee, 2003, para. 3). Canada, like all signatories to the UNCRC, has access to information resulting from the Day of General Discussion leading to General Comment No. 11.

²² The CCCYA (2011) Special Report makes reference to the UN Committee's concluding observations in 2003 about Aboriginal children.



3.3.2 General Comments

The UN Committee's General Comment No. 11 for indigenous children is accompanied by other General Comments on various topics, including: education (1); national human rights commissions (2, 5); HIV/Aids (3); health (4); general measures of implementation (5); treatment of unaccompanied and separated children outside their country of origin (6); early childhood (7); protection from corporal punishment and other cruel and degrading forms of punishment (8); children with disabilities (9); juvenile justice (10); child participation (12); and right to freedom from all forms of violence (13).²³

The specific references to indigenous children in the Convention are indicative of the recognition that they require **special measures** (author emphasis) in order to fully enjoy their rights... The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to Article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this General Comment. (UN Committee General Comment No. 11, 2009, para. 5)

Various UN human rights treaties, the 2003 UN Forum on Indigenous Issues, the Day of General Discussion, and the Special Rapporteur's work inform General Comment No. 11. This comment also reflects a consultative process with relevant stakeholders, including indigenous children.

Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however, the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard. (UN Committee General Comment No. 11, 2009, para. 14)

Promoting the realization of Aboriginal children's rights, as the UNCRC and the Committee intend, requires UN Committee external monitoring *and* internal monitoring and accountability within States such as Canada. In its General Comment No. 5, for example, the UN Committee issued statements about States' need for internal monitoring structures, such as national human rights institutions, to ensure proper and full UNCRC implementation for all children²⁴ (see Section 3.5).

²³ Available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

²⁴ Ibid.



3.4 Human rights violations and remedies

When Aboriginal children resided at residential schools, there were no realistic and accessible mechanisms through which they could claim human rights violations and seek remedies for those violations. Children have the (participatory) right to seek redress or remedies for human rights violations, including those violations arising within the context of public service provision. There are long established international human rights treaties that impose duties on States to ensure that effective remedies exist for rights injustices, which may include denying children their freedom of expression, their right to receive information, and other participatory rights.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (UN Universal Declaration of Human Rights, 1948, Article 8)

Within Canada, redress mechanisms may be associated with courts, human rights institutions, and public service administrative procedures, such as complaints processes. In recognition that children may be denied adequate remedies to human rights violations within their own countries, a UNCRC third optional protocol has introduced a complaints process for children to claim human rights violations and pursue remedies.

Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated. Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions...in order to voice their complaints. Children should know who these persons are and how to access them...

If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment. (UN Committee General Comment No. 12, 2009, para. 66–67)

Since the residential school years, there has been an evolution in our understanding about individual and collective entitlements to seek remedies for such violations. Federal and provincial/territorial human rights institutions along with provincial children's advocacy offices existing throughout Canada have shown a particular interest in promoting and protecting Aboriginal peoples' human rights with many making complaints processes available.²⁵

²⁵ See CCCYA (2011) Special Report.



3.5 National human rights institutions

During the residential school years, government gave little recognition to human rights violations occurring within settings where children resided and to their obligation to ensure that children and their advocates had ways to seek remedies for human rights violations. Since the residential school years, there has been a growth in our understanding about fundamental human rights and the significance of ensuring their protection and realization.

The UN Committee has recommended internal monitoring measures that States may adopt, such as law reform and independent national human rights institutions, for example children's ombudsman offices, children's advocacy offices, and child rights commissioners, to assess rights implementation. The UN Committee has highlighted the importance of "focal points" within national human rights institutions alongside child rights-focused permanent institutions and structures within government to ensure coordination, implementation and systematic monitoring of UNCRC implementation.²⁶ While more law reform is required in Canada to make laws compliant with the UNCRC, existing human rights institutions in Canada can promote and monitor human rights implementation for Aboriginal children.

Also in recent years, national human rights commissions have proliferated throughout the world as institutions responsible for holding governments accountable for upholding and implementing human rights within their State boundaries. These institutions have emerged to serve various functions identified in the 1994 UN General Assembly resolution on national institutions for the protection and promotion of human rights.²⁷ This resolution, which affirms the critical role that human rights institutions can play in upholding human rights, includes 'Paris Principles' to guide human rights institutions in their work.

The Paris Principles²⁸ reiterate the essential role of human rights institutions in promoting and protecting human rights. Among the detailed responsibilities elaborated, these principles state that such institutions should be independent; assist States with their human rights reporting obligations to the UN; express opinions on human rights; address discrimination by increasing public awareness; and address complaints about human rights violations.

²⁶ Ibid

²⁷ Available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>

²⁸ Available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>



4. Present Context: The Legacy

Aboriginal children today are predominately children who were born after the last residential school closed in 1996. Among these Aboriginal children are those who have experienced many successes in their lives. We can learn from these children by hearing what made a difference in their lives – what made it possible for them to have positive experiences. These children have the potential to influence and encourage other Aboriginal children to have affirmative life experiences as well.

4.1 The legacy

Aboriginal families “survived” the residential school era, and celebrate their contribution and distinct identity. “Survival” has been an empowering concept and creates hope and stability for the future. Yet the legacy of harm is far from over or distant. Aboriginal children today bear the legacy of poor government decisions, policies and practices, and the resulting negative experiences of their parents, grandparents and great grandparents. They are not necessarily being engaged or heard. The Canadian Council of Child and Youth Advocate’s 2011 Special Report, for example, along with other public reports, identifies the same concerns, circumstances, barriers and gaps existing today for Aboriginal children as existed when the last residential school closed, despite Canada’s child rights obligations under the UNCRC and other human rights treaties (see Appendix A). The Special Report notes that too many Aboriginal children continue to experience high rates of:

- infant mortality
- FASD
- respiratory illnesses, diabetes, other chronic diseases
- malnutrition
- disabilities
- obesity
- alternative care
- poor educational attainments
- poverty.

And, Aboriginal children experience high rates of:

- suicide
- depression
- substance abuse
- representation in welfare systems
- representation in justice systems.



The Special Report also identifies that Aboriginal children experience:

- lower child immunization rates
- poorer nutritional status
- substandard housing characterized by crowding, the need for repairs, poor water quality
- lack of access to quality food leading to preventable chronic health conditions
- inadequate opportunities to exit the cycle of poverty
- inadequate opportunities in rural communities, and on reserves to participate in recreation activities and sports.

The Special Report notes that we – as a society – have become better at identifying that the legacy of residential schools and colonialism in Canada has impacted current generations of Aboriginal children. It is apparent that socio-economic, environmental and historical factors have contributed to poor outcomes for Aboriginal children as compared to non-Aboriginal children. Other factors negatively impacting Aboriginal children's experiences include poverty, geographical inaccessibility, cultural insensitivities and language barriers, which together compound existing challenges. Systemic discrimination towards Aboriginal children and their families makes it difficult for them to overcome disadvantage.

4.2 Contributing factors

The TRC and others have contributed to identifying the historical factors contributing to residential school system's negative impacts on Aboriginal peoples. These factors include:

- lack of respect for and understanding about Aboriginal culture
- discrimination, inequality and racist attitudes towards Aboriginal peoples
- lack of Aboriginal voice and power to determine their own futures
- poor legislation, policy and practices in all key areas of children's lives
- misguided religious practices
- poor attitudes toward children, as a sub-group of Aboriginal peoples
- lack of transparency and accountability
- lack of government understanding about Aboriginal people's entitlements
- lack of government understanding about their human rights obligations.



The silencing of Aboriginal children and their families' voices when children were removed and placed in residential schools was a critical contributing factor to the negative impact experienced by Aboriginal peoples today. There was an absence of ways through which children, their families, and communities could express their concerns and seek redress for the injustices they experienced. There were no mechanisms in place – judicial or non-judicial – through which children and their families could remedy the harms they experienced. Adopting a human rights approach would have required governments and their agents to prevent human rights breaches in the first instance and, secondly, to ensure that ways existed for Aboriginal children and their families to express their concerns about human rights violations and seek reparation for those injustices.

The Representative's work with Aboriginal children, their families, and communities, and the work of other provincial and territorial child advocacy offices, has identified that many contributing factors to negative impacts on Aboriginal children during the residential school years remain today. The Special Report notes that Canadian governments continue to fail to embed human rights principles in domestic legislation and policy to the fullest extent possible. Special measures, as indicated by the UN Committee, are absent even though they are required to prevent injustices, avoid inequities, and improve Aboriginal children's lives. There is a continuing need to ensure that ways exist for Aboriginal children and their families to express their concerns about human rights violations and seek reparation.

4.3 Learning on the journey

While there is much to learn about Aboriginal peoples' lives in their historical context, there is also much to learn about the lives of Aboriginal children, their families and communities today as we take steps to be led by and support Aboriginal peoples in their quest to realize their entitlements. Many Aboriginal children, for example, stand at the crossroads of Aboriginal and non-Aboriginal cultures. Learning about and understanding their lives requires us to listen to Aboriginal children, survival testimonials and Aboriginal families and communities. Through listening and learning we can support Aboriginal children, their families and communities in ways that are meaningful to them and that helps them to realize their rights.

Learning about, understanding and supporting Aboriginal children, families and communities necessitates that we ask such questions as:

- How can Aboriginal voices, particularly children's voices, be heard in a sustained way so that we learn from children and their families' perspectives?
- How can we support Aboriginal children and families in ways that are respectful and culturally appropriate?
- How can we identify successes among Aboriginal children and adults while promoting resiliency among vulnerable Aboriginal children and their families?
- How can we take what we learn from Aboriginal children and their families and use that knowledge to inform services and policy development?



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- How can we promote healthy, respectful, and enduring relationships within Aboriginal families, communities and wider Canadian society?
- What does taking a holistic view of Aboriginal children's lives mean and how can that approach improve Aboriginal children's lives?
- What does taking a human rights-based approach to improving Aboriginal children, their families, and their communities' experiences mean?
- What does reconciliation look like within families, communities and broader Canadian society?

Research can facilitate answering these questions and promote evidence-based policy changes to benefit Aboriginal peoples. The Special Report reiterates, for example, what Aboriginal peoples and others have said about the crucial role that research plays in helping us to learn and understand the lives of Aboriginal peoples, including children, from their perspectives. It notes that contrary to the federal government's stated intentions, it has not established a national research institute for Aboriginal children.

There is no centralized federal institute focused on disaggregated data collection, analysis and research dissemination for Aboriginal children, with the result that Canada is unable to report on Aboriginal children's lives from a holistic perspective. There is a lack of disaggregated data that makes clear distinctions between Aboriginal and non-Aboriginal children and that differentiates among First Nations, Metis and Inuit children for comparative purposes. Taking a holistic approach to Aboriginal children's lives, as referred to by Canada in its 2009 report, continues to be hampered by the lack of quality data and synthesis informed by a rights perspective – an issue that concerned the Committee in 2003. (Canadian Council of Child and Youth Advocates, 2011, p. 14)

As a result, data collection for Aboriginal children remains problematic and is not 'sufficiently developed, disaggregated and well synthesized for all areas covered by the Convention' as the Committee observed. Canada's 2009 report does not provide the Committee with an accurate overall picture of Aboriginal children's lives today. Research relevant to Aboriginal children's lives needs to be envisioned as a collaborative, nationwide endeavour whereby partners – Aboriginal, federal and provincial/territorial governments and researchers – agree on relevant indicators addressing the full scope of children's rights. Harmonized and disaggregated data collection at the federal level would enable it to collate, analyze, compare and report more accurately on leading indicators within key domains of Aboriginal children's lives (such as health, education, child welfare, justice and family status). Without ongoing and proper data gathering, analysis and dissemination, we cannot measure whether we are making progress in improving outcomes for Aboriginal children or which initiatives are making a difference. (Canadian Council of Child and Youth Advocates, 2011, p. 15)



Research can also identify discrimination or potential discrimination to be identified through disaggregated data collection (UN Committee General Comment No. 11, 2009). This learning and understanding can, in turn, help to inform future policy making and to direct resources in a way that best improves Aboriginal peoples' lives while addressing discriminatory law, policies, and practices and promoting equality.

The Special Report recommends:

R2. That Canada develop and implement an Aboriginal children's national plan that is collaborative; **informed by current and evolving research**; properly funded; monitored for implementation and evaluated for outcomes against objectives. It is critical that this plan is linked to an Aboriginal child poverty reduction strategy with measurable outcomes.

R3. That Canada convene a special conference of federal/provincial/territorial representatives, with Aboriginal leaders and child delegates, to **explore key issues specific to Aboriginal children**. This conference could inform the national plan.

R10. That Canada develop a national Aboriginal Children's Institute for Research, in collaboration with Aboriginal research organizations and initiatives, that:

- identifies key issues in Aboriginal children's lives
- examines, in collaborative partnerships, ways to improve research approaches
- identifies gaps in research
- leads on research initiatives informing these gaps while engaging in rigorous research practices
- utilizes a child impact assessment tool
- coordinates other research data and results specific to Aboriginal children
- provides information to Canada, and others, that assists with reporting to the Committee and with decision-making specific to Aboriginal children's lives
- provides information about good practices in Aboriginal research, including relevant ethical considerations.



5. Looking to the Future

As a society, we have begun the journey of learning, understanding and supporting Aboriginal peoples who have been negatively impacted by the residential school system. The TRC has facilitated that journey. The BC Representative for Children and Youth and other provincial and territorial child advocates' offices have also been learning about and working at improving Aboriginal children and their families' lives today. And along this journey, we have learned that making Aboriginal peoples' lives better today, and looking to the future, demands special measures, political will, resources and commitment.

5.1 Aboriginal children and residential school survivors

The TRC Interim Report identifies various requests that Aboriginal peoples have made throughout their participation in the TRC process. The Representative has learned that today's Aboriginal children want, and need, to improve their lives alongside those Aboriginal adults who are healing from their residential schools experiences. This section offers an Aboriginal child rights perspective on what residential school survivors have said they want. This contribution includes identifying what measures can be taken to improve Aboriginal children's lives and promote the realization of their rights.

Various people have drawn upon international human rights instruments, such as the *UN Declaration of Human Rights (1948)* and the *UN Declaration on the Rights of Indigenous Peoples (2007)* to inform their analysis about past injustices to Aboriginal peoples. This section demonstrates how the UNCRC can be used to complement those analyses, highlight past injustices to children, and illustrate human rights standards that must be applied in today's world. It draws specific attention to the UN Committee's role and its General Comment No. 11 on indigenous children.

In its General Comment No. 11, the UN Committee refers to the challenges indigenous children encounter in their everyday lives.

The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to Article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment. (UN Committee, 2009, para. 5)

Residential school survivors have conveyed what is important to them to have better quality lives (see TRC, 2012b). They have communicated about issues that include: respect and voice; intergenerational trauma, healing, resilience and support; family; education; cultural, language and tradition; justice; and records. The Representative has learned in work with Aboriginal children and their families that they share these issues and a common desire for change.



5.1.1 Respect and voice

They want respect. People are angry at being told they should simply "get over it." For them, the memories remain, the pain remains. They have started on their healing journey – usually with no help and no support. They told the Commission they will be the ones to determine when they have reached their destination. (TRC, 2012b, p. 7)

All Aboriginal peoples, including children, have a fundamental human right to be treated with dignity and respect. The *UN Declaration of Human Rights (1948)* and the UNCRC reaffirm this principle, which is embedded in all major human rights instruments.

Many students who came to school speaking no English lost the right to express themselves. Students repeatedly told the Commission of being punished for speaking their traditional languages. People were made to feel ashamed of their language – even if they could speak it, they would not, and they did not teach it to their children.

It was made clear that not only language was lost: it was voice. People said their mouths had been padlocked. At school, boys and girls could not speak to each other, meaning that brothers and sisters were cut off from one another.... It is inspiring because those who were oppressed, victimized, and silenced have struggled to heal themselves and regain their voice. (TRC, 2012b, p. 5)

Like residential school survivors, Aboriginal children deserve to be treated with dignity and respect. Putting this core human rights principle into practice requires that we respectfully listen to Aboriginal peoples' voices. The implementation of this principle, and other human rights participatory principles, for Aboriginal children today means that we must recognize children as active rights holders who are entitled to the realization of their human rights, including their right to express their views about matters important to them.

Residential school survivors and Aboriginal children share the right to have an influential voice about matters important to them. Respecting the voices of children, their families, and others is essential for promoting enduring, healthy relationships *and* for ensuring that Aboriginal children realize their rights. Listening to Aboriginal children also requires that we hear their concerns and make it possible for them to express those concerns in ways that are safe, meaningful, responsive and respectful. This approach makes it possible for us to learn and to make systemic improvements that benefit all children.



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The UNCRC recognizes children's participatory rights, such as the right to express their views in matters important to them and to receive information that will allow them to make informed decisions that reflect their own best interests. "While children's 'participatory rights' are sometimes interpreted as relating specifically to Article 12, this article and Article 13 together affirm the value of children as individuals with the right to acquire information and freely express their views about matters important to them, including through their involvement in judicial and administrative processes" (Bell, 2008, p. 34). Children's general participatory rights, or 'self-expression articles', extend beyond Articles 12 and 13 to include many other articles²⁹ (Bell, 2008).

UN Committee General Comment No. 12 (2009) provides guidance to Canada and others with responsibilities for implementing children's participatory rights while UN Committee General Comment No. 11 (2009) offers direction on the implementation of *indigenous children's* participatory rights.

The Committee considers that, in relation to Article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the right to be heard collectively, which allows children as a group to be involved in consultations on matters involving them.

With regard to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.

When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they are consulted on all matters affecting them. The State party should design **special strategies** (author emphasis) to guarantee that their participation is effective. The State party should ensure that this right is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programmes, policies and strategies for implementation of the Convention. (UN Committee General Comment No. 11, 2009, para. 37-39)

²⁹ These include: article 9 (separation from parents), article 21 (adoption), article 37 (torture, degrading and deprivation of liberty), article 40 (administration of juvenile justice) (see Hart, 1998). The 'evolving capacities' articles, in addition to articles 12 and 13, encompass article 14 (freedom of thought), article 15 (freedom of assembly), article 17 (access to information), article 23 (special support for disabled children) article 29 (education for personal fulfillment and responsible citizenship) and article 31 (leisure, play and culture) (Hart, 1998). In describing children as active subjects of rights, Flekkoy (1997, p. 62) referred to article 13 – freedom of expression – and 'other civil rights to freedom of thought, conscience and religion' (Article 14) and freedom of association (Article 15) as underlining children's status as individuals with fundamental human rights.



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UN Committee General Comment No. 12 (2009) makes apparent the distinction between the right of individual children and the rights of groups of children to be heard, stating that "...the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively" (para. 10). The need for Canada to listen to the views of its Aboriginal children "speaking collectively" highlights the critical role of advocates, including their families, their communities, organizations, and provincial advocates working from a human rights perspective that is committed to Aboriginal children realizing their rights as a collective group.

Aboriginal children can add relevant perspectives, based on their experiences, and can participate in a multitude of ways within families, communities and in other places. Within this context, the UN Committee emphasizes that while children have the right *not* to participate, it is essential that children receive "all necessary information and advice" so that they can make informed decisions that reflect their own best interests. Child participation must include hearing from children who have concerns and seek redress for possible wrongdoing.

The Special Report recommends:

R15. That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.

R16. That the future federal Children's Commissioner's mandate promotes child participation, including the participation of children who have concerns and are seeking redress for possible wrongdoing.

R17. That the future federal Children's Commissioner's mandate is coordinated with provincial child advocacy mandates to facilitate the implementation of children's participatory rights equally across Canada and to ensure children's views inform policy decision-making about matters affecting their lives.



5.1.2 Intergenerational trauma, healing, resilience and support

...They have started on their healing journey – usually with no help and no support... They want support for the work they have begun in healing. For too long, communities were left to shoulder this burden on their own. In many of the remote communities that are home to former students, health services of any kind are scarce, and there are virtually no mental health services available. (TRC, 2012b, p. 6)

The TRC report highlights the resiliency of Aboriginal peoples and their capacity to move to healthier places in their lives.

They had survived mental abuse, sexual abuse, physical abuse, and spiritual abuse. They were still standing. Many have reclaimed their culture, are relearning language, and are practising traditional spirituality. In other cases, they have remained Christians, while infusing their beliefs with a renewed sense of Aboriginal spirituality... People who were not able to show their children love spoke of finding a way to love their grandchildren, and to make amends with their grandchildren. (TRC, 2012b, p. 6)

Aboriginal children experience trauma within families and communities struggling to cope with the legacy of the residential schools. Residential school survivors, their families, communities and Aboriginal children collectively have experienced trauma and share a need to be supported in their healing journeys. Through their direct work with Aboriginal peoples, the Representative and other provincial and territorial child advocacy offices have noted the resiliency of Aboriginal children but also their need for holistic support to make it possible for Aboriginal children to move beyond trauma to reach their full potential.

Within this context, Aboriginal children require the full implementation of UNCRC Article 6, which grants children the right to life and maximum survival and development. The key articles vital to ensuring children's right to life, survival and development include articles specific to health, standard of living, education, and leisure and play (Articles 24, 27, 28, 29). Protection from violence and exploitation (UNCRC Articles 19, 32-39) is vital to ensuring Aboriginal children's survival and development. The implementation of UNCRC Article 6, therefore, requires that we recognize child development as a holistic concept, incorporating the entire UNCRC (Hodgkin & Newell, 2002).

The "development" concept needs to extend beyond preparing Aboriginal children for adulthood to ensuring "optimal conditions for childhood, for the child's life now" (Hodgkin & Newell, 2002, p. 103). Implementation requires duty bearers, such as the State, to acknowledge Article 6 as a holistic concept, to emphasize the central role of parents and families in children's development, and to acknowledge the State's obligation to support them. Implementing this article as the UN Committee intends must be supported by rights-based legislation, policy and practice for Aboriginal children.



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In its *Guidelines for Periodic Reports*, the UN Committee requires States to institute and describe (special) measures taken "to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including the physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society" (para 40).

...The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible. (UN Committee General Comment No. 11, 2009, para. 35)

UNCRC Article 24 grants children the right to health and health services, including mental health services. The mental health challenges that Aboriginal children experience inhibit their right to survival and development. According to UN Committee General Comment No. 11 (2009), "special measures" must be instituted to ensure Aboriginal children's realization of these rights. In relation to basic health and welfare (see UNCRC Articles 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3)), UN Committee General Comment No. 11 (2009) (paras. 49-55) also states:

- guidance on health, including mental health services, for indigenous children is critical
- a high standard of health and access to healthcare services essential
- special measures are needed to prevent discrimination in health care for indigenous children.

Health services should:

- be community based, planned, administered in cooperation with the peoples concerned
- be culturally sensitive
- be accessible in rural and remote areas
- give special attention to indigenous children with disabilities.

States should take all reasonable measures to:

- ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care...
- design and implement a policy for suicide prevention measures
- ensure financial/human resources for mental health care for indigenous children that are culturally appropriate and informed by consultation with the affected community.



In addition, research on the topics of intergenerational trauma, historic trauma and healing within Aboriginal communities has been growing. To complement this research and improve our understanding about how to optimize the realization of Aboriginal children's rights, more research is required that reflects Aboriginal children's perspectives and experiences. The results from this research can be used to develop and implement evidence-based supportive approaches for residential survivors, Aboriginal children, and others to help them heal from traumatic life circumstances.

The Special Report recommends:

R21. That Canada provide more community-based, culturally appropriate and properly funded health services in Aboriginal communities to address critical health issues among Aboriginal children and to ensure that Aboriginal children have access to the same standard of health care as other Canadian children.

R22. That Canada promote accountable, coordinated partnerships among federal, provincial, territorial and Aboriginal bodies responsible for Aboriginal health care and ensure that those partnerships address key issues related to funding, service delivery, infrastructure and equal access to quality health care.

R23. That Canada adopt monitoring and evaluative strategies in association with their health initiatives to encourage better policy decision-making and more accurate reporting about outcomes in Aboriginal child health. Independent researchers specializing in Aboriginal child health should lead on these strategies.

R24. That Canada improve its investment in health infrastructure within remote communities by promoting initiatives, such as video links, that make quality health care more accessible within those communities.

R25. That Canada provide educational incentives to encourage Aboriginal youth, and adults, to train in health related fields and work in Aboriginal communities.



5.1.3 Family

They want support to allow them to improve parenting skills. In particular, people asked for support in regaining and teaching traditional parenting practices and values (TRC, 2012b, p. 7).

Residential school survivors want to improve their parenting skills that will, in turn, benefit their children, who require stable, caring families to reach their full potential. UNCRC Article 5 requires States, such as Canada, to "...respect the rights, responsibilities and duties of parents or where applicable, members of extended family or community...to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance for children exercising their rights under the UNCRC."

UNCRC Article 18 makes particular reference to support for parents. This article requires States to recognize that "...both parents have common responsibilities for the upbringing and development of the child..." and that parents have primary responsibility for their children's development with the child's best interests to guide them. In addition, Article 27 grants children the right to an adequate standard of living and requires, under Article 27.3, that the State "...take appropriate measures to assist parents and others responsible for the child to implement this right."

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities... (UNCRC Article 18(2)).

Taking a holistic view of the UNCRC requires that these approaches to parenting and family life happen within a culturally appropriate manner as required under Article 15 (right to identity) and Article 16 (preservation of language and culture). UNCRC Article 5 and Article 18 together "...provides a framework for the relationship between the child, his or her parents and family, and the State" (Hodgkin & Newell, 2002, p. 85) and introduces two aligned notions of parental "responsibilities" and children's evolving capacities.³⁰

Within this context, the UNCRC upholds family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children." The articles that emphasize family significance and limit State intervention include Articles 3(2), 7, 9, 10, 18.

...States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with Articles 3, 5, 18, 25 and 27 (3) of the Convention.

³⁰ This approach encourages us to see children as active rights bearers, capable of exercising their human rights.



States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children. (UN Committee General Comment No. 11, 2009, para. 46–47)

The Representative has found in her work that Aboriginal parenting is a central issue and that Aboriginal children will profit from a rights-based to practice that supports Aboriginal parents. The UN Committee General Comment No. 11 (2009) is helpful in its message to States about the significance of supporting parents in fulfilling their parental responsibilities to their children.

5.1.4 Children in alternative care

Serious systemic issues affecting Aboriginal peoples have led to disproportionate numbers of Aboriginal children residing in alternative care for protection reasons.³¹ Within this context, the implementation of UNCRC articles specific to family and alternative care require States to pay attention to children's best interests.

...States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children...
In States parties where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity. (UNCRC, 2009, para. 48)

The Special Report recommends:

R18. That Canada adopt the United Nations Guidelines for the Alternative Care of Children in situations where it has jurisdiction over children in alternative care.

³¹ The UNCRC articles specific to family and alternative care include articles 5, 9-11, 18-21, 25, 27, 39.



5.1.5 Education

They want control over the way their children and grandchildren are educated. Reconciliation will come through the education system... They want the full history of residential schools and Aboriginal peoples taught to all students in Canada at all levels of study and to all teachers, and given prominence in Canadian history texts. (TRC, 2012b, p. 7)

Residential school survivors have indicated that they want their children, and others, to learn about the residential school system. At the same time, the Representative notes that this teaching needs to take account of its impact on Aboriginal communities, Aboriginal children's responses, and possible associated trauma to that history when taught.

Too many Aboriginal children today do not have access to quality education in general. There are too many Aboriginal children attending inadequately resourced schools and not completing basic levels of education. Obtaining educational qualifications is challenging for Aboriginal children because of factors such as poverty, substandard housing, poor health, and the lack of culturally appropriate educational facilities in their home communities. Education for Aboriginal children is multi-dimensional with learning about residential school history and Aboriginal culture and traditions representing a significant element.

The importance of education, which Aboriginal peoples have recognized since treaty negotiations, is highlighted in several human rights instruments.³² UNCRC Article 28 states that children have the right to education (see also Articles 8 and 30). UNCRC Article 29 provides that "education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin."

In providing guidance on UNCRC Article 29, the UN Committee General Comment No. 1 (2001) describes educational aims as multi-purpose, with developing children's respect for identity, culture and values along with respect for human rights and fundamental freedoms a component. UN Committee General Comment 11 (2009) states that education:

- enables indigenous children to exercise economic, social and cultural rights
- strengthens civil rights to influence policy processes/improves human rights protection
- achieves individual empowerment, self-determination of indigenous peoples.

³² See, for example, the UN Declaration of Human Rights (1948) (article 26) and the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, for example, make specific reference to education.



States should:

- allocate targeted financial, material, human resources to implement policies, programs to improve education access for indigenous children
- develop, implement education in cooperation with peoples affected
- recognize indigenous right to establish education institutions, provided meet minimum standards established by authorities in consultation
- ensure school facilities easily accessible where indigenous children live...
- make education in child's own language essential...
- ensure indigenous children have effective exercise of rights, participation in sports, traditional games, physical education, recreational activities... (see para. 56-63).

The Special Report recommends:

R27. That Canada, together with Aboriginal representatives and the provinces and territories, develop and implement a national framework on education for all Aboriginal children residing in areas subject to federal jurisdiction. This national framework needs to take account of localized and regional considerations.

5.1.6 Culture, languages, and traditions

They want their languages and their traditions. With tremendous effort, people have sought out traditional teachings and practices, and worked at preserving endangered languages. They want the institutions that invested so much over many decades in undermining their cultures to invest now in restoring them. (TRC, 2012b, p. 7)

The UNCRC states that children have a right to preserve their identity (Article 8) and that children have the right to "freedom of thought, conscience and religion" (Article 14). UNCRC Article 30 states that children of indigenous peoples have a right to enjoy their culture, practice their religion and use their language.³³

Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard. (UNCRC, 2009, para. 14)

Restoring and preserving Aboriginal peoples' culture, language and traditions can be woven into everyday aspects of Aboriginal peoples' lives. The Special Report, for example, makes reference to the need for culturally sensitive initiatives specific to all Aboriginal children's human rights.

³³ See Convention on the Rights of the Child (2009) UN Committee General Comment No. 11 for guidance on article 30 implementation.



5.1.7 Justice and records

They want justice. People spoke about the difficulties they have experienced in claiming compensation under the Settlement Agreement. They spoke of how **missing school records** (author emphasis) prevent them from being compensated. They spoke countless times of schools and residences that they believe should be included in the Settlement Agreement. They also said that, in addition to missing records, school-imposed variations in their names or spellings of their names have prevented them from being compensated for all their years at school. (TRC, 2012b, p. 6)

Aboriginal peoples, including Aboriginal children, have a human right to seek remedies for current and past human rights violations. The lack of information, including records, must not impede that entitlement, which is also a fundamental human right recognized throughout the world. The following section illustrates that access to justice encompasses a broad range of mechanisms and, secondly, that records are important for many reasons. Also, historical investigations into institutional child abuse other countries having found that "missing records" can be a term used to describe poorly archived records that can be retrieved through intense dedication to seeking out those records (see Bell, 2007).

Access to justice

Like residential school survivors who want access to justice for past human rights violations, Aboriginal children today require access to effective ways that they can communicate their concerns about current human rights violations and seek redress for injustices they experience. The term 'access to justice' includes access to judicial and non-judicial mechanisms, such as human rights complaints processes, for all Aboriginal peoples. Administrative proceedings constitute a non-judicial mechanism and perhaps a more realistic option for children with complaints about human rights violations arising within the context of their everyday worlds.

There are a wide range of mechanisms through which children may want to seek access to justice. UNCRC Article 12 grants children the right to express their views and also to participate in "judicial and administrative proceedings." "Judicial proceedings" cover a range of criminal and civil proceedings while "administrative proceedings", according to Hodgkin and Newell (2002), "broadens the scope still further and certainly includes, for example, formal decision-making in education, health, planning and environmental decisions, social security, child protection, employment and administration of juvenile justice" (p. 166). Administrative proceedings may also be associated with national and provincial human rights institutions and provincially mandated child advocacy offices.

The Special Report recommends:

R9. That Canada establish a federal Children's Commissioner role that ensures that children have access to justice, including access to effective non-judicial administrative mechanisms for hearing their concerns and providing remedies to human rights violations [see Recommendation 15].



Records

Residential school survivors have identified that they require access to information – records – about their residential school experiences. The UN Committee emphasizes that receiving information is a central prerequisite for children's participation today in administrative and judicial proceedings. This participation must happen without discrimination and children's language and/or disabilities must not impede their participatory entitlements (Hodgkin & Newell, 2002). The lack of resources must also not impede children's participatory rights, which should be embedded in domestic legislation.

Residential school survivors have identified the key role that records play in access to justice. The Representative has also identified the central role that records play in ensuring that Aboriginal children realize their rights to justice and how access to records contributes to fostering quality public services, protection, transparency and accountability in decision-making. The important role that these records play in children's lives is well-documented and survivors of institutional child abuse, former child migrants and others have identified the various reasons why these records are important (see Appendix B).³⁴

Acknowledging the key role of records in Aboriginal people's lives, particularly children in State care and children receiving public services, requires us to ensure that legislation is in place to promote proper generation and management of records, including their accessibility. Research in other jurisdictions has confirmed the essential nature of records and documentation to reconciliation and transitional initiatives. The TRC Interim Report (2012b) states that the TRC has had difficulty in obtaining relevant historical documentation from government and the churches, with the result that it is difficult for the TRC to conduct its work.

As residential school survivors have stated, "missing" records can deny them access to justice. Records may be missing for various reasons, such as inadequate searching, the misplacement of records or because records have been destroyed (Bell, 2007). Previous inquiries have noted, however, that these records, consisting of management records and individual children's records, are hugely significant for adults who lived as children in residential establishments.³⁵

³⁴ See, for example Bell (2007).

³⁵ Ibid.



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Records are important for many reasons. In its work, the Scottish Executive's Public Records Strategy (2004) examined what makes records significant, to whom and for what purpose. The strategy identified that one possible answer was "...to ensure that past experiences and lessons are not lost." Parliamentarians expressed this same opinion during their December 2004 discussion... (Bell, 2007)

The Public Records Strategy identified other reasons why records are important, such as "public accountability", "to provide background and context to current and future work" and public access to information. During the workshops associated with the strategy's consultation, participants identified other purposes, such as: corporate memory, protecting rights and interests of individuals and authorities, research to produce change, legal knowledge, individual and family identity and the importance of documenting society for current and future use. "Historical interest of future generations" and "assisting social inclusion" were also identified as reasons why records should be preserved. (Bell, 2007)

Beyond generating and preserving records, it is also essential to make historical records accessible through legislation, policy and sound records management practices. Those institutions, such as government and churches that assumed parental roles under their perceived authority as institutions providing "public services", must grant this accessibility for previous reasons. Accessibility to records is critical to all individuals directly impacted by government policies that ignored their interests and that had devastating effects on their lives.

There is a relationship between identity and records for adults who have resided in residential schools as children and today's children in alternative care. Records provide information about children and their experiences that families do not have because they were absent from children's lives. In this regard, the UN Committee notes that States have an obligation to assist indigenous children with "re-establishing" their identities.

The Committee draws the attention of States to Article 8 (2) of the Convention which affirms that a child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity. The Committee encourages States parties to bear in mind Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities. (UNCRC, 2009, para. 45)



5.2 Aboriginal children and UNCRC Core Principles

Core UNCRC principles, relevant to Aboriginal children's everyday lives, must be embedded in legislation, policy and practice. Those principles include best interests (Article 3), participation (Article 12), right to life, survival and development (Article 6), and non-discrimination (Article 2). Two of these principles – the right to participate and the right to life, survival and development – were discussed in the previous section. This section focuses on the remaining two principles – non-discrimination and best interests.

5.2.1 Non-discrimination

Aboriginal children today share experiences of discrimination with residential school survivors and other Aboriginal peoples. The non-discrimination principle, an element of numerous human rights instruments, is a core UNCRC principle.

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (UNCRC, Article 2.1)

States Parties shall take all appropriate measures to ensure the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (UNCRC, Article 2.2)

The UN Committee's General Comment No. 11 (2009) makes specific reference to discrimination facing indigenous children throughout the world.

The UN Committee has observed that indigenous children face significant challenges in exercising their rights... Indigenous children continue to experience serious discrimination contrary to Article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment. (UN Committee, 2009, para. 5).

The UN Committee General Comment No. 5 (2003) states that:

...indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children", urging States such as Canada to implement "...special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice. (UN Committee, 2009, para. 25)



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The UN Committee's General Comment No. 11 (2009) draws particular attention to those children who may encounter "multiple facets of discrimination and the need to consider varying situations among indigenous children" (para. 29). The UN Committee has been concerned about persistent discrimination against Aboriginal children in Canada, stating that discrimination may need to be addressed through changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.

The Representative's work, along with that of other provincial and territorial child advocacy offices, has identified that "persistent disparities" and systemic discrimination towards Aboriginal children, and their families, continues to exist in key areas such as housing, education, health, allocation of resources, access to services, and services delivery. The implementation of the UNCRC core non-discrimination principles requires Canada to ensure that there is no discrimination in funding for Aboriginal children and that equality in funding exists in key areas such as child welfare, health and education services for all Aboriginal children.

The Special Report recommends:

R11. That Canada and others responsible for implementing Aboriginal children's right to be free from discrimination ensure equality in funding, access to services and provision of services for all Aboriginal children requiring child welfare, health and education services.

R12. That Canada fully implement 'Jordan's Principle' and monitor its implementation.

5.2.2 Best interests

Another core UNCRC principle is reflected in Article 3, which states that the best interests of children shall be a primary consideration in all actions concerning children. When considering the best interests principles and its relevance to Aboriginal children, it is essential to associate this principle with Aboriginal children's collective rights as stipulated in the *UN Declaration on the Rights of Indigenous Peoples* (see Articles 7, 14, 17, 21, 22 and the Annex).

The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. **Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation)** (author emphasis). In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.



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When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. Considering the collective cultural rights of the child is part of determining the child's best interests. (UN Committee General Comment No. 11, para. 30-32)

The best interests principle requires States to undertake *active* measures within their legislative, administrative and judicial systems and to systematically apply the principle by considering the implication of decisions and action on children's lives. To effectively guarantee the rights of indigenous children, these measures should include training and education for service providers who need to pay attention to collective cultural rights when assessing indigenous children's best interests. (UN Committee's General Comment No. 11, 2009, para. 33)

The Royal Commission Report on Aboriginal Peoples (1996)³⁶ made specific reference to Aboriginal children and the need for government to work with advocates promoting Aboriginal children's best interests. The outcomes for Aboriginal children today suggest that their best interests are not being considered and experienced by them (see Special Report). It appears that an educational programme about duty bearers obligations is needed within Canada so the best interests principle can be implemented on a practical level.

The Special Report recommends:

R13. That Canada conduct a review of the 'best interests principle' adoption into federal legislation concerning children, legal procedures in federal courts, judicial and administrative decisions, projects, policy, programs and services that have an impact on children.

R14. That Canada designates funding for educational child rights programs that include training, led by Aboriginal organizations, about the best interests principle and its practical application for families, communities and service providers who have responsibilities for Aboriginal children.

³⁶ Available at: <http://www.aadnc-aandc.gc.ca/eng/1307458586498>



5.3 Aboriginal children and reconciliation

The TRC has a central mandated role to foster reconciliation – a role that has included using dialogue to encourage discussions about the importance and meaning of reconciliation. The TRC has referred to reconciliation as about what we do today that will restore balance to relationships between Aboriginal and non-Aboriginal Canadians.

Effective reconciliation will see Aboriginal people regaining their sense of self-respect, and the development of relations of mutual respect between Aboriginal and non-Aboriginal people... The process of reconciliation will require the passionate commitment of individuals and the genuine engagement of society. Reconciliation also will require changes in the relationship between Aboriginal people and the government of Canada. (TRC, 2012, p. 26)

There are many dimensions to reconciliation, which can occur within families, communities, Canadian society and the international community. There is considerable research on reconciliation within societies³⁷ and less research on children and reconciliation, in any context and incorporating their perspectives. There is developing awareness about children's potential role in societal reconciliation processes and the need to pay particular attention to children's special considerations. Reconciliation within families and communities, particularly when children have been affected by trauma, is another layer of complexity added to reconciliation processes in general.

Central issues for Aboriginal children and reconciliation relate to:

- how reconciliation is defined and what it means to Aboriginal children and their families
- how Aboriginal children and family members reconcile within families when there has been trauma from harm to and by family members
- how Aboriginal children and families reconcile with those persons/agencies responsible for child welfare
- how Aboriginal children participate in reconciliation processes beyond their immediate family environment.

³⁷ See, for example, Younging, Dewar, and DeGagné (2009).



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In recent years, children's participation in reconciliation associated with truth commissions has become a research focus. This research has identified that reconciliation is multi-dimensional and occurs within and outside of truth commission processes (International Centre for Transitional Justice, Innocenti Research Centre 2010). Children may be affected by various reconciliation measures, including those that happen within families where family members have experienced human rights violations, have been traumatized or inflicted trauma, and who may or may not be involved in reconciliation activities. For those reasons, more child centred research on intergenerational trauma, healing and reconciliation within families is needed to identify Aboriginal children's issues and what is important to Aboriginal children who want a better quality of life.

Aboriginal children may be involved in reconciliation activities that happen within their communities. In 2010, the International Centre for Transitional Justice and UNICEF's Innocenti Research Centre released a publication on truth commissions and children's role in truth, justice and reconciliation processes. The ICTJ/Innocenti Research Centre focused their work on children's involvement in processes outside family life concluding, for example, that:

- Educational reform can contribute to national reconciliation and peace-building processes. Linking educational reform to truth commission findings and recommendations may reinforce respect for human rights, establish historical memory and build capacity for active citizenship among children and young people.
- Further research, documentation and analysis will be needed to examine more recent truth-seeking efforts and to assess their short- and long-term effects on children, as well as on broader society. There is no easy way to determine the most appropriate role for children. Rather, there is a range of experience to draw on, and analysis will better inform future efforts to protect children's rights to participate in truth-seeking and reconciliation during post-conflict transition.
- The recent involvement of children and adolescents in truth, justice and reconciliation processes, specifically in truth commissions, has demonstrated their unique capacity to contribute...in efforts to improve accountability and promote reconciliation. But if children are to engage in transitional justice processes, their rights must be respected.
- A truth commission that reflects a comprehensive child rights agenda is more likely to address children's needs in the reconciliation process than one in which the promotion and protection of children's rights is not made explicit.
- Child protection agencies and NGOs will need to examine how their engagement with a truth commission can complement, strengthen or interact with other activities and programmes for children, such as psychosocial support, school and curriculum reform, reconciliation processes and children's reintegration into their communities. This is closely tied to the question of follow-up and implementation of a truth commission's recommendations. To the extent possible, child protection agencies should anticipate and respond to the longer-term needs of children and their families.



- Engaging the Ministry of Education, school officials, teachers and children in planning a truth commission curriculum component addressing such issues as citizenship, conflict resolution, self-esteem, memory and history, and peace and reconciliation.
- Truth commissions should reach out to government officials and agencies to inform them and seek their support in efforts to obtain information about violations against children, and to promote children's protection and participation in the reconciliation process.
- When local reconciliation or healing ceremonies respect child rights they may provide an opportunity for children to be heard.
- Child participation in hearings should not be viewed as an isolated event that occurs only to provide information to the commission. Rather it should be understood as part of a broader process of engaging children and young people in reconciliation efforts. By bringing their unique views and experiences forward children can meaningfully contribute to reconciliation.
- Finally, it is important to create child-friendly memorial sites to avoid causing further trauma for children visiting the sites. The involvement of children and youth themselves in planning, designing and creating memorial sites can both help assure that sites are sensitive to their experiences and include the young generation in healing and reconciliation. (The International Centre for Transitional Justice and the Innocenti Research Centre, 2010)

The lessons learned from this research can inform approaches to reconciliation within Aboriginal communities. It is also apparent, however, that more research, including research that incorporates Aboriginal children's perspectives, is required.

5.4 Missing children and unmarked grave project

The TRC is supporting research into Aboriginal children's deaths and disappearances from the residential schools. In recognition of this critical topic within the broader international community, the International Day of the Disappeared (2011)³⁸ was held to support families right to justice and right to truth about family members. It has become part of transitional justice practices in countries throughout the world to try and locate individuals, including children, who died or went missing in circumstances outside of their control.

The *UN International Convention for the Protection of All Persons from Enforced Disappearance (2006)* recognizes the seriousness of this issue and the trauma inflicted on families when their children and other family members go missing or die for reasons unknown to them. The particular issue of children's deaths in historical residential schools has emerged in other jurisdictions, such as Scotland and Ireland.

³⁸ Available at: <http://www.icrc.org/eng/resources/documents/event/day-disappeared-event-2011-08-26.htm>



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Visits to graveyards showed that children who died in children's residential establishments are buried there although it is unknown how many due to poor record practices. Some children lie in unmarked graves. Former residents who lived in one children's home described their attempts to find records for children who died while they'd lived in that same home. These deceased children are buried in a large area within a local graveyard. While some organisations have kept records identifying the children who died in their establishments, the former residents found there were few records identifying the deceased children and few records about their deaths.

Some former residents believe that society may never know how many children died in residential establishments, who the children were, where they're buried and the reasons for their deaths. What their experience suggests, is that their difficulty in locating information reveals the low importance placed on the children's identity and the children's value to their extended families and others. Some former residents believe it is essential to identify those children and acknowledge them in a humane, caring way that reflects the equal importance of those children to others (Bell, 2007).

At one children's home managed by the Catholic Church and where approximately 500 children lived, there were large numbers of children buried in unmarked graves. A survivor recalls his experiences while living in that children's home:

Docherty told Scotland on Sunday that when children died from diseases none of the nuns would speak about it. He never recalls attending a requiem mass for any of the orphans... In stark contrast, he recollects vividly having to kiss the forehead of a dead nun as she lay at the entrance to St Mary's Church in Lanark at the start of a requiem mass before burial at St Mary's Cemetery.

The part of the cemetery reserved for nuns and priests contained rows of crosses and headstones. Tiny mounds of earth are all that mark the existence of the dead orphans.

There are few, if any, clues to when the children died, how they died, and whether their deaths were investigated and recorded within the requirements of the law. (The Scotsman newspaper, 2003)

In response to survivors' request, the Catholic Church donated funds to erect a memorial in the graveyard and memorial services are held each year to remember the children. In Ireland, there are also mass gravesites of children buried, sometimes on top of one another, in unmarked graves. While there is often reference to 'orphans', such as those who died, it was a myth that children living in the residential school had no parents. Churches and voluntary organizations perpetuated such a myth, which resulted in parents not knowing what had happened to their children. (Shaw, 2007; Raftery & O'Sullivan).



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The reality – namely that thousands of children were detained in a State-funded system essentially because their parents were poor – would not have produced the same levels of either sympathy or charity from the wider community. Had there been a proper understanding of the true nature of the system, it is likely it would not have survived for so long. (Raftery & O'Sullivan, p. 12)

These practices around garnering charitable support and children's deaths reflect attitudes toward children that saw children as insignificant and their deaths as irrelevant. Locating records, identifying the children who died or went missing, and memorializing their former presence can contribute to healing and reconciliation. It can also prompt us in today's world to demonstrate to children how much we have learned and how much we value their presence in our lives.



6. Conclusion

Aboriginal children in Canada are living the residential school legacy, along with residential school survivors across generations. It is a legacy that has left many Aboriginal children among the most disadvantaged children in Canada. While there are successes among Aboriginal peoples, too many Aboriginal peoples – particularly children – are not experiencing the full implementation of their human rights. Reconciliation is a step towards that realization supported by commitment to address systemic, underlying factors in a way that substantially improves the quality of Aboriginal peoples' lives.

Hearing the stories of residential school survivors and their families helps us to identify root, underlying causes to Aboriginal peoples' experiences that have devastated families and communities. By facilitating this journey, the Truth and Reconciliation Commission of Canada can move our understanding about residential schools to a deeper level, identifying measures needed to support Aboriginal peoples' with their healing and with improving their children's lives.

Through this submission, the Representative has sought to contribute to the residential school dialogue by offering a child-centred, human rights approach to our learning about the residential schools' context and impacts. The submission has demonstrated how poor attitudes towards children and a lack of understanding about Aboriginal children's cultural worlds, within the historical context of colonial domination, has led to the human rights violations of children and their families.

Acknowledging the challenges that are facing Aboriginal children and their families today is critical. Revealing the residential school system as root causes to those challenges is essential to better understanding the depth and breadth of the damage done to Aboriginal children, their families, and communities today. The Representative believes that holding duty bearers accountable for the realization of Aboriginal peoples' – and children's – human rights will lead to a better society for all. It will be a society in which Aboriginal children are valued and able to realize their participatory rights in key areas such as culture and tradition, health, education, social services and justice. It is the Representative's hope that its recommendations will be implemented, resulting in improved Aboriginal lives and reconciliation.

A revitalized Aboriginal education system that embraces children's rights, supported more widely in Canada, is a crucial part of the reconciliation project for government. Listening to children and youth and supporting them in a human rights context, will place us on firm footing for this unfinished project.



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APPENDIX A – Canadian Council of Child and Youth Advocates: Special Report to UN: Relevant Recommendations

Research and moving forward

R3. That Canada convene a special conference of federal/provincial/territorial representatives, with Aboriginal leaders and child delegates, to explore key issues specific to Aboriginal children. This conference could inform the national plan.

R4. That Canada facilitate the development, adoption and use of child impact assessments for proposed legislation, policies, programs and budgets affecting children's lives, making the results of these assessments publicly available.

R10. That Canada develop a national Aboriginal Children's Institute for Research, in collaboration with Aboriginal research organizations and initiatives, that:

- identifies key issues in Aboriginal children's lives
- examines, in collaborative partnerships, ways to improve research approaches
- identifies gaps in research
- leads on research initiatives informing these gaps while engaging in rigorous research practices
- utilizes a child impact assessment tool
- coordinates other research data and results specific to Aboriginal children
- provides information to Canada, and others, that assists with reporting to the Committee and with decision-making specific to Aboriginal children's lives
- provides information about good practices in Aboriginal research, including relevant ethical considerations.

R20. That Canada collaborate on initiatives with Aboriginal organizations to examine quality research and partnership contributions exploring the relationship between systemic factors, abuse and neglect and Aboriginal children's placement in alternative care. This research, along with partnership contributions, should inform practice and policy decision-making about how to reduce the numbers of Aboriginal children in alternative care while facilitating the realization of their rights.

R23. That Canada adopt monitoring and evaluative strategies in association with their health initiatives to encourage better policy decision-making and more accurate reporting about outcomes in Aboriginal child health. Independent researchers specializing in Aboriginal child health should lead on these strategies.



Federal Children's Commissioner

R5. That Canada establish a federal Children's Commissioner role with a human rights mandate, consistent with the Paris Principles, and General Comments 2 and 5, to address significant issues affecting children's lives³⁹, including the lives of Aboriginal children. Canada should develop and implement this role in collaboration with children and adults working with and for children in key areas of children's lives.

R6. That Canada establish a federal Children's Commissioner role that ensures that children have access to justice, including access to effective non-judicial administrative mechanisms for hearing their concerns and providing remedies to human rights violations.

R16. That the future federal Children's Commissioner's mandate promotes child participation, including the participation of children who have concerns and are seeking redress for possible wrongdoing.

R17. That the future federal Children's Commissioner's mandate is coordinated with provincial child advocacy mandates to facilitate the implementation of children's participatory rights equally across Canada and to ensure children's views inform policy decision-making about matters affecting their lives.

R26. That the future federal Children's Commissioner has a mandate to assume an advisory and monitoring role regarding a coordinated provincial, territorial and federal plan for addressing child poverty, particularly among vulnerable groups such as Aboriginal children.

Planning

R1. That Canada work with the provinces/territories over the next five years to: develop a rights-based lens for reviewing and amending legislation; review, together with non-governmental child rights specialists, the extent to which CRC principles are reflected in legislation affecting children's lives; amend legislation on a priority basis to ensure the CRC is embedded in legislation impacting children.

R2. That Canada develop and implement an Aboriginal children's national plan that is collaborative; informed by current and evolving research; properly funded; monitored for implementation and evaluated for outcomes against objectives. It is critical that this plan is linked to an Aboriginal child poverty reduction strategy with measurable outcomes.

R15. That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.

³⁹ The Commission des droits de la personne et des droits de la jeunesse of Quebec agrees with this recommendation, insofar as the National Children's Commissioner's mandate respects the constitutional distribution of legislative powers.



Budgetary analysis and allocation

R7. That Canada make it a priority to improve its current analysis of budgetary decision-making and its impact on children, specifically in relation to vulnerable groups such as Aboriginal children.

R8. That Canada expand the areas currently reported upon; correlate this expansion with improved data collection methods; and adopt a budget accountability model that shows how many dollars are spent on children in key areas.

R9. That Canada utilize its improved budgetary analysis to inform, develop and implement a national children's budget with clearly targeted funding intended to improve children's lives. This budget development should be informed by consultations with individuals working with and for children and monitored and evaluated for budgetary effectiveness at strategic intervals.

R14. That Canada designates funding for educational child rights programs that include training, led by Aboriginal organizations, about the best interests principle and its practical application for families, communities and service providers who have responsibilities for Aboriginal children.

R21. That Canada provide more community-based, culturally appropriate and properly funded health services in Aboriginal communities to address critical health issues among Aboriginal children and to ensure that Aboriginal children have access to the same standard of health care as other Canadian children.

R24. That Canada improve its investment in health infrastructure within remote communities by promoting initiatives, such as video links, that make quality health care more accessible within those communities.

R25. That Canada provide educational incentives to encourage Aboriginal youth, and adults, to train in health related fields and work in Aboriginal communities.

R29. That Canada provide targeted funding to programs that promote internet safety among children and adults with responsibilities for children.



Non-discriminatory practices

R11. That Canada and others responsible for implementing Aboriginal children's right to be free from discrimination ensure equality in funding for all Aboriginal children requiring child welfare, health and education services.

R12. That Canada fully implement 'Jordan's Principle' and monitor its implementation.

Partnership initiatives

R15. That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.

R19. That Canada lead on partnership initiatives to develop and promote culturally sensitive parenting programs, which include alternative forms of discipline to physical punishment.

R22. That Canada promote accountable, coordinated partnerships among federal, provincial, territorial and Aboriginal bodies responsible for Aboriginal health care and ensure that those partnerships address key issues related to funding, service delivery, infrastructure and equal access to quality health care.

R27. That Canada, together with Aboriginal representatives and the provinces and territories, develop and implement a national framework on education for all Aboriginal children residing in areas subject to federal jurisdiction...

R30. That Canada, provinces, territories and Aboriginal communities, through their collaborative work, promote the development and implementation of holistic services for child victims of trafficking, sexual exploitation, homelessness and related issues through funding initiatives.

R36. That Canada develop and implement a national multi-jurisdictional framework to address the rights of children with mental illnesses or severe behavioural and developmental disorders. Federal, provincial and territorial and Aboriginal representatives should develop this framework in collaboration with key partners, including researchers.

R40. That Canada engage in a national dialogue about the Declaration on the Rights of Indigenous Peoples; its relationship to the CRC; and the implementation of Aboriginal children's rights under these two human rights instruments.



Child welfare and special protection: Canada

R18. That Canada adopt the United Nations Guidelines for the Alternative Care of Children in situations where it has jurisdiction over children in alternative care.

R28. That Canada immediately establish a national commission to examine child trafficking, sexual exploitation and homelessness and their interconnectedness with other issues such as violence and child abuse...

R31. That Canada fully implement the provisions within the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol).

R33. That Canada utilize the Best Practice Statement: Separated Children in Canada to meet its CRC obligations to refugee, unaccompanied and separated children.

R37. That Canada reinforce the protection and rehabilitation of children as interdependent objectives, both of which are interrelated principles guiding decision-making under the YCJA.

Legislation enactment and reviews

R13. That Canada conduct a review of the 'best interests principle' adoption into federal legislation concerning children, legal procedures in federal courts, judicial and administrative decisions, projects, policy, programs and services that have an impact on children.

R32. That Canada review its legislation, along with the provinces and territories, for compliance with the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol).

R34. That Canada review and amend, where necessary, its legislation, regulations and practices related to refugee, unaccompanied and separated children to ensure full compliance with its CRC obligations.

R35. That Canada fully implement the YCJA by providing the provinces and territories, which have administration responsibilities for the Act, with funding for non-custodial options in it.

R38. That Canada ensure that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the CRC.

R39. That Canada remove its reservation to CRC article 37(c).



APPENDIX B – Children in Residential Services: Learning from Records

Bell, N.M. (2007). Appendix 3 – Children in residential services: Learning from records. In T. Shaw (Ed.), *Historical abuse systemic review* (pp. 209-266). Edinburgh, Scotland: Scottish Government.

Records: why are they important?

Records are important for many reasons. In its work, the Scottish Executive's Public Records Strategy (2004) examined what makes records significant, to whom and for what purpose. The strategy identified that one possible answer was "...to ensure that past experiences and lessons are not lost." Parliamentarians expressed this same opinion during their December 2004 discussion when they placed importance on records for providing insights into how abuse was allowed to happen in residential schools and children's homes between 1950 and 1995.

The Public Records Strategy identified other reasons why records are important, such as "public accountability", "to provide background and context to current and future work" and public access to information. During the workshops associated with the strategy's consultation, participants identified other purposes, such as: corporate memory, protecting rights and interests of individuals and authorities, research to produce change, legal knowledge, individual and family identity and the importance of documenting society for current and future use. "Historical interest of future generations" and "assisting social inclusion" were also identified as reasons why records should be preserved.

Drawing from the Public Records Strategy's work, the following section highlights why records are important to this review and other inquiries, organisations, local authorities and central government, future research and former residents.

Why records are important to this review and other inquiries

Fundamental to our work, as the Public Records Strategy identifies, is ensuring "...that past experiences and lessons are not lost." Past experiences, we suggest, begin yesterday and extend back throughout the centuries. Our work and other inquiries into the past could not proceed without the existence and proper preservation of records. They're essential to ensuring that we, as a society, gain insights into past experiences and learn valuable lessons as we continue to search for ways to improve the well-being of children's lives, such as those children living without parental care and in vulnerable situations.

In today's world, there are preventative, monitoring and responsive approaches taken to keeping children safe in residential care – all of which rely on current and past records. Preventative and monitoring approaches rely upon suitably generated records, such as those created through assessments, reviews, incidents, complaints and inspections. Responsive approaches, often taking the form of investigations



and inquiries, also rely upon properly maintained records – past and present – to review current and historical practices possibly harmful to children. By analysing information within records, inspections and inquiries can reveal what has happened and what can be improved upon “...to ensure that past experiences and lessons are not lost.” In other words, records are extremely important for contributing to informed decision-making about keeping children safe and responding to claims of abuse.

The Bichard Inquiry (2004) into the deaths of two children in England who were killed by someone known to them, examined record-keeping practices to learn about whether these might have contributed to, or prevented, the children’s deaths. The inquiry found there were many problems with the review, retention and deletion of records, leading to confusion and poor decision-making by the police and social services. These conclusions led the Bichard Inquiry to make many recommendations for changes in current records practices that will ultimately determine, as well, what historical records will exist for the future.

In Scotland, one independent review examined services provided to the families of children neglected and abused within their community. This review included investigators from police, health, education and social work inspectorate services (Social Work Inspection Agency, 2005). The final report stated that the review depended upon local authority, agency and health records to make certain that the “...life stories of the three children...were at the centre of our investigation.” The fact that these records existed and could be examined meant that the investigators were able to establish important facts about the children’s lives, conduct “...an analysis of practice, policy and management of all agencies involved,” and make key recommendations for improving their child protection services. From a systemic perspective, investigators depended on records for providing insights into what happened to the children that led to their abuse.

Records were important to fulfilling our mandate. They’re also essential to other inquiry processes investigating, from historical and contemporary perspectives, matters relating to children, their welfare and their protection.

Children’s residential establishments, voluntary and religious organisations, local authorities and central government

Individual residential establishments, voluntary and religious organisations, local authorities and central government have a vested interest in ensuring that records are generated, properly managed and preserved. This is also a legal obligation. Contemporary records in these locations are needed to evaluate, monitor and respond to children’s entitlements to excellent quality care. Various records types, such as personal files, incident reports, complaints records and logs, are relied upon for monitoring children’s safety and responding to concerns, while records are also associated with organisations being held accountable.



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Historical records are important because they embody corporate memory: they make sure that when individuals leave work, the information they've gleaned through their careers is retained. Available and properly generated records also make possible contemporary and historical analyses, investigations, monitoring and audits – internal and external. All of these hold organisations, local authorities and central government accountable for the quality of their services, while possibly contributing to a better understanding of residential childcare services.

Further research

There is a growing interest in Scotland's social history and childhood, as evidenced by the proliferation of research about adults' childhood experiences as well as other experiences associated with, for example, life in inner-city tenements, shipyards, coal mines and during the slave trade era. There is a gap in the empirical research (research that draws from observation and experience) about children's experiences in children's residential establishments in Scotland between 1950 and 1995. Research into children's residential services, particularly for the earlier years, could be enhanced by further study.

Records for children's residential services make that research possible while allowing, as well, for an exploration into the relationship between children's residential services, children's experiences and other sectors of society. Some suggest it is important to acknowledge that children who lived in children's residential establishments are the same people who fought for Scotland during the wars, contributed to society's betterment and, in particular, worked to enhance the well-being of young people growing up a generation later. Research into the childhood experiences of children in children's residential establishments in Scotland can establish those links.

There is a lack of research into historical abuse in children's residential establishments. Records should be identified, located and made accessible to researchers who can add to a body of historical knowledge about childhood experiences relating to abuse. Social research can improve our understanding about what happened in children's residential establishments and influence what needs to change to improve the lives of children in care today.

Former residents of children's residential establishments

Former residents...told us that records about their lives and children's residential establishments have great significance to them for many reasons, which follow.

Historical accounts:

Advocates focusing upon reparation for survivors of abuse suggest that developing accurate historical accounts is necessary to help survivors heal from injustices. Developing historical accounts takes many forms, including an analysis of records that must be located and made accessible. Historical accounts can contribute to reconciliation arising from human rights abuses. This is exemplified in South Africa by the work of its Truth and Reconciliation Commission.



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"I hope that the work of the Commission, by opening wounds to cleanse them, will thereby stop them from festering. We cannot be facile and say bygones will be bygones, because they will not be bygones and will return to haunt us. True reconciliation is never cheap, for it is based on forgiveness which is costly. Forgiveness in turn depends on repentance, which has to be based on an acknowledgement of what was done wrong, and therefore on disclosure of the truth. You cannot forgive what you do not know...."

Bishop Tutu, as Chairperson of the Truth and Reconciliation Commission, argued that learning about past events through historical accounts and disclosure of truth is an essential component to reconciling past abuses. In Scotland, former residents indicated that they want a historical account of their experiences in children's residential establishments to emerge. Survivors of institutional child abuse place huge importance upon records for insights into their circumstances, for informing any legal proceeding they're involved in and for helping them to heal from the long-lasting effects of child abuse. The 1998 Law Commission of Canada discussion paper on institutional child abuse reveals that through their research survivors of institutional child abuse identified, among their various needs, the "need for establishing the historical record":

Many survivors have expressed the need to have a permanent, physical reminder to memorialise the fact of their abuse and to establish an archive of their experiences...[they] also need to ensure that history will not be written or rewritten as continuing denial. (Law Commission of Canada, 1998)

Former residents' rights:

Former residents have legal rights, including human rights entitlements under the *Human Rights Act* 1998 which stipulates that "...[e]veryone has the right to respect for his private and family life, his home and his correspondence..." Records associated with children's residential establishments – the homes where former residents' lived as children – play a critical role in the interpretation of what respect means to former residents for their private and family life, their homes and their correspondence. Former residents state that those records are important in terms of what they reveal – and don't reveal – about them as individuals, and about their experiences.

In particular, records are important to ensure that former residents realise their entitlements under freedom of information and data protection legislation, which grant former residents the right to view records associated with their experiences. Records are critical for ensuring that former residents experience their right to justice and to fair and proper legal or administrative proceedings. It is important that former residents aren't denied these entitlements because significant records cannot be located.

Search for identity:

Some former residents lacking basic information about their lives reported that they don't have a sense of belonging or identity. They described how they're responding to a basic human need to better understand who they are and who they are associated with.



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Searching for identity is often associated with general interest in family history and social background. This has become a burgeoning area, with archivists reporting unprecedented requests from adults for records about their past. Hundreds of thousands of orphans, for example, separated from their parents during the Holocaust are searching for information about their families after nearly 60 years. An international tracing centre established after the war forwarded approximately 12 million files to a museum in Jerusalem, the first batch of 50 million files to be released after government and Jewish organisation lobbying (Scotland on Sunday, 2007).

Child migrants' search for information in records is linked to their search for an identity that derives from "...certainty about individual circumstances and knowing about oneself" (Parliament of Australia Senate, 2004). Many child migrants reported to an Australian Senate committee that they found their loss of identity a great hardship. Former residents contacting this review told about experiences similar to those reported by child migrants, with some former residents indicating that they have siblings who were child migrants. An Australian report on those who experienced institutional or out-of-home care as children states that:

People who make the decision to apply for their records are on a journey of self- discovery. They are dealing with the unfinished business of their childhood. People searching want to understand more about the circumstances that led to their placement in care, who their parents were and whether or not they have brothers or sisters. In addition some people have recollections about their time in care, and are keen to see if there is any verification of the experiences they remember. We have an obligation to assist in this journey and to help these adults complete what has been unfinished for them, often for many years. (Parliament of Australia Senate, 2004)

There are many reasons why former residents as children may not have learned information important to them as adults. There is evidence to suggest that, in the earlier years under review, adults responsible for children in residential establishments placed little value on providing information to children. In turn children were often silent, afraid to ask questions and express their concerns. Many children were isolated from or had little contact with siblings, families and friends. Children removed from families experienced trauma that inhibited learning and focusing on information that they now realise, as adults, is important to their sense of belonging and identity.

There is evidence that authorities placed restrictions on family members who were trying to contact children. Children weren't informed about their family members' inquiries about them. Former residents say that, as a result, they have gaps in knowledge about their families and their circumstances. At the same time, some former residents report vivid memories of some childhood experiences, which they want to verify in some tangible and physical way.

Many former residents reported that they had, and continue to have, no understanding about why they were placed in children's residential establishments away from their family. Some want to trace



other family members, as they were often separated from siblings and parents at a young age. Many reported that they didn't know why they were denied contact with their family members. Others said they were searching for confirmation of their birth names (which may have been changed on placement), birthdates, birthplace, educational background, medical histories, family members' names and family histories. Some former residents are searching for information about other child residents, employees and key adult figures in their lives.

The United Kingdom Health Committee (1998) report on the welfare of former British child migrants highlights that many report similar experiences to those living in children's residential establishments in Scotland. In that report, the Committee recognised the need for former child migrants to have and to access their individual records:

This is of great importance to them as a means of coming to terms with their past experiences, achieving a fuller sense of personal identity, and (in some cases) making contact with surviving relatives in the UK and elsewhere. In addition, health difficulties may be caused by the absence of complete medical records. (United Kingdom, Health Committee, 1998)

Former residents stated that they were often provided with erroneous information about their family lives, for example, that they were orphans when one or both parents were alive. Some believed their families had abandoned them or didn't want them. For those people in both groups who assumed they had no family ties, many reported that they didn't look for family members until years later when they requested their records and learned that other family members existed:

Their lies prevented me from searching for my family after I had left the home. I had been told I had no family...I was told there was nobody to look for. Their deception cost me my identity and any chance at a family life, I had to invent myself and then live with confusion for decades. (Parliament of Australia Senate Report, 2001)

Some former residents in Scotland have discovered that parents contributed to their upkeep when they lived as children in children's residential establishments - a fact they didn't know until they saw their records as older adults. Former residents say this knowledge is important because it reflects their parents' concern for their welfare.

Practical implications:

There are practical implications for former residents who lack basic information about their lives in that they may find it difficult to obtain passports, birth certificates before marriage and gather their medical histories. The personal details known to most of us, including birth names, birthdates, nationality, mother's maiden name and so on, may be unknown to former residents making it difficult, if not impossible, for them to complete questionnaires "...and so there is a tendency to avoid any situation that requires this kind of information...We have become invisible citizens" (Parliament of Australia Senate Report, 2001).



A sense of belonging:

Some former residents told us that for many years they felt socially excluded from those who grew up in family homes, knowing their parents, siblings and other family members. Records may permit former residents to trace their family connections and to move towards a sense of belonging to family and community. Families and descendants of former residents may also want to know about their family members as there are historical associations that are important to families and their descendants.

Many years ago children who died in large children's homes, for example, were buried at the back of graveyards in large unmarked graves. These children were the daughters, sons, siblings and relatives of people today who are searching for verification of family experiences and family identity, both of which contribute to feelings of belonging to societies that value family life.

General interest:

Former residents' interest extends beyond their own circumstances and placements. Some said that, as children, they didn't know that other children's residential establishments existed throughout Scotland. As a result, they've developed an interest as adults in learning more about the widespread institutionalisation of children. Some have visited the locations of former large children's homes. Former residents have searched in museums, libraries and archives for records and discovered photographs of earlier children's residential establishments. What former residents have learned, is that it's difficult to find records as no central system for children's residential services identifies where records are held.

Missing historical records: myths and realities

It was evident from the beginning of our information-gathering that records were missing from various locations although it wasn't evident why. Former residents, parliamentarians, the courts and the Scottish Information Commissioner have all questioned why records relating to children's residential establishments appear to be missing. Organisations and local authorities may not know why records can't be located. While it's often assumed that, when records are missing, they don't exist, we found that this wasn't always the case.



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The Scottish Information Commissioner (SIC) addressed the topic of missing records in his report ('the SIC report') about the Scottish Executive Education Department's (SEED) search for records:

The issue of missing records or gaps in records was raised by several Members of the Scottish Parliament during the course of their debate on institutional child abuse in December. The tracing of relevant records has also been a considerable practical issue in the action currently being considered by the Court of Session. The availability of records has been continuing concern of members of INCAS...the definition of 'missing' is clearly important and I have given much consideration to this matter. (Scottish Information Commissioners Report, 2005)

The SIC report indicated that "missing" may imply that records existed in the first instance and that they have been lost or destroyed. The SIC report found that the existing SEED records contained "gaps" and lacked consistency, although it noted that records were very much "of their time."

They contain large amounts of miscellaneous information and there are gaps in the series of documents within them. It is also not clear what they ought to contain beyond reports of statutory inspections and even the timescales for these are not clear. (Scottish Information Commissioners Report, 2005)

The Australian Senate Report (2001) into child migration found that various factors impacted the source of available information to child migrants about what information they could locate. Examples included the volume of information initially available, record-keeping practices and the survival of physical records throughout the years. The report noted that other factors made records difficult to locate, including the imprecise requirements about what information to record and other details about what must or must not be kept and by whom. As later chapters identify, these factors had an impact on record-keeping in Scotland as well.

In our search for information, we found that certain records that were believed to be missing may not have been generated in the first place, or had been destroyed. We also found that adequate searching for records associated with children's residential services has not taken place throughout Scotland. During our review, for example, organisations and local authorities located records that had previously been unidentified. It also became apparent that records thought to be missing may exist in unknown locations. With the passage of time, individuals with corporate memories of records have left their employment and knowledge about what records exist and where left with them. As information about the transfer of records often went unrecorded, it was, and can be, difficult for organisations and government to locate existing records. This work has been made difficult, in part, because legislation has not required proper records management (see Chapter 3).

In general, we found that records about children's residential services in Scotland may exist in larger numbers than is realised and in previously undisclosed locations. While many records from the past appear to be missing, it is too early to conclude that missing records associated with children's residential services do not exist or cannot be located.

